CSAEW
California & Nevada State Association of Electrical Workers

June 12, 2023

The Honorable Scott Wiener, Member
California State Senate
State Capitol
Sacramento, CA 95814

SUBJECT: Senate Bill 284 (Weiner) – OPPOSE

Dear Senator Wiener:

On behalf of the International Brotherhood of Electrical Workers, California State Association of Electrical Workers and the California Coalition of Utility Employees we are writing to notify you of our adamant opposition to your Senate Bill 284 which is an attempt to RAID THE IBEW'S UTILITY WORK.

SB 284 WOULD FORCE CONTRACTING OUT OF UTILITY WORK AND FORCE MORE THAN 40,000 UNION LAYOFFS:

Part 7 of SB 284, including Section 3298.1, requires that any construction project with "expenditures" that exceed $10,000 must be contracted out. Given that the majority of construction work performed by the electric and gas utilities exceeds $10,000, SB 284 would cause more than 40,000 union jobs to be outsourced.

SB 284 IS AN UNPRECEDENTED ASSAULT ON COLLECTIVE BARGAINING AND INVALIDATES THE IBEW'S CBAs:

For more than 50 years, the IBEW's collective bargaining agreements have required that all contracted out "electrical work" be performed by contractors' signatory to the IBEW. SB 284 explicitly invalidates these agreements.

SB 284 IS AN ANTI-UNION RIGHT TO WORK BILL:

Page 10 lines 37 through 40 states that the utilities must allow *"all qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements."* <u>This by definition is an anti-union right to work provision!</u>

SB 284 IS CLEARLY PRE-EMPTED BY THE NATIONAL LABOR RELATIONS ACT:

The NLRA generally preempts state and local laws that conflict with or undermine the NLRA's general purposes. The Supreme Court's decision in *Teamsters Local 24 v. Oliver*, 358 U.S. 283 (*Oliver*) is instructive. *Oliver* considered an Ohio anti-trust law purporting to invalidate a provision in the Teamsters' collective bargaining agreement that fixed minimum payments for the leasing of trucks. The Supreme Court

reasoned that the bargained-for leasing provisions "not only clearly b[ore] a close relation to labor's efforts to improve working conditions but [were] in fact of vital concern to the carrier's employed drivers." *Id.* at

294. Because the NLRA mandated bargaining over this issue, Ohio was not free to interfere with the federal policy. *Id.* at 296-97.

Moreover, Congress specifically intended the NLRA to permit employers in the construction industry to be free to enter into PLAs for specific construction projects. *See Bldg. & Const. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218, 231–32 (1993). The NLRA generally prohibits state and municipal regulation of areas that have been left "to be controlled by the free play of economic forces," *Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 140 (1976), like the decision whether a private sector employer should enter into a PLA and the terms of such a private PLA. There is an exception to NLRA preemption for state and local laws that set generally applicable substantive minimum labor standards (e.g., minimum wages), *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 754–55(1985), but SB 284 does not fit within that exception because SB 284 prohibits the enforcement of subcontracting restrictions. For these reasons, SB 284 would likely be held preempted by the NLRA.

SB 284 WOULD UNDERMINE ALL UNION SUBCONTRACTING CLAUSES:

If legislation like SB 284 were permitted by the NLRA, nothing would preclude state and local legislation that overrides the work-preservation provisions of *any* private sector CBA or state and local legislation that dictates the permissible terms of *any* private sector PLA. The precedent of SB 284 threatens subcontracting clauses in ALL CBAs and PLAs.

THE SUPREME COURT HAS DIRECTLY HELD THAT STATES REGULATION OF UTILITIES DOES NOT OVERIDE THE NLRA:

The Supreme Court has held that a state's regulation of private companies that operate public utilities does not give the state the authority to override the NLRA. *See Bus Employees v. Wisconsin Employment Relations Bd.*, 340 U.S. 383 (1951).

SB 284 IS UNCONSTITUTIONAL:

Article I, Section 10 of the Federal Constitution provides that no state may pass any "law impairing the obligation of contracts." U.S. Const. Art, I, S 10. The California Constitution contains a similar clause, and it has been interpreted to be co-extensive with the federal clause, Cal. CONST. ART. I, S 9: see Calfarm Ins. Co. V Deukmejian, 48 Cal.3d 805, 826-29 (1989).

The subcontracting clauses between the IBEW and the investor-owned utilities are private binding agreements that have been in force for more than 50 years and therefore state legislation to invalidate these agreements violates the contract clauses of both the federal and state constitutions.

SB 284 IS A CRASS ATTEMPT TO LABOR WASH AND MIS-APPLY LABOR STANDARDS THAT ARE NOT RELEVENT TO THE UTILITY INDUSTRY:

AB 284 attempts to LABOR WASH its brazen RAID on the IBEW, by mandating labor standards that do not apply and are not transferable to the utility industry. Wage rates and fringe benefits in the utility industry have evolved through decades of collective bargaining and are fundamentally different than prevailing wage rates in

construction. Therefore, applying prevailing wage rates would undermine industry practices in-bedded in utility CBAs.

In addition, many of the job classifications within the utility industry receive the highest standard of training through long-standing training programs other than apprenticeship programs. Therefore, SB 284's attempt to impose a skilled and trained workforce standard and apprenticeship is designed to rob the IBEW of ALL its work.

SB 284 WOULD UNDERMINE CPUC SAFETY ORDERS AND WOULD RESULT IN A SHORTAGE OF QUALIFIED CONTRACTORS:

SB 284's contracting regime and anti-collective bargaining ban would prevent IBEW outside line utility contractors from bidding for utility work. Because CPUC safety orders require that only qualified journeymen electrical workers perform this work, there would be a massive shortage of qualified contractors to perform this work.

SB 284 WOULD SLOW UTILITY INFRASTRUCTURE HARDENING TO A STANDSTILL:

SB 284 would require that all utility work be bid following cumbersome and time-consuming public contracting requirements. SB 284 demonstrates the author's ignorance of how utility work is performed. The bill calls for a series of discreet jobs with fixed prices awarded by an elaborate lowest bid process - while utility work is most often contracted on time and materials and unit pricing, not hard money bids.

By requiring hard money bids on the tens of thousands of utility projects undertaken every year, SB 284 would grind all service work, new inter connections, and critical system hardening projects to a snail's pace, exacerbating wildfire risk.

SB 284 IS POORLY CONCIEVED AND AMATEURISH IN ITS DRAFTING:

The new PUC Sec. 3298.7 includes language regarding the installation of carpet, which obviously is not a widely undertaken function of electric and gas utilities.

SB 284 WOULD RESULT IN "SHAM MUNICIPALIZATION" AND LEAD TO MASSIVE COST SHIFTS:

The bill (Article 2, PUC § 2849.5) would require an IOU that has a FERC wholesale distribution tariff to offer electric service at any voltage level requested by public entities to be consumed by the public entities or sold by them directly to consumers.

This would enable any local government or other public entity to engage in "sham municipalization," a well-known tactic to enable some retail customers to bypass their obligations to pay for the distribution grid.

"Sham municipalization" works by having a local government create a paper retail distribution utility that owns nothing but the meter. The local government then claims it is the distribution utility and demands that the actual distribution utility provide energy at ***wholesale*** rather than ***retail*** rates. This sham utility serves retail load on a wholesale basis, completely undermining electric utilities and allowing businesses, server farms, office buildings, shopping centers, etc. to bypass distribution rates. Google, for example, could partner with a city that becomes a sham, paper municipal utility, for the purpose of bypassing distribution system costs. These costs would be shifted to other electric customers. Every business in the state could team up with a local government to bypass retail electric service. This cost shift would dramatically increase rates for the remaining retail customers.

SB 284 would ***require*** all genuine electric utilities to provide wholesale distribution service to sham munis. Of course, this directly undermines the utility's ability to pay for upgrading the distribution system to support EV charging, building electrification and other efforts to use a decarbonized electric system to achieve California's GHG reduction goals. This cynical provision is reckless in the extreme.

In conclusion, SB 284 is cynical in its clear intent and reckless in its cavalier assault on Collective Bargaining. SB 284 clearly demonstrates your contempt for the rights of workers and the sanctity of collective bargaining. The fact that as a Democrat in a progressive state like California you introduced this bill is an embarrassment to the Legislature, the stench of which will follow you for years to come.

Sincerely,

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