

Date of Hearing: May 11, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 2849 (Mia Bonta) – As Amended March 24, 2022

|                   |                      |       |       |
|-------------------|----------------------|-------|-------|
| Policy Committee: | Banking and Finance  | Vote: | 9 - 3 |
|                   | Labor and Employment |       | 5 - 1 |

Urgency: No                      State Mandated Local Program: No                      Reimbursable: No

**SUMMARY:**

This bill enacts the Promote Ownership by Workers for Economic Recovery Act and creates a private, non-profit mutual benefit corporation called the Association of Cooperative Labor Contractors (ACLC) to serve as a membership organization for cooperative labor contractors (CLCs). Specifically, this bill:

- 1) Requires the Labor and Workforce Development Agency (LWDA) secretary to organize the ACLC and requires the Governor, Speaker of the Assembly and President pro Tempore of the Senate to each appoint one director to the initial board of directors. Once the ACLC is organized and the first board of directors appointed, there is no further control over the ACLC by any governmental entity.
- 2) Restricts membership of the ACLC to CLCs following specified democratic worker control requirements, grants the ACLC the right to suspend or expel a member that does not comply and outlines voting powers of the ACLC board of directors and each ACLC member.
- 3) Requires the ACLC to establish and oversee the implementation of labor standards, with which the ACLC and each member must comply, including a wage floor of 125% of the applicable minimum wage, maximum worker to worker pay ratio of 10:1, provision of a monthly health care expenditure, enrollment in a retirement savings program and clean slate hiring practices. A worker aggrieved by a violation of these standards may bring a civil action, including injunctive relief, lost wages, damages and attorney's fees and costs upon prevailing, or enforcement under the Private Attorneys General Act.
- 4) Provides that the ACLC is deemed the employer of each member's workers under federal law, whereas under state law, workers are employees of both the association and the applicable member. Thus, any person that contracts with the ACLC or an ACLC member is not deemed an employer or joint employer of workers and the ACLC or an ACLC member may indemnify any contractor from liability if ACLC labor standards or other existing employment rights are violated.
- 5) Grants the ACLC and ACLC members the same tax exemption provided to state-chartered credit unions.

**FISCAL EFFECT:**

- 1) Likely costs in the hundreds of thousands of dollars to LWDA to establish the ACLC. LWDA does not have experience organizing a corporation; thus, LWDA would likely need to hire an outside consultant with expertise in this highly specialized field.
- 2) Costs of an unknown, but definitely significant, amount in General Fund (GF), special fund and local revenue loss, by granting the ACLC and ACLC members the same tax-exempt status as credit unions. It is unclear how many entities may forgo a traditional business model and utilize a CLC model as a result of this bill.
- 3) Similarly, GF or Trial Court Trust Fund cost pressures of an unknown, but potentially significant, amount to the courts in additional workload, by authorizing workers to bring a cause of action for violations of ACLC labor standards. The estimated workload cost of one hour of court time is \$1,000. If 10 cases are filed statewide resulting in 20 hours of court time for each case, costs would be approximately \$200,000. Although courts are not funded on the basis of workload, increased pressure on the courts and staff may create a need for increased funding for courts to perform existing duties.

#### COMMENTS:

- 1) **Purpose.** 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, choosing people over profits. The lack of awareness of this model and its benefits has been a major barrier in forming worker co-ops. AB 2849 incentivizes employee ownership by creating an Association of worker co-ops to serve as a membership organization and resource that can provide technical assistance and administrative support.

This bill is sponsored by the California State Council of Service Employees International Union (SEIU California).

- 2) **Worker Cooperatives and CLCs.** A cooperative corporation (co-op) conducts its business primarily for the mutual benefit of its members as “patrons” of the corporation. Whereas a traditional corporation generates earnings for its owners or shareholders, a co-op is required to proportionately and equitably distribute earnings to its members based upon their “patronage” of the corporation. A worker co-op is organized for the benefit of its members who provide their labor in the production of the good or service sold by the co-op. Distributions are generally based on the amount of hours worked or wages earned, with a share in year-end profits.

A joint report by Project Equity and the Democracy at Work Institute suggests widespread dissatisfaction with prevailing economic models amongst workers since the Great Recession, noting “various municipal and regional actors are engaging with worker co-op development as a way to address growing income and wealth inequality.” However, a 2019 informational hearing by the Assembly Labor Committee found that worker co-ops face numerous formation challenges, including securing access to capital, lack of legal expertise and fewer established support organizations.

In light of these challenges, this bill creates a statewide association, the ACLC, to help worker co-op member organizations, or CLCs, grow. CLCs that become ACLC members and follow the ACLC's labor standards would receive business services and management assistance from the ACLC. Additionally, the CLC would enjoy tax benefits and be able to indemnify a contractor of the CLC's services from liability if workers' rights are violated (with liability presumably falling on the CLC or ACLC). Thus, although the ACLC does not limit membership to any particular industry sector, this bill appears to strongly incentivize formation of CLCs that provide contracted staffing services, similar to the largest worker co-op in the U.S., New York's Cooperative Home Care Associates (CHCA). CHCA employs 2,500 worker-owners who provide home health services, with 80% of revenues allocated to workers' wages and benefits and very low turnover compared to the industry's average rate.

- 3) **Tax and License Fee Exemption.** This bill grants the ACLC and the ACLC's members the same tax exemption provided to state-chartered credit unions. Existing law exempts a state-chartered credit union from the corporation tax and all other state, county and municipal taxes and licenses, except taxes on real property, local utility user taxes, sales and use taxes, energy resources and emergency telephone surcharges, unrelated business income taxes and motor vehicle and vehicle registration fees. Credit unions are also still subject to payroll taxes, and share dividends paid to credit union members are taxed at the membership level.

Proponents of this bill note that while an ACLC member would be exempt from business license fees, individual worker-owners would still be responsible for covering their own licensing costs. For example, a barbershop would not need to pay for the shop's license to operate, but a cosmetologist would pay for their license to practice. However, such an example highlights the potentially far-reaching impacts of applying a tax and license fee exemption designed for one type of financial non-profit entity to the ACLC and ACLC members, the latter of which may be for-profit operations across various industry sectors.

- 4) **Related Legislation.** SB 1407 (Becker) would establish the California Employee Ownership Program within the Office of Small Business Advocate to assist small businesses in transitioning to employee ownership. SB 1407 is pending in the Senate Appropriations Committee.
- 5) **Prior Legislation.** AB 1319 (Bonta), of this legislative session, was substantially similar to this bill, except a Federation of California Worker Cooperatives would have been organized by the Labor Commissioner and no civil cause of action was provided. AB 1319 was not heard by this committee after being referred to the Suspense File.

**Analysis Prepared by:** Irene Ho / APPR. / (916) 319-2081