
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 73 (Robert Rivas) - Health emergencies: employment safety: agricultural workers: wildfire smoke

Version: July 8, 2021

Policy Vote: HEALTH 11 - 0, L., P.E. & R.
5 - 0

Urgency: Yes

Mandate: Yes

Hearing Date: July 15, 2021

Consultant: Robert Ingenito

Bill Summary: AB 73 would consider agricultural workers “essential workers” for the purposes of including them in employees who would have access to the Department of Public Health (DPH) personal protective equipment (PPE) stockpile, and (2) require Cal/OSHA to designate a “wildfire strike team” that may be deployed during dangerous air quality to investigate agricultural workplaces for compliance with wildfire smoke protection requirements.

Fiscal Impact:

- The Department of Industrial Relations (DIR) would incur first year costs of \$2.1 million, and \$1.9 million annually thereafter, to implement the provisions of the bill (Occupational Safety and Health Fund, see Staff Comments).
- DPH indicates that its costs resulting from the bill would be minor and absorbable.
- The bill would not have a direct impact on the California Department of Food and Agriculture (CDFA). Any impacts to CDFA related to coordination would be minor and absorbable.

Background: In 2020, SB 275 (Pan) among other provisions, required DPH and the Office of Emergency Services (OES) to establish a state stockpile of PPE for all healthcare workers and “essential workers.” While Cal/OSHA standards already require employers, including healthcare employers, to provide PPE such as N95 respirators when necessary (and SB 275 also required certain healthcare employers to establish their own stockpile of PPE), during a global pandemic, employer supplies of PPE may be exhausted again, resulting in the need for a state stockpile. While the current requirement that employers provide N95s to agricultural workers during poor air quality events would still apply, this bill would allow access to the state stockpile in the event of an emergency that caused agricultural employers to have insufficient N95 masks.

Current regulation specifies employee protections from wildfire smoke. The regulation applies to most outdoor workplaces when (1) the Air Quality Index (AQI) for airborne particulate matter 2.5 micrometers or smaller (PM2.5) is 151 or greater, and (2) an employer reasonably anticipates employees could be exposed to wildfire smoke. An employer must: (1) determine employee exposure to PM2.5 at the start of each shift and periodically thereafter, (2) implement a system for communicating wildfire smoke hazards in a language readily understandable by employees, (3) provide effective

training that includes specified information, and (4) reduce workers' exposure to wildfire smoke, by adjusting work locations and schedules, or providing employees with PPE. When the AQI is between 151 and 500, employers must provide all employees with a sufficient number of approved particulate respirators, such as N95 masks, and train employees to safely use and maintain respirators. When the AQI is higher than 500, the employer must require employees to use provided respirators.

Proposed Law: This bill would, among other things, do the following:

- Adjust the requirements that DPH establish a PPE stockpile by (1) including "Agricultural Workers," as defined, within the definition of essential workers, and (2) requiring PPE stockpile guidelines to take into account what types of procedures and types of PPE will be required in the event of a wildfire smoke event.
- Require Cal/OSHA to designate a "wildfire smoke strike team" within the appropriate regional offices. These teams may be deployed to inspect agricultural workplaces when both of the following conditions apply: (1) the current AQI for PM 2.5 is 151 or greater, regardless of other pollutants, and (2) the wildfire conditions in the region are such that it would be reasonable to anticipate that agricultural employees within the region may be exposed to wildfire smoke.
- Require DPH to report to the Legislature on the amount of PPE in the required PPE stockpile for essential workers, the amount of PPE from the stockpile that has been used, and the amount of anticipated future usage. This report must be made within six months of the effective date of this bill.
- Require Cal/OSHA, by Jan 1, 2023, to develop and thereafter distribute a sample template document providing specific air quality training and information in both English and Spanish on the following issues: (1) what resources employers use to determine unhealthy air quality, (2) what types of PPE agricultural employees are entitled to when working in hazardous air quality conditions, (3) how to use N95 respirators safely, (4) signs and symptoms of illness related to unhealthy air exposure and respirator failure or issues, and (5) the right of an employee to request and obtain medical treatment without fear of reprisal. This information is required to be designed to be easily understood by agricultural employees from a variety of ethnic and cultural backgrounds and various education levels. Additionally, this training shall be provided periodically by the employers for agricultural employees and supervisors of agricultural employees. The frequency shall be established by regulations adopted by the board and shall be based upon the regional wildfire risk. The frequency would be established by Cal/OSHA, based on regional wildfire risk. Finally, the information provided in the sample template document shall be consistent with applicable workplace safety regulations adopted by the Occupational Safety and Health Standards Board (OSHSB).
- Require that, commencing Jan 1, 2023, in addition to the periodic training required above, an agricultural employer must provide refresher training on the safe and effective use of an N95 respirator, as specified.

- Adjust the makeup for the PPE Advisory Committee, as specified

Related Legislation: SB 275 (Pan, Chapter 301, Statutes of 2020) requires DPH and the Office of Emergency Services (OES) to establish a PPE stockpile, and requires certain health care employers, including hospitals and skilled nursing facilities (SNFs), to maintain an inventory of PPE at least sufficient for 45 days of surge consumption, effective on January 1, 2023, or one year after regulations are adopted defining 45 days of surge consumption, whichever is later.

Staff Comments: Recent amendments to the bill have reduced DIR's administrative costs considerably. Specifically, the amendment that removed DIR's responsibility for the stockpile eliminates a significant fiscal cost, estimated to be minimally in the millions of dollars. DIR notes that other cost drivers remain, including rulemaking costs for both the Division of Occupational Safety and Health (DOSH) and OSHSB. For the strike team, while the elimination of the requirement that a team be assigned to each region, and flexibility about when such teams may be deployed, may reduce the likely total number of additional inspections required by the bill, the new emphasis on wildfire smoke enforcement is still expected to require additional inspections. DIR estimates that the bill would result in 160 additional inspections annually, requiring additional resources for both DOSH and the Occupational Safety and Health Appeals Board (OSHAB).

DIR notes that the bill's language is unclear with respect to whether DOSH or employers are responsible for ensuring that the English and Spanish training information described in the bill be accessible "in physical formats at the worksite." DOSH would interpret this to mean that it should distribute the specified information when staff visit worksites during inspections; during presentations or visits by its Consultation Services Unit; such materials would also be given to employers to distribute at their own work locations. DOSH staff would need to review existing materials for compliance with the bill's mandates, make changes as needed, and print copies for distribution each year. Although these materials would not be required until January 1, 2023, they would likely be prepared for the 2022 wildfire season in order to make sure that the materials remain consistent.

Overall, DIR estimates that the bill's annual fiscal impact would be \$1.9 million ongoing, for staffing, printing and associated costs. DIR notes that the bill does not provide funding to support immediate implementation. Consequently, notwithstanding the added urgency clause, DOSH and the Board would be unable to fulfill their requirements until 2022-23, unless resources are provided in the 2021 Budget Act, without shifting resources away from other workload.

Any local government costs resulting from the mandate in this measure are not state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

-- END --