
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**

**Senator Steven Bradford, Chair
2023 - 2024 Regular**

Bill No:	SB 1460	Hearing Date:	4/16/2024
Author:	Durazo		
Version:	3/20/2024 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Sarah Smith		

SUBJECT: Broadband Labor Standards Act: public contracts: broadband labor standards

DIGEST: This bill requires the California Public Utilities Commission (CPUC) to adopt specified labor contract provisions that must be included in every contract and subcontract for broadband deployment under the Broadband Equity Access and Deployment (BEAD) program. This bill also requires the CPUC and other state agencies to consult with recognized labor unions before adopting these contract requirements and submit a report to the Legislature summarizing these consultations.

ANALYSIS:

Existing law:

- 1) Establishes the California Advanced Services Fund (CASF) for the purposes of providing funding for broadband infrastructure to unserved households. Existing law specifies that an “unserved household” is a home lacking broadband internet at speeds of at least 25 megabits per second (Mbps) downstream and 3 Mbps upstream. Existing law also specifies that all CASF-funded infrastructure must provide broadband internet at speeds of at least 100/20 Mbps. (Public Utilities Code §281)
- 2) Establishes various accounts within the CASF to fund specific broadband adoption and deployment. These funds include the Federal Funding Account (FFA), which is established to deploy broadband infrastructure to unserved and underserved communities. Existing law specifies how monies in the FFA must be allocated to rural and urban communities for broadband deployment. (Public Utilities Code §281)

This bill:

- 1) Defines a “broadband project” as a middle-mile, last-mile, or other broadband project.
- 2) Defines a “contract” for the purposes of the bill as a state contract or subcontract related to the construction of a broadband project that is funded by federal funds received by the state on or after July 1, 2025, and allocated by the CPUC.
- 3) Directs the following agencies to collaboratively develop and establish specified labor contract terms and requirements, which must be included in these agencies’ contracts, subcontracts, and procurement processes:
 - a) CPUC.
 - b) Department of Industrial Relations (DIR).
 - c) Department of Technology (CDT).
 - d) Department of Transportation (CalTrans).
 - e) California Workforce Development Board.
 - f) Any other state agency that constructs a broadband project.
- 4) Specifies specific provisions that must be included in every contract and subcontract for broadband construction conducted by state agencies. This bill requires each contract and subcontractor covered by this bill to certify that they comply with certain laws, including sick leave requirements, anti-retaliation provisions related to sick leave, and the federal Americans with Disabilities Act.
- 5) Prohibits every contractor and subcontractor on broadband construction projects from misclassifying individuals performing work on broadband projects, as specified.
- 6) Requires each contractor and subcontractor to submit the following information to state agencies:
 - a) A history of compliance with applicable federal, state, and local labor laws.
 - b) The number of individuals the contractor or subcontractor anticipates hiring to perform work to fulfill the contract.
 - c) For each job title, the minimum compensation and benefits paid to an employee who performs work to fulfill the contract.

- d) A plan to recruit, hire, and train individuals who face barriers to employment or underrepresented individuals to perform work to fulfill the contract.
 - e) A plan to prioritize hiring individuals within the local community in which the project is located to perform work to fulfill the contract.
 - f) A plan to hire individuals from an apprenticeship program to perform work to fulfill the contract.
- 7) Requires the CPUC, DIR, CDT, CalTrans, the California Workforce Development Board, and any other state agency constructing a broadband project under this bill to consult with relevant stakeholders, which much include recognized labor unions, to develop contract terms and requirements for broadband projects. This bill requires these agencies to submit a report to the Legislature by March 1, 2025, listing the stakeholders with which the agencies consulted and a summary of the consultations.
- 8) This bill requires these agencies to incorporate contract terms and requirements developed with stakeholders into any contracts, agency procurements, amendments to contracts, or renewals of contracts.
- 9) Requires the CPUC, DIR, CDT, CalTrans, the California Workforce Development Board, and any other state agency constructing a broadband project to post contract terms and requirements developed pursuant to this bill on their respective internet websites.
- 10) Authorizes state agencies to adopt labor standards higher than this bill.

Background

Bill includes other agencies, but only impacts contracts for BEAD deployment. This bill establishes requirements in the Public Contract Code that imply that other agencies will be responsible for adopting labor contract requirements for broadband deployment projects; however, the bill’s definition of a “contract” narrows the scope of projects covered by the bill to only those receiving a grant from the BEAD program. While this bill directs DIR, CDT, CalTrans, CPUC, California Workforce Development Board, and any other agency overseeing broadband deployment projects to develop specific labor provisions for their public contracts, the bill also defines a “contract for its purposes as a “state contract or subcontract related to the construction of a broadband project that is funded by federal funds received by the state on or after July 1, 2025, and allocated by the

CPUC.” This definition of a contract currently applies only to contracts for awards issued under the BEAD program. While CDT received federal funds for the construction of a state-owned middle mile network, these funds were received before July 1, 2025, and the funds were not allocated by the CPUC. The CPUC initially received federal funds for the deployment of broadband infrastructure in the FFA; however, these funds were received before July 1, 2025, and will likely be encumbered before this bill may be enacted. It is unclear if any state agency other than the CPUC would enter into an agreement that could be construed as a “contract” for broadband construction under this bill. As a result, this bill’s provisions may only apply to contracts related broadband infrastructure deployment under BEAD. At this time, there are no new federal funds scheduled for state-level disbursement to support broadband infrastructure deployment beyond the BEAD program. This bill references procurement processes; however, the bill does not define those procurements. As a result, the scope of the bill’s impact on agencies’ procurements is unclear.

CPUC’s BEAD plan already includes extensive labor provisions. National Telecommunications and Information Administration’s (NTIA’s) guidance to states provided a series of baseline requirements that every state must adopt; however, it also provided some discretion to states when adopting requirements above the baseline. NTIA’s guidance set baseline labor requirements for all BEAD applicants, and it also encouraged states to adopt program rules that would incentivize labor benefits above NTIA’s baseline requirements. As part of the CPUC proceeding (R. 23-02-016) adopt requirements for implementing the BEAD program, the Communications Workers of America (CWA) and a coalition of labor unions and organizations filed comments in May 2023, emphasizing the need for BEAD application criteria that achieved the following goals:

- Prioritizing labor factors beyond those required by NTIA, including a directly employed workforce, in-house training, a locally-based workforce, and quality wages and benefits.
- Providing a substantial point allocation for labor factors in application scoring.
- Collecting and publishing information regarding subgrantees workforce plans, including information about subcontracting, job quality, training and safety, and local hiring.

On November 7, 2023, the CPUC issued a staff proposal for BEAD implementation rules, which adopted both mandatory labor requirements and established labor criteria for scoring applications. Several provisions of this bill

are substantially similar to certain portions of the CPUC BEAD staff proposal. For example, all applicants are required to certify their compliance with relevant labor law for prior broadband deployment projects. All applicants must also certify that proposed contractors and subcontractors have certain labor practices in place, including wage scales for each class of employees. Other requirements in the staff proposal include requiring applicants to discuss workforce plans for subgrantees, including plans for local hires, policies for public disclosure of workforce plans, plans for targeted hires, job quality, job safety, apprenticeship utilization, and plans to use a directly-employed workforce, in-house training, and a locally-based workforce. In addition these requirements, the CPUC also allocated a substantial amounts of points in the applications scoring criteria to labor standards. Under the staff proposals, the CPUC will award projects up to 100 points. Labor commitments will comprise 20 of those 100 points. Only consumer affordability measures offer more points for an applicant. Below is language directly from the CPUC's staff proposal for allocating points to BEAD proposals based on labor commitments:

Labor Standards: up to 20 points Up to 20 points will be awarded, with 10 points based on (1) a demonstrated history of compliance with federal labor laws; (2) demonstrated commitments to future compliance with federal labor laws; and (3) the quality and contents of labor practice-related items submitted during the Application Phase. Projects on Tribal lands will receive the 10 points for labor standards as long as the project complies with Tribal and applicable federal law concerning labor standards. Additionally, up to 10 points will be awarded to all projects on the basis of workforce capacity building and development commitments, especially those prioritizing equitable workforce development. New entrants without a lengthy record of labor and employment law compliance will receive points in this category based on specific, concrete commitments to strong labor and employment standards and protections and equitable workforce development commitments going forward. Up to 10 points will be deducted for official labor relations complaints or violations in the five years preceding the date of application.

On November 27, 2023, CWA and a coalition of labor organizations filed comments on the staff proposal. The comments were largely supportive, but recommended a higher number of applications scoring points for labor considerations, more detail on how each of those points would be allocated, and more detail about how certain enforcement measures will be conducted. For example, the labor coalition largely supported CPUC's proposed enforcement measures, like site visits; however, the coalition recommended that these site visits be periodic and random, but with specific engineering information provided in

advance for verification at the site. Regarding the CPUC’s proposals for enforcing workforce commitments, the labor coalition’s comments state:

“The Initial Proposal states that successful applicants will be required to submit ongoing workforce reports and that these reports will be legally binding and publicly available (p. 62-63). Respondents commend the CPUC for the model practices outlined in this section.”

Too late? Unlike other broadband infrastructure deployment programs, the BEAD program is heavily managed by the federal government through the NTIA. While NTIA has constructed the program to provide states with some flexibility to develop program administration plans that meet their states’ needs, certain aspects of the BEAD program are federal requirements that may not be modified by states. NTIA set strict deadlines for various portions of the BEAD program. In order to draw down funding, each state was required to submit a detailed proposal for how the state will administer BEAD funding. Below is a brief outline of the key dates for BEAD implementation.

2022	NTIA released guidance to states, enabling states to start developing their proposals for administering BEAD funds.
December 27, 2023	NTIA’s deadline for states to submit their detailed plans for administering BEAD grants. CPUC submits a two-part plan for BEAD administration.
April 5, 2024	NTIA approves first part of CPUC’s plan for administering BEAD funds. Approval for the second part is expected shortly.
Mid 2024-2025	CPUC solicits applications, reviews projects, and develops a package of proposed BEAD projects to submit to NTIA. This package serves as a final proposal of how BEAD funding will be used for broadband deployment.
Mid 2025	CPUC submits a final proposal of BEAD projects to NTIA.

Under federal BEAD requirements, each state must accept, review, and proposal approvals for BEAD applications in accordance with the criteria approved by the NTIA. Given the timelines provided by NTIA, the CPUC may be accepting and reviewing applications for BEAD funding before this bill may be enacted. To the extent that this bill would establish contract requirements that substantially impact BEAD eligibility and the application scoring process outlined in the CPUC’s BEAD implementation plan, it is not clear if NTIA will permit changes to the CPUC’s BEAD plan. To the extent that this bill changes BEAD funding eligibility or feasibility for applicants that have submitted applications, this bill may result in the withdrawal of applications or cancellations of grant awards.

Need for Amendments. As currently drafted, it is not clear that this bill will add substantially greater labor outcomes to the BEAD program above those already proposed by the CPUC. Additionally, this bill may add delays and ambiguity to the application submission and scoring process that could jeopardize applicants' efforts to submit successful BEAD proposals under existing NTIA timelines. *As a result, the author and committee may wish to amend this bill to recast the bill to require the California Workforce Development Board work with stakeholders and other agencies, including the CPUC, to develop model contract provisions that could increase the utilization of recognized labor unions' apprenticeships in the telecommunications sector, including on broadband deployment projects awarded state grants.*

Dual Referral. Should this bill be approved by this committee, it will be re-referred to the Senate Committee on Labor, Public Employment and Retirement.

Prior/Related Legislation

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.

SB 4 (Gonzalez, Chapter 671, Statutes of 2021) and AB 14 (Aguilar-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.

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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

Communications Workers of America, District 9, Sponsor
California Labor Federation

OPPOSITION:

California Broadband & Video Association
USTelecom-The Broadband Association

ARGUMENTS IN SUPPORT: According to the author:

I have worked my entire life, as a migrant farmworker and in my career, to make California more equitable. Now – in the midst of a seismic change in our economy – the greatest transformation since the Industrial Revolution – we cannot make the same mistakes of the past. A commitment to climate and digital equity means a commitment to workers.

As our state receives once-in-a-generation funding from the federal government and makes historical investments of our own, we continue to have the highest supplemental poverty rate of any state in our country. We must go beyond “job creation” – this is about access to good jobs.

As the largest recipient of federal infrastructure funds complementing what our state and local governments are spending on closing the digital divide, transportation and climate adaptation, California can lead the way for people building these projects to have access to quality jobs.

ARGUMENTS IN OPPOSITION: Opponents argue that this bill could put BEAD funding at risk by disrupting NTIA’s review of California’s proposed BEAD implementation plan. In opposition, a coalition of telecommunications organizations, including USTelecom – The Broadband Association and the California Broadband and Video Association (CalBroadband) state:

The CPUC submitted Volume I and Volume II of the BEAD Initial Proposal to NTIA in December of 2023. NTIA is currently reviewing the Volumes to ensure compliance with the requirements of the Notice of Funding Opportunity and NTIA program guidance.

This bill adds additional requirements on grantees that would require re-opening of the BEAD proposals that have already been sent to NTIA. This would upend California’s BEAD process with NTIA and create uncertainty for the \$1.86 billion in federal funds on the table. There is too much at stake and the funding is critical to reach the last of the unserved areas of California, we cannot put that funding at risk. Thus, we must respectfully oppose SB 1460 (Durazo).

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