

VETO REQUEST – SB 799 (Portantino)



SOUTHERN CALIFORNIA
LEADERSHIP COUNCIL



September 14, 2023

To: The Honorable Gavin Newsom
Governor, State of California

Cc: Dee Dee Myers
Director, GO-Biz

Re: SB 799 (Portantino) Unemployment insurance: trade disputes: eligibility for benefits – As Amended August 22, 2023 – Request for Veto.

Governor Newsom:

On behalf of the broad and unified business community, we are writing to inform you of our grave concern regarding **SB 799 (Portantino)** to expand Unemployment Insurance (UI) benefits for workers choosing to participate in strikes. Not only will this proposal further push our state's already functionally insolvent UI fund into further and potentially permanent debt, but it will also likely increase the risk of fraud and establish a concerning precedence regarding those eligible to receive UI benefits.

The state's UI fund is the single most important safety net program for workers. As seen during the unprecedented pandemic shutdowns, millions of workers relied on the state's UI fund to help support themselves and their families. As a result of this massive influx of beneficiaries, the UI fund quickly began to accumulate debt, now totaling \$18 billion.

Unlike every other state except New York, and despite repeated pleas from the business community, the Legislature has not yet allocated funds to help pay off the massive debt that continues to undermine the future solvency of the fund. While the federal government provided ample money to pay off the debt through two of the federal pandemic assistance bills, California unlike almost every other state chose to spend that money on other programs, leaving the business community to "pay back" the debt through increased taxes on employers. We have attached a letter, dated December 2021, sent by the business community, requesting \$10 billion in your 2022 January Budget Proposal to address the deficit in the unemployment insurance fund. We have also attached a fact sheet on the UI debt problem to provide you additional background and enumerate the costs businesses will incur to pay off existing debt. The bottom line is that SB 799 is a hidden tax on all employers in California.

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The current way in which the fund is administered already provides benefits well above those in the other states. In the most recent data from US Department of Labor, California accounts for 19.4% of all initial claims and 22.0% of all continuing claims nationally, even though our state only accounts for 11.6% of total nonfarm jobs. Not surprisingly, given this existing structure, the May 2023 Unemployment Insurance (UI) Fund Forecast released by EDD expects the state fund to go further into debt, accumulating another \$600 to \$700 million in additional debt annually over the next two years even in the absence of a renewed economic downturn.

Further expanding benefits at this time will force the fund to go into even deeper debt. There is not enough money coming into the fund now to cover the addition of striking workers, as proposed. This additional debt will further destabilize the fund, which is nearly functionally insolvent as it is and certainly will reach this mark in the event of yet another downturn before the full debt is retired.

Moreover, more than nearly any other state, California's UI fund experienced massive fraud when important checks and balances were weakened during COVID. Removing the "looking for work" requirement, which would be necessary to allow striking workers to access the fund, would create additional opportunities for fraud and abuse. Additional state funding would be necessary to fund anti-fraud efforts within the Department of Justice and Economic Development Department to limit and prosecute those attempting to take advantage of the system. And as we have seen in the aftermath of COVID, many of the fraudulent payments are unrecoverable, having been sent to domestic and international crime organizations.

Lastly, at a time when our fund is already on shaky ground, the last thing we should be doing is opening the fund to legal and political machinations at the federal level. The "looking for work" requirement is mandated by the federal program. Should this legislation pass, our fund would no longer be in compliance with the federal program, jeopardizing our ability to continue to participate in that program. Our fund would be at the whim of the federal government. The amount of the federal tax now being imposed on businesses to pay off the existing debt would be at greater risk to the two escalation clauses under federal law. Again, as the state's most important safety net program for California workers, stability and long-term solvency are critical.

For all of the reasons stated above, we respectfully request your **VETO** of **SB 799**. We stand ready to work with you to ensure the fund continues to be the vital safety net program it has been for decades.

Sincerely,

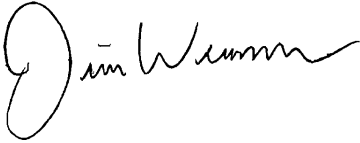


Mike Roos
President
Southern California Leadership Council



Robert C. Lapsley
President
California Business Roundtable

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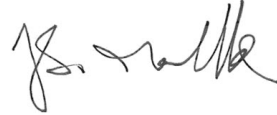
Jim Wunderman
President and CEO
Bay Area Council



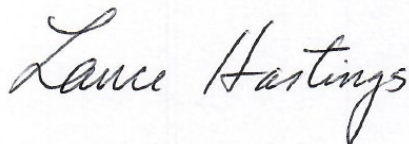
Dan Dunmoyer
President and CEO
California Building Industry Association



Matthew Hargrove
President and CEO
California Business Properties Association



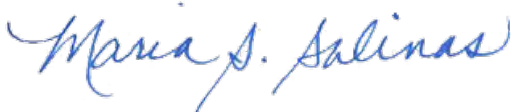
Lynn Mohrfeld
President and CEO
California Hotel and Lodging Association



Lance Hastings
President and CEO
California Manufacturers and Technology
Association



Paul Granillo
President and CEO
Inland Empire Economic Partnership



Maria Salinas
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Los Angeles Area Chamber of Commerce



Tracy Hernandez
Founding CEO
Los Angeles County Business Federation



John Kabateck
Executive Director, California
National Federation of Independent Business



Jeffrey K. Ball
President and CEO
Orange County Business Council



December 22, 2021

The Honorable Gavin Newsom
 Governor, State of California
 State Capitol
 Sacramento, CA 95814

RE: Small Business Budget Request: \$10 Billion to Address Unemployment Insurance Fund Deficit and Looming \$40 Billion Business Tax Increase

Delivered via electronic mail

Governor Newsom:

The Unemployment Insurance Fund is the state’s and workers’ most important safety net program, as was clearly demonstrated during the Pandemic Recession. When countless businesses were forced to close down and employees were unable to work, millions turned to the UI Fund for assistance putting food on the table and paying for essential services. The state relied on this employer-funded benefit as the primary means to mitigate the economic impact from its shutdown actions.

There is an urgent need to begin paying this debt off now. Not only will continued delay leave the fund insolvent for the foreseeable future, but failure for the state to act will result in the largest tax increase on California businesses in our state's history.

While the entire nation dealt with the Pandemic Recession, many states have already begun to repay—or have fully repaid—their UI Fund debt. A full 23 states have used CARES Act money and 19 have used ARPA money to pay off their debt. These states include Texas, which recently just allocated \$7.2 billion of its ARPA funds to pay off their federal debt, rebuilt their state fund, and made additional improvements to their state program in order to better position this critical social assistance program for the next economic downturn.

As California has chosen to allocate none of its federal dollars to this critical program, our state now accounts for a *full half of the outstanding federal UI Fund debt*. This is no longer a national problem, but in most respects a uniquely California one. There will be no additional federal bailout.

California businesses already pay the highest state unemployment insurance tax rate, plus a 15 percent surcharge. Businesses already pay the highest rate among states as measured by taxable wages (4.01 percent vs. the U.S. average 1.72 percent).

Given the state's strong financial footing, you have repeatedly reiterated your commitment to not raise taxes. Continuing to ignore the UI Fund debt, or relying on business to pay it back in its entirety, would be a violation of that commitment to businesses and workers.

In fact, using a rough cash flow analysis, we predict it will take **at least 10 years** to pay off the current debt, assuming there is not another economic downturn in that time and that the additional federal tax increase levied year 3 and year 5 are not imposed. In other words, in a **best-case scenario, California businesses will pay \$20 billion in higher state taxes compared to the C rate schedule and \$20 billion in higher federal taxes** to pay off the debt and make the UI Fund solvent again.

Because UI Fund taxes are levied per employee, the ongoing debt crisis will have a chilling effect on employers—especially small employers—looking to recover and grow jobs in California for at least the next decade. In fact, employers will pay as much as **\$324 per employee** in UI taxes should this crisis remain unaddressed. Employers are making decisions now about their future here, and with a looming \$40 billion tax bill, many will seek to either not hire or leave the state entirely.

Given the urgency of this issue and the critical role the UI Fund plays, we believe that a \$10 billion appropriation from the state's predicted \$30 billion (and growing) surplus is critical and will be a strong signal to businesses and employees that the state is committed to addressing this debt crisis.

At the same time, we are asking you to join us in forming a working group to help address the outstanding debt and the long-term solvency of the fund.

We look forward to working with you and the Legislature to address this urgent need in your January Budget Proposal and with the Legislature on making this critical investment in growing jobs and creating a strong social safety net for California workers.

Sincerely,

California Business Roundtable
National Federation of Independent Business, California
California Business Properties Association
California Grocers Association
California Manufacturers and Technology Association
California Restaurant Association
California Hotel and Lodging Association
Family Business Association of California
Building Owners and Managers Association of California
NAIOP—The Commercial Real Estate Development Association
Innovating Commerce Serving Communities
Institute of Real Estate Management (IREM)
Bay Area Council
Los Angeles Area Chamber of Commerce
Orange County Business Council
Valley Industry and Commerce Association
Long Beach Area Chamber of Commerce
Fresno Chamber of Commerce

What the Unemployment Insurance Fund Debt Means for Business?

Thanks to prolonged shutdowns during the pandemic, the state's Unemployment Insurance (UI) Fund is over \$17 billion in debt. While the state has money it could use to pay off the debt it created, the governor and Legislature have not paid. Now, **businesses will pay one of the largest tax increases in state history** to pay off this debt.

The UI Fund is the only social program paid directly by the business community through a payroll tax. The administration of the program is funded by private sector employers who pay a federal tax to the Internal Revenue Service, known as the Federal Unemployment Tax Act (FUTA) contribution, along with State Unemployment Insurance Tax to California. It is a **payroll tax** paid to the federal and state government based on a percentage of the first \$7,000 in wages paid to each worker on an annual basis.

The UI Fund Falls Apart During COVID

When Governor Gavin Newsom shut down the California economy in response to the growing threat of COVID-19, millions of Californians relied on the UI Fund to pay for bills, buy food for their families, and stay afloat. Unfortunately, due to reduced state oversight, international criminal organizations, drug cartels, and others made fraudulent claims for payment from the fund, resulting in **more than \$30 billion** in fraudulent payments being disbursed by the California Employment Development Department. A vast majority of this money is **unrecoverable**, and is now padding the pockets of cartels and funding criminal activity throughout the globe. Much of this fraud centered on the federal supplemental payments, but the spike in claims accelerated the draining of the state fund as well.

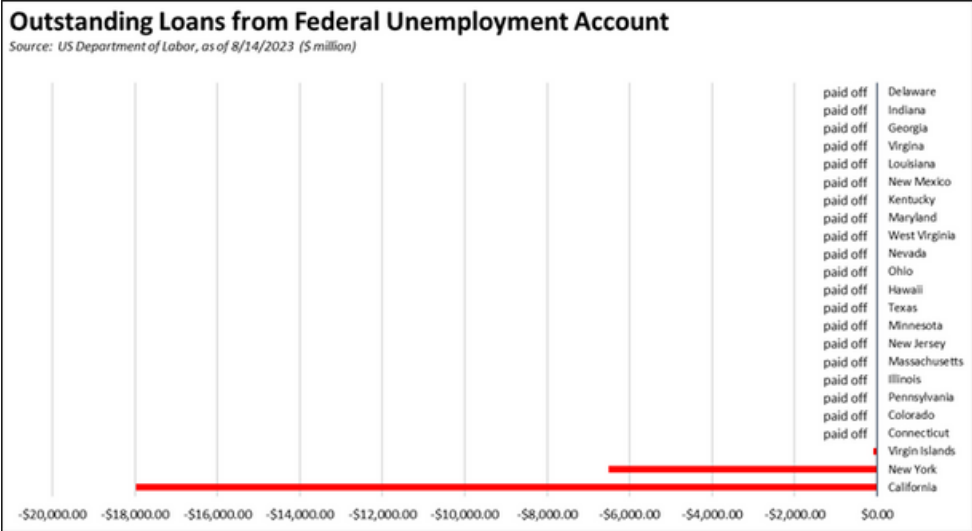
Politicians Clearly Want Business to Pay Increased Taxes

Due to rampant fraud and the prolonged closure of major industry sectors, California has amassed a massive **\$17 billion plus** in UI Fund debt. This directly threatens future worker benefits.

The federal government allocated billions of dollars to states to help pay off their UI Fund debt and restore their state funds back to pre-pandemic levels. **Every state but California and New York have used those funds to pay off their debt.**

In 2022, despite a whopping **\$78 billion state surplus**, Governor Newsom proposed only \$1 billion in FY 2022-23 to help pay off the debt, with a promise of an additional \$2 billion in the next fiscal year.

Despite \$89 billion in reserve and carryforward funds, the Legislature has refused to provide the \$2 billion in relief in this year's budget.



A Per-Employee Tax

Starting in 2023, California businesses of all sizes will start to pay increased taxes to pay off the UI Fund debt. Each year, the tax will increase until it hits the maximum tax per employee. In addition, employers will continue to pay at the highest state tax rate schedules for the foreseeable future if not long term if new economic downturns make it impossible for the state fund to recover.

In our previous cash flow analysis, a federal 4.2% tax rate would be reached in 2034. At that point, total average rate (state plus FUTA) would be 8.2% on the first \$7,000 of wages. At that point, the per employee tax will be \$574.

California businesses and the labor market are still recovering from the recession, and a **massive payroll tax increase** will further reduce job opportunities, business expansion, and expedite automation and other labor cost-savings measures.

Critical Worker Benefits are Threatened

During the Great Recession that began in 2008, California's UI fund faced a similar crisis. The state fund was only able to cover benefit claims during the first year of the downturn and quickly went into debt that took over 9 years to pay off. The maximum debt in that period was \$11 billion. The state is now starting with a \$17 billion plus debt even as threats of a renewed downturn increase every month. Given the accelerated cycle of downturns in the last few decades, workers now face a real threat that this critical support program will remain bankrupt. California employers pay these taxes to support their workers during downturns. For the foreseeable future, these taxes will now go to paying down debt caused by state actions.



\$21

Additional Tax
Per Employee
in 2023



\$574

Per Employee
in 2034

A California Problem with a California Solution

California does not have a budget deficit. State revenue is coming in below previous projections, but the state still has significant revenue coming in well above historical levels. For example, the state was so flush with cash last year that politicians were unable to spend it all, leaving \$55 *billion* in carryforward dollars from the last fiscal year. **The state has the money; politicians simply refuse to pay off the debt.**

We cannot wait for or rely on a federal bailout. President Biden has previously said the states were given federal funds to pay off their UI debts. The other states did. California did not. This isn't a national problem; it's a California problem.

We need leaders to fix the problem they created and provide immediate relief to countless California businesses while protecting worker benefits.

ADD YOUR VOICE



Call your
Legislators



Write the
Governor



Talk to
Reporters

**Business Can't Afford a Massive Payroll Tax!
Demand solutions to the UI Fund debt **NOW!****