



# State Legislative Committee Meeting Agenda

July 11, 2024  
2:00 p.m. – 3:00 p.m.

Agenda Items	Recommended Action
1. Chair's Report	Information
2. Update on FY 2024-25 Budget, Spending Freeze	Information
3. Other Legislation	
• <a href="#"><u>AB 2557 (Ortega) Local Agency Special Services Contracts.</u></a>	Discuss
• <a href="#"><u>SB 961 (Wiener) Vehicles: Safety Equipment.</u></a>	Discuss
• <a href="#"><u>SB 1325 (Durazo) Best Value Procurement.</u></a>	Discuss
4. Update on State Legislative Committee Solicitation	Information
5. Update on Sponsored Legislation	Information
6. Reminders	
7. Other Business	
8. <a href="#"><u>Association's Bill Matrix</u></a>	
9. Adjourn	



## **AB 2557 (Ortega) Public Agency Contracts.**

**Purpose:** This bill would impose a variety of reporting requirements on private companies and nonprofit entities that contract with local government entities to perform services that were performed by public employees in the past five years.

**Background:** According to a UC Berkeley Labor Center report, *Civil Service Vacancies in California: 2022–2023*, local governments have significant numbers of vacant positions. The report noted California’s local governments employ almost 10% of the state’s workforce – more than three times the number employed in state government, which employs about 560,000 people. According to the report, as of 2022, there were about 391,000 county employees, 268,000 city employees, and 904,000 school district employees. These numbers don’t include special districts. Unsurprisingly, the number of employees varies widely by the size of the governmental entity. For example, Alpine County has fewer than 100 full-time employees, while Los Angeles County has over 100,000 employees.

Also according to the report, local government job vacancy numbers had been slowly building for some time prior to the COVID-19 pandemic in 2020 and the subsequent recovery. The report noted several interlinking factors that contribute to the struggle to fill those vacancies, including:

- A tight labor market;
- Increased voluntary turnover;
- Changing labor force demographics (such as a shrinking and aging workforce);
- Underinvestment in local government;
- Difficulty competing with the private sector and other government agencies on earnings in the context of high costs of living in California;
- High growth in demand for workers in certain occupations (especially behavioral health and nursing); and
- A long and cumbersome hiring processes.

The report also noted high job vacancies impact not only the ability of local governments to deliver public services, but also impact the workers who remain on the job and are forced to handle heavier workloads. That in turn can lead to burnout, triggering even more turnover, which further exacerbates staffing challenges.

While there are some exceptions – most notably in emergency situations – a local government’s decision to contract out work is a public one. The decision to award the contract must be done at a public meeting and the contract itself and other supporting documents are subject to release under the California Public Records Act (CPRA).

However, given that there are 58 counties, 483 cities, and nearly 3,300 special districts in California, it is challenging for any interested person or entity to keep track of what may be happening in those jurisdictions relative to contracting out issues. Similarly, not every local government writes or manages its contracts the same way, responds to requests under the CPRA the same way, provides information in a way that may be useable to the requestor in the same manner, and much more. With this bill, certain entities are looking to see a uniform set of data from each entity that receives a contract from a local government and to receive reports from the contractors to see if they are adhering to the terms of the contract.

**Impact:** As Association staff has shared in previous Committee meetings, this bill mainly highlights actions that must be taken by cities and counties but because it also applies to special districts and county boards of supervisors, this bill remains pertinent to bring to the Committee's attention. This bill would require boards of supervisors that solicit and enter into contracts that were performed by public employees in the past five years, or are currently being performed by a public employee, to post the contract on their publicly accessible website, along with any accompanying relevant documents and specified detailed information. Additionally, before the procurement process begins for a service, employee representatives of the workforce that currently or previously performed that service must be notified by the board of supervisors. Similarly, the board of supervisors would also be required to notify the employee representatives at least 30 days before a contract is modified or renewed. The Author and Sponsors note that these processes are preferred in order to maintain a level of transparency with the public on how public dollars are being spent.

As stated, this bill would effectively raise the transparency and reporting threshold for the aforementioned entities and in doing so, could also harbor the potential to impede otherwise effective methods that local governments currently use to provide and offer service opportunities, particularly to marginalized communities. However, the Author recently accepted amendments from the Senate Labor, Public Employment, and Retirement Committee that exempt the bill from applying to contracts that are simultaneously less than \$100,000 and provide services for work that is not usually performed by public employees. "Work not usually performed by public employees" is further defined in the bill to mean a function or activity for which the employer has not had a classification within the last five years prior to the initiation of the contract whose duties include the function or activity. These amendments could mitigate concerns about the bill's potential impediment of providing services to under-resourced communities.

**Recommendation:** With the recently adopted amendments and many public entities including the California State Association of Counties and various cities maintaining their positions in opposition, Association staff recommends that the Committee **DISCUSS** this bill.

**Status:** This bill in the Assembly Appropriations Committee.



## **SB 961 (Wiener) Speed Governors.**

**Purpose:** This bill would require that beginning with the model year 2030, all new passenger vehicles, motortrucks, and buses that are manufactured or sold in the state be equipped with a passive intelligent speed assistance system. This technology is defined within the bill as an integrated vehicle system that determines the speed limit on the roadway that the vehicle is travelling on, and utilized a brief, one-time visual and audio signal to alert the driver each time they exceed the speed limit by more than 10 mph.

**Background:** In the United States, the federal government does not currently have any requirements for vehicles to be equipped with intelligent speed assistance systems. The National Traffic Safety Board (NTSB) has called on the National Highway Traffic Safety Administration (NHSTA) to require intelligent speed assistance systems that, at a minimum, warn a driver when a vehicle is speeding and to incentivize adoption of intelligence speed assistance systems through the New Car Assessment Program. In 2016, NHSTA issued a joint notice of proposed rulemaking with the Federal Motor Carrier Safety Administration (FMCSA) regarding requiring (non-intelligent) speed limiters to be placed on commercial motor vehicles. On January 28th of this year FMCSA stated that it intends to prepare a supplemental notice of proposed rulemaking to be released in May. On April 3rd NHSTA sent a letter to the NTSB responding to their request to require passive intelligent speed assistance systems on all new vehicles. In that letter, NHSTA stated they are currently working on two intelligent speed assistance research projects this year. The studies will assess the capabilities and limitations of technologies and assess consumer acceptance and effectiveness of the technology.

Absent action from federal regulators, states and local governments have also begun experimenting with their own policies. New York City's Department of Citywide Administrative Services began a pilot program in August of 2022, equipping city fleet vehicles with intelligent speed assistant technology. Since the launch of that program the 50 fleet vehicles utilizing intelligent speed assistant technology have driven over 133,400 miles and traveled within speed limit parameters 99% of the time. They also observed a 36% reduction in hard braking events, an indicator of unsafe driving. In January 2024, Washington, D.C.'s city council instituted an intelligent speed assistance program that would allow its DMV to install ISA systems in the cars of drivers whose license was suspended or revoked for excessive speeding. The bill must still undergo congressional review before being enacted.

**Impact:** Because buses manufactured and sold in California are not exempt from this bill, transit agencies would be required to begin procuring buses with intelligent speeds assistance technologies. Association staff presented this bill to the Maintenance Committee and solicited feedback and concerns about the bill. Far and wide, the consensus staff received from OEMs was that this bill would place burdensome requirements on manufacturers statewide, and could

create confusion and unnecessary complexity as this is not a federal mandate that other states must currently adhere to. Additionally, this requirement would inevitably create added costs for agencies, not keeping in mind the fact that many agencies statewide are facing fiscal cliffs currently or in the very near future. Intelligent speed assistance technologies would require regular maintenance, replacements, and annual or semi-annual inspections to ensure they are functioning regularly, and each of which could incur significant costs to transit agencies as a result.

**Recommendation:** Given the concerns raised by OEMs, Association staff recommends that the Committee **DISCUSS** this bill.

**Status:** This bill in the Assembly Appropriations Committee.



## **SB 1325 (Durazo) Best Value Procurement.**

**Purpose:** This bill would authorize public entities to use a best value procurement method when awarding contracts for goods over \$250,000 instead of awarding them utilizing the traditional “lowest responsible bidder” method, provided the public entities take specified steps.

This bill would additionally authorize public entities to use a best value procurement method when awarding contracts for the purchase of municipal fleets, provided the procurement includes a high road jobs plan policy.

**Background:** The majority of public sector contracts in California are awarded on a low-bid basis where the contractor submitting the lowest bid that meets specified criteria is awarded the contract. When procuring goods and services, the state seeks to promote fair and open competition that is free from bias and favoritism. To this end, statute includes various requirements for the procurement of goods and services, particularly those of significant monetary value. Specifically, statute sets certain monetary thresholds above which agencies generally must use a competitive bidding process to advertise and solicit bids before selecting a vendor.

While the low-bid procurement system has promoted open competition, the Author and Sponsor have voiced concerns that a system based strictly on the lowest price does not provide the best overall product value and can result in higher costs over the long-term. In California, the Department of General Services (DGS) sets state procurement policies and provides purchasing services for all state departments. However, in certain circumstances DGS delegates purchasing authority to individual state departments, such as Caltrans for the procurement of heavy mobile fleet vehicles and special equipment.

Over the years, the state has authorized both state and local agencies to use various other types of procurement processes in the awarding of contracts. For example, in 2014, SB 785 (Wolk, Chapter 931, Statutes of 2014) was signed into law which authorized specified state agencies, until January 1, 2025, and specified local agencies to use design-build for public work contracts in excess of \$1 million. Under design-build, the public agency contracts with a single entity—which can be a single firm, a consortium, or a joint venture—to design and construct a project. Before inviting bids, the owner prepares documents that describe the basic concept of the project, as opposed to a complete set of drawings and specifications of the final product. In the bidding phase, the owner typically evaluates bids on a best-value basis, incorporating technical factors, such as qualifications and design quality, in addition to price.

Progressive design-build is a more recent variant on traditional design-build contracting. While there is some variation, the progressive design-build model generally includes two phases. In

the first phase, the awarding authority uses a best value process to select a design-build entity who completes preliminary plans and preconstruction services necessary to provide a cost estimate and final design proposal. The project then “progresses” to the second phase of the project, where the awarding authority and the design-build entity agree to a final design, project cost, and schedule. If they cannot agree, there is an “off ramp” between the two phases where the awarding authority can pursue other options, but still benefit from having the first phase work complete. This is different from traditional design-build where the awarding entity contracts with a single entity to design and construct a project at a set price before design work begins, and without a similar off ramp.

The best value procurement process is a procurement process whereby a bidder may be selected on the basis of objective evaluation criteria representing the best combination of price and qualifications. The process allows the contracting agency to consider “values” in addition to cost in awarding contracts, such as community benefit goals. Under design-build, the public agency contracts with a single entity—which can be a single firm, a consortium, or a joint venture—to design and construct a project. Before inviting bids, the owner prepares documents that describe the basic concept of the project, as opposed to a complete set of drawings and specifications of the final product. In the bidding phase, the owner typically evaluates bids on a best-value basis, incorporating technical factors, such as qualifications and design quality, in addition to price.

The best value criteria can include factors such as lifetime costs, use of sustainable materials or practices, experience, timeliness, terms and conditions, or economic benefits to the community. The bidder with the highest score (not necessarily the lowest bid) receives the contract. Though not without its draw backs, best value procurement potentially can yield long-term state savings while avoiding the hassle of hiring vendors unlikely to perform adequately. In order for a state or local agency to use the best value procurement method described in this bill, they must first adopt and publish procedures and guidelines for evaluating the qualifications of bidders in order to ensure the best value selections are conducted in a fair and impartial manner.

**Impact:** Currently, public entities face a wide variety of best value procurement authorization within the state. For example, some public entities are granted explicit statutory permission to utilize best value procurement methods, while others do not. Similarly, some may have authorization to enter into best value contracts but only under explicit circumstances.

This bill would provide parity for all public entities to use the best value procurement method for goods over \$250,000. To use this authority, a public entity would, among other things, be required to adopt and publish procedures and guidelines for evaluating the qualifications of bidders that ensure the best value selections are conducted in a fair and impartial manner. These procedures and guidelines may include, but are not limited to, the adoption of a high road jobs plan policy.

This bill would additionally authorize public entities to use a best value procurement method when awarding contracts for the purchase of municipal fleets, provided the procurement includes a high road jobs plan policy.

This bill would define “best value procurement” to mean a process by which a contract award is determined by objective criteria related to price, quality, and other qualifications, including, but not limited to, the following:

- 1) Product performance, productivity, and safety standards.
- 2) The supplier’s ability to perform the contract requirements.
- 3) Environmental benefits, including the reduction of greenhouse gas emissions.
- 4) Community benefits, including the bidder’s participation in or commitments to a community benefits agreement, targeted hiring program, or high road training program.
- 5) Job quality benefits, as determined by a high road jobs plan policy.

This bill would define “high road jobs plan policy” to mean a policy by which a public entity evaluates bidders’ high road jobs plan commitments as part of the overall score from the public contract, and incorporates these commitments into the selected applicant’s final contract as a material term.

This bill would define “high road jobs plan” to mean a component of an application submitted by applicants for public contracts where bidders are required to state, at a minimum, all of the following:

- 1) The minimum number of full-time equivalent jobs that will be retained and created in awarded the contract.
- 2) The minimum wage and benefit amounts by job classification for nonsupervisory workers on the contract.
- 3) The minimum number of jobs that will be specifically retained and created for individuals with employment barriers if awarded the contract.
- 4) Detailed information regarding any targeted hiring programs, community benefits agreements, high road training programs, or registered apprenticeship programs.
- 5) A statement that all workers are properly classified pursuant to Section 2775 of the Labor Code.

**Recommendation:** As you may recall, the Association was a proud co-sponsor of SB 617 (Newman, 2023), which was signed by Governor Newsom. This bill, similar to SB 1325, authorizes local agencies to utilize a specific procurement methods but for public works projects over \$5,000,000. Specifically, agencies are granted authority to use the progressive design-build process on up to 15 public works projects that surpass the \$5,000,000 threshold. Association staff is interested in hearing thoughts and potential concerns from the Committee on this bill and for that reason, staff recommends that the Committee **DISCUSS** this bill.

**Status:** This bill in the Assembly Appropriations Committee.