

JAN 10 2019

**In the Supreme Court of the State of California** Jorge Navarrete Clerk

Deputy

**TAMARA SKIDGEL,**

Plaintiff and Appellant,

Case No. S250149

v.

**CALIFORNIA UNEMPLOYMENT  
INSURANCE APPEALS BOARD,**

Defendant and Respondent.

First Appellate District, Division Five, Case No. A151224  
Alameda County Superior Court, Case No. RG16810609  
Hon. Robert B. Freedman, Judge

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE;  
DECLARATION IN SUPPORT**

XAVIER BECERRA  
Attorney General of California  
EDWARD DUMONT  
Solicitor General  
\*JANILL L. RICHARDS  
Principal Deputy Solicitor General  
State Bar No. 173817

JULIE WENG-GUTIERREZ  
Senior Assistant Attorney General  
SUSAN M. CARSON  
Supervising Deputy Attorney General  
HADARA R. STANTON  
Deputy Attorney General  
State Bar No. 227040  
1515 Clay Street, 20th Floor  
P.O. Box 70550  
Oakland, CA 94612-0550  
(510) 879-0858  
Janill.Richards@doj.ca.gov  
*Attorneys for Defendant and Respondent  
California Unemployment Insurance  
Appeals Board*

**TO THE HONORABLE CHIEF JUSTICE AND TO THE  
HONORABLE ASSOCIATE JUSTICES OF THE SUPREME  
COURT OF CALIFORNIA:**

Pursuant to Rule 8.252, subdivision (a) of the California Rules of Court, Defendant and Respondent the California Unemployment Insurance Appeals Board (Appeals Board) hereby requests that the Court take judicial notice of the following documents:

- Exhibit 1: Assem. Office of Research, 3rd reading analysis of Assem. Bill 644 (1977-1978 Reg. Sess.) as amended Jun. 22, 1977. The document is part of the legislative history for Unemployment Insurance Code section 629 and is located in the files of the Assembly Committee on Finance, Insurance, and Commerce for A.B. 644 (1977-1978 Reg. Sess.). The court of appeal took judicial notice of this document. (Order (5/3/2018).)
- Exhibit 2: Letter from U.S. Dept. of Labor to Emp. Dev. Dept., Aug. 8, 1977 [describing consequences should California fail to enact legislation conforming to the federal Unemployment Compensation Amendments of 1976]. The document is part of the legislative history for Unemployment Insurance Code section 629 and is located in the files of the Senate Committee on Industrial Relations for A.B. 644 (1977-1978 Reg. Sess.).
- Exhibit 3: Empl. Dev. Dept., analysis of Assem. Bill. 3028 (1977-1978 Reg. Sess.) June 29, 1978. The document is part of the legislative history for Unemployment Insurance Code section 683 and Welfare and Institutions Code section 12302.2 and is located in the files of the Senate Committee

on Industrial Relations for A.B. 3028 (1977-1978 Reg. Sess.).

- Exhibit 4: Assem. Comm. on Ways and Means, staff analysis of Assem. Bill 3028 (Reg. Sess. 1977-1978) as amended June 8, 1978. The document is part of the legislative history for Unemployment Insurance Code section 683 and Welfare and Institutions Code section 12302.2 and is located in the files of the Assembly Committee on Ways and Means for A.B. 3028 (1977-1978 Reg. Sess.). The court of appeal took judicial notice of this document. (Order (5/3/2018); see also CT 0097-0098, 00174-00175.)
- Exhibit 5: Assem. Office of Research, 3rd reading analysis, Assem. Bill 3028 (1977-1978 Reg. Sess.) as amended June 8, 1978. The document is part of the legislative history for Unemployment Insurance Code section 683 and Welfare and Institutions Code section 12302.2 and is located in the files of the Assembly Republican Caucus for A.B. 3028 (1977-1978 Reg. Sess.). The court of appeal took judicial notice of this document. (Order (5/3/2018).)
- Exhibit 6: Dept. of Social Services, enrolled bill report, Assem. Bill 3028 (1977-1978 Reg. Sess.) July 7, 1978. The document is part of the legislative history for Unemployment Insurance Code section 683 and Welfare and Institutions Code section 12302.2 and is located in the Governor's Chaptered Bill File for A.B. 3028 (1977-1978 Reg. Sess.). The court of appeal took judicial notice of this document. (Order (5/3/2018).)

- Exhibit 7: Emp. Dev. Dept., enrolled bill report, Assem. Bill 3028 (1977-1978 Reg. Sess.) July 10, 1978. The document is part of the legislative history for Unemployment Insurance Code section 683 and Welfare and Institutions Code section 12302.2 and is located in the Governor's Chaptered Bill File for A.B. 3028 (1977-1978 Reg. Sess.). The court of appeal took judicial notice of this document. (Order (5/3/2018); see CT 00104-CT 00106, 00181-00183.)
- Exhibit 8: Dept. of Finance, enrolled bill report, Assem. Bill 3028 (1977-1978 Reg. Sess.) July 13, 1978. The document is part of the legislative history for Unemployment Insurance Code section 683 and Welfare and Institutions Code section 12302.2 and is located in the Governor's Chaptered Bill File for A.B. 3028 (1977-1978 Reg. Sess.). The court of appeal took judicial notice of this document. (Order (5/3/2018); see also CT 00100-00102, 00177-00179.)
- Exhibit 9: Assem. Bill 1420 (1971 Reg. Sess.) § 1, Apr. 1, 1971. The bill in its original form would have amended Unemployment Insurance Code section 631 to allow for opt-in coverage for both disability and unemployment insurance in the close-family service context. The document is part of the legislative history for Unemployment Insurance Code section 631.
- Exhibit 10: Dept. of Hum. Res. Dev., enrolled bill report, Assem. Bill 1420 (1971 Reg. Sess.) Nov. 2, 1971. The document is part of the legislative history for Unemployment Insurance Code section 631 and is located in the Governor's Chaptered Bill File for A.B. 1420 (1971 Reg. Sess.).

- Exhibit 11: Assem. Comm. on Fin. and Ins., analysis of Assem. Bill 1420 (1971 Reg. Sess.) as amended May 6, 1971. The document is part of the legislative history for Unemployment Insurance Code section 631 and is located in the file of the Assembly Committee on Finance and Insurance for A.B. 1420 (1971 Reg. Sess.).
- Exhibit 12: Employ. Dev. Dept., Amendments proposed May 30 to A.B. 3028, as amended May 10, 1978, Assem. Bill 3028 (1977-1978 Reg. Sess.) June 19, 1978. The document is part of the legislative history for Unemployment Insurance Code section 683 and Welfare and Institutions Code section 12302.2 and is located in the file of the Senate Committee for Industrial Relations.
- Exhibit 13: Sen. Rules Comm., Office of Sen. Floor Analyses, 3rd reading analysis of Assem. Bill. 1930 (2015-2016 Reg. Sess.) as amended Aug. 1, 2016. The document relates to a bill that would have created a new advisory committee to study whether to extend unemployment and other benefits to close-family in-home supportive service providers. (Assem. Bill 1930 (2015-2016 Reg. Sess.)) The document is available at <[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB1930](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1930)> [as of Jan. 10, 2019].
- Exhibit 14: Sen. Floor Analysis, Governor's Veto, Assem. Bill 1930 (2015-2016 Reg. Sess.) as enrolled Aug. 30, 2016. The document summarizes the history of this bill, including the Governor's veto. The document is available at <<https://leginfo.legislature.ca.gov/faces/billText>

Client.xhtml?bill\_id=201520160AB1930> [as of Jan. 10, 2019].

The documents described in this motion all relate to events that pre-date the trial court's judgment (Mar. 27, 2017) and the court of appeal's opinion and judgment (June 14, 2018).

As noted above, some of these documents were judicially noticed by the court of appeal.<sup>1</sup> All may be relevant and helpful to this Court in interpreting Unemployment Insurance Code sections 631 and 683 and related statutes. Pursuant to Evidence Code sections 452 and 459, the Court may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments ... of any state of the United States." (Evid. Code, § 452, subd. (c).) Statutes are the Legislature's official acts. Legislative committee reports and analyses are also proper subjects of judicial notice. (*In re J. W.* (2002) 29 Cal.4th 200, 211 [legislative committee analyses]; *Acer v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471,484 [same]; *People v. Jones* (1995) 11 Cal.4th 118, 122, fn. 1 [enrolled bill reports].)

The Appeals Board respectfully requests that the Court take judicial notice of the documents listed above, should the Court determine that they are relevant to the disposition of the matter.

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<sup>1</sup> There is some limited, additional legislative history pertaining to A.B. 3028 in the Clerk's Transcript. (See CT 0092-0094, 00169-00171.)

Dated: January 10, 2019

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
EDWARD C. DUMONT  
Solicitor General

*/s/ Janill L. Richards*

JANILL L. RICHARDS  
Principal Deputy Solicitor General  
JULIE WENG-GUTIERREZ  
Senior Assistant Attorney General  
SUSAN M. CARSON  
Supervising Deputy Attorney General  
HADARA R. STANTON  
Deputy Attorney General  
*Attorneys for Defendant and Respondent  
California Unemployment Insurance  
Appeals Board*

**DECLARATION OF KARA WEILAND IN SUPPORT  
OF RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

I, Kara Weiland, declare:

1. I am a Librarian employed with the California Department of Justice, Office of the Attorney General, at DOJ's Sacramento library. Among my other duties, I regularly compile legislative histories at the request of DOJ employees.
2. In October through December of 2018, I responded to the requests of Principal Deputy Solicitor General Janill Richards and Deputy Attorney General Hadara Stanton for legislative histories relating to Unemployment Insurance Code sections 629, 631, and 683, and Welfare and Institutions Code section 12302.2. I obtained the relevant documents from the California State Archives, located in Sacramento, California.
3. I have reviewed the entries above discussing Exhibits 1-8 and 9-12, and the descriptions of their sources are correct. The copies of these same documents, attached to this motion as Exhibits 1-8 and 9-12 are true and correct, to the best of my knowledge.

\* \* \* \* \*

I declare under penalty of perjury that the foregoing is true and correct. Executed in Sacramento, California, on January 10, 2019.

*/s/ Kara Weiland*

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KARA WEILAND



# **EXHIBIT 1**

## ASSEMBLY THIRD READING

AB 644 ( McAlister ) As Amended: 22 June 1977

## ASSEMBLY ACTIONS:

COMMITTEE FIN., INS., & COM. VOTE 9-2 COMMITTEE W. & M. VOTE 16-0

Ayes: Agnos, Greene, Hayden, Miller, Nestande, Papan, Robinson, Young, McAlister

Ayes:

Nays: Bannai, Lancaster

Nays:

DIGEST

This bill conforms California's unemployment insurance law to federal law (Public Law 92-566) related to unemployment insurance coverage, eligibility, benefits, and financing as follows:

Existing law excludes unemployment insurance coverage for service performed in the employ of a state or local government, with broad specified exceptions.

This bill includes under the provisions of unemployment insurance coverage with specified exceptions, all service performed by an individual for any public entity.

Existing law does not include domestic service in a private home under unemployment insurance coverage provisions or under unemployment compensation disability provisions.

This bill includes domestic service in a private home as employment for these purposes, if performed for an employer who paid \$1,000 or more in wages in specified calendar quarters.

The bill also requires the Director of the Employment Development Department (EDD) to furnish specified information from the files of the department with respect to an individual, upon request by any public agency.

The bill provides that provisions of this bill, with respect to wages paid, shall be operative on and after 1 July 1976.

The bill specifies that no employer contributions shall be payable based on remuneration paid prior to 1 January 1978 for service which first becomes covered for unemployment insurance by this bill.

The bill provides that an employer's reserve account cannot be charged for unemployment compensation benefits if such benefits are reimbursable by the federal government, under certain provisions.

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The bill provides for a pooled fund arrangement for local governments to finance unemployment insurance coverage of their employees and establishes a Local Public Entity Employees Fund in the State Treasury to be continuously appropriated for such purposes without regard to fiscal year.

The bill makes related changes which conform state law with the federal Unemployment Compensation Amendments of 1976 (Public Law 94-566).

The bill specifies that its provisions are federally mandated.

The bill provides for an increase in the revenue limits of school districts and in the maximum tax rates of community college districts in an amount sufficient to provide revenue equal to costs incurred in implementing the provisions of this bill.

Existing law grants the homeowners' property tax exemption in the amount of \$7,000 of the full value of qualified dwellings and continuously appropriates state funds for subventions to local government to compensate for property tax revenues lost by reason of such exemption.

This bill increases the amount of such appropriation by authorizing an increased rate of property tax.

The bill also provides that if the United States Supreme Court finds PL 94-566 unconstitutional or invalid as it pertains to mandatory unemployment insurance coverage for California state and local government employees this legislation shall be inoperative.

FISCAL EFFECT

The Legislative Analyst states:

EDD estimates that the bill would result in increased annual disbursements of about \$71 million from the Unemployment Fund, when coverage is in full effect. It would take about three years from the effective date of the bill, 1 January 1978, for the full effect of coverage to become operative. The benefit payments would be distributed among the newly covered employees of the following entities:

State employees	\$10.0 million
City, county and special districts	44.0 million
School districts	13.4 million
Nonprofit elementary, secondary and vocational schools	1.5 million
Domestic workers	1.8 million

The cost to the General Fund to reimburse the Unemployment Fund would be about \$10 million annually.

The bill would create local costs which the bill specifies are not reimbursable by the state because the provisions are federally mandated. Assuming that all school districts elect to continue

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financing through the School Employees Fund and that the reduced rates remain in effect during fiscal years 1977-78 and 1978-79, the added costs to school districts would be an estimated \$10.5 million during fiscal year 1977-78 and \$22.1 million during 1978-79.

Assuming that all local public entities elect to finance through the Local Public Entity Employees Fund, the added costs to local government other than school districts would average approximately \$54.3 million annually during the first three years, 1978-1980.

The revenue to the Unemployment Fund created by passage of this bill would be approximately \$73 million annually, when coverage is in full effect.

#### COMMENTS

Federal law extended unemployment insurance coverage to several groups of employees which were not covered by the federal program in the past. In some instances, California has already covered these groups either in part or in full. This bill extends unemployment insurance coverage to the following groups:

- 1) State employees. California had already extended coverage to all state employees except for permanent-intermittent, temporary, and part-time employees. This bill would extend coverage to these uncovered groups consisting of about 20,000 persons.
- 2) Employees of cities, counties and special districts. California law has made coverage of local government employees voluntary on the part of employing units. Only about 30,000 workers have been covered. This bill would extend coverage to about 475,000 additional employees.
- 3) Employees of school districts. Under current law, classified school employees are fully covered. This bill would extend coverage to about 375,000 credentialed and other professional employees of school districts.
- 4) Employees of nonprofit elementary, secondary and vocational schools. This bill would extend coverage to about 30,000 private, nonprofit school employees who were not previously covered.
- 5) Domestic workers. Approximately 12,500 domestic workers employed by households which pay wages of \$1,000 or more in a calendar quarter would be newly covered by the bill.
- 6) Agricultural workers. Public Law 92-566 also extended coverage to specified groups of agricultural workers, but California law has already fully covered virtually all farm workers so that this provision in California law is unaffected by this bill.

Public Law 92-566 requires that state and local governments have the option of electing to finance the unemployment insurance program either through experience taxing or through reimbursing. Under experience taxing all private

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employers pay unemployment insurance contributions based on the amount of benefits paid out to former employees as compared with the amount of contributions paid into the unemployment fund during the past three years. Under reimbursing, employers reimburse the unemployment fund for all benefits paid to former employees. This method presents advantages to employers who have steady employees. There is, however, a risk of severe funding problems if revenues are reduced, leading to forced layoffs and consequently high unemployment costs.

California law requires that all school districts cooperate in a joint reimbursement financing system. School districts are required to contribute a fixed percentage of classified employee wages into a fund which in turn reimburses the unemployment fund for benefits paid to all former classified school employees.

This bill incorporates the collection of employer contributions for the coverage of certified employees with other professional school employees into the School Employees Fund and makes it optional rather than mandatory for public school districts as a financing method. During fiscal year 1976-77, the tax on school districts was reduced because of a surplus in the fund. A companion bill to this bill, AB 1721, would continue the reduced tax during fiscal years 1977-78 and 1978-79.

The bill also creates the Local Public Entity Employees Fund as an optional financing method for cities, counties and special districts other than schools. The tax rate would be set at 0.8% of total wages paid to local government employees during fiscal years 1978-79, 1979-80 and 1980-81. After that, the Director of Benefit Payments would determine the on-going rate based on the experience of the fund.

# **EXHIBIT 2**

U. S. DEPARTMENT OF LABOR  
EMPLOYMENT AND TRAINING ADMINISTRATION  
REGION IX

824  
AUG 9 1977

In reply refer  
to: IX-TGU

450 GOLDEN GATE AVENUE, BOX 36084  
SAN FRANCISCO, CALIFORNIA 94102

August 8, 1977



Mr. Martin R. Glick  
Director  
Employment Development Department  
800 Capitol Mall  
Sacramento, California 95814

Dear Mr. Glick:

This is to provide you specific information as to what consequences will flow if comprehensive legislation to implement the Unemployment Compensation Amendments of 1976 (P.L. 94-566) is not enacted in California during the 1977 legislative year. I understand that issues concerning the wage and/or employment requirements to qualify for benefits are holding up further action on A.B. 644. It appears the delay could extend until studies on these matters are completed, probably too late for passage of the bill by the State Senate.

While I recognize the need for examining possible amendments to California's qualifying requirements, I must emphasize the undesirability of allowing a delay in action on legislation to implement the requirements of Public Law 94-566 until 1978. While there have been discussions between our offices on the feasibility of making legislation passed later in 1978 retroactive to January 1, 1978, it is not at all clear to me that this is feasible. An opinion rendered July 29, 1977, by Bion M. Gregory, Legislative Counsel of California, in response to Assemblyman McAlister's inquiry, states that claims may be paid retroactively to January 1, 1978, "provided that no employer's reserve account is charged for unemployment compensation benefits paid for services performed prior to the effective date of the bill." No opinion is offered on the question of applying the contribution provisions of the California Unemployment Insurance Code to newly-subject employers retroactively to January 1, 1978. Further, it is worth noting here that the California Code contains no provisions for automatically covering either employing units or services when such are liable for Federal tax, or required to be covered under Federal law.

2.

Very serious consequences would follow upon a delay in the comprehensive legislation until next year, should the finally-enacted California legislation not be retroactive in all respects—or should it be later determined that some or all of such legislation's retroactive provisions may not be lawfully applied. If it is ultimately determined that the California law did not, for any period on or after January 1, 1978, contain the provisions required by the Federal Unemployment Tax Act as amended by P.L. 94-566, California employers would be liable for that period for the full Federal unemployment tax of 3.4 percent, in addition to any State tax assessed. The Federal reimbursements under the transitional provisions of P.L. 94-566 would be lost for that period. Furthermore, administrative grants made to California for that period would be recoverable.

Even if there is no State constitutional barrier to making amendments enacted in 1978 effective retroactively to January 1, 1978, I am sure you are aware that such action would create grave and unnecessary administrative difficulties for your agency in implementing the amendments. The problems associated with retroactive claims, determinations, appeals, etc., are massive. More importantly, the adverse effects on claimants would be incalculable.

In any event, I must advise you that, if implementing legislation is not in place in California as of January 1, 1978, the Secretary of Labor will be required, pursuant to section 3304(c) of the Federal Unemployment Tax Act, to notify the Governor that there is reason to believe that California will not be certified for tax credit and to provide your State an opportunity for a hearing on the issue. Such notice, absent the legislation, will be issued by January 31, 1978. The purpose of the hearing would be to determine whether your State failed to amend its law so that it contained each of the provisions required by P.L. 94-566 to be included in the State law.

I urge that you explore every means of assuring that enactment of appropriate legislation will be deemed a matter of the utmost urgency.

Sincerely,



Daniel P. Riordan  
Acting Associate Regional Administrator  
for Unemployment Insurance



# **EXHIBIT 3**

**Memorandum**

To : Members of the Senate Industrial  
Relations Committee

Date : June 29, 1978

File No.: 32:MJ:pw



From : Mary Matilda Jones, Deputy Director for Legislation  
Employment Development Department

Subject: AB 3028 (Agnos) - In-Home Supportive Services

This bill resolves the question of who is the employer of the In-Home Supportive Services (IHSS) workers selected by the aged, blind or disabled recipients for the purposes of unemployment insurance, workers' compensation, disability insurance and social security. This issue, which has been unresolved since the inception of the program, now requires resolution because of recent changes in federal and state law mandating unemployment insurance, disability insurance, workers' compensation and social security coverage for domestic workers. Under a series of decisions by enforcement agencies and court cases, counties are being held to be the employers, even in those instances where the recipient hires the IHSS worker.

AB 3028 resolves this issue by designating the recipient as the employer, requiring the State to assure collection and payment of all contributions through a payrolling system, and requiring the State to pay the employer's share of mandated benefits. The \$13 million cost is the least costly alternative. Absent this legislation, counties will turn to the other statutorily permitted delivery methods in order to avoid paying these costs as the employer. These alternatives would be funded entirely from the General Fund since under state and federal law the State must reimburse the counties for their costs (federal fund participation is already at a maximum). The alternatives are: (1) the use of contract providers at an additional cost of \$80 million to the General Fund, or (2) county civil service employees at an additional cost of \$116 million to the General Fund. Several counties have already indicated that they will choose contract providers if there is no legislative relief.

This bill has the support of the Administration. We respectfully urge your support of the measure.

AB 3028 (AGNOS)  
IN-HOME SUPPORTIVE SERVICES  
PROVIDER BENEFIT LEGISLATION

Thousands of California workers employed in the state and federal funded In-Home Supportive Services program (IHSS) are now eligible for such employment benefits as social security, unemployment insurance and workers' compensation. The question has arisen as to whether the counties are the employer of these workers and are legally responsible for the collection and payment of the taxes and premiums for such benefits.

The California IHSS program (also known as homemaker/chore) utilizes over 50,000 low-paid and relatively unskilled workers to provide in-home services to approximately 75,000 aged, blind and disabled recipients of public assistance as an alternative to placement in nursing homes or other institutions. The counties may arrange for the delivery of the services through either county staff (five percent of the total cost), agency contractors (13 percent), or individual providers selected by the recipient and paid directly by the county or via the recipient (82 percent). This latter method has many programmatic advantages since it permits the disadvantaged person the most control over the care which is provided.

Recent changes in federal and state law have made domestic employees, such as IHSS workers, eligible for unemployment and disability insurance (AB 644, effective this year) and workers' compensation (AB 133, effective in 1977). In addition, federal law has required social security coverage of domestic workers for several years. Federal and state enforcement agencies are increasingly taking the position that the counties are responsible for the collection and payment of taxes and premiums for the employment benefits of those IHSS workers who are paid directly by the county or the recipient. The enforcement agencies are basing their decisions on a legal theory that holds that the counties are joint employers of the IHSS workers with the recipients.

Inaction by the state on this issue will have one of two extremely expensive results. A number of counties have indicated that they will shift to contracting with private agencies for the provision of IHSS rather than utilizing individual providers selected by the recipients because the agency contractor becomes the responsible employer. The additional yearly cost of this alternative is \$80,000,000, entirely in state funds as the state must reimburse the counties for their costs and federal fund participation is already at the maximum. This estimate is based upon the current cost of contract agencies projected to the statewide caseload.

The second costly result of inaction will be that some counties will shift to providing IHSS through civil service employees. This is the most expensive of the three methods of delivery that the county may choose because of the higher level of wages and benefits applicable. Based on an estimate done in conjunction with a recent state/county task force, the additional cost of having all the service provided by civil service employees would be \$116,000,000 annually. This includes \$33 million for state and federal mandated benefits and minimum wage, \$5.6

million in sick leave, \$4.7 million in vacation, \$6.5 million in holiday, \$11.4 million in one-step pay increases, \$21 million in medical insurance, \$21 million in retirement and \$12.4 million in additional administrative costs. Again, the additional costs would have to be reimbursed from state funds.

AB 3028 is being offered as an alternative to the substantial increase in program costs that would be inevitable if no action is taken by the state. The bill preserves the 3 options for delivery of services indicated above and it provides that in those instances where the IHSS worker is selected by the recipient that:

1. The recipient is the employer of the IHSS worker.
2. The state shall assure the collection and payment of the various taxes and premiums in behalf of the recipient-employer through a centralized payroll system.
3. The state shall pay the costs of the employer's share of legally required employment benefits.

The \$13,000,000 general fund appropriation includes \$1.8 million for unemployment insurance, \$8.5 million for workers' compensation for the 78-79 budget year and \$1.8 million for these benefits for January through June of the current year. In addition, the appropriation includes \$.8 million for administrative and support costs.

# **EXHIBIT 4**

WAYS AND MEANS STAFF ANALYSIS

BILL NUMBER AP 302F AUTHOR Agnos AMENDED 6-6-78 ITEM 103

INDEX Health POLICY COMMITTEE Human Resources CONSULTANT Williams

<u>FISCAL IMPACT:</u>	<u>FUND</u>	<u>1977/78 FY</u>	<u>1978/79 FY</u>	<u>1979/80 FY</u>
Net State Cost (+) or Savings (-)	<u>C</u>	<u>                    </u>	<u>+\$13,000,000</u>	<u>                    </u>
Variation	<u>C</u>	<u>                    </u>	<u>\$13,000,000</u>	<u>                    </u>

Urgency: Yes (X) No ( )

SUBJECT:  
In-Home Supportive Services

SUMMARY:  
This bill would appropriate \$13,000,000 to the State Department of Social Services so that it may assure the performance of all rights, duties and obligations of Homemaker Chore recipients for purposes of unemployment and disability compensation laws in regards to persons who perform domestic services comprising in-home supportive services. The State Compensation Insurance Fund would be authorized to issue one workers' compensation insurance policy to insure such recipients to the extent of the Department's obligation.

COMMENTS:  
Proponents of this legislative contend that because thousands of domestic workers employed in the Homemaker Chore Program are now eligible for unemployment and disability insurance and workers' compensation, many counties have indicated that they will shift from the existing situation where they are the employers of these workers and are legally responsible for the collection and payment of taxes and premiums for such benefits to more costly alternatives that would be reimbursable by the State.

Although the provisions of this bill would cost \$13 million, it saves the State from having to assume the fiscal liability for alternatives costing either \$20,000,000 or \$116,000,000 annually as explained in the analysis below.

FISCAL IMPACT:  
This bill would appropriate \$13,000,000 from the General Fund to the State Department of Social Services.

\$1.6 million	Unemployment Insurance
\$9.5 million	Workers' Compensation for 1978-79
\$1.9 million	Workers' Compensation for January - June 1978
<u>\$ .9 million</u>	<u>Administrative and Support Costs</u>
\$12.9 million	Total

ANALYSIS:  
Existing law requires county welfare departments to develop and submit a plan to the State Department of Social Services for the provision of in-home supportive services (Homemaker Chore) to aged, blind and disabled recipients of public assistance. The departments may as an option: (1) hire homemakers and other in-home supportive personnel; (2) make direct payments to recipients for the purchase of such services; or (3) contract with private agencies or individuals for the provision of such services.

Also, existing law includes Homemaker Chore employees within the provisions of unemployment and disability insurance and workers' compensation. Because Federal and State enforcement agencies are increasingly taking the position that the counties are responsible for the collection and payment of taxes and premiums for the employment benefits of In-Home Supportive Services workers who are paid directly by the county or the recipient, the counties are indicating that they will begin to adopt either options 1 or 3 as specified in the above paragraph because they are reimbursable costs from the State. Option 1 would cost the State \$80,000,000 and option 3, \$116,000,000 annually.

This bill would provide for the least expensive option now available to the State by requiring the Department of Social Services to perform and assure the performance of all rights, duties and obligations of the recipient relating to Homemaker Chore services as required for unemployment compensation, disability benefits, workers' compensation, Federal and State income tax, and Federal old-age survivors and disability benefits if, the State or a county makes or provides for direct payment to a provider chosen by a recipient for the purchase of In-Home Supportive Services.

Contributions, premiums, and taxes shall be paid or transmitted on the recipients behalf as the employer for any period beginning January 1, 1978, except income taxes and Federal old-age survivors and disability insurance contributions which shall be paid or transmitted the first full month which begins 90 days after the effective date of this legislation.

This bill also provides that upon request of the State Department of Social Services, the State Compensation Insurance Fund may issue one workers' compensation insurance policy insuring all recipients of In-Home Supportive Services for whom and to the extent that the State Department of Social Services has an obligation to perform or assure the performance of rights, duties and obligations relating to such services as specified in the Welfare and Institutions Code.

Finally, the bill would appropriate \$13,000,000 from the General Fund to the State Department of Social Services for the purposes of this legislation.

# **EXHIBIT 5**



## ASSEMBLY THIRD READING

AB 3028 ( Agnes ) As Amended: 8 June 1978

## ASSEMBLY ACTIONS:

COMMITTEE HUMAN RES. VOTE 4-0 COMMITTEE W. & M. VOTE 18-0

Ayes:

Ayes:

Nays:

Nays:

DIGEST

This bill provides workers' compensation coverage to specified persons who perform domestic service comprising in-home supportive services under county programs.

The bill also provides unemployment and disability compensation coverage to individuals who perform in-home supportive services for an employer who pays wages of \$1,000 or more during any calendar quarter.

The bill also provides that the State Department of Social Services will perform the duties of employer if the person receiving in-home supportive care is provided state or county funds for the purchase of such care.

This bill also allows the State Compensation Insurance Fund to issue one workers' compensation insurance policy to insure persons receiving in-home supportive services to the extent of the department's obligation.

FISCAL EFFECT

Appropriates \$13 million from the General Fund to the Department of Social Services.

COMMENTS

According to the Assembly Human Resources Committee analysis, the adoption of this bill could make the state the employer of 55,000 service providers.

18/pk  
6/23/78

ASSEMBLY OFFICE OF RESEARCH

AB 3028

# **EXHIBIT 6**

**ENROLLED BILL REPORT**

AGENCY <b>HEALTH AND WELFARE</b>	BILL NUMBER AB 3028
DEPARTMENT, BOARD OR COMMISSION Department of Social Services	AUTHOR Agnos

SUMMARY

The bill would identify In-Home Supportive Services (IHSS) clients as the employers of service providers for purposes of unemployment insurance, disability insurance, workers' compensation, federal and state income tax, and social security. The bill provides an appropriation and an urgency clause.

LEGISLATIVE HISTORY

As introduced, AB 3028 attempted to statutorily identify the county as the employer of IHSS individual providers for workers' compensation, unemployment insurance, and minimum wage purposes. The general fund effect of such designation was an increase expenditure in excess of \$90 million per year.

The author completely amended the bill, at the request of the Departments of Finance, Employment Development and Social Services, by accepting language submitted by the Health and Welfare Agency and approved by the Governor's Legislative Office.

SPECIFIC FINDINGS

- A. Section 11656.7 would be added to the Insurance Code to allow the State Compensation Insurance Fund to issue one workers' compensation policy to the Department of Social Services to insure all IHSS clients.
- B. Section 3351.5 of the Labor Code would be amended to define IHSS providers as "employees" for workers' compensation purposes.
- C. Section 683 would be added to the Unemployment Insurance Code to identify IHSS clients as employers for unemployment and disability insurance purposes.
- D. Section 12302.2 would be added to the Welfare and Institutions Code to provide that the Department of Social Services would perform or assure the performance of all rights, duties, and obligations relating to provider benefits. The Section would allow the state to contract with any person, or any public or private agency to assure such performance.

The IHSS clients' responsibilities as an employer are effective January 1, 1978 except for state and federal income taxes and social security, which will take effect 90 days after the effective date of this bill.

This Section would also provide that the cost of provider benefits will not be applied toward the maximum IHSS grant.

Contact Dan Brunner - work (322-7247)  
- home (481-4362)

RECOMMENDATION

Sign.

DEPARTMENT HEAD	DATE	AGENCY HEAD	DATE
<i>Norman D. Wood</i>	7-7-78	<i>Opal Sulley</i>	

2.

FISCAL ANALYSIS:

Has fiscal effect - appropriates \$13 million to the Department of Social Services.

To the extent possible the costs of administering the bill as well as the costs of the contributions, premiums and taxes covered by the bill are to be paid from federal funds. The bill appropriates \$13 million from the general fund to the Department of Social Services to cover the costs of the bill after federal funds are utilized. The support costs of the Department of Social Services, includes administrative support position, are included as part of the appropriation. No additional costs above the appropriation are anticipated.

RECOMMENDATION: Sign.

This bill resolves the problem of who is the employer of the In-Home Supportive Services (IHSS) workers selected by the aged, blind or disabled recipients for the purposes of unemployment insurance, workers' compensation, disability insurance and social security. This problem, which has been unresolved since the inception of the program, now requires resolution because of recent changes in federal and state law mandating unemployment insurance, disability insurance and workers' compensation coverage for domestic workers. Under a series of decisions by enforcement agencies and in court cases, counties are being held to be the employers, even in those instances where the recipient hires the IHSS worker.

AB 3028 resolves this problem by designating the recipient as the employer, for certain purposes, requiring the State to assure collection and payment of all contributions through a payrolling system, and requiring the State to pay the employer's share of mandated benefits. The \$13 million cost is the least costly alternative. Absent this legislation, counties will turn to the other statutorily permitted delivery methods in order to avoid paying these costs as the employer. These alternatives would be funded entirely from the General Fund since under state and federal law the State must reimburse the counties for their costs (federal fund participation is already at a maximum). The alternatives are: (1) the use of contract providers at an additional cost of \$80 million to the General Fund, or (2) county civil service employees at an additional cost of \$116 million to the General Fund. Several counties have already indicated that they will choose contract providers if there is no legislative relief.

# **EXHIBIT 7**

# ENROLLED BILL REPORT

AGENCY <b>HEALTH AND WELFARE</b>	BILL NUMBER AB 3028
DEPARTMENT, BOARD OR COMMISSION <b>EMPLOYMENT DEVELOPMENT DEPARTMENT</b>	AUTHOR AGNOS

SUBJECT AND ANALYSIS

AB 3028, an urgency measure, clarifies who is the employer of In-Home Supportive Service (IHSS) workers. It would appropriate \$13 million from the General Fund to pay for unemployment insurance, disability insurance, social security, and workers' compensation for these workers and in so doing would avoid much higher General Fund costs of between \$67 million and \$103 million. It would also preserve an arrangement that gives IHSS recipients the greatest possible control over who is hired to care for them. This bill passed with the active ~~support~~ of the Departments of Finance, Benefit Payments, Industrial Relations, Health and EDD. We recommend, very strongly, that the Governor sign this bill.

The California IHSS program (previously known as homemaker/chore) employs over 50,000 low-paid and relatively unskilled workers to provide in-home services to approximately 75,000 aged, blind and disabled recipients of public assistance as an alternative to placement in nursing homes or other institutions. Counties, which administer the program, may arrange for the delivery of the services through one of three methods: (1) through county staff (5 percent of the program's current total cost is spent on this option), (2) through agency contractors (13 percent), or (3) through individual providers selected by the recipient and paid directly by the county or the recipient (82 percent). This last method is especially desirable since it permits the disadvantaged person the most control over the care which is provided.

The issue of who is the employer of IHSS workers has been unresolved since the inception of the program. Resolution of the issue is now necessary because of recent changes in Federal and State law mandating unemployment insurance, disability insurance, workers' compensation and social security coverage for domestic workers. Under a series of decisions by enforcement agencies and court cases, counties are being held to be the employers of IHSS workers, and legally responsible for the collection and payment of the taxes and premiums for these benefits even in those instances where the recipient hires the IHSS worker.

If AB 3028 does not become law, there will be one of two extremely expensive results. A number of counties have indicated that they will shift to contracting with private agencies for the provision of IHSS rather than utilizing individual providers selected by the recipients because the agency contractor would then become the responsible employer, thus relieving counties of a significant administrative burden. The additional yearly cost of this alternative is \$80,000,000 (or \$67 million more than AB 3028 will cost), entirely in state funds as the state must reimburse the counties for their IHSS costs and federal fund participation is already at the maximum. (This estimate is based upon the current cost of contract agencies projected to the statewide caseload.)

RECOMMENDATION:

Department Contact: Mary Matilda Jones/Hugh Fitzpatrick  
Work: 445-3576 Home: 444-6152/1-758-5041

SIGN

DEPARTMENT DIRECTOR

*M. R. Glick*  
MARTIN R. GLICK

DATE

7-10-78

AGENCY SECRETARY

*Opal Hulley*

DATE

SUBJECT AND ANALYSIS (Contd.)

The second costly result of inaction will be that some counties will shift to providing IHSS through civil service employees. This is the most expensive of the three methods of delivery that the county may choose because of the higher level of wages and benefits (such as sick leave, vacations/holidays, medical insurance, and retirement) applicable. Based on an estimate done in conjunction with a recent state/county task force, the additional cost of having all the service provided by civil service employees would be \$116,000,000 annually, or \$103 million more than AB 3028 will cost.

AB 3028 preserves the three options for delivery of services, but provides that in those instances when the recipient selects the IHSS worker:

1. The recipient is the employer of the IHSS worker.
2. The state shall assure the collection and payment of taxes for four basic benefits -- unemployment insurance, disability insurance, workers' compensation and social security -- through a centralized payroll system.
3. The state shall pay the costs of the employer's share of legally required employment benefits.

FISCAL ANALYSIS

AB3028 makes a \$13 million General Fund appropriation to the Department of Social Services, including \$1.8 million for unemployment insurance, \$8.5 million for workers' compensation for the 78-79 fiscal year, and \$1.8 million to pay for these benefits for January through June of the current fiscal year. In addition, the appropriation includes \$.8 million for administrative and support costs.

If AB 3028 does not become law, we estimate that the General Fund will have to finance an additional \$67-103 million in IHSS program costs.

HISTORY, SPONSORSHIP, AND RELATED BILLS

AB 3028 is sponsored by Self-Help for the Elderly and the Coalition for In-Home Services. It is strongly supported by the County Welfare Directors Association, the Center of Independent Living, the California Conference of Catholic Charities, the Family Service Agency of San Francisco, American Friends Services, and many other groups. ACR 118 would direct the Secretary of the Health and Welfare Agency to prepare a report for the Legislature on the programmatic, procedural, and legal issues concerning who should be the employer of persons rendering IHSS for purposes of UI and DI. There is no known opposition to this bill.

HISTORY, SPONSORSHIP, AND RELATED BILLS (Contd.)

AB 644 (Chapter 2, Statutes of 1978) extended UI and DI coverage to domestic workers; AB 133 (Chapter 17, 1977) extended workers' compensation coverage to these workers.

VOTE

Assembly: 79-0

Senate: 27-5



# **EXHIBIT 8**

# ENROLLED BILL REPORT

Form DF-44 (Rev. 5/75 4M)

<b>AGENCY</b> DEPARTMENT OF FINANCE	<b>AUTHOR</b> Agnos	<b>BILL NO.</b> AB 3028
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<b>SUBJECT:</b> Designates the recipient as the employer of individual providers of in-home supportive services for purposes of workers' compensation and unemployment and disability insurance benefits.	<b>DATE LAST AMENDED</b> 6/30/78
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Contains an urgency statute and an appropriation of \$13 million.

**HISTORY, SPONSORSHIP, AND RELATED BILLS**

Sponsored by Self Help for the Elderly and Coalition for In-Home Services

**ANALYSIS**

**A. Specific Findings**

Under existing law, county welfare departments are required to develop and submit a plan to the Department of Social Services for the provision of in-home supportive services (IHSS). To implement the plan, counties may select one or a combination of delivery modes from the following: (a) contract with agencies or individuals; (b) county welfare department staff, and/or (c) direct payments to clients to hire their own providers.

Recently, the issue of extending fringe benefits to IHSS providers has received a great deal of attention. This attention was stimulated by changes in Federal and State law (e.g., PL 94-566, AB 133, Chapter 17/77; AB 644, Chapter 2/78) which expanded eligibility for unemployment insurance and workers' compensation benefits to domestic employees. A related question is who is the employer of IHSS providers for purposes of payment of such fringe benefits? These issues relate primarily to individual providers since other providers are considered the employees of contract agencies or county welfare departments, and already receive fringe benefits.

AB 3028 would designate the IHSS recipient as the employer of individual service providers for purposes of workers' compensation, unemployment insurance and disability insurance benefits. Specific provisions are:

1. Allows the State Compensation Insurance Fund to issue one workers' compensation insurance policy to the Department of Social Services to insure all IHSS recipients.
2. Identifies IHSS individual providers as "employees" of IHSS recipients for purposes of workers' compensation.

(Continued)

**SUMMARY OF REASONS FOR SIGNATURE/VETO**

Complies with existing Federal and State law which makes IHSS individual providers eligible for workers' compensation and unemployment and disability insurance benefits. The method contained in this bill for providing such fringe benefits appears to be the least costly.

<b>RECOMMENDATION</b> Sign the bill.	<b>ANALYST</b> <i>J. Phillips</i>		
<b>DEPARTMENT REPRESENTATIVE</b> <i>Harris</i>	<b>DATE</b> 7/13/78	<b>DIRECTOR</b> <i>Raymond</i>	<b>DATE</b> 7/13/78

Specific Findings (Continued)

3. Identifies IHSS recipients as "employers" of individual IHSS providers for purposes of unemployment and disability insurance.
4. Requires the Department of Social Services to perform or assure the performance of all rights, duties, and obligations of the IHSS recipient relating to individual provider benefits (e.g., unemployment and disability insurance, workers' compensation, Federal and State income tax, and OASDI). This is basically a payroll function to ensure that appropriate employer benefit costs are withheld and paid. The Department may assure the performance of this function by contracting with any individual or public or private agency.
5. Defines an individual provider as one who receives direct payment from the IHSS recipient, or one who is hired by the recipient but receives payment from the State or county.

The IHSS recipients' responsibility to pay benefits as an employer would be effective January 1, 1978 except for payment of State and Federal income taxes and OASDI. The latter would be effective 90 days after the effective date of this bill. The cost of provider benefits would be in addition to the statutory maximum IHSS grant.

The Department indicates that existing employee benefit laws require payment of fringe benefits for IHSS providers. Since benefits must be paid, the Department has defined the major issue as who is the employer and thus must pay for the provision of such benefits?

The employer may either be the IHSS recipient, the county and/or the State. The Department claims that no action will most likely result in the counties being named the employer through legal action. If this were to occur, the counties would immediately file suit enjoining the State as a co-employer. This action could potentially cost \$100 million General Fund. Some counties have indicated that to avoid the whole issue, they will switch to contracting with agencies to provide services. The contract agency would then be designated the employer. This is a much more costly delivery method and could result in an \$80 million cost to the General Fund.

The above options are much more costly than designating the IHSS recipient as the employer at an annual cost of approximately \$13 million General Fund. If fringe benefits as required under existing law are to be paid to IHSS providers, the method contained in this bill appears to be the least costly. However, existing employee benefit laws may need to be reexamined in light of the great General Fund cost impact, the likely possibility that other employee groups may also claim fringe benefits (e.g., child care workers), and the passage of Proposition 13.

Finance staff are concerned that State responsibility for assuring performance of the payroll function may result in the courts finding the State the "employer" of IHSS providers. Further, the administrative complications that may result from assuming responsibility for performance of this function are numerous. There are approximately 56,000 individual IHSS providers with an extremely high job turnover rate. The payroll function may result in audits, compliance actions and fines brought about by taxing agencies, etc.

B. Fiscal Effect

AB 3028 requires additional costs to be financed from Federal Title XX funds or the State General Fund. Since Title XX funds are capped, any additional costs would be borne by the General Fund. The Department of Social Services estimates additional first year costs at approximately \$13 million. The annual ongoing cost to the General Fund (for second and subsequent years) is estimated at approximately \$11 million. First year costs were higher due to the inclusion of some retroactive benefits. The cost estimates are approximations and will be adjusted to reflect increases/decreases in the cost of worker benefits. These adjustments cannot be predicted and are partly dependent upon employee experience ratings.

The bill does not contain a "local mandate appropriation" or a disclaimer. A "no new duties" disclaimer is appropriate.

Summary of Fiscal Effect

The following estimates have been prepared by Estimates Bureau staff Department of Social Services.

	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>Fund</u>
Department of Social Services	\$13 million	\$11 million	\$11 million	General

# **EXHIBIT 9**

**ASSEMBLY BILL**

**No. 1420**

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**Introduced by Assemblyman LaCoste**

April 1, 1971

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REFERRED TO COMMITTEE ON FINANCE AND INSURANCE

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*An act to amend Section 631 of the Unemployment Insurance Code, relating to unemployment compensation.*

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1420, as introduced, LaCoste (Fin. & Ins.). Unemployment and disability compensation.

Amends Sec. 631, U.I.C.

Permits elective coverage for individuals in employ of specified relatives.

Vote—Majority; Appropriation—No; Fiscal Committee—No.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 631 of the Unemployment Insurance
- 2 Code is amended to read:
- 3 631. "Employment" does not include *service performed by*
- 4 *a child under the age of 21 years in the employ of his father*
- 5 *or mother, or service performed by an individual in the employ*
- 6 *of his son, daughter, or spouse, and service performed by a*
- 7 *child under the age of 21 in the employ of his father or mother*
- 8 *unless the employer and the employee have elected to make*
- 9 *contributions to the Unemployment Fund or Unemployment*
- 10 *Compensation Disability Fund.*

# **EXHIBIT 10**

# ENROLLED BILL REPORT

AGENCY <b>HUMAN RELATIONS</b>	BILL NUMBER <b>AB 1420</b>
DEPARTMENT, BOARD OR COMMISSION <b>HUMAN RESOURCES DEVELOPMENT</b>	AUTHOR <b>LaCOSTE</b>

## SUBJECT

Permits an employer who employs members of his family (parent, child or spouse) to elect to cover such employees for disability insurance under the Unemployment Insurance Code for nonoccupational disability.

## HISTORY, SPONSORSHIP, AND RELATED LEGISLATION

This is the first attempt to allow disability insurance coverage for family employment. Sponsorship is unknown; this is not a Department bill. There has been no related legislation. There is no opposition to the bill. HRD opposed the bill's earlier proposal to allow elective coverage for unemployment insurance for family members, due to the collusion hazard. This opposition was removed when the bill was restricted to disability insurance only.

## ANALYSIS

### A. Specific Findings

This bill will effectively remove the inequity which makes an employee ineligible for disability benefits strictly because of familial relationship to the employer. Concern about family collusion is minimal due to the requirement of a physician's certification of the disability claim.

### B. Fiscal Analysis

Both revenue and disability benefit payments for the Disability Fund will be increased by insubstantial amounts. Precise evaluation is impossible at this time because of lack of information. No effect on General Fund.

RECOMMENDATION: **SIGN**

DEPARTMENT HEAD

*S J Hansen*

DATE

*11-2-71*

AGENCY HEAD

*Dyke Walthall*

DATE

*11-2-71*



# **EXHIBIT 11**

The documents following this page were  
photocopied from the files of the

Assembly Committee on

Finance and Insurance.

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AB 1420 - LaCoste (as amended May 6, 1971)

The apparent purpose of this bill is to permit children under the age of 21 in the employ of their father or mother or persons in the employ of their son or daughter or spouse to elect to be covered under unemployment compensation disability insurance and to collect benefits from that Fund if they have made contributions to it.

Section 631 presently excludes such persons from both unemployment insurance and unemployment compensation disability insurance.

Since such benefits cannot be obtained without a doctor's certificate of disability, there is obviously less chance of fraudulent claims being filed than exists with respect to unemployment insurance benefits for these same persons.

# **EXHIBIT 12**

# Memorandum

- : Joyce Wimple MIC 32

Date : June 19, 1978

File No.:

From : Employment Development Department

Subject: Amendments proposed May 30 to AB 3028 as amended May 10, 1978

## Proposal

The amendments designate the employer (for UI and DI purposes) of persons who perform in-home supportive services, (IHSS) as someone who pays wages in cash of \$1,000 or more for such service during any calendar quarter and is either:

- 1) the recipient of the service if the county or state makes or provides payment to a provider chosen by the recipient; or
- 2) an individual or entity with whom the county contracts to provide the service; or
- 3) the county which hires and directs providers

In the first instance the Department of Social Services is to perform or assure the duties required of an employer for UI or DI purposes, and the cost of such administrative activity is to be paid, if possible, out of federal funds. If they are inadequate, the State will pay for the added administrative expense.

The amendment would appropriate \$13 million for the legislation, which is an urgency measure, from the General Fund.

## Impact

Subject to the discussion below it is estimated the proposal would cost an additional \$5.6 million in benefits-- \$4.7 million for UI costs and \$0.9 million in DI benefits. The proposal is estimated to generate tax revenue of \$4.2 million, \$3.3 million in UI contributions and \$0.9 million in DI contributions. About 4,800 persons will receive benefits under this proposal-- 3,100 will receive UI benefits and 1,700 DI benefits.

## Discussion

A key assumption is that the welfare recipient would become the employer. The bill provides strong incentive for that to happen. Under that assumption it is estimated that only 30 percent of IHSS providers will work for an employer whose wages qualify for UI and DI purposes. It is estimated that family relationships will bar UI payment to 10 percent of providers otherwise eligible and that the

unemployment rate of providers will be 20 percent. It is known that turnover rates are much higher. The average weekly UI benefit is estimated at \$58 and for DI purposed it is estimated at \$65.

  
D.C. WACKER, Chief  
Estimates Group

# **EXHIBIT 13**

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THIRD READING

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Bill No: AB 1930  
Author: Lackey (R)  
Amended: 8/1/16 in Senate  
Vote: 21

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SENATE HUMAN SERVICES COMMITTEE: 4-0, 6/14/16  
AYES: McGuire, Hancock, Liu, Nguyen  
NO VOTE RECORDED: Berryhill

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/11/16  
AYES: Lara, Bates, Beall, Hill, McGuire, Mendoza, Nielsen

ASSEMBLY FLOOR: 77-0, 6/1/16 - See last page for vote

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**SUBJECT:** In-home supportive services: family caregivers: advisory committee

**SOURCE:** UDW/AFSCME Local 3930  
California Association of Public Authorities

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**DIGEST:** This bill establishes the In-Home Supportive Services (IHSS) Family Caregiver Benefits Advisory Committee for the purpose of studying and providing a report on employment-based supports and protections for IHSS providers.

**ANALYSIS:**

Existing law:

- 1) Establishes the IHSS program to provide defined supportive services for aged, blind, or disabled persons who are unable to perform the services themselves and who cannot safely remain in their homes unless such services are provided. Those supportive services include, but are not limited to, domestic services, heavy cleaning, personal care services, and accompaniment during travel to health-related appointments or to alternative resource sites, yard hazard



abatement, protective supervision, and paramedical services, as defined. (*WIC 12300 et seq.*)

- 2) Establishes county authority to contract with a nonprofit consortium or a public authority for the delivery of IHSS supportive services. Requires those nonprofit consortia and public authorities to establish a registry in order to assist IHSS recipients with hiring providers, and to investigate the background and qualifications of potential providers, as specified. (*WIC 12301.6*)
- 3) Requires that the application for IHSS services shall contain a notice to the recipient of services that his or her provider or providers will be given written notice of the recipient's authorized services, and full number of services hours allotted to the recipient. The application shall inform recipients of the Medi-Cal toll-free telephone fraud hotline and Internet Web site for reporting suspected fraud or abuse in the provision or receipt of supportive services. (*WIC 12301.15*)
- 4) Provides that an authorized recipient of IHSS supportive services shall direct those authorized services, and that authorized services shall be performed by a provider or providers within a workweek and in a manner that complies with the requirements, as specified. (*WIC 12300.4*)
- 5) Maintains an IHSS recipient's right to hire, fire, and supervise the work of any IHSS provider, regardless of the employer responsibilities of a public authority or nonprofit consortium, as specified. (*WIC 12301.6*)

This bill:

- 1) Creates the IHSS Family Caregiver Benefits Advisory Committee to describe the availability of, and barriers to, employment-based supports and protections, including, but not limited to, federal Social Security benefits and state unemployment insurance benefits, and to study the impact that lack of access to these supports and protections has on IHSS providers who care for specified family members, and their communities.
- 2) Requires the advisory committee to be made up of not more than 11 individuals, and further requires those individuals to represent specified entities, including, but not limited to, academic entities and nonprofit organizations, the California Department of Social Services (CDSS), IHSS public authorities, labor organizations that represent IHSS providers, and IHSS providers and consumers.

- 3) Permits the Governor to appoint not more than nine individuals to the advisory committee and requires that individuals appointed by the Governor may include only representatives from specified groups.
- 4) Requires the Speaker of the Assembly and the Senate Committee on Rules to each appoint one individual to the advisory committee, as specified.
- 5) Requires that appointments made to the advisory committee include representatives from all groups, as specified.
- 6) Requires, by January 1, 2018, the advisory committee to provide a peer-reviewed report to designated Legislative committees that includes a summary of findings and recommendations on steps the state could take to ensure that all IHSS providers who provide care for specified family members have access to employment-based supports and protections, as specified.
- 7) Provides that the provisions of the bill shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

## **Background**

The IHSS program, which is administered by CDSS, provides in-home services for low-income individuals who are at least 65 years of age, blind and/or disabled and unable to perform the services themselves and who cannot safely remain in their homes unless these services are provided. IHSS recipients need those services in order to avoid out-of-home care.

IHSS services may include domestic and related services, like housework, meal preparation, laundry and shopping; personal care services; accompaniment to medical appointments; protective supervision for recipients who may place themselves at risk for injury; and hazard or accident and paramedical services when directed by a physician.

County welfare departments notify IHSS recipients which services are approved, how much time is authorized for each service, and the total authorized monthly hours. IHSS recipients are responsible for hiring, firing, directing and supervising their IHSS provider. These responsibilities include some administrative duties, such as scheduling and signing timesheets. However, CDSS handles IHSS payroll.

Providers must complete an enrollment process, including submitting fingerprints for a criminal background screening and participating in an orientation prior to receiving payment for services.

Approximately 464,000 Californians receive IHSS and about 99% of recipients receive IHSS as a Medicaid benefit. There are currently about 433,400 IHSS providers in the state. Approximately 69 percent of them are relatives and about 50 percent are live-in providers.

### *IHSS Exclusion from certain employment benefits*

Access to some employment-based benefits and protections are limited for certain IHSS providers, particularly if a provider is related to the IHSS consumer. According to IHSS provider training materials from CDSS, "some family members, especially spouses and parents of consumers, are not eligible to have Social Security (FICA) funds withheld from paychecks" and "Unemployment Insurance benefits may be available to you if you are not the parent or spouse of your employer/recipient and become unemployed, able and available to work and you meet certain eligibility requirements."

CDSS cites existing state and federal laws as the reason why spouses and parents are generally not subject to Social Security, Medicaid and unemployment benefits. Existing federal law requires employers to withhold and match Social Security and Medicare taxes from an employee's wages, which are then used to fund the employee's future Social Security and Medicare benefits. However, wages earned while providing IHSS services by a spouse, child or parent are not subject to these withholdings, making these providers ineligible to receive such benefits.

Specifically, the Federal Insurance Contribution Act (FICA) requires employers to withhold taxes from the wages an individual receives for employment. The employer matches the amount of these withholdings, which together are used to fund the employee's future Social Security and Medicare benefits. The Internal Revenue Code (IRC) section 3121 (b) defines "employment" as any service an employee performs for an employer. The IRC contains an exception to this definition for family employment (IRC section 3121(b) (3)). The "family employment exception" applies to service in a private home "in the employ of an individual's son, daughter, or spouse." In those cases, according to the IRS, no actual employment relationship exists.

As a result, the CDSS has determined that wages paid through IHSS to parent or spouse providers fall under the “family employment exception” and therefore are exempt from employment taxes such as FICA and state UI.

Additionally, Section 631 of the California Unemployment Insurance Code states, in part, that “Employment” does not include service performed by ... an individual in the employ of his (or her) son, daughter, or spouse. Therefore, these family employees are excluded from Unemployment Insurance (UI), Employment Training Tax, and State Disability Insurance coverage.

In order to change the benefits to this subset of IHSS workers, changes in federal and state law are likely necessary. According to the author, some people argue that “this is a federal issue and that any remedy for this situation can only be pursued on a federal level. Though we agree that this problem originates in federal code, we believe there may be steps the state can take to resolve the issue or, at the least, mitigate the negative economic impacts. The first step would be to bring together policy experts, lawmakers, and individuals directly impacted by this problem in order to thoroughly analyze and understand it. After studying the problem, it will be possible to determine what else the state can do to address this issue.”

### **Related/Prior Legislation**

SB 1036 (Senate Budget and Fiscal Review Committee, Chapter 45, Statutes of 2012) established the IHSS Statewide Authority for purposes of collective bargaining.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- Estimated costs to the CDSS of \$373,000 in fiscal year 2016-17 and \$331,000 in fiscal year for administrative costs to support the advisory group, assuming the committee will meet quarterly. This includes three new staffing positions to assist in staffing the committee and to prepare the peer-reviewed report. (GF)
- Costs to CDSS of \$97,000 for fiscal years 2016-17 and 2017-18 for transportation and meeting expenses for committee members, county representatives, IHSS providers, IHSS recipients and their providers and for legal research and consultation. (GF)

- Significant cost to CDSS of \$250,000 for fiscal years 2016-17 and 2017-18 for an external contract with the University of California to complete the study and peer-reviewed report. (GF)
- Likely significant cost pressure to implement any recommendations that the advisory committee produces.

**SUPPORT:** (Verified 8/12/16)

UDW/AFSCME Local 3930 (co-source)  
 The California Association of Public Authorities (co-source)  
 American Federation of State, County and Municipal Employees  
 California Alliance for Retired Americans  
 California Health Advocates  
 Centro Laboral de Graton  
 Coalition for Humane Immigrant Rights of Los Angeles  
 Congress of California Seniors  
 GABRIELA San Francisco  
 Justice in Aging  
 National Employment Law Project  
 Pilipino Workers Center of Southern California  
 San Francisco Senior Disability Action  
 The California Commission on Aging  
 The California Domestic Workers Coalition  
 The California Labor Federation  
 The Coalition of Welfare Rights Organizations  
 The Instituto de Educacion Popular del Sur de California  
 The Personal Assistance Services Council  
 The Los Angeles County IHSS Public Authority

**OPPOSITION:** (Verified )8/12/16

California Department of Finance

**ARGUMENTS IN SUPPORT:** According to the author, individuals who provide services through the IHSS program to their child or spouse are not allowed to contribute towards social security, Medicare, or state unemployment insurance (UI). This means that when they retire, if they become disabled, or if they lose their jobs, these hard-working caregivers do not have access to our nation's most important programs for seniors and the uninsured, per the author. The author also states that this situation has resulted in terrible economic hardship for tens of thousands of IHSS workers who are at or near retirement age.

AB 1930 establishes an advisory committee to study how the exclusion from certain employment-based supports and protections, such as Social Security, impacts the economic security of individuals who provide these critical services and their communities. This committee includes policy experts from the field and the administration as well as individuals who are directly impacted by the exclusion. AB 1930 would require the committee to provide a peer-reviewed report to the Legislature by January 1, 2018 with a summary of the findings and recommendations on steps the state can take to ensure that all IHSS providers who provide supportive services to a spouse or child have access to all employment-based supports and protections, including federal Social Security benefits.

**ARGUMENTS IN OPPOSITION:** The Department of Finance is “opposed to this bill because it results in additional General Fund costs that are not included in the Administration’s current fiscal plan.”

ASSEMBLY FLOOR: 77-0, 6/1/16

AYES: Achadjian, Alejo, Travis Allen, Arambula, Atkins, Baker, Bigelow, Bloom, Bonilla, Bonta, Brough, Brown, Burke, Calderon, Campos, Chang, Chau, Chávez, Chiu, Chu, Cooley, Cooper, Dababneh, Daly, Dodd, Eggman, Frazier, Gallagher, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Grove, Hadley, Roger Hernández, Holden, Irwin, Jones, Jones-Sawyer, Kim, Lackey, Levine, Linder, Lopez, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Nazarian, Obernolte, O'Donnell, Olsen, Patterson, Quirk, Ridley-Thomas, Rodriguez, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Wagner, Waldron, Weber, Wilk, Williams, Wood, Rendon

NO VOTE RECORDED: Dahle, Beth Gaines, Harper

Prepared by: Taryn Smith / HUMAN S. / (916) 651-1524  
8/16/16 9:33:55

\*\*\*\* END \*\*\*\*

# **EXHIBIT 14**

GOVERNOR'S VETO  
AB 1930 (Lackey)  
As Enrolled August 30, 2016  
2/3 vote

ASSEMBLY: 77-0 (June 1, 2016) SENATE: 37-0 (August 16, 2016)

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ASSEMBLY: 77-0 (August 23, 2016)

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Original Committee Reference: **HUM. S.**

**SUMMARY:** Establishes the In-Home Supportive Services (IHSS) Family Caregiver Benefits Advisory Committee for the purpose of studying, and providing a report on, employment-based supports and protections as they pertain to IHSS providers.

**The Senate amendments:**

- 1) Modify and clarify certain aspects of the advisory committee, including the following: establishes the committee within the Department of Social Services (DSS); states that it should consider, alongside other employment-based supports and protections, factors related to state unemployment insurance benefits; and changes the required composition of the committee by including nonprofit organizations related to IHSS, removing the Department of Finance and Legislative Analyst's Office, and specifying that the labor organizations to be included should be designated representatives of providers of personal assistance services funded as IHSS, as specified.
- 2) Change the bill's required size of the advisory committee from not more than 15 individuals to no fewer than eight individuals and not more than 11 individuals, and authorize the Governor to appoint no more than nine individuals, and require the Speaker of the Assembly and the Senate Committee on Rules to each appoint one individual to the committee. Further, require the Governor's appointees to include only representatives of groups specified by the bill, but permit the other two appointees to include representatives not from these groups, and require all appointments to ensure that the advisory committee includes representatives of all specified groups.
- 3) Make technical changes.

**EXISTING LAW:**

- 1) Establishes the IHSS program to provide supportive services, including domestic, protective supervision, personal care, and paramedical services as specified, to individuals who are aged, blind, or living with disabilities, and who are unable to perform the services themselves or remain safely in their homes without receiving these services. (Welfare and Institutions Code Section (WIC) 12300 *et seq.*)
- 2) States those counties may choose to contract with a nonprofit consortium or establish a public authority for the provision of IHSS services. Requires nonprofit consortia and public authorities to, among other things, establish a registry to assist recipients in locating IHSS



providers, and to investigate the background and qualifications of potential providers, as specified. (WIC 12301.6)

- 3) Maintains an IHSS recipient's right to hire, fire, and supervise the work of any IHSS provider, regardless of the employer responsibilities of a public authority or nonprofit consortium, as specified. (WIC 12301.6)
- 4) Requires the application for IHSS to contain a notice to the recipient that his or her provider(s) will be given written notice of the recipient's authorized services and allotted hours and further requires the application to inform recipients of specified Media-Cal contact information for reporting fraud or abuse. (WIC 12301.15)

**FISCAL EFFECT:** According to the Senate Appropriations Committee on August 1, 2016, this bill may result in the following costs:

- 1) Estimated costs to DSS of \$373,000 in fiscal year 2016-17 and \$331,000 in fiscal year for administrative costs to support the advisory group, assuming the committee will meet quarterly. This includes three new staffing positions to assist in staffing the committee and to prepare the peer-reviewed report. (General Fund)
- 2) Costs to DSS of \$97,000 for fiscal years 2016-17 and 2017-18 for transportation and meeting expenses for committee members, county representatives, IHSS providers, IHSS recipients and their providers and for legal research and consultation. (General Fund)
- 3) Significant cost to DSS of \$250,000 for fiscal years 2016-17 and 2017-18 for an external contract with the University of California to complete the study and peer-reviewed report. (General Fund)
- 4) Likely significant cost pressure to implement any recommendations that the advisory committee produces.

**COMMENTS:**

*In-Home Supportive Services:* The IHSS program enables low-income individuals who are at least 65 years old, living with disabilities, or blind to remain in their own homes by paying for care providers to assist with personal care services (such as toileting, bathing, and grooming), domestic and related services (meal preparation, housecleaning, and the like), paramedical services, and protective supervision. Approximately 464,000 Californians receive IHSS, with approximately 99% receiving it as a Medicaid benefit.

When an individual is determined eligible for IHSS services by a county social worker, he or she is authorized for a certain number of hours of care. IHSS recipients are responsible for hiring, firing, directing, and supervising their IHSS workers. These responsibilities include some administrative duties, such as scheduling and signing timesheets; however, the state handles payroll. There are currently about 433,400 IHSS providers in the state; approximately 69% are relatives and an estimated 50% are live-in. Providers must complete an enrollment process, including submitting fingerprint images for a criminal background check and participating in a provider orientation prior to receiving payment for services.

Access to some employment-based benefits and protections may be limited for certain IHSS providers, particularly if a provider is related to the IHSS consumer. According to IHSS provider training materials from DSS, "some family members, especially spouses and parents of consumers, are not eligible to have Social Security (FICA) funds withheld from paychecks," and "Unemployment Insurance benefits may be available to you if you are not the parent or spouse of your employer/recipient and become unemployed, able and available to work and you meet certain eligibility requirements."

*Need for this bill:* According to the author, this bill "would establish an advisory committee to study how this exclusion [of certain relative IHSS providers from Social Security, state unemployment insurance and other coverage] impacts the economic security of individuals who provide these critical services and their communities. This committee would include policy experts as well as those directly impacted by the exclusion. The committee would be tasked with drafting a report to the Legislature with recommendations on steps the state can take to ensure that all IHSS providers have access to social security, Medicare, and unemployment insurance. Over several decades, the fact that these workers cannot access Social Security, Medicare or Unemployment Insurance benefits has resulted in terrible economic hardship for tens of thousands of IHSS workers who are at or near retirement age. It also results in indirect costs to taxpayers as hard working seniors are forced into poverty and reliance on state public assistance programs. It is worth exploring why benefits that are provided to one category of workers that are denied to another category of workers in the same program."

#### **GOVERNOR'S VETO MESSAGE:**

I am returning Assembly Bill 1930 without my signature.

This bill establishes an advisory committee within the Department of Social Services to study and report to the Legislature on issues related to employee contributions to Social Security benefits, Medicare and unemployment benefits for In-Home Supportive Services family providers.

The In-Home Supportive Services Stakeholder Advisory Committee, with its composition of consumers, providers, labor representatives and advocates, has the ability and expertise to examine these issues and produce information necessary to advise the departments involved as well as the Legislature on this topic.

Analysis Prepared by: Daphne Hunt / HUM. S. / (916) 319-2089

FN: 0005118

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: ***Tamara Skidgel v. California Unemployment Insurance Appeals Board***  
Case No.: **S250149**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On January 10, 2019, I served the attached **RESPONDENT'S MOTION FOR JUDICIAL NOTICE; DECLARATION IN SUPPORT** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Stephen E. Goldberg  
Legal Services of Northern California  
517 12<sup>th</sup> Street  
Sacramento, CA 95814-1418  
*Attorneys for Plaintiff and Appellant*

Wade Askew  
Legal Services of Northern California  
1810 Capitol Street  
Vallejo, CA 94590  
*Attorneys for Plaintiff and Appellant*

Clerk of the Court  
California Court of Appeal  
First Appellate District, Division Five  
350 McAllister Street  
San Francisco, CA 94102  
Case No. A151224  
First.District@jud.ca.gov  
*(Via TrueFiling Submission)*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 10, 2019, at San Francisco, California.

\_\_\_\_\_  
M. Campos  
Declarant

\_\_\_\_\_  
*M. Campos*  
Signature