
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT**Senator Dave Cortese, Chair****2021 - 2022 Regular**

Bill No: AB 2849**Hearing Date:** June 22, 2022**Author:** Mia Bonta**Version:** May 19, 2022**Urgency:** No**Fiscal:** Yes**Consultant:** Alma Perez-Schwab**SUBJECT:** The Promote Ownership by Workers for Economic Recovery Act**KEY ISSUES**

Should the Legislature establish a Promote Ownership by Workers for Economic Recovery Act to create an Association of Cooperative Labor Contractors (CLC or worker co-ops) for the purpose of spurring growth of this business model?

Should the Legislature require the Secretary of the Labor and Workforce Development Agency to create this association as a nonprofit mutual benefit corporation, but once it is set up, the association will be run by member CLCs with no government control over any of its operations?

Should the association be authorized to set labor policy, manage workers for member CLCs, provide other business services and improve business conditions for its members?

ANALYSIS**Existing law:**

- 1) Establishes the Nonprofit Corporation Law that recognizes the following:
 - a) Public benefit corporations;
 - b) Mutual benefit corporations; and
 - c) Religious corporations.
(Corporations 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. (Corporations 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. (Corporations 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. (Corporations 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 member who meet the uniform threshold of hours of work established by the association pursuant to subdivision (c) of Section 10009.

Organization

- 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 provisions 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.*

Membership & Voting

- 8) Specifies that membership in the association is restricted to CLCs that meet all of the following requirements:
 - a. Democratic worker control requirements:
 - 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:
 - i. Compliance with labor standards, as specified.
 - ii. 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.

Board of Directors

- 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.

Powers and Duties of the Association

- 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 5 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 5 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.

Labor Standards

- 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 don't 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: Worker Co-Ops

A worker cooperative is a business that is owned and controlled by its workers, who constitute the members of the cooperative. The two central characteristics of worker cooperatives are:

- workers own the business and they participate in its financial success on the basis of their labor contribution to the cooperative
- workers have representation on and vote for the board of directors, adhering to the principle of one worker, one vote

According to the Assembly Committee on Banking and Finance policy analysis of this bill:

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 hours 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.

2. Examples of Co-Ops:

According to the Democracy at Work Institute, a US Federation of Worker Cooperatives, the majority of worker cooperatives in the United States are small businesses, with between 5

and 50 workers, but there are a few notable larger enterprises with between 150 and 500 workers. The largest worker cooperative in the United States is Cooperative Home Care Associates (CHCA), a home care agency with over 2,000 workers based in New York. Any business can be a worker-owned and -controlled business. Worker co-ops have been successful in many different sectors and industries.

Worker cooperative facts and figures (according to the Democracy at Work Institute):

- Number of worker cooperatives in the United States: between 900-1000
- Total number of people working at worker cooperatives in the United States: between 8,000 - 10,000
- Median firm revenue for worker cooperatives: \$298,016
- Median size of a worker cooperative: 6 workers
- Largest worker co-op: Cooperative Home Care Associates (CHCA)
- Percentage of worker cooperatives that began as conventional enterprises: 12%
- Average age of a worker cooperative: 5 years old

A joint report by Project Equity and the Democracy at Work Institute suggests that worker cooperatives may have a potential impact on reducing inequalities for low-wage workers.¹ This report further found that since the economic crash of 2008, there has been widespread reported dissatisfaction with prevailing economic models, which has driven interest in worker cooperatives. 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.”²

3. Need for this bill?

According to the author, “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. Some states have cooperative corporation entities under which a worker cooperative can choose to form, as in California under AB 816 (Bonta, Chapter 192, Statutes of 2015) the California Worker Cooperative Act, which was signed into law by Governor Brown. The federal government also gives preferential tax status for cooperatives under Subchapter T. 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.

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

² Ibid.

AB 2849 would create a nonprofit mutual benefit corporation, the Association of Cooperative Labor Contractors (“Association”), which would serve as a membership organization for worker co-ops who wish to join. Members of the Association would have to maintain democratic worker control, meaning worker-owners would hold majority ownership interest and majority voting power, among other workplace democracy requirements. The Association would also serve as a resource and house shared administrative, managerial, and other functions and costs, leveling the playing field for worker co-ops of any size to join the Association and gain the benefits of scale the Association would provide.

An Association would provide critical missing infrastructure to support worker co-op membership to grow and thrive. The Association would also be an oversight body that is itself worker-governed, and offer a common framework for worker co-ops in any industry. With the support of an Association, worker cooperatives can become a powerful vehicle for putting assets in the hands of workers, including through a share in the profits, meaningful benefits, and career growth opportunities.”

4. Proponent Arguments:

According to the sponsors of the measure, SEIU California, “A worker-owned cooperative (worker co-op) is an enterprise where workers share in the profits, oversight, and management of the enterprise using democratic practices. In this model, worker-owners get a voice in determining policies for issues like schedules, pay, benefits and other parts of the business. This is not a new idea—the first recorded modern co-op, the Rochdale Pioneers of Northern England, was founded in 1844.

Worker co-ops operate across the world and across industries, both as for-profit and nonprofit enterprises. In contrast to the conditions many workers are facing today, worker co-ops offer a worker-centered model that offers both a sustainable, long-term arrangement for workers, and accelerates their economic recovery. While the worker co-op model has been successful globally and in smaller operations in the United States, co-ops have not yet scaled up, largely due to a lack of access to capital and to expertise in navigating the complex tax and corporation laws associated with forming a co-op.

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.”

5. Opponent Arguments:

None received.

6. Staff Comments:

As noted by the author and sponsors, the lack of understanding around co-ops has created challenges for the growth of this business model. This bill seeks government assistance in navigating the complexities of this business model by establishing an association for worker co-ops, but once established, the government will have no further control of the operation of the association. The association will then be run by member CLCs to provide guidance and

assistance on the day-to-day operations of the co-ops through the employment of “association managers” that will be assigned to each CLC. The association would be organized as a mutual-benefit corporation, which is a nonprofit or not-for-profit corporation providing an association of people a common benefit, but is not a charitable organization and must still file tax returns and pay taxes because the benefits it provides is not meant for the general public.

As discussions on this bill continue, the author may wish to consider the following:

The bill specifies, “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 first board of directors, there shall be no further control of the operation of the association by any governmental entity.” However, the bill doesn’t provide further information on how this change in control happens. *What is the state liability after this change in control? Before the change in control, could the state be liable for any violations of law of member CLCs?*

The Secretary of the Labor and Workforce Development Agency has the knowledge and expertise in the area of labor law, which is only one component of the bill. The bill also includes other components that are outside the area of expertise of the agency, tax implications, for example. *Should the bill include participation from other relevant state entities – at least as part of the initial board of directors for the association?*

The concept proposed by this bill is unique; it is unclear what precedent exists for this type of action. *The committee may wish to consider what precedent the bill is setting.*

7. Double Referral:

This bill has been double referred and if passed by our committee today, will be sent to Senate Judiciary Committee for a hearing.

8. Prior and Related Legislation:

SB 1407 (Becker, 2022) establishes the California Employee Ownership Program within the Office of Small Business Advocate to assist small businesses in transitioning to employee ownership. Establishes an Employee Ownership Outreach and Technical Assistance Grant Program for funding education and outreach programs that increase awareness and technical assistance for employee ownership transitions. 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 when introduced in the Senate was single referred to the Senate Business, Professions and Economic Development Committee and is currently awaiting hearing in the Assembly Jobs, Economic Development and the Economy Committee.*

AB 1319 (Gonzalez, 2021) – This bill (AB 2849) began as a reintroduction of AB 1319, which did not move out of Assembly Appropriations committee.

SB 779 (Becker, Chapter 223, Statutes of 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 an employment social enterprise, or a worker cooperative, particularly for individuals with barriers to employment.

AB 816 (Bonta, Chapter 192, Statutes of 2015) renamed the Cooperative Corporation Law and authorized a cooperative corporation to elect to designate itself as worker cooperative in its articles of incorporation, and require that 51% of the workers shall be worker-members or candidates.

SUPPORT

SEIU California (Sponsor)
A Slice of New York
American Sustainable Business Network
California Labor Federation, AFL-CIO
Project Equity

OPPOSITION

None received

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