Date of Hearing: April 23, 2025

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 1329 (Ortega) – As Amended April 21, 2025

SUBJECT: Workers' Compensation: Subsequent injuries payments

SUMMARY: This bill, for purposes of claims for special additional compensation from the Subsequent Injuries Benefits Trust Fund (SIBTF), specifies the type of evidence necessary to demonstrate the existence of a prior permanent partial disability (PPD), requires that medical-legal evidence be collected exclusively through existing qualified medical evaluation (QME) procedures, transfers responsibility for payment of SIBTF benefits from the State Compensation Insurance Fund ("State Fund") to the Director of Industrial Relations, and clarifies existing law concerning the calculation of permanent disability rating. Specifically, **this bill**:

1) Provides that, for compensable subsequent injuries occurring on or after January 1, 2026, for purposes of determining eligibility for, and the amount of, special additional compensation (i.e. "SIBTF benefits"), the existence of a PPD that existed at the time of the compensable subsequent industrial injury (SII) shall be determined by substantial evidence, based on medical records, testimony, or other evidence, that the PPD predated the SII, and that the PPD resulted in loss of earnings, interfered with work activities of the employee, or otherwise impacted the ability of the employee to perform work activities or activities of daily living.

2) Specifies that medical-legal evidence in a proceeding for SIBTF benefits may only be obtained in accordance with existing procedures for QMEs applicable to traditional workers' compensation claims.

3) Requires the administrative director (AD) of the Division of Workers' Compensation (DWC) to create and maintain a database of QME physicians who have the necessary training and expertise to evaluate SIBTF claims; and specifies that this database shall be used by the medical director of DWC to fulfill requests for a panel of QMEs in accordance with existing procedures.

4) Authorizes the Director of Industrial Relations to issue regulations as necessary for the implementation and orderly and effective administration of SIBTF medical evaluations.

5) Transfers responsibility for the payment SIBTF benefits from State Fund to the Director of Industrial Relations.

6) Clarifies that, pursuant to existing law, the term "permanent disability" in relation to SIIs occurring on or after January 1, 2005, and prior to January 1, 2013, be measured by the whole person impairment rating, based on the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), after adjustment for future earning capacity.

7) Clarifies that, pursuant to existing law, the term "permanent disability" in relation to subsequent compensable injuries occurring on or after January 1, 2013, be measured by the

whole person impairment rating, based on the AMA Guides, after multiplication by the adjustment factor of 1.4 pursuant to existing law.

EXISTING LAW:

1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. (California Constitution Article XIV, Section 4)

2) Establishes DWC within the Department of Industrial Relations (DIR) and charges it with monitoring the administration of workers' compensation claims and providing administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. (Labor (Lab.) Code Sections 3200 et. seq.)

3) Establishes the SIBTF as a special trust fund account in the State Treasury, of which the Director of Industrial Relations is a trustee; specifies that the fund is continuously appropriated for the non-administrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments; and prohibits the use of the funds for any other purpose. (Lab. Code Section 62.5(c)(1))

4) Provides that, if a worker with a PPD receives a SII resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the SII alone, and the combined effect of the SII and the PPD is a permanent disability equal to or greater than 70% of total, the worker shall be paid compensation in addition to the compensation due for the permanent disability caused by the SII for the remainder of the combined permanent disability existing after the SII. (Lab. Code Section 4751)

5) Specifies that compensation in accordance with 4, above, be provided only if either: the PPD affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the SII affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the worker, is equal to 5% or more of total; or the permanent resulting from the SII, when considered alone and without regard to or adjustment for the occupation or the age of the worker, is equal to 35% or more of total. (Lab. Code Section 4751)

6) Levies separate surcharges upon all employers for purposes of deposit in the SIBTF, the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, and the Occupational Safety and Health Fund, and that the total amount of the surcharges be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year. (Lab. Code Section 62.5(f)(1))

7) Provides that, for injuries occurring before January 1, 2013, in determining percentages of permanent disability, account shall be taken of descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the AMA Guides, the occupation of the injured worker, the worker's age at the time of injury, and the worker's diminished future earnings capacity (DFEC), as calculated based on a prescribed numeric formula. (Lab. Code Section 4660)

8) Provides that, for injuries occurring on or after January 1, 2013, in determining percentages of partial or permanent total disability, account shall be taken of the occupation of the injured worker, the worker's age at the time of injury, and descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the AMA Guides with the whole person impairment, as provided in the AMA Guides, multiplied by an adjustment factor of 1.4. (Lab. Code Section 4660.1(b))

9) Provides for a formal system of administrative dispute resolution for cases where an injured worker and their employer do not agree over any issue associated with the delivery of traditional, non-SIBTF workers' compensation benefits, including evaluation by a neutral QME, receipt of a medical-legal report prepared by the QME based on that evaluation and any other medical records and information provided by the parties, the opportunity to meet before a workers' compensation administrative law judge (WCJ) for adjudication on the dispute based on the medical-legal report, and, if necessary, appeal the WCJ's decision to the Workers' Compensation Appeals Board (WCAB) for final judgement. (Labor (Lab.) Code Sections 4060, et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) *Purpose*: According to the author:

> In the last 10 years, the average business in California has seen a $13,356 reduction in their annual Workers' Compensation cost. During the same 10 years, the Secondary Injury Fund's average assessment has increased by $176 and an estimated 95,000 California Gulf War veterans have been diagnosed with PTSD. In 2019, the Legislature adjusted Workers' Compensation for first responders with PTSD, but kept the Secondary Injury Fund for Gulf War veterans and others with disabling injuries.
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> The fund was first created because a soldier who had a disabling injury is more prone to a subsequent injury. The fund spreads the risk so patriotic employers don't carry the burden. AB 1329 will lower assessments paid by all employers into the Subsequent Injury Benefit Trust Fund (SIBTF) by 20-25% while continuing to reduce the financial risk to employers who hire a previously disabled worker.

This bill is author-sponsored.

2) *Workers' compensation and the SIBTF*: At its core, the workers' compensation system relies on a so-called "grand bargain." If a worker is injured on the job, the employer must pay for the worker's medical treatment, including monetary benefits if the injury is permanent. In exchange for receiving the guarantee of such treatment, the worker surrenders the right to sue the employer for monetary damages in civil court. To receive such care and/or benefits, the worker must be able to demonstrate that it is more likely than not that the injury arose "out of and in the course of employment."

In some cases, injuries suffered on the job can exacerbate pre-existing permanent disabilities the worker incurred before that injury, or can combine with those disabilities to more significantly limit the ability of the worker to perform work activities. These pre-existing disabilities can often be unrelated to present employment, but, absent a mechanism to address

them, could increase liabilities for employers under the traditional workers' compensation system by augmenting the cost of compensatory benefits for resulting, combined permanent disabilities. Though modern anti-discrimination laws would ideally prohibit this, such increased liabilities could disincentivize employers from hiring workers with pre-existing disabilities.

In the wake of World War II, when veterans returning home from the war suffered from particularly high rates of pre-existing permanent disability, the Legislature established the SIBTF to address this problem. A coalition of organizations in opposition to the bill unless amended, comprised of the California Coalition on Workers' Compensation (CCWC), the California Chamber of Commerce (CalChamber), and the American Property Casualty Insurance Association (APCIA), details the history of the SIBTF as follows:

> California's SIBTF was established in 1945 with the purpose of encouraging employers to hire and retain workers that suffered from pre-existing disabilities. At the time, there was concern that employers would be reluctant to hire workers with disabilities for fear that the employer would be fully liable for the combined effects of an existing disability and a new workplace injury. SIBTF was established to protect the interests of veterans returning from World War II who were seeking to return to the workforce but presented a liability risk to employers.
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> While both state and federal law have evolved to protect workers from discrimination, SIBTF still serves an important function for injured workers who face the unfortunate results of combined industrial and non-industrial disabilities or impairments.

The SIBTF is funded through a payroll surcharge levied on all employers, based on a percentage of the premium paid by insured employers, and based on a percentage of indemnity paid during the most recent year for self-insured employers. In the event a worker with a prior permanent partial disability (PPD) suffers a subsequent industrial injury (SII), compensation for the disability attributable to the SII is provided by the employer, while compensation for additional disability resulting from the combination of the SII and the PPD is provided by the SIBTF.

To be eligible for SIBTF benefits, a worker must meet specific requirements pertaining to the pre-existing disability (i.e. PPD), the nature and severity of the SII, and the severity of the combined permanent disability rating. These requirements are set forth in Section 4751 of the Labor Code and specify that in order to qualify for SIBTF benefits, all of the following must be true:

- The worker suffered a SII, i.e. a subsequent compensable work injury;
- The worker had one or more PPD at the time the worker suffered the SII;
- The permanent disability resulting from the combination of the PPD(s) and the SII exceeds the permanent disability resulting from the SII alone;
- The permanent disability resulting from the SII and PPD(s) combined is rated at least 70% or higher; and

- The permanent disability resulting from the SII alone, without adjustment for age or occupation, was either: 1) at least 35%; or 2) was at least 5% and affected a hand, arm, foot, leg, or eye that is "opposite and corresponding" to a body part affected by the PPD(s).

A worker with a combined disability rating from 70-99% may qualify for permanent partial disability benefits, which end after a number of weeks determined by the permanent disability rating, and a smaller life pension, which begins following the completion of permanent partial disability benefits and ends at death. For workers determined to have a combined rating of 100%, the worker is entitled to lifetime permanent total disability benefits. These permanent total disability benefits are significantly more generous than typical workers' compensation benefits, both because they are paid at the higher temporary disability rate, and because they continue until death. In traditional, non-SIBTF workers' compensation cases, lifelong disability payments are exceedingly rare because it is unusual for the industrial injury to independently reach a permanent disability rating of 70% or higher, and permanent total disability cases are rarer still. Because a threshold combined disability rating of 70% is necessary to qualify for SIBTF benefits, SIBTF benefits are generally lifelong.

3) *Financial solvency of the SIBTF*: In 2023, noting rapid increases in the volume of applications and payments for SIBTF benefits, DIR contracted with RAND to "conduct a comprehensive study of the SIBTF. The goal of the study was to capture as much data as possible to document a wide range of basic facts about the SIBTF program that might provide a foundation for informed deliberation over policy options in response to the SIBTF's recent growth." This report, published in June 2024, identified startling trends concerning the long-term liabilities of the SIBTF and its resulting financial instability. As the RAND report describes:

> A sharp increase in recent years in SIBTF claims and benefits and the potential for even greater liabilities poses a financial challenge for the SIBTF. Total annual payments from the SIBTF on the 12 years of cases considered in this report grew from $13.6 million in 2010 to $232 million in 2022. Looking to the future, this analysis estimates $7.9 billion in SIBTF liabilities for cases filed or pending between 2010 and 2022, the midpoint of an estimated range of $6.4-10.5 billion.
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> The recent surge in current and future liabilities can in part be attributed to interpretations of SIBTF's governing statutes, which are vague on key issues concerning eligibility and compensation, and which are decades old. More recently, the wide parameters of the governing statutes and SIBTF rules have motivated claimants, their representatives, and vendors to make more frequent claims for injuries which in past decades might have yielded smaller benefits or might not have led to any benefits at all. In the absence of policy changes to ensure the SIBTF is implemented in a sustainable and fair way, decisionmakers can reasonably expect that funding demands will exceed the currently available resources and assessments on workers' compensation premiums (or on covered payroll for self-insured employers) will have to continue to rise to cover the Fund's growing liabilities.

The RAND report identifies several causes for increasing liabilities to the SIBTF, many of which can be traced back to a 2020 Workers' Compensation Appeals Board (WCAB)

decision in *Todd v. SIBTF* [85 Cal. Comp. Cases 576 (App. Bd. en banc)]. According to the report:

> Prior to the decision, ratings from impairments to multiple body parts, and the [permanent disability] ratings from the SII and SIBTF cases, were typically combined using a formula referred to as the Combined Values Chart (CVC). The CVC takes into account the theoretical overlapping nature of impairments and disability and produces a combined PD rating that is lower than what would be derived from simply adding together two or more values. For example, two impairments each rated at 50 percent would yield a rating of 75 percent under the CVC […].
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> Instead, the *Todd* decision held that simple addition was the correct method to use for combining SII and PPD disability ratings in determining SIBTF eligibility and benefits. […] This decision made it far more likely that an SIBTF case would reach a combined rating of 100 percent. In the examples above, the combined rating would increase from 75 percent pre-*Todd* to 100 percent post-*Todd*.

This decision had two major effects: the number of applicants reaching the threshold combined permanent disability rating of 70% to qualify for SIBTF benefits increased, and the number of applicants determined to have a permanent disability of 100%, thereby qualifying for the more generous lifetime permanent total disability benefits increased. As a result, the number of applications for SIBTF benefits spiked (though applications were already on the rise), and the number of those applications yielding awards also increased. Additionally, because the likelihood of qualifying for lifetime benefits and of qualifying for even more generous lifetime permanent total disability both increased, the number of SIBTF cases that were resolved through "compromise and release" settlements for a lump sum dramatically decreased, as litigating the case to a final judgement more often resulted in a larger award. This was reflected in a significant increase in non-benefit costs to the SIBTF due to skyrocketing attorney fees, which grew from $770,000 in 2010 to $27 million in 2022.

The aforementioned coalition of opponents to the bill describe the situation, and their objection to the bill, as follows:

> The precipitous increase in the number of applications and payouts from the fund are the result of several factors, few of which are addressed by the current contents of AB 1329. Our organizations believe that the legislature should address the easily identifiable problems with SIBTF in a comprehensive manner. The Department of Industrial Relations commissioned a study of the fund and its recent explosion in applicants and payments, and made several findings that could help the legislature identify reasonable and balanced policy solutions.

Staff notes that the bill in print does, at least in part, seek to implement some recommendations from the RAND report, which was the result of the study commissioned by DIR. These include folding SIBTF medical evaluations into the existing QME process for traditional workers' compensation claims and amending SIBTF statutes to provide a more specific definition of what constitutes a PPD for purposes of SIBTF eligibility. That said, the report does include several additional recommendations that are not addressed by the bill.

4) *Incorporating SIBTF claims into the existing QME process*: In a traditional workers' compensation claim (i.e., <u>not</u> for SIBTF special compensation), if a dispute arises between

the injured worker and the employer over whether an injury is work-related, a worker's capacity to return to work, the existence or extent of a permanent disability, the ability to engage in the worker's usual occupation, or the need for specific or future medical treatment, the injured worker may request a QME. QMEs – qualified medical evaluators – are licensed physicians that must: spend at least one-third of their time providing direct medical treatment; report specified financial interests, take at least one 12-hour course on writing medical-legal reports, pass a competency exam, and pay an annual fee.

When a QME is requested, DWC uses a computer program to randomly generate a "panel," i.e. a list of three QMEs, based on the requested medical specialty and the proximity to the worker's residence. Depending on whether the injured worker is represented by an attorney, the QME selection process differs. If unrepresented, the injured worker selects a QME from the panel and makes an appointment within 10 days. If represented, the injured worker and the employer each eliminate one QME from the panel, and the injured worker makes an appointment with the remaining QME within 10 days. At this point, the QME reviews medical records and evaluates the injured worker, and, within 30 days of the evaluation, writes and distributes to the parties a "medical-legal report," which addresses the issues of the dispute and includes findings by the QME that a WCJ may need to resolve the dispute. The parties may then use the findings detailed in the report to resolve the dispute directly, or may meet before a WCJ to render a judgement resolving the dispute.

SIBTF claims are <u>not</u> subject to the QME process for collection of medical-legal evidence, and instead, injured workers filing SIBTF claims select their own medical evaluators. The aforementioned RAND report notes that the non-benefit costs to the SIBTF resulting from medical-legal reports was a substantial driver of its increasing liabilities. According to the report:

> The proportion of SIBTF applicants who had one or more medical-legal reports conducted specifically for the SIBTF case doubled between cases filed in 2010-2015 and those filed in 2016-2019, from 23 percent to 46 percent. Among cases with at least one medical-legal report, the average number of reports paid by the SIBTF was 3.6 reports, and the average medical-legal payment in cases with one or more report was $21,600 – several times greater than the average medical-legal expense per case in the rest of the workers' compensation system.

The RAND report also identifies consequent fraud and abuse resulting from "doctor shopping" as a possible contributor to SIBTF insolvency that could be readily addressed, arguing:

> One possible avenue for fraud and abuse in the SIBTF is the potential for exaggeration or fabrication of impairments experienced by SIBTF applicants, either from the SII or as attributed to the alleged PPDs. […] [R]eforms to medical treatment in workers' compensation and the QME process adopted in recent decades (SB 899) include changes intended to reduce opportunities for "doctor shopping." Research on [permanent disability] ratings in California between 1991 and 1997 found that medical evaluators chosen by applicants yielded [permanent disability] ratings that were 6-8 percentage points higher than ratings for the same injured workers that were performed by neutral QMEs on the state [Disability Evaluation Unit]. […] [G]iven that medical evaluators in SIBTF are selected by applicants and are reviewing lengthy medical histories in relation

to alleged PPDs, it is therefore possible that ratings may be substantially higher than would be assigned if the evaluations occurred through the QME system that applies for regular workers' compensation cases. And it is also likely that the exclusion of the SIBTF from these medical-legal reforms that apply throughout the rest of the California workers' compensation system contributes to some of the issues with the Fund.

The report recommends that the Legislature modify the Labor Code to "include SIBTF in the medical examiner reforms that were implemented in 2005 [via SB 899] for other cases in the system. Narrowing the choice of medical experts and creating mandatory processes around medical evaluations for SIBTF cases, including potentially requiring that the same medical reports used for SII be used for purposes of the SIBTF case, could reduce the potential for 'doctor shopping' for evaluators who deliver higher ratings specifically targeted at SIBTF eligibility."

Based on this recommendation, this bill would specify that medical-legal evidence in an SIBTF claim proceeding can only be obtained through the QME process, and would require the AD to create and maintain a database of QME physicians with the necessary training and expertise to evaluate SIBTF claims from which to empanel QMEs for these purposes.

Given that SIBTF medical-legal report costs dramatically exceed those of traditional workers' compensation claims, relying instead on the same medical-legal evaluation procedures as traditional claims may reduce non-benefit medical-legal costs to the SIBTF. It also seems likely that relying on a neutral party for obtaining medical-legal evidence to support or rebut a claim for SIBTF special compensation can reduce fraudulent exaggeration or fabrication of impairments, thereby reducing costs to the fund.

On the other hand, the existing QME process faces criticism for significantly delaying the delivery of treatment and benefits to injured workers and producing protracted litigation that can be extremely costly to employers when disputes arise. In part, this is due to a well-documented shortage of QMEs, which makes it difficult to schedule timely appointments for evaluation, and in part, it is due to the pervasiveness of incomplete or inaccurate medical-legal reports that require substantial follow-up to reach a judgement. Requiring QME evaluation and reporting for SIBTF claims on top of their existing workload could further impact the timeliness of resolution for traditional workers' compensation claims and SIBTF claims alike.

Nonetheless, as legislative and regulatory efforts continue to focus on improving the QME process, procedures for obtaining medical-legal evidence to support traditional workers' compensation claims and SIBTF claims increasingly diverge. Folding SIBTF claims into the existing QME process would allow these reforms to benefit both processes in tandem, and to reduce fraud that threatens the solvency of the Fund.

5) *Diminished future earnings capacity (DFEC) in SIBTF benefit qualification*: As discussed above, in order to qualify for SIBTF benefits, the permanent disability resulting from the SII suffered by the worker must, "when considered alone and without regard to or adjustment for the occupation or the age of the employee," equal 35% or more of total disability, or 5% or more in specified circumstances. While Section 4751 of the Labor Code, which describes these criteria, has excluded consideration of occupation or age in these calculations since 1959, the section is silent on whether the calculation should include adjustments for DFEC, or whether DFEC should only be taken into account when considering the combined

permanent disability. This omission, and a convoluted legislative history, has resulted in significant confusion and litigation concerning these calculations.

In 1959, when the "when considered alone" provision was amended into Section 4751, permanent disability was calculated based on the 1950 Permanent Disability Rating Schedule (PDRS), which was statutorily required to take into account "the nature of the physical injury or disfigurement, the occupation of the injured employee, and his age at the time of such injury, consideration being given to *the diminished ability of such injured employee to compete in an open labor market*." [Emphasis added] Notably, the language of the "when considered alone" provision specifically excludes age and occupation, but makes no mention of the diminished ability to compete in an open labor market.

In 2005, with the implementation of SB 899 (Poochigian, Ch. 34, Stats. 2004), a modified PDRS was adopted that incorporated a DFEC modifier, but because Section 4751 had not been updated since 1959, it, for obvious reasons, did not provide guidance on the role of this adjustment in SIBTF threshold calculations. In 2012, the Legislature passed SB 863 (De León, Ch. 363, Stats. 2012), which made several reforms to the workers' compensation system, including, for injuries occurring on or after January 1, 2013, simplifying the DFEC modifier to an adjustment factor of 1.4, i.e. a standardized 40% adjustment on the permanent impairment rating calculated based on the AMA Guides.

In 2016, the WCAB held in *Geletko v. Cal. Highway Patrol* [81 Cal. Comp. Cases 661] that the omission of reference to this diminished competitive capacity, which roughly corresponds to DFEC, in the "when considered alone" provision implied that DFEC adjustments should not be excluded in SIBTF threshold calculations. This meant that, for injuries occurring after the incorporation of the DFEC modifier but before the passage of SB 863 (i.e. between January 1, 2005 and January 1, 2013), the DFEC modifier should be included when calculating the permanent disability rating for purposes of meeting the threshold to qualify for SIBTF benefits. Because SB 863 replaced the DFEC modifier with the 1.4 adjustment factor, this also meant that for injuries occurring on or after January 1, 2013, the 1.4 adjustment factor should be included when calculating the permanent disability rating for SIBTF threshold purposes.

To avoid further confusion and unnecessary litigation, this bill would codify the substantive impacts of the *Geletko* decision. Specifically, the bill would clarify that, for SIIs occurring between January 1, 2005 and January 1, 2013, "permanent disability" should be measured based on the whole person impairment rating calculated based on the AMA Guides after adjustment for DFEC, and that, for SIIs occurring on or after January 1, 2013, "permanent disability" should be measured based on the whole person impairment rating calculated based on the AMA Guides after multiplication by the 1.4 adjustment factor. The bill also specifies that these provisions are declarative of existing law.

6) *"Actually labor disabling"*: While the SIBTF was initially established to mitigate potential discrimination due to liabilities incurred by employers for hiring employees with pre-existing disabilities, in 1958, the California Supreme Court held in *Ferguson v. Indus. Acc Comm.* [50 Cal.2d 469, 477] that the employer need to be aware of that pre-existing disability in order to qualify for SIBTF benefits. Rather, the court held that a previous disability or impairment contemplated by Section 4751 of the Labor Code (i.e. a PPD) "must be actually 'labor disabling,' and that such disablement, rather than 'employer knowledge,' is the pertinent

factor to be considered in determining whether the employee is entitled to subsequent injuries payments under the terms of section 4751." (*Id.* at p. 477) *Ferguson* also held that "the prior injury under most statutes should be one which, if industrial, would be independently capable of supporting an award. It need not, of course, be reflected in actual disability in the form of loss earnings [citation], but if it is not, it should at least be of a kind which could ground an award of permanent partial disability." (*Ibid.*)

While the *Ferguson* decision, and several subsequent decisions, describe generalities concerning what constitutes "labor disabling" for the purpose of granting SIBTF benefits, no specific definition for the term has been codified in statute. Among the recommendations in the RAND report for maintaining the solvency of the SIBTF was a recommendation that the Legislature "amend the SIBTF statutes to provide a more specific definition of what constitutes a PPD for purposes of SIBTF eligibility." The report notes:

> [A] growing number of SIBTF cases allege PPDs that are common health conditions and/or chronic diseases frequently found in an aging population. In many cases, the extent to which these conditions are "actually labor disabling" is unclear, and case law offers little guidance on how to apply this principle. The program would benefit from more specific eligibility requirements and a clear specification of the evidence required to establish that a PPD was labor disabling at the time of the SII.

This bill seeks to provide this clarity by specifying that "the existence of a prior permanent partial disability that existed at the time of the subsequent compensable injury shall be determined by substantial evidence, based on medical records, testimony, or other evidence, that the prior permanent partial disability predated the subsequent compensable injury and that *the prior permanent partial disability resulted in loss of earnings, interfered with work activities of the employee, or otherwise impacted the ability of the employee to perform work activities or activities of daily living*." [Emphasis added]

While the specific phrase "actually labor disabling" is not used in the bill, this language appears to summarize and concretize what are otherwise vague criteria from assorted case law that describe specific features of a PPD eligible for SIBTF special compensation. Much of such case law is consolidated in the decision of *Franklin v. Workers' Comp. Appeals Bd.* (1978) [79 Cal.App.3d 224, 237-238], which reads, in part:

> While the permanent partial disability need not have existed prior to work exposure [citation] nor need it be of industrial origin, known to the claimant at the time of the subsequent injury, or the subject of a prior rating [citation], or known to the employer [citation], nevertheless it must antedate the subsequent injury [citation] and it must be permanent in character [citations].
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> Although the prior disability need not be reflected in the form of loss of earnings, if it is not, it must be of a kind upon which an award for partial permanent disability could be made had it been industry caused. This is necessary to distinguish [it] from a 'lighting up' aggravation or acceleration of a preexisting physical condition where the employer is to be held liable for the whole. [Citations.]

By concisely clarifying the types of evidence necessary to support the existence of a PPD that existed at the time of the SII in accordance with existing case law, AB 1329 may reduce

the frequency and duration of litigation concerning whether an injured worker qualifies for SIBTF special compensation.

7) *State Fund and administration of SIBTF benefits payments:* Under existing law, SIBTF benefits are, by statute, paid to injured workers by State Fund at the direction of WCAB. State Fund can draw directly from SIBTF to make award payments up to $50,000, and is then authorized to reimburse itself from the Workers' Compensation Administration Revolving Fund (WCARF) for the cost of rendering the service of paying compensation awards and maintaining associated accounts and records. In the event the WCARF lacks the funds for timely payment, reimbursement to State Fund for administrative expenses is advanced from SIBTF, and then reimbursed to SIBTF in full upon enactment of the annual Budget Act.

   State Fund was established by the Legislature in 1913 to provide a stable option for workers' compensation insurance to California employers, including state agencies. State Fund is a quasi-public entity that competes with other workers' compensation insurance providers on the open market, and currently holds the largest market share of any workers' compensation insurer.

   It is unclear why such payments are, by statute, paid out by State Fund through this complex reimbursement scheme, rather than being paid directly by DIR, who oversee the fund as its trustee. It may be the case that, at the time these statutes were written, DIR lacked the administrative infrastructure to effectively distribute awards, which State Fund maintained already to pay out traditional workers' compensation claims. However, according to the author of this bill, DIR now maintains sufficient capacity to handle these payments, and is in fact already paying them out in practice. This bill would amend existing law to formally shift responsibility for administering payments from SIBTF to the Director of Industrial Relations, simplifying the payment process and aligning statute with current practice.

8) *Prior legislation*:

   SB 863 (De León, Ch. 363, Stats. 2012) enacted major reforms to the workers' compensation system, including establishing the IMR and IBR processes for resolving disputes, and, for injuries occurring on or after January 1, 2013, simplifying the DFEC modifier to an adjustment factor of 1.4.

   SB 899 (Poochigian, Ch. 34, Stats. 2004) enacted major reforms to the workers' compensation system, including authorizing medical provider networks (MPNs), revising the QME process, and adopting a modified PDRS that incorporated a DFEC modifier.

REGISTERED SUPPORT / OPPOSITION:

Support

California Applicants' Attorneys Association

Oppose Unless Amended

American Property Casualty Insurance Association
California Chamber of Commerce
California Coalition on Workers Compensation

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