

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

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

SUBJECT: The Promote Ownership by Workers for Economic Recovery Act

SUMMARY: Establishes the Promote Ownership by Workers for Economic Recovery Act (Act) to create an Association of Cooperative Labor Contractors for the purpose of spurring the growth of cooperative labor contractors.

Specifically, **this bill:**

- 1) Requires the Secretary of Labor and Workforce Development to organize a corporation under the Nonprofit Mutual Benefit Corporation Law operating under the name “Association of Cooperative Labor Contractors” (Association) or a substantially similar name. The Association must function as a membership organization for cooperative labor contractors (CLCs) and must establish CLCS in specific industries, set labor policy, manage workers, and provide other business services to its members and improve business conditions for CLCs.
- 2) Specifies that the Association is a nonpublic entity and does not constitute a public agency or state employer for any purpose.
- 3) Restricts Association membership to a CLC that meets specified requirements for democratic worker control, such as uniform hiring and ownership eligibility criteria and the majority of voting power is held by worker-owners.
- 4) States that there is a rebuttable presumption that a CLC formed as a California worker cooperative corporation under Section 12253.5 of the Corporations Code meets the democratic worker-control requirements described in #3.
- 5) Requires each member CLC to designate one representative to cast the member CLC’s vote in elections or other Association decisions. Each member CLC’s voting power is proportionate to its workforce’s share of the Association’s total workforce, but no member CLC can have greater than 30% of the voting power, which will be enforced in a specified manner.
- 6) Establishes the Association’s board of directors (board), which initially is three voting directors, at least one of whom is a worker-owner. This initial board must set forth rules, which must include some specified rules in the bylaws such as there be an odd number of voting directors or that the directors must be selected by weighted votes as described in #5, in the bylaws for the composition of a future board.
- 7) Requires the Association to establish or grant membership of at least one CLC and require the board, by December 31, 2024, to approve a plan to establish or grant membership to additional CLCs.

- 8) Provides the Association the right to unilaterally revoke the democratic worker control requirements described in #3 above if the Association determines that a member CLC has violated or is violating those requirements, and specifies other conditions that allow for the suspension or expulsion of a CLC member, such as a material failure to comply with association bylaws or a failure to comply with minimum labor standards described in #11.
- 9) Requires the Association to set the labor policies of member CLCs , including policies for hiring, firing, promotion, and compensation. The Association must also provide association managers to each member CLC, and this management is responsible for executing the Association's labor policy. States that the primary purpose of these requirements is to provide that the Association shall be deemed the employer of the Association managers and each member CLC'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.
- 10) Grants the Association and a member CLC the tax exemption granted to state-chartered credit unions, as specified.
- 11) Requires any labor standards adopted by the Association to meet specified minimum standards, including:
 - a) A worker's wages must be at least 125% of the applicable minimum wage.
 - b) The maximum hourly total compensation of any association manager or worker may not exceed 10 times greater than the minimum hourly total compensation paid to another association manager or worker at the same member CLC.
 - c) A monthly required health care expenditure must be made to, or on behalf of, each worker in the amount of \$5 per hour worked, subject to specified inflation. This monthly required health care expenditure may be provided in specified forms (such as through additional compensation or payments to a third party, such as an insurance carrier), subject to any applicable collective bargaining agreement.
 - d) A worker must be provided with a specified retirement savings program.
- 12) Prohibits a CLC from considering certain criteria in making an offer of employment to an applicant worker, including an arrest not leading to a conviction, participation in a diversion program, an adjudication in the juvenile justice system, or a conviction that is more than seven years old.
- 13) Requires the Association to expel any CLC that in preceding three years has been found to be violation two or more times of any applicable laws or regulations governing workplace rights or civil rights, as specified. The Association may excuse violations based on consideration as to whether the violation was minor, systemic, or intentional.
- 14) Authorizes any worker who is aggrieved by specified violations to bring a civil action, including injunctive relief, lost wages, and damages, against any employer who violates this division and, upon prevailing, shall recover reasonable attorney's fees and costs, and enforce

any other applicable law, including, but not limited to, the Labor Code Private Attorneys General Act of 2004.

- 15) Authorizes the Association and member CLCs to indemnify any person that contracts with the Association or a member CLC for the provision of contracting services for any liability arising under this code, any provision of any order of the IWC, the California Fair Employment and Housing Act, or any similar statute providing for employment liability.
- 16) States that the Legislature recognizes the importance of holding all parties responsible for violations of workplace standards accountable for those violations. In particular, abuse of franchiser-franchisee relationships, independent contractor misclassification, and the use of low-road labor market intermediaries can leave workers without meaningful recourse for those violations, if only an insolvent or otherwise underresourced entity is subject to liability. Accordingly, it is the policy of the state that joint employment liability be construed broadly in favor of workers.
- 17) Provides that a person that contracts with the Association or a member CLC for the provision of contracting services shall not be deemed an employer or joint employer of workers, provided that specified requirements are met.
- 18) Provides that the provisions of the Act are severable and if any provision of the Act 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.

EXISTING LAW:

- 1) Establishes the Nonprofit Corporation Law that recognizes the following:
 - a) Public benefit corporations;
 - b) Mutual benefit corporations; and
 - c) Religious corporations.
- 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, as specified.
- 3) Establishes the Division of Labor Standards and Enforcement (DLSE) under the direction of the Labor Commissioner (LC) and authorizes the LC to investigate employee complaints and enforce labor laws, as specified.

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

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. 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.

2) **Background on worker cooperatives.**

A cooperative corporation (or co-op) conducts its business primarily for the mutual benefit of its members as patrons of the corporation. The earnings, savings, or benefits of the co-op are legally required to be used for the general welfare of the members. Whereas a traditional corporation generates earnings for its owners or shareholders, a co-op is required to proportionately and equitably distribute earnings to some or all of its members or its patrons, based upon their patronage of the corporation.

Consumer co-ops and worker co-ops are two general classes of cooperative corporations. A consumer co-op is organized for the benefit of its members who purchase goods or services from the co-op. 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.

Both consumer and worker co-ops are required to distribute their earnings, savings, and benefits to their members. For worker co-ops, these distributions are typically based on the amount of hour worked or wages earned and often take the form of a share in year-end profits.

In recent years there have been renewed interests in promoting worker cooperatives and addressing the obstacles owners (or future owners) face in trying to grow or start the business. An August 16, 2019 informational hearing hosted by the Assembly Labor Committee explored the challenges faced by worker cooperatives. The Assembly Labor Committee identified the following challenges in the purview of this committee:

- a) *Finding investors.* Cooperatives face difficulty in finding investors or financial institutions willing to assist with start-up costs and thus become more reliant on internal financing.
- b) *Lack of legal expertise.* The legal framework for establishing a cooperative is not widely taught and potential owners navigate a myriad of tax and corporation laws related to formation.

3) **The proposed federation structure**

AB 2849 would establish the Association to function as a federation of so-called cooperative labor contractors in order to allow more worker cooperatives to form and thrive in California. The proposed Association would be organized as a mutual-benefit corporation, which is a nonprofit or non-for-profit corporation that provides an association of people a common

benefit. Examples include certain corporations created to provide insurance for members or trade groups or professional organizations that promote the welfare of member individuals or organizations. Importantly, a mutual-benefit corporation is not a charitable organization, and it must still file tax returns and pay taxes because the benefits it provides is not meant to be for the general public.

The Association's scope is not tailored to any specific industry or cohort of workers, though it appears to be in response to the increasing prevalence of gig work. A 2020 UCLA Labor Center study evaluated this proposal's ability to compete against traditional gig industries, such as Uber, Lyft, and Instacart, and the study notes that this proposed federation structure "would allow individual workers to band together in jointly owned and democratically controlled organizations that provide staffing services to gig companies."¹

The UCLA study points to a number of real-world examples meant to highlight how the Association could work. For example, the Cooperative Home Care Associates (CHCA), which is the largest worker cooperative in the US, is comprised with over 2,300 workers who provide home health services across New York City. Similarly, the NurseCan Cooperative provides on-demand services from licensed vocational nurses to address market demands. In these examples, the worker-owners are unionized and generally earn more and receive better benefits than their counterparts who work as independent contractors for a platform.

The Act's organizational structure is a network of CLCs that can be hired by others on a contract basis. Unlike gig workers who work for a specific platform such as rideshare companies or food delivery services, the individual workers providing the services are also worker-owners who can set the terms of their work. The Association, as an umbrella organization with member CLCs, provides technical and management assistance, provided that member CLCs abide by the federation's labor standards and policies. In theory, the Association could also provide financial support or seed funding, though AB 2849 is silent on whether direct financial assistance is part of the overall vision.

Another key design feature of the Association is the use of managers who work for the Association but manage a CLC's labor policies. This individual or individuals are tasked with "executing the labor policy set by the Association" and work under contract with a member CLC.

4) **The tax exemption**

This bill applies a tax exemption available to state-chartered credit unions to the Federation and its members. Under current law, a state-chartered credit union is "exempt from all other taxes and licenses, state, county, and municipal, imposed upon those credit unions" except specified taxes such as sales and use taxes, local utility user taxes, and taxes upon their real property.

¹ Lucero Herrera et al, *Worker Ownership, COVID-19, and the Future of the Gig Economy*, UCLA Labor Center (2020), available at <https://www.labor.ucla.edu/publication/gigworkers/>. Note that this study calls the program the Cooperative Economy Act (CEA), which has since been renamed into the Promote Ownership by Workers for the Economic Recovery Act.

It is unclear what the full impact of this credit union tax exemption will be. Proponents indicate that one motivation for this is to reduce the impact of license fees such as alcoholic beverage license fees as well as secretary of state filing fees to reduce the start-up burdens for new worker cooperatives. However, there may be unintended consequences from applying a broad tax exemption designed for a type of financial nonprofit entity like a credit union to the Association (a nonprofit) and member organizations (presumably for-profit). How would this exemption affect the tax treatment of distributed profits? What happens if a member organization leaves the Federation and how do appropriate government bodies know the tax exemption no longer applies?

As this bill moves forward, greater clarity on the scope of this proposed tax exemption will be needed. There are some similarities between credit unions and worker cooperatives, but credit unions' tax exempt status is an artifact of history related to their unique role in the financial system. The author may wish to consider specifying which taxes are exempt instead of applying the existing credit union tax exemption to the Federation and worker cooperative organizations.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Council of Service Employees International Union (SEIU California) (Sponsor)
A Slice of New York
California Labor Federation, AFL-CIO

Opposition

None on file.

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