

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2849 (Mia Bonta)
Version: May 19, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

The Promote Ownership by Workers for Economic Recovery Act

DIGEST

This bill would to create the Association of Cooperative Labor Contractors (ACLC), an independent and worker-led nonprofit mutual benefits corporation, to serve as a hub for establishing cooperative labor contractor (CLCs) in various industries throughout the state and support them with labor policy, management assistance, and business support for cooperative labor contractors.

EXECUTIVE SUMMARY

Worker cooperatives are an enterprise model in which the workers own the business, manage it through democratic processes, and share in profits. The proponents of this bill assert that worker cooperatives are particularly sustainable and equitable business models that California should seek to promote. Cooperative labor contractors (CLCs) are conglomerations of individual service providers organized together under a worker cooperative model. This bill would direct the Secretary of the Labor and Workforce Development Agency to create the framework for a nonprofit mutual benefit corporation, the ACLC, with the mission of establishing CLCs in a variety of different industries throughout the state and providing them with labor policy, management assistance, and business support. To participate in the ACLC, the CLCs would have to agree, subject to regular audit, to abide by specified operating procedures intended to ensure worker rights and the integrity of the worker cooperative model.

The bill is sponsored by the Service Employees International Union – California. Support comes from other organized labor and worker cooperative advocates who believe the bill is important for fomenting worker cooperatives in the state. There is no opposition on file. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Nonprofit Corporation Law that recognizes the following:
 - a) public benefit corporations;
 - b) mutual benefit corporations; and
 - c) religious corporations. (Corps. Code §§ 5000 – 10841.)
- 2) Establishes the Nonprofit Mutual Benefit Corporation Law and provides that a corporation may be formed as a nonprofit mutual benefit corporation for any lawful purpose, provided that it is not formed exclusively for charitable purposes, religious, or public purposes, as specified. (Corps. Code §§ 7110 – 8910.)
- 3) Defines “worker cooperative” or “employment cooperative” as a corporation, formed under the Cooperative Corporations part of the Corporations code, which includes a class of worker-members who are natural persons whose patronage consists of labor contributed to or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of the corporation for any purposes. At least 51 percent of the workers shall be worker-members or candidates. (Corps. Code § 12253.5.)
- 4) Establishes the Labor and Workforce Development Agency (LWDA) to serve California workers and businesses by improving access to employment and training programs, enforcing California labor laws to protect workers and create an even playing field for employers, and administering benefits that include workers’ compensation, unemployment insurance, and disability insurance and paid family leave. (Gov. Code §§ 15550 - 15562)

This bill:

- 1) Establishes the Promote Ownership by Workers for Economic Recovery Act (Act) requiring the Secretary of the Labor and Workforce Development Agency (LWDA) to organize, and members to maintain, a corporation under the Nonprofit Mutual Benefit Corporation Law to function as a membership organization for cooperative labor contractors (CLCs).
- 2) Finds and declares that the creation of an Association of Cooperative Labor Contractors will spur the growth of democratically run, high-road cooperative labor contractors, thereby promoting equitable economic development, reducing inequality, and increasing access to living-wage jobs.
- 3) Provides, among others, the following definitions:

- a) "applicant worker" means an individual who applies to work at a cooperative labor contractor;
 - b) "association manager" means an employee of the association that provides services to the members of the association pursuant to the contract required by Section 10022;
 - c) "contracting services" means work, labor, or services provided by a member to a person, as defined by Section 5065 of the Corporations Code;
 - d) "cooperative labor contractor" or "CLC" means a legal entity owned and led by its worker-owners;
 - e) "total association workforce" means the total number of worker-owners of all members that meet the uniform threshold of hours of work established by the association pursuant to subdivision (c) of Section 10009;
 - f) "worker" means a natural person contributing labor or services to a cooperative labor contractor, other than a bona fide independent contractor under paragraph (1) of subdivision (b) of Section 2775. Unless otherwise specified, the term worker includes a worker-owner;
 - g) "worker-owner" means a worker who holds an ownership interest in a cooperative labor contractor;
 - h) "worker voice expert" means an organization dedicated to advocating on behalf of workers, one or more of which shall be designated in the association's bylaws;
 - i) "workforce" means the total number of worker-owners in a cooperative who meet the uniform threshold of hours of work established by the association in the manner specified.
- 4) Specifies that the association shall establish CLCs in specific industries, set labor policy for its members, manage workers for its members, provide other business services to its members, and improve business conditions for its members.
 - 5) Specifies that the association is a nonpublic entity, and shall not constitute a public agency or state employer for any purpose, as specified, nor shall it constitute an employer pursuant to any statute administered by the Public Employment Relations Board.
 - 6) Provides that once the secretary organizes the association as a nonprofit mutual benefit corporation and the Governor, Speaker of the Assembly, and President pro Tempore of the Senate appoint the initial board of directors, as specified, there shall be no further control of the operation of the association by any governmental entity.
 - 7) Specifies that whenever a provision of the Act applicable to the association is inconsistent with a provision of law applicable to nonprofit mutual benefit corporations generally, this Act shall control.

- 8) Specifies that membership in the association is restricted to CLCs that meet all of the following requirements:
 - a) Democratic worker control requirements including:
 - i. Having uniform hiring and ownership eligibility criteria.
 - ii. Having worker-owners work the majority of the hours worked by workers over a six-month period for the CLC.
 - iii. Having the majority of voting ownership interest held by worker-owners.
 - iv. Having the majority of voting power held by worker-owners.
 - v. Having worker-owners exercise their vote on a one-person, one-vote basis.
 - vi. Having the majority of earnings distributed or allocated based on the quantity or value of work performed rather than ownership interest.
 - b) Operational requirements:
 - i. Having governing documents providing the reserve powers, as specified.
 - ii. Carrying employment practices liability insurance for all workers, as specified.
 - iii. Making any employment practices liability insurance policy purchased, per above, available for inspection by any covered worker, as specified.
 - iv. Promptly reporting to the association any instance, as specified, where the CLC has been alleged in a formal proceeding to be in violation of any laws and regulations governing workplace or civil rights.
 - v. Not materially failing in any responsibilities set forth in the association's bylaws.
 - vi. Not materially breaching any management contracts, as specified.
 - vii. Freely assuming employment responsibilities for workers, as specified.
 - c) Workplace and civil rights requirements:
 - vii. Compliance with labor standards, as specified.
 - viii. Compliance with laws and regulations governing workplace or civil rights.
- 9) Provides that there is a rebuttable presumption that a CLC formed as a California worker cooperative, as specified, meets the democratic worker control requirements of this bill.
- 10) Provides the voting rights of members and specifies that each member shall be allocated voting power proportionate to its workforce's share of the total association workforce; no member shall have greater than 30 percent of the voting power, as specified.
- 11) Specifies that the association's initial board of directors shall have three voting directors, representing the gender, ethnic, racial, and geographic diversity of the state, and at least one of whom is a worker-owner.
- 12) Specifies that the initial board of directors, appointed by the Governor and the Legislature, as specified, shall serve at the pleasure of the appointing entity and

until December 31, 2023, or until the first regular meeting of members, whichever comes later.

- 13) Requires the initial board of directors to set forth rules in the bylaws for the composition of future directors, as specified, and provides that following the term of the initial board, no voting directors shall be appointed by the Governor, the Speaker of the Assembly, the President pro Tempore of the Senate, the Legislature, or any other governmental entity.
- 14) Requires the initial board members (appointed by the Governor and the Legislature) to establish or grant membership to at least one cooperative labor contractor and by December 31, 2024, the board of directors shall approve a plan to establish or grant membership to additional members.
- 15) Requires, before granting membership to a CLC and at least once per year during a CLC's membership, the association to conduct an audit of each member and CLC being considered for membership to ensure and confirm membership compliance.
- 16) Specifies that if a member has violated or is violating the democratic worker control requirements, as specified, the association has the right to restore control in the member's governing documents, corporate governance, and employment practices, and shall exercise that right to cure any violations within 90 days. In addition, it requires the CLC to make workers whole for any within 90 days as a condition of continued membership.
- 17) Provides the association with the right to suspend, expel or provide a 90 day right to cure a member's membership if it finds the CLC has violated or is violating the operational requirements of this bill, as specified.
- 18) Specifies that a CLC is found to not be in compliance if, during the preceding three years, it has violated labor standards, laws and regulations governing workplace or civil rights two or more times. Provides the association with the discretion to excuse certain violations, as specified, however, it may not excuse any violation that results in a monetary judgment or administrative determination exceeding the lesser of one hundred thousand dollars (\$100,000) or five percent of the annual payroll applicable to the CLC - and the association must suspend the membership of or expel such CLC.
- 19) Grants the association the right, at its discretion and without providing the opportunity to cure, deny membership to, suspend the membership of, or expel any CLC it finds to have engaged in repeat or flagrant violations of the membership requirements, as specified.

- 20) Specifies that all workers have a right to bring a civil action for injunctive relief to require the association to carry out its duties under this Act.
- 21) Grants the association the right to set the labor policies of the members, including, but not limited to, policies for hiring, firing, promotion, discipline, compensation, and assignment of work.
- 22) Requires the association to employ and provide all association managers to the members and prohibits a CLC from directly employing its own association managers. Additionally:
 - a) any association manager shall be an employee of the association, provided to the member via a contract between that member and the association.
 - b) association management shall be responsible for executing the labor policy set by the association. Members are authorized to implement labor policy under the direction of an association manager.
- 23) Specifies that the association is deemed the employer of the association managers and each member's workers under federal law, regardless of whether a member is also deemed an employer. Under state law, workers are employees of both the association and the applicable member, while association managers are employees of the association.
- 24) Requires the association to carry employment practices liability insurance for all workers at the association and its members with coverage limits equivalent to at least five percent of corresponding payroll covering class and individual claims, as specified.
- 25) Provides all workers with the right to inspect any employment liability insurance policy and the right to bring a civil action for injunctive relief to require the association or the worker's corresponding member to comply with these provisions, as specified.
- 26) Requires the association to establish and oversee the implementation of labor standards for itself and its members that meet at least all of the following minimum requirements, but specifies that these do not reduce the member's or the association's separate obligation to comply with all other laws:
 - a) a worker's wages shall not be less than 125 percent of the applicable minimum wage, for all hours worked, in the jurisdiction where work is performed, as specified;
 - b) the maximum hourly total compensation of any association manager or worker at a member CLC may not exceed an amount 10 times greater than the minimum hourly total compensation paid to any association manager or worker at the same member. Additionally, every member shall annually

- disclose to its workers the total compensation of its highest paid association manager or worker.
- c) a monthly health care expenditure for each worker in the amount of five dollars (\$5.00) per hour worked, subject to annual adjustments, as specified, with discretion as to the form of the expenditures, subject to any applicable collective bargaining agreement. Monthly obligations can be met through one or more of the following:
 - i. additional compensation paid directly to the worker, as specified.
 - ii. payments to a third party, such as to an insurance carrier or trust or into a tax-favored health program, for the purpose of providing health care services to the worker or the spouse, domestic partner, or dependents of the worker, if applicable.
 - iii. average per capita monthly expenditures for health care services made to or on behalf of workers or the spouses, domestic partners, or dependents, as specified.
 - iv. health care expenditure rates shall be adjusted annually based upon the average annual rate of growth of spending in the health insurance market, as specified.
 - d) offer a retirement savings program that provides for any of the following:
 - i. participation in the California Secure Choice Retirement Savings Program under specified terms and conditions, as prescribed.
 - ii. any employer-sponsored retirement plan, as specified.
 - iii. an automatic enrollment payroll deduction IRA that qualifies for favorable federal income tax treatment under the federal Internal Revenue Code.
 - e) specifies that both the association and its members must comply with employment eligibility verification requirements in existing law, as specified.
 - f) requires the association and member CLCs to include a statement of fair chance policy and provides that, except as specified, certain arrests, expunged convictions or participation in a diversion program, among other specified reasons, cannot be considered in making an offer of employment to an applicant.
 - g) Provides that any worker aggrieved by a violation of these provisions may:
 - i. bring a civil action against any employer who violates these minimum standards or higher standards as established by the association and, upon prevailing, recover damages, including, but not limited to, lost wages and reasonable attorney's fees and costs, as well as obtain any appropriate injunctive relief.
 - ii. enforce any other applicable law that provides an alternative vehicle for enforcing provisions of the Act, including, but not limited to, the Labor Code Private Attorneys General Act of 2004 and the Unfair Competition Law.
 - h) Specifies that all relief provided for is supplementary to additional relief available under any other law.

- 27) Permits workers, under specific industry or occupational wage orders of the Industrial Welfare Commission (IWC), to waive through a valid collective bargaining agreement any wage order rights, provided that any right for which the Labor Code provides an independent, overlapping, or corresponding right shall not be waivable.
- 28) Specifies that it is the policy of the state that joint employment liability be construed broadly in favor of workers, however, specifies that a person that contracts with a member CLC for the provision of contracting services shall not be deemed an employer or joint employer of workers, as long as the member's membership in the association is not suspended, as specified.
- 29) Specifies that a member CLC and the association are not labor contractors, as defined.
- 30) Specifies that the provisions of this Act are severable. If any provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

COMMENTS

1. Background on worker cooperatives

A worker cooperative is a business that is owned and controlled by its workers. Worker cooperatives are typically characterized by democratic management structures and profit sharing among the worker-owners, among other things.

2. Potential economic benefits of the worker cooperative model

The proponents of this bill assert that worker cooperatives are more sustainable and equitable than other business models. In particular, a joint report by Project Equity and the Democracy at Work Institute concluded that worker cooperatives may reduce inequalities for low-wage workers. The report also found widespread dissatisfaction with prevailing economic models since the economic crash of 2008 and increasing interest in worker cooperatives as a result. According to this report, "as cities across the United States rethink their approach to economic development, they are trying new strategies and tools to promote sustainability and inclusion. From city halls to community colleges to community development financial institutions, various municipal and regional actors are engaging with worker co-op development as a way to address growing income and wealth inequality."¹

¹ Abell, Hilary and Hoover. *The Cooperative Growth Ecosystem: Inclusive Economic Development in Action*. Project Equity and the Democracy at Work Institute. January 2016.

3. Current challenges for the formation of worker cooperatives

The author of this bill states that: “Forming worker co-ops can be difficult due to complicated state and federal laws, tax laws, and access to capital. A typical worker owned co-op needs to have access to capital, and often requires multiple financial sources such as loans from banks, CDFIs, investors, members, or even community members. Additionally, there is no uniform cooperative code in the United States, and definitions and incorporation guidelines vary from state to state. [...] Administering benefits and lack of awareness of the model can also present challenges to forming worker co-ops. The lack of understanding around co-ops has created material challenges for these entities. For example, worker co-ops in California have reported facing administrative struggles in obtaining loans, insurance, and other areas where an individual is asked to sign and unduly take on the liability that is in actuality spread across the worker-owners.”

Accordingly, the author and sponsor of this measure see a need for the creation of a body that can help to foment the establishment and success of worker cooperatives. In particular, the proponents have in mind the formation of cooperative labor contractors (CLCs). CLC can be thought of as a group of individuals, each of whom provides a particular service, who band together to offer those services under a worker cooperative model,

4. The proposed Association of Cooperative Labor Contractors

To fill this need, AB 2849 would create a nonprofit mutual benefit corporation, the ACLC, with the mission of establishing CLCs in various industries across the state. The ACLC would operate as a sort of umbrella cooperative. The ACLC would provide the technical know-how for formation of the CLCs. Once established, each CLC would become a voting member of the ACLC in keeping with the overall democratic ethos of worker cooperatives. To remain part of the ACLC, each member CLC would have to maintain certain minimum standards, including following the worker cooperative model and guaranteeing a certain level of wages and benefits. The ACLC would audit the CLCs regularly for compliance and would have the power to take disciplinary action against the CLC the ACLC finds that the CLC is not keeping up with the required standards. In addition to these oversight functions, the ACLC would serve as a locus for shared administrative, managerial, and other functions, thus helping to reduce these costs for any individual CLC and to communicate experience and knowledge across enterprises.

The CLCs are intended to foment the use of worker cooperative models in any sector of the economy where there is a demand for contract labor. The author points to existing nursing care worker cooperatives as a model. The CLCs could also potentially provide gig workers an alternative option for offering up their services but likely with better pay and benefits.

5. Regarding CLCs, ACLC, and joint employer status

The primary policy issue raised by this bill and squarely within the purview of the Senate Judiciary Committee has to do with the question of joint employment status between the CLC's and whoever hires a worker-owner of the CLC to perform services. Under California law, where a person or entity exercises sufficient control over the terms and conditions of an employees' work, that person or entity is considered a joint employer of the employee. (*Patterson v. Domino's Pizza* (2014) 60 Cal. 4th 474.) As a joint employer, that person or entity is subject to joint and several liability for violations or harm to the worker that arises out of the employment.

Ordinarily, worker advocates tend to support an expansive view of when joint employment status attaches, because the associated liability encourages both employers to be vigilant about the conditions in which people are working. However, people are unlikely to hire worker-owners from a CLC if they know that they could be taking on legal responsibility for anything that happens to that worker-owner as well as for making sure that worker-owner is paid in accordance with all applicable labor laws. Accordingly, the bill carves out an exception here and makes clear that a person or entity hiring a CLC worker-owner would not become a joint employer of the CLC worker-owner. Such an exception may be necessary for CLCs to have any chance of business success. And, given the extensive alternative protections and safeguards that this bill establishes for the rights of CLC worker-owners, such an exception does not raise any serious concern that it might lead to abuse.

6. Arguments in support of the bill

According to the author:

Employee ownership and worker cooperative models help workers build wealth, while allowing them to participate in the management of the business. When workers are also owners, they can prioritize stronger worker protections and benefits, instead of profits. The lack of awareness of this business model and its benefits has been a major barrier in forming worker co-ops. AB 1319 would incentivize employee ownership by creating a Federation of worker co-ops to serve as a membership organization and resource that can provide technical assistance and administrative support. The creation of more worker co-ops will help move the state towards an inclusive and resilient economy by centering on worker ownership and investing in local communities.

As sponsor of the bill, Service Employees International Union - California writes:

AB 2849 establishes an Association, organized as a private, nonprofit mutual benefit corporation with the purpose of providing technical support to new co-ops and overseeing compliance with democratic governance standards. The creation of the Federation is an important first step to scaling up the worker co-op model in California and helping more Californians get back into the workforce and in high-quality family supporting jobs. California's workers have been hit hard by the pandemic, and if California is going to rebuild with an equitable recovery, we must ensure that workers have a voice in the workplace. Establishing the Association of Cooperative Labor Contractors will provide the necessary technical support to enable workers to band together to provide high-quality family-supporting jobs.

SUPPORT

Service Employees International Union - California (sponsor)

A Slice of New York

American Sustainable Business Network

California Labor Federation

Cooperación Santa Ana

Project Equity

Worker-Owned Recovery California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 1407 (Becker, 2022) establishes the California Employee Ownership Program (EO Program) within the Office of Small Business Advocate (OSBA), to assist small businesses in transitioning to employee ownership. The bill would also establish an Employee Ownership Outreach and Technical Assistance Grant Program (EOTA Grant) for the purpose of funding education and outreach programs that increase awareness and technical assistance for employee ownership transitions. Finally, the bill establishes an Employee Ownership Feasibility Assessment Grant Program (EOFA Grant) to assist in the development of financial assessments to determine viable employee-ownership transition scenarios. SB 1407 is currently pending consideration before the Assembly Jobs, Economic Development, and the Economy Committee.

Prior Legislation:

SB 779 (Becker, Ch. 223, Stats. 2021) amended the list of “earn and learn” programs by specifying that an “earn and learn” program includes transitional jobs, as described in the federal Workforce Innovation and Opportunity Act (WIOA), and subsidized employment, as provided by a worker cooperative, particularly for individuals with barriers to employment.

AB 1319 (Gonzalez, 2021) would have established the Federation of California Worker Cooperatives. AB 2319 died in the Assembly Appropriations Committee.

SB 577 (Hueso, 2015) would have, among other things, increased the maximum aggregate investment that may be made by a shareholder in shares or a member in memberships of a cooperative corporation from \$300 to \$1000. SB 577 died in the Senate Judiciary Committee.

AB 816 (Bonta, Ch. 192, Stats. 2015) renamed the Cooperative Corporation Law. The bill also authorized a cooperative corporation to elect to designate itself as a worker cooperative in its articles of incorporation and require that 51 percent of the workers be worker-members or candidates.

AB 2525 (Bonta, 2014) would have established the Limited Liability Worker Cooperative Act to provide for the organization and operation of worker cooperative companies. AB 2525 died in the Assembly Banking and Finance Committee.

AB 1161 (Skinner, 2011) would have renamed the Consumer Cooperative Corporation Law as the Cooperative Corporation Law and authorized the establishment of worker cooperatives. AB 1161 died in the Assembly Banking and Finance Committee.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 0)

Assembly Floor (Ayes 56, Noes 15)

Assembly Appropriations Committee (Ayes 12, Noes 4)

Assembly Labor and Employment Committee (Ayes 5, Noes 1)

Assembly Banking and Finance Committee (Ayes 9, Noes 3)
