

Date of Hearing: June 22, 2021

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kara, 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 a California Jobs Plan form as a component to applications for transportation-related public contracts to specifically incentivize and support the creation and retention of quality, non-temporary and full-time jobs. Specifically, **this bill:**

- 1) Defines “applicant” to mean a private entity that applies, bids, or seeks qualification for a covered public contract. “Applicant” may be more than a single entity. It does not include a firm, as defined in Section 4525 of the Government Code.
- 2) Defines “covered public contract” to mean 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.
- 3) Defines “California Jobs Plan” to mean 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 relevant public contracts covered under this chapter.
- 4) Defines “displaced worker” to mean 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.
- 5) Defines “transportation-related equipment” to mean tangible personal property having 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.

- 6) Defines “transportation-related infrastructure” to mean the construction of electric vehicle charging stations or installation of physical property necessary for the operation of transportation-related equipment. “Transportation-related infrastructure” does not include the construction or design of other infrastructure, including, but not limited to, roads, bridges, or highways.
- 7) Requires the LWDA to 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 jobs, as specified. This application component shall not require any minimum commitments other than those already required by relevant federal, state, and local laws. An applicant shall state the minimum numbers of proposed jobs and other related information that are projected to be retained and created if the applicant wins the covered public contract in the following categories:
    - i. The number of full-time nontemporary jobs proposed to be retained and created.
    - ii. The number of full-time temporary jobs proposed to be retained and created.
    - iii. The number of part-time temporary jobs proposed to be retained and created.
    - iv. The number of part-time nontemporary jobs proposed to be retained and created.
    - v. The number of jobs classified as “employees,” as specified in Section 2750 of the Labor Code.
    - vi. The number of positions classified as “independent contractors,” as specified in Section 2750.5 of the Labor Code.
    - vii. The number of all jobs proposed to be retained or created for individuals facing barriers to employment.
    - viii. The number of all jobs proposed to be retained or created for displaced workers.
    - ix. The wage levels by job classification.
    - x. Proposed amounts to be paid for fringe benefits by job classification.
    - xi. Proposed amounts to be paid for worker training by job classification.
  - 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.
- 8) Requires the LWDA to create procedures and criteria for public agencies to evaluate applicants for covered public contracts in consultation with those public agencies. The procedures and criteria shall award additional consideration to applicants who do, among other things:
  - a. Enhance the state’s commitment to energy conservation, pollution and greenhouse gas emissions reduction, and transportation efficiency.

- b. Retain the greatest number of full-time, nontemporary employees compensated at a wage rate at or above an indexed, regional living wage measure in the jurisdiction of the project, if such a measure has been adopted by the state.
  - c. Make concrete commitments to create the greatest number of full-time, nontemporary jobs at a wage rate at or above an indexed regional living wage measure in the jurisdiction of the project, if such a measure has been adopted by the state.
  - d. Make concrete commitments to maintaining at least 90 percent of the labor on a contract performed by properly classified employees.
  - e. Offer targeted training and opportunities for individuals facing barriers to employment and displaced workers.
- 9) Requires the California Jobs Plan to be scored as a part of the overall application for the covered public contract. To the extent that a subsidy or other covered public contract is noncompetitive, applicants shall still be required to complete the California Jobs Plan application form. The California Jobs Plan shall then be included in the awarded public contract as a material term.
- 10) Requires, beginning January 1, 2024, and annually thereafter, recipients of covered public contracts to upload progress reports on the commitments made in the California Jobs Plan for the duration of the covered public contract. At a minimum, the information provided pursuant to this subdivision shall include all of the following:
- a. The number of full-time temporary and nontemporary jobs and part time temporary and nontemporary jobs to be retained and created.
  - b. The number of jobs classified as “employees” and as “independent contractors.”
  - c. The number of all jobs to be retained or created for individuals facing barriers to employment and for displaced workers.
  - d. The wage levels by job classification.
  - e. Any amounts that will be paid for fringe benefits by job classification.
  - f. Any amounts that will be paid for worker training by job classification and information on training programs targeted specifically towards individuals facing barriers to employment.
- 11) Requires the LWDA 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 California Jobs Plan, as described in 10) above. The portal shall be designed in such a manner that, if the information entered into the portal indicates noncompliance with the commitments made, then an automatic notice of noncompliance would be sent to the relevant public agency respective to the contract.
- 12) Requires the web-based portal to be accessible to the public through the LWDA’s website.

**EXISTING LAW:**

- 1) Establishes the LWDA to oversee 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.
- 2) Establishes the Department of Industrial Relations within the LWDA to, among other things, foster, promote, and develop the welfare of the wage earners of California and to advance their opportunities for profitable employment.
- 3) Establishes the Division of Labor Standards Enforcement within the DIR to, among other things, enforce prevailing wage standards for public works projects.
- 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.
- 5) Establishes jurisdiction over contracting and procurement between state agencies and private contractors at a number of departments including, but not limited to, the Department of General Services (DGS) and the Department of Transportation (Caltrans).
- 6) Defines "individual with employment barriers" as an individual with any characteristic that substantially limits an individual's ability to obtain employment, including members of specified groups.
- 7) Provides that for purposes of the Labor Code, a person providing labor or services for remuneration shall be considered an employee and not an independent contractor unless the hiring entity satisfies the 3-part ABC test:
  - a) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
  - b) The person performs work that is outside the usual course of the hiring entity's business.
  - c) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

The California Workforce Development Board (within LWDA) would be the lead entity in implementing the bill's provisions, and indicates that it would require increased staff at a cost of \$1 million annually (General Fund).

The Department of General Service (DGS) is still reviewing the bill and determining its full fiscal effect. However, the bill would likely result in increased costs related to contract awards, protests and enforcement. Annual costs would minimally be in the hundreds of thousands of dollars annually.

The California Department of Transportation (CalTrans) indicates that the bill would result in minor and absorbable costs.

By imposing new duties on local public agencies with respect to CAJP, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). The magnitude of these costs is unknown.

**COMMENTS:** This bill is double-referred to the Assembly Transportation Committee upon passage out of this committee.

The California Jobs Plan established under this bill is largely modeled after the US Employment Plan (USEP). The USEP is a federal program that has been in place since 2012 and can be used by cities, states, and public agencies in their contract bidding process. When a public entity uses the USEP, applicants are required to disclose more than project specifications but also “the number, type, and location of jobs the contract will create and retain, as well as salaries, benefits, training programs, and their plan to recruit and train historically marginalized workers.”<sup>1</sup> In doing so, the program helps create jobs and ensure employment equity across various populations. In California, the Los Angeles (LA) Metro has used the USEP eight times and created over 550 jobs and many more jobs indirectly. In 2018, LA Metro committed to replacing their entire fleet and anticipates supporting up to 22,000 U.S. jobs as a result.<sup>2</sup>

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

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<sup>1</sup> See: <https://jobstomoveamerica.org/resource/u-s-employment-plan-2/>.

<sup>2</sup> *Ibid.*

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.”

### **Arguments in Support**

The Transport Workers Union is in support and states, “The state and federal government are making significant investments in transportation-related projects, especially in programs that make progress to meeting climate goals. California has numerous programs to fund transportation projects the reduce greenhouse gas emissions and that funding is expected to increase. 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.

Green jobs, however, are not inherently good jobs. A critical component to achieving good jobs is a requirement in public contracts that the applicant will create high-quality jobs with living wages, benefits and a commitment to equitable hiring and training.

SB 674 requires that transportation-related contracts include the California Jobs Plan which would require good job creation as part of the contractual agreement. Required information includes the number of jobs created and retained in California, the number of jobs classified as “employees” and “independent contractors” pursuant to current law, the number of jobs for displaced workers and individuals facing barriers to employment, proposed wage levels, benefits and worker training by job classification.

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.”

### **Arguments in Opposition**

None on file.

### **Committee Comments**

Committee staff note that in the future the author may wish to clarify some of the “additional considerations” that can be given to public contract applicants under Section 6984(a). For example, the bill provides that applications that propose “the highest value and quality California Jobs Plan” or “make *concrete commitments* to creating the greatest number of full-time, nontemporary jobs” at certain wage rates qualify for additional consideration. More prescriptive guidance as to what these concepts mean could help the LWDA or a delegated agency implement the bill.

### **Related Legislation**

SB 46 (Stern) of 2021 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. The bill is in the Senate Governmental Organization Committee.

SB 582 (Stern) of 2021 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. The bill is on the Senate inactive file.

AB 680 (Burke) of 2021 would establish The California Just Transition Act to 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. The bill is pending referral in the Senate.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Alliance for Community Transit-Los Angeles  
Bluegreen Alliance  
Byd Motors, INC.  
California Immigrant Policy Center  
California League of Conservation Voters  
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  
Earthjustice  
Greenlining Institute  
Jobs to Move America  
LAANE  
Los Angeles Cleantech Incubator  
Los Angeles Conservation Corps  
Los Angeles County Federation of Labor  
Miguel Contreras Foundation  
Move LA  
Redf  
Socal350 Climate Action  
Transit Workers Union California State Conference  
Transport Workers Union of America  
UAW Region 8  
United Auto Workers  
United Steelworkers District 12  
United Steelworkers Local 675  
Warehouse Worker Resource Center  
Western States Council Sheet Metal, Air, Rail and Transportation  
Working Partnerships USA

**Other**

American Council of Engineering Companies of California  
California Asphalt Pavement Association

**Opposition**

None on file.

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