
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Dave Cortese, Chair

2021 - 2022 Regular

Bill No:	SB 674	Hearing Date:	March 22, 2021
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SUBJECT: Public Contracts: workforce development: transportation-related contracts

KEY ISSUE

Should the Legislature create new procurement rules and procedures for state and local public transportation and transportation-related contracts, subsidies, loans, and grants of \$5 million or more in order to incentivize creation and retention of non-temporary full-time transportation jobs?

ANALYSIS

Existing law:

- 1) 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)
- 2) 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)
- 3) 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)).
- 4) 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).
- 5) Establishes the Division of Labor Standards Enforcement in DIR to, among other things, enforce prevailing wage standards. (Labor Code §79 et seq.).
- 6) 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.).
- 7) 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).

- 8) 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).
- 9) 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).
- 10) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)
- 11) Establishes the Occupational Safety and Health Standards Board, within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for workers. (Labor Code §140-147.6)
- 12) Requires employers, with some exceptions, to establish, implement and maintain an effective Injury and Illness Prevention Program (IIPP) and provides that the IIPP shall be written, except as specified, and shall include, among other things, the following elements (Labor Code §6401.7):
 - a) Identification of the person or persons responsible for implementing the program.
 - b) A system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.
 - c) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.
 - d) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.
 - e) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.
 - f) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.
- 13) 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 the following groups:
 - i. Displaced homemakers.
 - ii. Low-income individuals.
 - iii. Indians, Alaska Natives, and Native Hawaiians, as those terms are defined in Section 3221 of Title 29 of the United States Code.
 - iv. Individuals with disabilities, including youths who are individuals with disabilities.
 - v. Older individuals.
 - vi. Ex-offenders.

- vii. Homeless individuals, as defined in Section 14043e-2(6) of Title 42 of the United States Code, or homeless children and youths, as defined in Section 11434a(2) of Title 42 of the United States Code.
 - viii. Youth who are in, or have aged out of, the foster care system.
 - ix. Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers.
 - x. Eligible migrant and seasonal farmworkers, as defined in Section 3322(i) of Title 29 of the United States Code.
 - xi. Individuals within two years of exhausting lifetime eligibility under Part A of Title IV of the Social Security Act (42 U.S.C. Sec. 601 et seq.).
 - xii. Single parents, including single, pregnant women.
 - xiii. Long-term unemployed individuals.
 - xiv. Transgender and gender nonconforming individuals.
 - xv. Any other groups as the Governor determines to have barriers to employment (Labor Code § 14005(j)).
- 14) 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.).
- 15) 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).
- 16) 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.).
- 17) 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.).
- 18) Authorizes the California Air Resources Boards to protect public health from the harmful effects of air pollution and lead state efforts to address global climate change (§§ Health and Safety Code 38510 & 38600 et seq.).
- 19) Authorizes state agencies to issue emergency regulations. (Government Code §11346.1).

This bill creates the California Jobs Plan Act of 2021, which sets the goal of maximizing creating good jobs, offsetting climate change, and supporting the creation of equitable high-quality transportation and related manufacturing and infrastructure jobs in California.

Specifically, this bill:

- 1) Requires individuals who seek to bid for public projects submit a California jobs plan 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) Provides that the California job form does not create additional commitments beyond those created by existing law.
- 3) Requires that “relevant public agencies” **design** the California Jobs Plan Program to meet all of the following objectives:
 - a. Create a California jobs plan form as a component to applications for covered public contracts to specifically incentivize and support the creation and retention of quality, nontemporary 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.
- 4) Defines “relevant public agencies” as any city, county, or state agency in the state.
- 5) Requires that the Labor and Workforce Development Agency **create procedures and criteria for public agencies to evaluate applicants for covered public contracts** pursuant to the California Jobs Plan Act.
- 6) 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.
- 7) 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 California Jobs Plan 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 substantially above the prevailing wage for a similar industry based on the North American Industry Classification System (NAICS) Code in the project jurisdiction or in the state.
 - 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.
- 8) Requires that the California Jobs Plan 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 the internet.
- 9) 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.
- 10) Requires that, beginning on ____ 2022, and annually thereafter, recipients of covered public contracts, under this chapter, must upload progress reports on the commitments made in the California Jobs Plan. 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.
 - M. Estimated amount of greenhouse gas emissions reduced as a result of this contract.
- 11) Defines “Covered public contract” as any transportation-related contract with a present value of five million dollars (\$5,000,000) 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 five million dollars (\$5,000,000) or more that is provided, granted, or guaranteed by a state or local agency and includes, but is not limited to, contracts funded in whole or in part by any of the following:

- i. The Road Maintenance and Rehabilitation Account established by Section 2031 of the Streets and Highways Code.
 - ii. The Affordable Housing and Sustainable Communities Program (Chapter 2 (commencing with Section 75210) of Part 1 of Division 44 of the Public Resources Code) and the Low Carbon Transit Operations Program (Part 3 (commencing with Section 75230) of Division 44 of the Public Resources Code).
 - iii. The Public Transportation Account established pursuant to Article 6.5 (commencing with Section 99310) of Chapter 4 of Part 11 of Division 11 of the Public Utilities Code.
 - iv. The State Highway Account created in the State Transportation Fund pursuant to Section 182 of the Streets and Highways Code.
 - v. The Traffic Congestion Relief Fund created by Section 14556.5 of the Government Code.
 - vi. The State Transit Assistance Program created pursuant to Section 99312.2 of the Public Utilities Code.
 - vii. The Public Transportation Modernization, Improvement, and Service Enhancement Account created in the Highway Safety, Traffic Reduction, Air Quality, and Port Security Fund pursuant to subdivision (f) of Section 8879.23 of the Government Code.
 - viii. The Highway Safety, Traffic Reduction, Air Quality, and Port Security Fund created pursuant to Section 8879.23 of the Government Code.
 - ix. The Passenger Equipment Acquisition Fund created pursuant to Section 14066 of the Government Code.
 - x. The Alternative and Renewable Fuel and Vehicle Technology Fund created pursuant to Section 44273 of the Health and Safety Code.
 - xi. Any relevant federal funding received by California or local agencies.
- 12) Defines “Applicant” as a person that applies, bids, or seeks qualification for a covered public contract. “Applicant” may be more than a single entity.
- 13) 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.
- 14) 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.

COMMENTS

1. Context and Considerations

Efforts to regulate government investment and use procurement processes as a means to promote job quality and uplift workers are well established in federal, state, and local law. Relevant policy levers include responsible contractor policies, living wage ordinances, and prevailing wage laws. These policies are intended to ensure that government bidding practices do not reward unscrupulous employers who secure access to public money by “sweating” workers as the primary means to compete for and win public contracts. The objective of these policies is to create basic contracting standards that effectively require contractors to compete on the basis of productivity, reliability, and product quality.

Efforts to use procurement processes as a workforce development tool are also not new, though efforts to create pathways to good jobs for individuals from historically marginalized communities are, perhaps, a more recent policy innovation. In California, statutorily mandated apprenticeship and skilled and trained staffing requirements on public works projects are intended to secure (and over time replenish) a reliable stock of human capital for the building of such projects. In some jurisdictions, Project Labor Agreements (PLAs) on public works projects have been combined with Community Benefits Agreements or Local Hire Agreements to create apprenticeship opportunities for local residents, women, and individuals from disadvantaged communities. In 2017 the Legislature provided funding to the California Workforce Development Board to fund construction pre-apprenticeship programs with the goal of preparing such individuals for apprenticeship opportunities opened by public investments in the state’s infrastructure.

The policy objectives of this bill are consistent with the objectives of these other procurement policies though the mechanisms for ensuring relevant outcomes are substantially different. Living wage and prevailing wage rules more directly set wage standards for government contractors, requiring that all applicants pay workers at or above relevant wage floors. Responsible contractor policies theoretically eliminate “bad actors” from procurement competition. The policy mechanisms in this bill do not operate in the same manner as these approaches but they do seek to promote higher levels of remuneration for contract employees by rewarding contractors during the procurement process by partially scoring applications on the basis of their employment practices and staffing decisions.

Considerations:

Should SB 674 move forward the author may wish to consider the following:

- The proposed language in section 6983 mandating that relevant agencies “design” the California Jobs Program potentially contradicts the language in section 6984 mandating that the Labor and Workforce Development Agency “create” procedures and criteria for public agencies to evaluate applicants. These sections do not clearly indicate who has ultimate responsibility for program design.
- The author may wish to consider adding language in section 6984 that clarifies that the LWDA may designate responsibility for policy development, program implementation, and enforcement to one or more of the departments for which it has oversight as they may have a greater capacity to do the work than LWDA.

- As drafted the bill creates a process for input by agencies affected by the proposed procurement changes, but it does not create a well-delineated formally enforceable statutory role for DGS, Caltrans, HSRA, or affected local agencies. The author may wish to provide such entities with a more formal role in the development of relevant criteria and procedures, especially given that these entities have legal jurisdiction over procurement in their areas, are likely more familiar with federal, state, and local procurement rules and standards governing affected monies, and are more informed about the potential unintended impacts that new rules might have on programs.
- The author may wish to consider what, if any, role should be given to the Environmental Protection Agency (EPA), the California Public Utilities Commission (CPUC), the California Energy Commission (CEC), CARB, and CalTrans with respect to relevant procurement criteria and standards having to do with energy conservation, pollution and greenhouse gas reductions, and transportation efficiency.
- The author may wish to determine the extent to which the worker safety language in the bill is necessary given existing laws and regulations. The OSH Health Standards Board has issued, and CalOSHA is currently enforcing, emergency COVID-19 health and safety regulations that may already achieve the relevant objectives of the bill.
- The language pertaining to wage benchmarks in section 6984(a)(3) might be interpreted to suggest that the only occupations to which the California Jobs Plan requirements apply are those occupations subject to prevailing wage determinations made by DIR. If the author's intent is that the California Jobs Plan requirements apply to a broader range of occupations, which seems likely given the bill's sweeping scale and scope, the author may wish to clarify intent by inserting additional language pertaining to relevant wage benchmarks, perhaps including references to regional median wages for occupations not subject to prevailing wage law.
- The language pertaining to wage benchmarks in section 6984(a)(3) refers to NAICS industry codes which include workers in multiple occupations. As such, there is no appropriate job classification or occupational benchmark for judging the relative earnings of contract workers. The author may wish to consider replacing references to NAICs with language referring to Standard Occupation Codes (SOC).
- The author may wish to consider alternative, less costly, data-reporting, transparency, and enforcement mechanisms, including the simple display of contracts on contracting agency websites.

2. Author's Statement

According to the author, "Historically, vulnerable groups have been disproportionately impacted by economic downturns and yet left out of recovery efforts. Green investments create more jobs than other infrastructure investments and these jobs are accessible and well-paying. Every \$1.0 million in spending on renewable energy creates 7.5 full-time jobs.

It is not enough to say we want to create good jobs. We need clear criteria, enforcement of these job commitments and access for the public to information related to promises made in contracts they've funded. A critical component to achieving good jobs is a requirement that, in exchange for public contracts, an application contain the number of jobs, family sustaining wages, benefits, investment in training, and targeted hiring plans for displaced workers and individuals facing barriers to jobs created or retained in California.

Quality green job investment efforts include pairing workforce development programs with local and state infrastructure initiatives, helping businesses expand and create new job openings, investing in customized training programs to retool and retrain existing workers, authorizing green job bond investment packages, and leading the way for President Biden's Build Back Better plan, including access to good union jobs, apprenticeships and training programs.

The COVID-19 pandemic has exacerbated economic inequality, particularly in working class communities and communities of color. Businesses have been forced to close and workers have been laid off. Prior to COVID-19, educational and hiring practices have put these communities at a significant economic disadvantage. Displaced workers, the formerly incarcerated, people experiencing homelessness, disconnected youth and many others face entrenched barriers to employment. With support, these workers can and should receive the education and training necessary to weather this crisis and create mutually beneficial career pathways in key industries for both the state and workforce."

3. Proponent Arguments

According to the Western States Council Sheet Metal Air Rail and Transportation Workers, *"The California Jobs Plan will require additional information as part of an application for covered public contracts. The applicant will provide the number of jobs, proposed wages, benefits, investment in training and health and safety protections. Also the applicant will need to provide information regarding hiring plans for displaced workers and those workers historically excluded from meaningful employment. We must use public dollars to put Californians back to work. The California Jobs Plan of 2021 will achieve that goal."*

4. Opponent Arguments:

According to the American Council of Engineering Companies, *"While we recognize and concur with the desire to ensure that displaced workers find full and well-paying employment in the green economy, that should not be the barometer by which the state or local agencies must judge their transportation projects or project applicants. We believe that this approach, and this bill, suffers from several fatal flaws.*

- **Hampers innovation.** *Under this bill, a design professional or contractor who discovers a more efficient way to complete a project mid-contract has no incentive to pursue it . . .*
- **Results not guaranteed.** *For the large level of reporting and administration required by this bill, its effects in terms of the intended goal, actual job creation, are likely to be minimal . . .*
- **Inflexible and unrealistic.** *Projects change all the time, so contracts have to be flexible and adapt. Holding an applicant to a standard as rigid as number of jobs or job-hours created does not leave room for change . . .*
- **Inconsistent with how project proposals are actually calculated.** *Proposals are typically calculated by a project applicant using job hours, not a certain number of jobs . . .*
- **Increases costs on all parties.** *SB 674 requires public agency involvement in the development of the state's web-based portal and requires those same public agencies to make the CJP a prime component of application evaluation processes. The creation of this portal will require the expenditure of significant state resources. In the best case that*

local agencies' costs to comply with these mandates are fully compensated by the state, project costs would still rise and be borne by the agency . . .

- ***Ripe for gamesmanship.*** *Knowing that job creation – full-time nontemporary job creation, more specifically – is to be prioritized in project selection, it is not a stretch to foresee an applicant estimating those jobs numbers over what is . . . necessary. . .*
- ***Interferes with public agency decision-making.*** *Requiring project owners to consider and prioritize any specific criteria, and to select applicants based on that criteria, erodes . . . decision-making authority . . .*
- ***Out of compliance with federal Brooks Act.*** *Federal law since 1972 has dictated that contracts with a design professional must be based on their qualifications alone . . . The Brooks Act exists to ensure the public's safety. . .*

4. Double Referral

Should SB 674 be passed out of the Senate Labor, Public Employment and Retirement Committee, the bill will be sent to the Senate Transportation Committee for hearing.

5. Prior and Related Legislation:

SB 46 (Stern, 2021): This bill would require a state agency that receives and disburses ARP 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.

SB 582 (Stern, 2021): This bill would require the 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.

AB 680 (Burke, 2021): The California Just Transition Act would require 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.

AB 983 (Eduardo Garcia, 2021): This bill would authorize 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.

SB 1 (Beall, Chapter 5, Statutes of 2017) implemented 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 (Eduardo Garcia, Chapter 135, Statutes of 2017) directed 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.

SB 73 (Committee on Budget and Fiscal Review, Chapter 29, Statutes of 2013) appropriated \$3,000,000 from the Job Creation Fund to the CWDB to develop and implement a competitive grant program to prepare disadvantaged youth or veterans for employment through work experience and job training on energy efficiency and clean energy projects.

SUPPORT

California Immigrant Policy Center
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Western States Council Sheet Metal, Air, Rail and Transportation

OPPOSITION

American Council of Engineering Companies of California

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