

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner, Chair

SB 1460 (Durazo) – As Amended April 25, 2024

SENATE VOTE: 30-9

SUBJECT: Broadband Labor Standards Act: broadband deployment projects: model contract terms: memorandum of understanding

SUMMARY: This bill requires, by January 1, 2026, the California Workforce Development Board (CWDB) to convene relevant stakeholders and state agencies to develop model contract terms for broadband deployment projects that are awarded state grants.

Specifically, **this bill:**

- 1) Provides that relevant stakeholders and state agencies includes, but is not limited to, recognized labor unions, the California Public Utilities Commission (CPUC), and the Department of Industrial Relations.
- 2) Requires the CWDB to provide a recommendation on a memorandum of understanding between the CWDB and the CPUC that would enable job creation in the broadband sector and expand access to those jobs.
- 3) Requires, by July 1, 2026, the CWDB to post the model contract terms on the CWDB's website.
- 4) Requires, by July 1, 2026, the CWDB to submit a report to the Legislature which includes specified information, such as a summary of the discussions the led to the development of the model contract terms and the recommendation on a memorandum of understanding.
- 5) States that the requirement for submitting a report is inoperative on July 1, 2030.

EXISTING LAW:

- 1) Establishes California Workforce Development Board (CWDB) as the body responsible for assisting the Governor in the development, oversight, and continuous improvement of California's workforce investment system and the alignment of the education and workforce investment systems to the needs of the 21st century economy and workforce. (Unemp. Ins. Code § 14010 et seq.)
- 2) Requires the California Public Utilities Commission (CPUC) to develop, implement, and administer the California Advanced Services Fund (CASF) program to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and substantial social benefits of advanced information and communications technologies, as provided in specific decisions of the CPUC and in the CASF statute. (Public Utilities Code § 281(a))
- 3) Provides that projects funded pursuant to the Federal Funding Account (FFA) of the CASF shall be implemented consistent with applicable federal regulations and any condition or

guidelines applicable to the one-time federal infrastructure moneys. (Public Utilities Code § 281 (n))

- 4) Defines “public works” to include an infrastructure project grant from the California Advanced Services Fund. (Labor Code § 1720).

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) Unknown, but likely significant costs to the CWDB for their assigned duties.
- 2) The CPUC estimates ongoing costs of \$210,000 annually (ratepayers’ funds) to participate in meetings, develop an MOU with the CWDB, and support reporting to the Legislature.
- 3) The California Department of Technology anticipates any administrative costs would be minor and absorbable.
- 4) An unknown, potentially significant, cost pressures on state broadband projects, contingent on the adoption of the model contract terms.

COMMENTS:

- 1) *Justification for this bill.* California lacks an established outline of high road labor standards designed to uniformly apply to all state-funded broadband projects in the state. The author argues that this results in projects going forward with minimal and non-specific labor standards; a missed opportunity to establish California as a leader to ensure safe and effective broadband buildout. Absent statutorily mandated labor standards, these publicly funded projects will rely on minimal requirements for workers, and contracted workers. To remedy these deficiencies with existing requirements, the author claims that “SB 1460 will help establish standards for access to high paid jobs and safe working conditions in our broadband buildout.”
- 2) *Overview of the state’s broadband deployment programs.* Under the current administrative structure for the state’s broadband programs, duties are split primarily between the Public Utilities Commission (CPUC) and Department of Technology (CDT).

The CPUC administers at least two broadband deployment programs, the California Advanced Services Fund (CASF) and the Broadband, Equity, Access and Deployment (BEAD) program. Existing state law expressly authorizes the CPUC to develop, implement, and administer the CASF program to encourage the deployment of high-quality advanced services to all Californians in order to promote economic growth, job creation, and societal benefits. The CASF program consists of several distinct subaccounts with particular focuses, including broadband infrastructure and broadband adoption. The subaccounts of the CASF program include: the Broadband Adoption Account, Broadband Infrastructure Grant Account (IGA), Federal Funding Account (FFA), Broadband Public Housing Account, Rural and Urban Broadband Consortia Grant Account, Line Extension Pilot Program, and Tribal Technical Assistance Program. Notably, infrastructure project grants funded from the CASF are considered a “public work” under the Labor Code.

In addition to the CASF, the CPUC is also administering the federal BEAD program funds in California. BEAD is a federal program established pursuant to the Infrastructure Investment

and Jobs Act, for which California has been awarded \$1.86 billion dollars. Under BEAD, the CPUC will award grants for construction of broadband infrastructure networks in unserved and underserved areas of the state. As a block grants to the state, BEAD includes federal requirements, including labor standards. Although much of the program design for administration of BEAD funds has been determined by the federal government, states do have some flexibility in implementing the program within their state. As of December 2023, California has submitted its plan for administering the BEAD program in California and is currently awaiting approval of the entire plan. Once the plan is approved, the CPUC will be required to follow the plan when administering the program and awarding grant funds.

Lastly, the California Department of Technology (CDT) administers the state's Middle-Mile Broadband Initiative (MMBI) program. The MMBI is a broadband infrastructure program for the construction of an open-access middle-mile network to bring equitable high-speed broadband service across California. As of this budget year, the state has committed about \$3.75 billion to the project, most of which is coming from federal COVID-19 relief funding under the American Rescue Plan Act (ARPA). Unlike the programs administered by the CPUC, the MMBI is not a grant program, although the state has entered into an assortment of contracts with various private companies to complete the project. For example, for about half the planned miles of the network, the state has entered into contracts with telecommunications companies to lease capacity on existing infrastructure. The state is also entering into construction contracts to construct new middle-mile broadband infrastructure in partnership with CalTrans.

- 3) *Which projects and programs will be covered by this bill?* This bill requires the CWDB, in consultation with other stakeholders and state agencies, to develop model contract terms for "broadband deployment projects that are awarded grants by state agencies" by January 1, 2026. The term "broadband deployment projects" is not defined in this bill, which raises questions about which projects or programs would be covered. Based on the current drafting of this bill, the MMBI would arguably not be included in whatever model contract terms the CWDB and its partners adopt because the MMBI is not generally understood to be a grant program and the construction contracts to complete the project are likely not considered grants. Therefore, the MMBI would not be a project awarded a grant by a state agency.

The CASF and the BEAD program, however, are clearly grant programs and the grant-funded projects under those programs would clearly be covered by this bill. Nonetheless, the CASF program includes various subaccounts that fund various types of projects, not just major infrastructure projects. For example, the Broadband Adoption Account funds grants to increase publicly available or after-school broadband access and digital inclusion, such as grants for digital literacy training programs and public education to communities with limited broadband adoption. While this bill does not explicitly require that every subaccount of the CASF be included in the model contract terms, the CWDB and its partners will have the discretion to include them. If the non-infrastructure grant accounts are included in the model contracts, this may lead to significant new labor requirements on relatively small grants that typically are in the low-hundreds of thousands of dollars.

In addition to the development of model contract terms, this bill also requires the CWDB to provide a recommendation on a memorandum of understanding (MOU) with the CPUC that would enable the development of high road job creation on broadband deployment projects. Unlike the drafting of the previous section of this bill, this portion of this bill does not specify

that the broadband deployment projects be grant funded by state agencies. However, because the MOU would be between the CWDB and the CPUC, the MMBI would likely not be included in the MOU because that project is under the administration of CDT. This bill does not require or suggest an MOU between the CWDB and CDT.

- 4) *The MMBI and CASF are covered by public works law.* Under existing law, an infrastructure project grant from the CASF is expressly defined as public works. The MMBI would also appear to meet the definition of a public works project. According to the Department of Industrial Relations (DIR), anyone working on a public works project must be paid prevailing wages as determined by DIR. Projects of \$30,000 or more must meet DIR's apprenticeship requirements. Failure to comply with public works requirements can result in civil penalties, criminal prosecution, or both. However, despite these baseline labor standards, supporters of this bill would argue that California is still falling behind the Biden Administration on achieving job quality standards for broadband projects.

For example, the federal requirements for the BEAD program provided guidance to states and local governments on items beyond prevailing wage such as project labor agreements, local and targeted hire, community benefits agreements, and other mechanisms that combine job quality with equity in access to quality jobs. Unlike the approach to administering CASF funds, the federal government has been clear that federal investments are meant to impact jobs, the economy, and poverty and that they expect states to include strong labor standards and equity when using these funds. Accordingly, California has proposed to adopt the high-road labor standards recommended for the BEAD program by the federal government. Additionally, submitted applications will be scored in part based on a project applicant's commitment to strong labor standards. Specifically, California has proposed in the program rules currently under evaluation by the federal government that up to 20 points out of 100 could be awarded for labor standards. If the federal government approves California's scoring criteria for the BEAD program, it will be the strongest labor standards criteria among all of the state's broadband infrastructure deployment programs including CASF and the MMBI. The table below summarizes some of the differences between the last-mile programs in regards to labor standards.

| | BEAD | CASF FFA | CASF IGA |
|-----------------------------------|-------------|-----------------|-----------------|
| Public Works Protections | YES | YES | YES |
| Prevailing Wage | YES | YES | YES |
| Local Hire | YES | NO | NO |
| Application Scoring Advantage | YES | NO | NO |
| Coordination with Labor Unions | YES | NO | NO |
| Commitment to Diverse Recruitment | YES | NO | NO |

This bill would arguably create the conditions to help fill the gap between the strong labor standards under BEAD and the other last-mile programs administered by the CPUC. The difference among the programs in regards to the labor standards, also raises a somewhat unrelated point about the differences among the programs generally. While the labor standards are clearly different, each program also has various other differences among them that project applicants also have to be mindful. While this bill is not attempting to create alignment among the programs generally, except for the labor standards, other legislation being considered by this committee raises issues with the differing low-cost or affordable plan offerings project applicants must commit to. In the future, the Legislature may wish to consider whether aligning each of the programs to have uniform standards across the CWDB might be reasonable.

- 5) *Being mindful of delays.* This bill requires the CWDB to take the actions specified in this bill by July 1, 2026, among which is to develop model contract terms. While developing model contracts terms of broadband deployment projects in order to work towards alignment among the programs is a reasonable approach to take. However, imposing those contract terms on existing applications or previously approved project may delay projects and the CPUC administrative process. Adding additional requirements on grantees or applicants may require the CPUC to re-open regulatory processes to update their rules, or risk federal funds that have established deadlines, such as projects funded by the Federal Funding Account. This is an especially concerning potential impact of this bill because the CPUC has already been much delayed in awarding grants to begin with. For example, out of the \$2 billion dollars available for the Federal Funding Account, to date the CPUC has only issued final awards totaling \$16.7 million worth of projects, with \$88.5 million proposed to be awarded in the near future. This total funding is only about 5% of the total funding available for the Federal Funding Account.
- 6) *Committee amendments.* The committee may wish to consider the following amendments.
 - a. Expressly include internet service providers in the group of relevant stakeholders the CWDB is required to convene.
 - b. Prohibit the model contract terms developed by CWDB from being imposed on pending broadband projects or applications submitted before the creation of the model contract terms.
- 7) *Related/similar legislation.*
 - a. SB 424 (Durazo) of this session would the CPUC to ensure that all broadband deployment grant awardees offer affordable home internet services to households participating in certain public assistance programs. That bill is pending in this committee.
 - b. SB 1375 (Durazo) of this session would create the Equity, Climate Resilience, and Quality Jobs Fund to finance workforce training and standards to meet climate resiliency workforce needs. This measure would require MOUs between public agencies administering federal infrastructure funds to ensure investments using IJA, CHIPS Act, and IRA funds have standards, and reporting to the California Workforce Development Board to perform analysis on equity, climate resilience, and quality jobs

- outcomes. This measure is currently pending in the Assembly Committee on Labor and Employment.
- c. SB 150 (Durazo) Chapter 61, Statutes of 2023, requires the Labor and Workforce Development Agency, the Government Operations Agency, and the Transportation Agency to convene stakeholders and develop recommendations for procurement models to ensure that federal IIJA, IRA, and CHIPS Act investments include enforceable commitments to job quality as a material term of our public contracts with measurable results to ensure equity.
 - d. AB 662 (Boerner, 2023) would have established requirements for the administration of the BEAD program, and would have prohibited the CPUC from taking any actions to administer the BEAD program that are not specified in the bill. The bill was held in the Senate Appropriations Committee.
 - e. SB 4 (Gonzalez, Chapter 671, Statutes of 2021) and AB 14 (Aguiar-Curry, Chapter 658, Statutes of 2021) revised and extended the CASF by increasing speed standards for CASF-funded infrastructure to 100/20 Mbps, expanded eligibility to communities that lack broadband service meeting federal standards, expanded local governments' eligibility for CASF grants, and extended CASF's operation and funding until 2032.
 - f. SB 156 (Committee on Budget, Chapter 112, Statutes of 2021) implemented broadband infrastructure spending approved in the 2021 Budget Act. The bill established the FFA within the CASF to fund broadband infrastructure projects using one-time funds. The bill also required the CDT to oversee the construction of a state-owned, open access middle mile broadband network.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file.

Opposition

Calbroadband

Analysis Prepared by: Emilio Perez / C. & C. / (916) 319-2637