

Date of Hearing: July 5, 2021

ASSEMBLY COMMITTEE ON TRANSPORTATION
Laura Friedman, Chair
SB 674 (Durazo) – As Amended May 20, 2021

SENATE VOTE: 31-7

SUBJECT: Public Contracts: workforce development: transportation-related contracts

SUMMARY: Requires the Labor and Workforce Development Agency (LWDA) to create the California Jobs Plan (CAJP), which requires private entities bidding on covered transportation-related contracts over \$10 million, excluding contracts for road, bridge, or highway construction, to include as part of their application a CAJP form stating information about jobs created and retained, and specifies that the CAJP is scored as part of the overall application and included in the awarded contract as a material term. Specifically, **this bill:**

- 1) Requires a private entity who bid or applies for a covered public contract to submit a CAJP form with information on the number of temporary and permanent positions created by the project, the wages paid, and the number of positions created or retained for displaced workers and workers facing barriers to employment, among other data points.
- 2) Requires that the CAJP be scored as a part of the overall application for the covered public contract, be included in the awarded public contract as a material term, and accessible to the public once the public contract is awarded through a web-based portal.
- 3) Defines “Applicant” as a private entity that applies, bids, or seeks qualification for a covered public contract. “Applicant” may be more than a single entity.
- 4) Defines “California Jobs Plan” as the component of an application submitted by applicants for covered public contracts where applicants state the minimum number of jobs, proposed wages, benefits, investment in training, specific protections for worker health and safety, and targeted hiring plans for displaced workers and individuals facing barriers to jobs created or retained in California in exchange for public contracts covered under this chapter. This component shall not require any application minimums other than those already required by relevant federal, state, and local laws.
- 5) Defines “covered public contract” as, to the extent otherwise permitted by law, any transportation-related contract with a present value of ten million dollars (\$10,000,000) or more to which a California state or local agency is a party or a transportation-related subsidy, grant, or loan with a present value of ten million dollars (\$10,000,000) or more that is provided, granted, or guaranteed by a state or local agency.
- 6) Defines “transportation-related contract” as the public investment in or purchase of transportation-related equipment, services, or transportation-related infrastructure connected to the operation of any mode of transportation in the state. Specifies that a “transportation-related contract” does not include construction contracts, except for construction contracts for the construction of electric vehicle charging stations.
- 7) Defines “transportation-related equipment” as tangible personal property have a useful life of more than one year and a per-unit acquisition cost which exceeds twenty-five

thousand dollars (\$25,000), including, but not limited to, streetcars, trackless trolleys, buses, light rail systems, rapid transit systems, medium- and heavy-duty trucks, subways, trains, jitneys, fare boxes, bicycles, information technology systems, and charging stations.

- 8) Defines “services” as all activities related to the operation and maintenance of transportation equipment and transportation-related infrastructure.
- 9) Defines “transportation-related infrastructure” as the construction of electric vehicle charging stations or installation of physical property necessary for the operation of transportation equipment. Specifies that “transportation-related infrastructure” does not include the construction of other transportation-related infrastructure, including but not limited to, the construction of roads, bridges, or highways.
- 10) Defines “relevant public agencies” as any city, county, or state agency in the state.
- 11) Requires that “relevant public agencies” design the CAJP Program to meet all of the following objectives:
 - a. Create a CAJP form, requesting specified information, as a component to applications for covered public contracts to specifically incentivize and support the creation and retention of quality, non-temporary and full-time transportation jobs that provide high wages, including benefits and access to training and protections for worker health and safety.
 - b. Support the hiring of displaced workers and individuals facing barriers to employment.
 - c. Encourage the development of the state’s long-term green transportation and related infrastructure and manufacturing sector.
 - d. Protect public health by supporting the adoption of specific protections for worker health and safety.
- 12) Requires that the LDWA to create procedures and criteria for public agencies to evaluate applicants for covered public contracts pursuant to the CAJP Act.
 - a. Requires that, to the extent feasible, the Labor and Workforce Development Agency shall seek input from, and consider the recommendations of, affected relevant public agencies on the proposed procedures and criteria to support or ensure consistency with existing policies, programs, and plans.
- 13) Provides that the procedures and criteria must award additional consideration to applicants who do any of the following:
 - a. Propose the highest value and quality CAJP in its application.
 - b. Enhance the state’s commitment to energy conservation, pollution and greenhouse gas emissions reduction, and transportation efficiency.
 - c. Retain the greatest number of full-time, nontemporary employees compensated at a wage rate at or above an indexed regional living wage measure, as specified.
 - d. Make concrete commitments to creating the greatest number of full-time, non-temporary jobs at a wage rate substantially above the prevailing wage for a similar industry based on the NAICS Code in the project jurisdiction or in the state.

- e. Make concrete commitments to maintaining at least 90 percent of the labor on a contract performed by properly classified employees pursuant to Assembly Bill 5 (hereafter AB 5; Chapter 296 of the Statutes of 2019).
 - f. Offer targeted training and opportunities for individuals facing barriers to employment and displaced workers.
 - g. Have the greatest beneficial economic impact on the state and local economies as a result of receiving the public contract, based on the priority criteria outlined in this chapter.
- 14) Requires that, beginning on January 1, 2024, and annually thereafter, recipients of covered public contracts, under this chapter, must upload progress reports on the commitments made in the CAJP. At a minimum, the information provided pursuant to this subdivision shall include all of the following:
- a. The number of full-time nontemporary jobs to be retained and created.
 - b. The number of full-time temporary jobs to be retained and created.
 - c. The number of part-time temporary jobs to be retained and created.
 - d. The number of part-time nontemporary jobs to be retained and created.
 - e. The number of jobs classified as “employees” pursuant to AB 5.
 - f. The number of positions classified as “independent contractors” pursuant to AB 5.
 - g. The number of all jobs to be retained or created for individuals facing barriers to employment.
 - h. The number of all jobs to be retained or created for displaced workers.
 - i. The wage levels by job classification.
 - j. Any amounts that will be paid for fringe benefits by job classification.
 - k. Any amounts that will be paid for worker training by job classification.
 - l. Information on training programs targeted specifically towards individuals facing barriers to employment.
- 15) Requires the Labor and Workforce Development Agency to develop a web-based portal to which recipients of covered public contracts shall be required to upload progress reports on the commitments made in the CAJP. Requires the portal to be designed in such a manner that, if the information entered into the portal indicates a failure to comply with the commitments made in the CAJP, then an automatic notice of noncompliance would be sent to the relevant public agency. Requires the portal to be accessible to the public.
- 16) Defines “Displaced Worker” as either of the following:
- a. Any employee who was employed by the employer for 6 months or more in the 12 months preceding the January 31, 2020, declaration of a national state of emergency by the President, and whose most recent separation from active service was due to a public health directive, government shutdown order, lack of business, a reduction in force, or other economic, nondisciplinary reason related to the COVID-19 pandemic.
 - b. Any employee whose most recent separation from active service was due to lack of business, a reduction in force, or other economic, nondisciplinary reason related to the transition from the fossil fuel industry to renewable energy.
- 17) Defines “Individual Facing Barriers to Employment” as either of the following:
- a. An individual facing barriers to employment as defined above.

- b. An individual from a demographic group that represents less than 30 percent of their relevant industry workforce according to the United States Bureau of Labor Statistics.

EXISTING LAW:

- 1) Establishes the Labor and Workforce Development Agency (LWDA) to oversee workforce programs, including seven major departments, boards and panels that serve California workers and businesses by improving access to employment and training programs, enforcing California labor laws to protect workers and create an even playing field for employers, and administering benefits that include workers' compensation, unemployment insurance, disability insurance and paid family leave. (Government Code (GOV) § 15550)
- 2) Governs contracting between state agencies and private contractors, and sets forth requirements for the bidding, awarding, and overseeing of contracts. (Public Contract Code §10100 et seq.).
- 3) Establishes jurisdiction over contracting and procurement between state agencies and private contractors at the Department of General Services (DGS), the Department of Transportation (Caltrans), the High Speed Rail Authority (HRSA), the Department of Water Resources, The Department of Parks and Recreation, the Department of Corrections and Rehabilitation, and the Military Department. Further establishes that the Department of General Services has jurisdiction over contracting and procurement for state departments not named in the foregoing list. (Public Contract Code §§10106 & 10107).
- 4) Sets forth the procedures local agencies are required to use when soliciting and evaluating bids or proposals for the construction of a public work or improvement (Public Contract Code §20100 et seq.).
- 5) Provides for alternative procurement, contracting, and project delivery methods, including, in some instances best value contracting under specified conditions (§§ Public Contract Code 6950 et seq., 6970 et seq. 10187 et seq, 10506.4 et seq. 20119 et seq. 20155 et seq. 20663 et seq.).
- 6) Establishes a comprehensive set of protections for employees, including a time-sure minimum wage, meal and rest periods, workers' compensation coverage in the event of an industrial injury, sick leave, disability insurance (DI) in the event of a non-industrial disability, paid family leave, and unemployment insurance (UI). (Labor Code §§201, 226.7, 246, 512, 1182.12, & 3600 and UI Code §§1251 & 2601)
- 7) Requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a "public works" projects costing over \$1,000 dollars and imposes penalties for violation of this requirement. (Labor Code §1771)
- 8) Defines "public works" to include, among other things, construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds. (Labor Code §1720(a)).

- 9) Requires that the applicable general prevailing rate of per diem wages be determined by the Director of the Department of Industrial Relations (DIR) for each locality in which the public work is to be performed and for each craft, classification, or type of worker needed to execute the public works project. (Labor Code §1773).
- 10) Establishes the Division of Labor Standards Enforcement in DIR to, among other things, enforce prevailing wage standards. (Labor Code §79 et seq.).
- 11) Establishes and regulates apprenticeship and skilled and trained staffing requirements on public works projects as a means to secure (and over time replenish) a reliable stock of skilled human capital available to work on and complete public works projects. (Labor Code §1777.5 & Public Contract Code §2660 et seq.).
- 12) Establishes the California Workforce Development Board (CWDB) as the body responsible for assisting the Governor in the development, oversight, and continuous improvement of California's workforce investment system. (Unemployment Insurance Code 14010 et seq).
- 13) Authorizes the CWDB to develop guidelines for public agencies receiving Road Maintenance and Rehabilitation Account funds to participate in, invest in, or partner with, new or existing pre-apprenticeship construction training programs. (Streets and Highway Code §2038).
- 14) Authorizes and funds the CWDB to establish a pre-apprenticeship grant program to prepare women, minority participants, disadvantaged youth, and the formerly incarcerated to enroll in construction apprenticeship programs (Streets and Highway Code §§2032 & 2038).
- 15) Defines "Individual with employment barriers" as an individual with any characteristic that substantially limits an individual's ability to obtain employment, including members of all of specified groups. (Labor Code § 14005(j)).

FISCAL EFFECT: Unknown

COMMENTS: The COVID-19 pandemic has exacerbated economic inequality, particularly in working class communities and communities of color. Transportation, infrastructure, and construction job opportunities have been targeted as a key solution to create job growth for underrepresented communities and communities of color. In March 2021, a coalition of mayors, employment advocates and academics sent a letter to President Biden and Vice President Harris urging the repeal of language prohibiting local hiring preferences, saying that not only would it help residents participate in the economic investments in their cities and towns, but it "can also increase opportunities for workers of color, women, veterans, returning community members, and others facing barriers to employment." Members of the coalition who signed on include, among others: LA County Metropolitan Transportation Authority, National League of Cities, American Federation of Labor - Congress of Industrial Organizations, Jobs to Move America, Los Angeles Alliance for a New Economy, and Transport Workers Union of America.

In 1988, the Reagan administration banned geographic-based hiring preferences on projects funded by the federal government. The ban was adopted without consulting Congress and established on the unfounded basis that local hiring policies would increase the price of public works projects and reduce the number of companies willing to bid on those projects. For the past 33 years, this rule has prevented cities from including criteria in public contracts that has potential to promote a fair economy.

From 2015-2017 the Obama-Biden Administration established a pilot program which allowed cities and states to test local hire policies on a limited number of projects. Parameters of this pilot program included the U.S. Employment Plan (USEP), developed by Jobs to Move America, as a customizable, federally-approved policy tool that “builds good jobs and equity into the public purchasing process.” The stated design of USEP is to: incentivize manufacturers bidding for public contracts to commit to creating good jobs, invest in new manufacturing facilities in communities, and generate career pathways for people traditionally left out of the manufacturing sector, including women, people of color, veterans, and formerly incarcerated folks. The current Biden-Harris Administration has, in essence, reinstated this program.

From USEP to CAJP: This bill creates the CAJP, modeled after the USEP. Rather than predetermine labor standards, the USEP seeks the “best-in-class” employer during procurement. The USEP was designed to level the playing field for high-road manufacturers that supply buses, rail cars, and other large capital equipment to public transit agencies, and has been adopted by some of the nation’s largest urban transit authorities, including: Los Angeles Metropolitan Transportation Agency (LA Metro), Los Angeles Department of Transportation (LADOT), California Department of General Services (DGS), San Ysidro School District, Amtrak for the ACELA line in NYC, Chicago Transit Authority, NY Metropolitan Transportation Agency, Minneapolis-St Paul Metropolitan Council, Metropolitan Atlanta Regional Transportation Agency.

According to the report “Putting California on the High Road: A Jobs and Climate Action Plan for 2030,” as required by AB 398 (E. Garcia) Chapter 135, Statutes of 2017, LA Metro now has a permanent USEP policy, requiring the USEP in all future procurements of new manufactured vehicles and equipment above \$100 million. Likewise, LADOT has committed to the USEP in procurements to meet the agency’s planned transition to a fully zero-emission transit bus fleet. Accordingly, companies bidding on future LA Metro and LADOT contracts can now voluntarily commit to job quality, job access, and workforce investment targets to improve the competitiveness of their proposals.

The report also notes that USEP’s inclusive procurement approach could be adopted more broadly in solicitations for the procurement of large capital equipment like buses or other fleet vehicles, and applied to contracts for public services like waste collection and fire prevention, and in the myriad of grant programs funded by the Greenhouse Gas Reduction Fund, ratepayer funds, and other sources. However, it does not appear to have been tested beyond equipment procurement at this point.

Existing law generally awards contracts to the lowest responsible bidder that responds to a solicitation for bids. This method provides a clear and objective measure to ensure the lowest initial procurement cost, but prevents agencies from factoring in other considerations such as equipment performance, lifecycle costs, or high-road jobs considerations.

For example, existing law requires Caltrans to purchase heavy equipment, such as large dump trucks, graders, snow removal equipment, loaders, and other construction equipment, using the standard lowest responsible bid procurement process. However, a pilot program authorized DGS to purchase and equip up to \$20 million worth of heavy mobile fleet vehicles and special equipment for use by Caltrans annually by means of “best value” procurement. As part of the pilot, DGS is required to prepare an evaluation of the best value procurement pilot, including a recommendation on whether the process should be continued. The provisions in this bill could be incorporated into best-value procurement processes.

The Long Road to Good Jobs: There are multiple routes to high-roads jobs, including prevailing, living and minimum wage standards, skill certification requirements, inclusive procurement policies such as the USEP, and community benefit agreements. These multiple roads are not mutually exclusive, however, more analysis would be helpful to understand which policies are best suited across the broad and varied areas of transportation contracting covered by this bill.

According to the Current Employment Statistics Highlights released in June 2021 by the United States Bureau of Labor Statistics, construction employment, as of May 2021, has recovered 888,000 of 1.1 million jobs lost in March and April 2020. Employment in transportation and warehousing is 100,000 below its February 2020 peak. While there is certainly a need for employment in these sectors, it is unclear how the labor standard requirements in this bill will create more jobs. The bill does not specify what types of state funding, programs, or job creation is expected from the CAJP.

Considering the historical toll a local hiring ban has had, the current work of the Biden-Harris administration on transportation infrastructure funding and job creation, and the USEP’s focus on the procurement process, the author may wish to seek the following amendments:

- Specify “covered public contract” only covers state investment in transportation infrastructure, as it relates to procurement, manufacturing, installation, and maintenance.
- Specify that requirements of the CAJP do not apply to contracts that already include: a project labor or collective bargaining agreement, workforce covered by the USEP or Local employment Plan.
- Specify “jobs” includes employment directly related to the procurement, manufacture, installation, and maintenance of transportation infrastructure.
- Strike the definitions of “transportation-related equipment,” “transportation-related infrastructure,” and “transportation-related contract.”
- Limit the “relevant public agency” to DGS and local transportation agencies.
- Require LWDA to seek input from relevant public agencies on the CAJP.
- Require the CAJP to meet objectives including: hiring of displaced workers, the long-term green transportation sector, and protect public and worker health.
- Require LWDA to develop procedures and criteria in consultation with relevant public agencies.

- Require material associated with the CAJP to be publicly assessable through a web-based portal.
- Strike the provision exempting the guidelines and policies for the CAJP from the Administrative Procedure Act.
- Exempt public contracts where federal law requires geographical preferences when federal funds are included in the award of a covered public contract.
- Stipulate the bill applies to contracts issued between December 1, 2022 and January 1, 2027.

According to the author, “Partnerships with business can lead to prosperity for everyone and a sustainable, healthy future for our state. This last year has pulled back the curtain on the inequities across so many of our institutions. It’s made clear who is hurt hardest in an economic crisis - communities of color and women. Communities of color are under immense strain from COVID-19. Women are struggling in the COVID economy, reflected most starkly in a December jobs report showing 140,000 jobs lost, all held by women.

Last year’s AB 398 report to the Legislature - “Putting California on the High Road: A Jobs and Climate Action Plan for 2030,” - identifies goods movement and movement of people as the biggest single contributor of pollution. The report emphasizes, that “At the same time, the transportation system underpins our economy, the freight system moves trillions of dollars of goods each year, supporting nearly one-third of the state economy and more than 5 million jobs.”

It is not enough to say we want to create good jobs. We need clear criteria, enforcement of these commitments and access for the public to information related to promises made in contracts they’ve funded. The California Jobs Plan Act will ensure state transportation funds support the creation of high-quality jobs and access to these jobs for those historically excluded from meaningful employment in these sectors. I introduced Senate Bill 674 to support the creation of equitable high-quality transportation and related manufacturing and infrastructure jobs in our state.

President Biden has been clear that public dollars should create community benefits. We must use our dollars to invest in California and put Californians back to work in better jobs. We have an opportunity to work together to realize the goals of the Future of Work Commission as reflected in “A New Social Compact for work and workers” to help create inclusive, long-term economic growth and ensure Californians share in that success. SB 674 is a mechanism to achieve this bold and urgent vision.”

In support, the Transport Workers Union California State Conference writes, “Job quality standards on public funds will help address the stark income inequality in the state while at the same time investing in critical transportation projects that drive economic recovery.”

In opposition, the American Council of Engineering Companies writes, “SB 674 is inconsistent with how actual transportation projects come about, creates an unintended but dangerous precedent of placing job creation and retention over public safety, and erodes local decision-making authority when selecting transportation project applicants

Double Referral: This bill was doubled referred to the Senate Labor, Public Employment and Retirement Committee, passing on March 22, 2021 on a 4-1 vote

Previous Legislation: SB 46 (Stern of 2021) requires a state agency that receives and disburses American Rescue Plan funds or other federal recovery funds to consider projects' potential impact on specified goals, including, among other things, restoring frontline communities and rapidly accelerating achievement of environmental justice and climate goals, including, but not limited to, climate, environmental, and biodiversity protection, and stimulating growth. This bill is currently in the Senate Governmental Organization Committee.

SB 582 (Stern of 2021) requires the Governor's Office of Planning and Research, by June 1, 2022, in collaboration with various state entities, to develop a Just Resilience Plan to drive resilience investments in the most vulnerable communities in California. This bill was order to the inactive file at the request of the author.

AB 680 (Burke of 2021) requires the Labor and Workforce Development Agency to work with the state board to update, by July 1, 2023, the funding guidelines for administering agencies to ensure that all applicants to grant programs funded by the Greenhouse Gas Reduction Fund meet specified standards. This bill is currently in the Senate Environmental Quality Committee.

AB 983 (Eduardo Garcia of 2021) authorizes a public entity to use, enter into, or require contractors to enter into, a community workforce agreement for specified construction projects, including projects related to renewable energy and installation of emission controls in refineries. This bill is set to be heard on July 8, 2021 in the Senate Governance and Finance Committee.

SB 1 (Beall, Chapter 5, Statutes of 2017) implements standards for multi-craft pre-apprenticeship in the construction sector. Although developed pursuant to SB 1, these standards are applicable to all segments of the construction industry, as well as to any policy area or workforce investment involving building and construction trades work.

AB 398 (E. Garcia, Chapter 135, Statutes of 2017) directs California Workforce Development Board (CWDB) to assess the need for increased education, job training, and workforce development resources to help workers and communities transition to a low carbon economy. This report was provided to the Legislature in the fall of 2020.

REGISTERED SUPPORT / OPPOSITION:

Support

Byd Motors, INC.
California Immigrant Policy Center
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Center for Employment Opportunities
Communications Workers of America, District 9
Jobs to Move America
Laane (Los Angeles Alliance for A New Economy)
Los Angeles Cleantech Incubator

Los Angeles County Federation of Labor
Miguel Contreras Foundation
Redf
Socal350 Climate Action
Transit Workers Union California State Conference
Transport Workers Union of America, Afl-cio
UAW Region 8
United Steelworkers Local 675
Warehouse Worker Resource Center
Western States Council Sheet Metal, Air, Rail and Transportation
Working Partnerships USA

Oppose

American Council of Engineering Companies of California

Oppose Unless Amended

California Asphalt Pavement Association

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