

SENATE THIRD READING
SB 674 (Durazo)
As Amended August 25, 2022
Majority vote

SUMMARY

Requires a contractor or subcontractor, until January 1, 2028, that is awarded a state contract, as specified, for the acquisition of zero-emission transit vehicles or electric vehicle supply equipment valued at ten million dollars or more, to incorporate high road job standards, as defined.

Major Provisions

- 1) Define "covered public contract," to the extent otherwise permitted by law, as a public contract awarded by a relevant public agency for the acquisition of zero-emission transit vehicles or electric vehicle supply equipment valued at ten million dollars or more.
- 2) Specify that "covered public contract", does not include any of the following
 - a) A contract awarded before January 1, 2023
 - b) A contract awarded based on a solicitation issued before January 1, 2023.
 - c) A grant or contract related to a grant award announced pursuant to a call for projects that occurred before January 1, 2023.
- 3) Define relevant public agency as the Department of General Services (DGS) or the Department of Transportation (DOT)
- 4) Define "Zero Emission Transit Vehicle" as a vehicle including, but not limited to, one operated on rails or tracks, which is used for public transportation service and which carries more than 20 persons, including the driver, that produces no emissions of criteria pollutants, toxic air contaminants, and greenhouse gases when stationary or operating.
- 5) Define "high road job standards" as a guarantee to satisfy a set of economic and workforce development strategies to achieve economic growth, economic equity, shared prosperity and a clean environment. The strategies include, but are not limited to, interventions that:
 - a) Improve job quality and job access, including for women and people from underserved and underrepresented populations.
 - b) Meet the skill and profitability needs of employers.
 - c) Meet the economic, social, and environmental needs of the community.
- 6) Require, at a minimum, the high road jobs standards to warrant that the contractor, and any subcontractors that it may use to fulfill the covered public contract, satisfy the following requirements:
 - a) Individuals performing work to fulfill the covered public contract shall not be misclassified as independent contractors.

- b) The contractor and any subcontractors performing work to fulfill the covered public contract shall comply with all applicable federal, state, and local laws pertaining to paid sick leave, including any antiretaliation provisions contained in those laws.
 - c) The contractor and any subcontractors performing work to fulfill the covered public contract shall comply with all applicable safety and health laws and regulations, as specified.
- 7) Require DGS, in consultation with LWDA and the DOT, to develop and publish policies, procedures, and requirements applicable to covered public contracts in the State Contracting Manual for the purpose of implementing this chapter.
- 8) Require, beginning twelve months after an entity is awarded a covered public contract, a contractor to annually submit information that is necessary to demonstrate its compliance with specified requirements.
- a) Require a relevant public agency, if a contractor fails to comply with the above reporting requirements, the awarding agency to withhold ten thousand dollars, for each missed report, in payment to the contractor, or the full payment to the contractor if the amount due is less than ten thousand dollars, until the contractor takes steps to cure the defect.
- 9) Require a contractor, before receiving any final payment on a covered public contract, to submit a final report to the awarding agency that demonstrates its compliance with specified requirements for the duration of the covered public contract.
- a) Require a relevant public agency, if a contractor fails to comply with the final reporting requirements specified above, to withhold ten thousand dollars from the final payment, or the full final payment, if the amount due is less than ten thousand dollars, until the contractor takes steps to cure the defect.
- 10) Clarify that the provisions of this bill do not limit the availability of standard breach of contract remedies, including, but not limited to, termination of the covered contract if a contractor fails to comply with specified requirements.
- 11) Require contractors and subcontractors performing work to fulfill the covered public contract to enter into a labor peace agreement with any organization of any kind in which its employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and which requests a labor peace agreement.
- a) Require the labor peace agreement to include a binding and enforceable provision prohibiting the organization and its members from engaging in picketing, work stoppages, boycotts, or any other economic interference for the duration of the labor peace agreement, which shall include the entire term of the covered public contract.
 - b) Specify that the requirement of contractors and subcontractors to enter into a labor peace agreement when performing work on covered public contracts does not require the contractor or subcontractor to change terms and conditions of employment for its employees, recognize a labor organization as the bargaining representative for its

employees, adopt any particular recognition process, or enter into a collective bargaining agreement with a labor organization.

- c) Provide that this subdivision does not abridge the rights, privileges, and benefits afforded by federal law, as applicable, including, but not limited to, Section 5333 of Title 49 of the United States Code pertaining to prevailing wages and employee protective arrangements, as specified.

COMMENTS

According to a report by the University of California (UC), Berkeley Center for Labor Research and Education titled *Putting California on the High Road: A Jobs and Climate Action Plan for 2030*, "California's transportation sector is the state's largest source of greenhouse gas emissions, accounting for 39 percent of the statewide total. It is also the largest source of criteria air pollutants and toxic diesel particulate matter emissions in the state. At the same time, the transportation system underpins our economy."¹

Job quality within the clean vehicle manufacturing sector appears mixed in California. Concerns about the labor practices of ZEV manufacturers have been raised. Several firms, in both light and heavy-duty ZEV manufacturing, have been found to have violations pertaining to unpaid wage claims, lax workplace health and safety, and employer retaliation against workers exercising their legally-protected rights; many additional cases are still under investigation by the California Department of Industrial Relations.²

According to the Author

"Partnerships with business can lead to prosperity for everyone and a sustainable, healthy future for our state. The pandemic 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. 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. 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."

Arguments in Support

Jobs to Move America, in support, states, "The current system of awarding public contracts, inherently rewards bad actors. By only taking quality and cost into consideration, companies are incentivized to cut down on labor costs. As a result, the companies who are most often successful in winning public contracts are most often the ones paying the lowest wages and benefits. This system not only hurts the very taxpayers funding those contracts but also has a real, negative effect on our economy. By shifting the system to one that rewards high-road employers, we can maximize the impact of our public dollars while obtaining necessary goods and infrastructure. [This bill] is how we shift this framework, from a race to the bottom, to a race to the top."

¹ Zabin, Carol, et al. *Putting California on the High Road: A Jobs and Climate Action Plan for 2030*. UC Berkeley Labor Center, June 2020.

² Ibid.

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Costs of an unknown, but potentially significant amount, to DGS, and Caltrans 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, and Caltrans 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, or Caltrans 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)

VOTES

SENATE FLOOR: 31-7-2

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Grove, Jones, Nielsen, Ochoa Bogh

ABS, ABST OR NV: Melendez, Wilk

ASM LABOR AND EMPLOYMENT: 5-0-2

YES: Kalra, Lorena Gonzalez, Jones-Sawyer, Reyes, Ward

ABS, ABST OR NV: Flora, Seyarto

ASM TRANSPORTATION: 11-3-1

YES: Friedman, Berman, Daly, Gipson, Kalra, Lee, Medina, Nazarian, Luz Rivas, Ward, Wicks

NO: Fong, Davies, Nguyen

ABS, ABST OR NV: Cunningham

ASM APPROPRIATIONS: 12-4-0

YES: Lorena Gonzalez, Bryan, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

NO: Bigelow, Megan Dahle, Davies, Fong

ASM LABOR AND EMPLOYMENT: 5-1-1

YES: Kalra, Haney, Jones-Sawyer, Reyes, Ward

NO: Seyarto

ABS, ABST OR NV: Flora

ASM APPROPRIATIONS: 12-4-0

YES: Holden, Bryan, Calderon, Arambula, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

NO: Bigelow, Megan Dahle, Davies, Fong

UPDATED

VERSION: August 25, 2022

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FN: 0004256