

Date of Hearing: August 10, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 674 (Durazo) – As Amended August 4, 2022

Policy Committee:	Labor and Employment	Vote:	5 - 0
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Urgency: No State Mandated Local Program: Yes Reimbursable: Yes

SUMMARY:

This bill establishes, until January 1, 2028, the High Road Jobs in Transportation-Related Public Contracts and Grants Pilot Program to support the creation of equitable high-quality transportation and related manufacturing and infrastructure jobs.

Specifically, this bill:

- 1) Requires a “covered public contract” awarded by the Department of General Services (DGS), Department of Transportation (Caltrans) or a local school district for the acquisition of zero-emission transit vehicles or electric vehicle supply equipment valued at \$10 million or more to incorporate high road job standards. A subsidy, grant or loan for the acquisition of such items by DGS, Caltrans or local school district is also deemed a “covered public contract” and must also incorporate high road job standards.
- 2) Sets minimum high road jobs standards a contractor must satisfy, such as requiring a contractor to give preference when hiring new employees to an applicant who is currently unemployed, and requires DGS, in consultation with the Labor and Workforce Development Agency (LWDA) and Caltrans, to develop and publish policies, procedures and requirements applicable to covered public contracts in the State Contracting Manual.
- 3) Requires a contractor to annually submit information necessary to demonstrate compliance with the relevant public agency’s high road job standards, as well as a final report demonstrating compliance for the duration of the covered public contract.
- 4) Authorizes a public agency to withhold payments to the contractor of up to \$10,000 if the contractor fails to comply with reporting requirements, until the contractor takes steps to cure the defect, and permanently deduct \$10,000 from the final or full payment if the contractor refuses to comply with reporting requirements. For covered public contracts awarded pursuant to a master agreement or master contract agreement, DGS may prescribe additional or alternative mechanisms for enforcing reporting requirements.
- 5) Requires a contractor to enter into a labor peace agreement with an organization representing the contractor’s employees, if the organization requests the agreement, to protect the state’s proprietary and economic interests in performing the covered public contract without interruption due to the economic effects of a labor dispute.

FISCAL EFFECT:

- 1) Costs of an unknown, but potentially significant amount, to DGS, Caltrans and local school districts if the pilot program results in the state paying more for covered public contracts. DGS notes suppliers are likely to attempt to recover the increased cost of preparing and submitting a bid through their bid prices. Additionally, the new requirements may deter some suppliers from bidding on state contracts. In cases where a foregone supplier would have been the low bidder, the state will pay more, and remaining suppliers may face less competitive pressure when bidding on contracts, thus increasing contract costs. For each \$10 million contract, a 1% price increase would result in costs of \$100,000. (General Fund (GF) or special fund)
- 2) Costs of an unknown, but likely significant amount, to DGS to develop high road jobs standards and update the State Contracting Manual. LWDA and Caltrans would also incur costs for their consultation roles. (GF)
- 3) Costs of an unknown, but likely significant amount, to DGS, Caltrans and local school districts to evaluate a contractor's compliance with high road job standards. Requiring a contractor to "demonstrate" compliance, versus "certify," implies the contractor must prove, not merely assert, compliance with such standards that the public agencies must evaluate, as noncompliance with such commitments would violate contract terms. These costs would be partially offset by the deduction of up to \$10,000 DGS, Caltrans or local school districts could take from the contractor's final payment when a contractor fails to comply with specified reporting requirements (the author intends this penalty to apply to each missed report, so cumulative penalties could be in excess of \$10,000). Additionally, if identified non-compliance issues are not cured, requiring eventual termination of the contract and a solicitation for new bids, the accompanying administrative and legal workload may be significant. (GF or special fund)
- 4) By requiring school districts to follow additional contracting procedures, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service, a school district could claim reimbursement for costs.

COMMENTS:

- 1) **Purpose.** According to the author:

It is not enough to say we want to create good jobs. We need clear criteria, enforcement of those commitments and access for the public to information related to promises made in contracts they've funded. We need to ensure state transportation funds support the creation of high-quality jobs and access to these jobs for those historically excluded from meaningful employment.

Recent amendments to this bill significantly limit yet revise its scope. The prior version of this bill was supported by a coalition of labor and environmental organizations.

- 2) **Future of Work Commission.** In 2019, Governor Newsom established the Future of Work Commission to "study, understand, analyze, and make recommendations regarding the kinds

of jobs Californians could have in the decades to come.” The commission’s final report, released March 2021, recommended support for efforts that promote job quality, citing a 2019 Gallup Poll stating fewer than half of California workers consider themselves in a “good job.” The report suggests taking measures to promote “high-road” employers, which pay above minimum wage and provide other benefits, so more employers seek such designation. Possible incentives include formal recognition, tax incentives, streamlined permitting or licensing and priority in procurement decisions.

- 3) **Piecemeal State Efforts to Promote High Road Employers.** There are many ongoing efforts to ensure beneficiaries of state contracts, grants and programs provide equitable and sustainable workplace conditions, especially in climate- and transportation-related industries. AB 680 (Burke), Chapter 746, Statutes of 2021, required updates, by July 1, 2025, to Greenhouse Gas Reduction Fund guidelines to ensure all grant program applicants meet fair and responsible employer standards, have inclusive procurement policies and pay prevailing wage and give preference to applicants based on such metrics. AB 794 (Carrillo), Chapter 748, Statutes of 2021, established, beginning fiscal year (FY) 2022-23, labor standards that a fleet purchaser must meet to be eligible to receive Air Resources Board program incentives for new drayage and short-haul trucks and required the incentive to be repaid to the state if provided to a non-compliant purchaser.

Additionally, existing law defines “high road” for purposes of the California Workforce Innovation and Opportunity Act as a set of economic and workforce development strategies to achieve economic growth, economic equity, shared prosperity and a clean environment. SB 154 (Committee on Budget and Fiscal Review), Chapter 43, Statutes of 2022, required LWDA to submit, by January 10, 2023, a report to the Legislature documenting all relevant programs and initiatives under the Employment Development Department, California Workforce Development Board and Department of Industrial Relations in relation to this high road standard. This high road standard was also applied to various labor-related grant programs established in the FY 2022-23 state budget. Lastly, the FY 2022-23 state budget included \$1.5 billion in funding for school districts to replace older school buses with zero-emission buses and purchase related infrastructure and required DGS to establish statewide contracts with manufacturers of zero- or low-emission school buses for this purpose. The contracts must satisfy the above-described existing high road standard and also incorporate new specified high road job standards and minimum contract terms.

This bill requires a covered public contract issued by DGS, Caltrans and local school districts to incorporate high road job standards. As noted in the Assembly Labor and Employment Committee’s analysis of this bill, this bill contains provisions that are duplicative of provisions in the state budget relevant to school bus contracts and the definition of “zero emission transit vehicle” likely does not cover zero-emission fleet and heavy-duty vehicles as the author may intend. This bill also adds requirements for contractors to enter into labor peace agreements and penalties for non-compliance with reporting requirements. Although the penalties do not extend to non-compliance with high road job standards, in such instances, DGS would likely utilize existing enforcement authority to give contractors an opportunity to cure before taking steps to terminate the contract. Overall, this committee may wish to evaluate the efficiency of establishing another new high road program in light of the many state efforts already underway on this issue, or whether a more coordinated approach would be more effective.

- 4) **Related Legislation.** SB 700 (Durazo) establishes the High Road Employment Program within LWDA, which requires each bidder for a contract with the state to submit a High Road Employment Plan to DGS to be eligible for the contract. SB 700 is pending hearing in this committee.

AB 2095 (Kalra), of this legislative session, would have required large employers to disclose worker-related metrics to LWDA and required LWDA to develop criteria utilizing the collected statistics to objectively qualify an employer as a certified “high-road employer.” AB 2095 was held on this committee’s suspense file.

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