



State Legislative Committee Meeting Agenda

August 15, 2024
2:00 p.m. – 3:00 p.m.

Agenda Items	Recommended Action
1. Chair's Report	Information
2. Other Legislation: Proposed Action <ul style="list-style-type: none">• SB 1420 (Caballero) Hydrogen Production Facilities.	Support
3. Other Legislation: For Discussion <ul style="list-style-type: none">• SB 1325 (Durazo) Best Value Procurement.	Discuss
4. Update on 2025 Spring Legislative Conference	Information
5. Reminders <ul style="list-style-type: none">• Solicitation Period for 2024-26 State Legislative Committee Now Open	
6. Other Business	
7. Association's Bill Matrix	
8. Adjourn	



SB 1420 (Caballero) Hydrogen Production Facilities.

Purpose: This bill would add hydrogen production facilities and onsite storage and processing facilities to the types of facilities that existing law makes eligible for centralizing permitting and expedited review under the California Environmental Quality Act (CEQA).

This bill is sponsored by the California Hydrogen Coalition.

Background: In 2023, Governor Newsom announced, and ultimately signed into law, eight infrastructure streamlining bills. The legislation, which was the outgrowth of Infrastructure Advisor Antonio Villaraigosa's engagement with industry stakeholders, including the Association, and subsequent slate of policy recommendations, aimed to accelerate critical infrastructure projects throughout the state that would help get California one step closer to building a 100% clean electric grid, modernize our transportation system, boost the state's water supply, and draw down federal funding authorized under the Infrastructure Investment and Jobs Act and Inflation Reduction Act. Included in this infrastructure streamlining package was SB 149 (Caballero, Chapter 50, Statutes of 2023), which would allow for the expedited judicial review of certain water, transportation, clean energy, and semiconductor or microelectronic projects under CEQA. The Association supported the infrastructure streamlining package, while noting specific support for SB 149 (among several other bills benefitting California transit agencies).

The Governor's loosely coined Infrastructure Project Certification Program was established as a result of this bill being signed into law, and under SB 149, it authorizes the Governor to certify certain types of infrastructure projects for streamlining through the CEQA judicial review process. Specifically, any litigation that occurred against the Environmental Impact Review of project certified by the Governor would need to be resolved within 270 days of said litigation being filed with the court. SB 149 authorizes for certification from the Governor certain infrastructure projects – water, transportation, clean energy, and semiconductor or microelectronic projects – but also sets a limit on the eligible project types under each infrastructure project umbrella. Under the umbrella of energy infrastructure projects, SB 149 authorizes the following project types:

1. Any eligible renewable energy resource, excluding resources that utilize biomass fuels;
2. A new energy storage system of 20 megawatts or more, subject to certain conditions;
3. Certain energy storage and renewable energy projects for which the applicant has certified that a capital investment of at least \$250 million will be made over a period of five years;
4. An electric transmission facility project; and

5. Projects that do not utilize hydrogen as a fuel.

As emphasized in the last point, SB 149 explicitly excludes from eligibility for streamlining any infrastructure facility that utilizes hydrogen as a fuel. SB 1420 would make adjustments to certain provisions previously established by SB 149 by expanding the definition of an “energy infrastructure project” to include “hydrogen production facilities and associated onsite storage and processing facilities,” thus qualifying them for streamlining certification. Additionally, this bill would define hydrogen production facilities and associated storage and processing facilities to include facilities that:

1. Have received funding from the state or federal government on or before January 1, 2032;
2. Do not use fossil fuel as the feedstock or energy source for the production of hydrogen; and
3. Have received a letter of support adopted at a public meeting by the governing body of the local government in which jurisdiction the facility will be located.

In addition to the Governor’s Infrastructure Project Certification Program, SB 1420 also seeks to streamline the production of hydrogen through the California Energy Commission’s (CEC) Opt-In Certification Program. This permitting program provides the CEC with the exclusive power to certify an eligible facility site and any related facilities. The certification replaces the need for any permit required by any state, local or regional agency, or federal agency to the extent permitted by federal law. It also supersedes any applicable statute, ordinance or regulation of any state, local or region agency, or federal agency to the extent permitted by federal law. As hydrogen production facilities are not eligible for this program under current law, this bill, citing the previously described definition of eligible hydrogen production facilities and associated storage and processing facilities provisions, authorizes their eligibility for certification by the Opt-In Certification Program.

This legislation is being pursued, in part, to help support the development of California’s hydrogen hub, being developed by the ARCHES consortium. California’s hydrogen hub will focus on building out hydrogen production for off-take by medium- and heavy-duty (MHD) fleet owners, including transit agencies. The increase in hydrogen production facilitated by California’s hydrogen hub is expected to help reduce the per unit cost of hydrogen fuel, making this zero-emission pathway more affordable. Additionally, California’s hydrogen hub, will directly support the deployment of 1,000 fuel cell electric transit buses at transit agencies across the state.

Impact: SB 1420 would help expedite the development of hydrogen production facilities, associated onsite storage, and processing facilities and reduce the cost of project delivery by creating a 270 day “shot clock” for judicial review of CEQA-based challenges to these projects. In doing so, this legislation would help ensure that California can quickly expand its hydrogen production capacities to meet growing demand, including from California transit agencies, and reduce the per unit cost of hydrogen fuel. As California transit agencies currently lead the state in the deployment of hydrogen-powered MHD vehicles, we would anticipate that the benefits of this legislation would be significantly realized by Association members.

Additionally, if signed into law, hydrogen production infrastructure projects would achieve parity with similar energy production infrastructure projects and create a more level playing field between fuel types – an important consideration, given the Association’s technology neutral approach to the zero-emission transition.

Recommendation: SB 1420 will provide considerable financial and temporal relief to public transit agencies, specifically those that opt for fuel cell buses in their transition to achieving fully zero-emission fleets. For that reason, Association staff recommends the Committee **SUPPORT** 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.