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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 2419

**Author:** Bryan

**Version:** 6/9/2022

**Hearing Date:** 6/22/2022

**Urgency:** No

**Fiscal:** Yes

**Consultant:** Jacob O'Connor

**SUBJECT:** Environmental justice: federal Infrastructure Investment and Jobs Act: Justice40 Advisory Committee

**DIGEST:** Requires a minimum of 40% of funds received by the state as part of the federal Infrastructure Investment and Jobs Acts to be allocated to projects with direct benefits to disadvantaged communities and an additional 10% to be allocated for projects that provide benefits to low-income communities. Establishes the Justice40 Advisory Committee to provide a recommendation for projects to fund under these requirements.

**ANALYSIS:**

Existing law:

- 1) Federal Executive Order 14008, Executive Order on Tackling the Climate Crisis at Home and Abroad (Justice40 Initiative), establishes a goal to deliver 40% of the overall benefits of specified federal investments to disadvantaged communities (DACs). The Justice40 Initiative:
  - a) Directs agencies to use the appropriate data, indices, and screening tools to determine whether a community is a DAC based on a combination of variables that may include factors like income, unemployment, racial and ethnic residential segregation, linguistic isolation, high housing cost burdens, and disproportionate environmental stressor burden.
  - b) Specifies that “covered programs” include federal programs that make covered investment benefits in areas relating to climate change, clean energy and transportation, affordable housing, and workforce development.
  - c) Requires agency heads to calculate the accrual of covered program benefits to disadvantaged communities, in consultation with the Office of Management and Budget (OMB), and report specified information to OMB for each covered program within “60 days and 150 days of the issuance” of federal guidance and annually thereafter.

- 2) The federal Infrastructure Investment and Jobs Act (IIJA) includes \$550 billion in new funding for critical infrastructure projects including funding for:
  - a) Clean drinking water and eliminating lead water lines;
  - b) Ensuring access to high-speed internet;
  - c) Repairing and rebuilding roads and bridges, with a focus on climate change mitigation, resilience, equity, and safety;
  - d) Improving transportation options and reducing greenhouse gas (GHG) emissions associated with public transit;
  - e) Upgrading the nation's power infrastructure to provide clean, renewable energy;
  - f) Improving infrastructure resilience against climate change, cyber-attacks, and extreme weather events; and,
  - g) Cleaning Superfund and brownfield sites, reclaiming abandoned mines, and capping orphaned oil and gas wells.
- 3) Federal Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act, establishes implementation priorities for the IIJA, including reiterating the commitment to direct 40% of investments to DACs and requiring effective communication with state local, tribal, and territorial governments.
- 4) Requires the California Environmental Protection Agency (CalEPA) to identify DACs based on geographic, socioeconomic, public health, and environmental hazard criteria. (Health and Safety Code (HSC) § 39711)
- 5) Requires the Department of Housing and Community Development to determine income limits for accessing financial assistance. (HSC § 50093)
- 6) Requires the California Air Resources Board (ARB), in consultation with CalEPA, to develop the Funding Guidelines for Agencies that Administer California Climate Investments that receive appropriations from the GHG Reduction Fund to ensure funds are used to facilitate the reduction of GHG emissions, maximize benefits for disadvantaged communities, and to the extent feasible: (HSC § 39710 et seq.)
  - a) Maximize economic, environmental, and public health benefits to the state;
  - b) Foster job creation by promoting in-state GHG emission reduction projects carried out by Californian workers and businesses;
  - c) Complement efforts to improve air quality;
  - d) Provide opportunities for businesses, agencies, tribes, nonprofits, and other community institutions to participate in and benefit from efforts to reduce GHG emissions; and

- e) Lessen the impacts and effects of climate change on the state's communities, economy, and environment.

This bill:

- 1) Defines, for the purposes of this legislation:
  - a) "Covered program" as a federal government program, as outlined in the Interim Implementation Goals for the Justice40 Initiative, that makes covered investment benefits in one or more of:
    - i) Climate change;
    - ii) Clean energy and energy efficiency;
    - iii) Clean transportation;
    - iv) Affordable and sustainable housing;
    - v) Training and workforce development related to climate, natural disasters, environment, clean energy, clean transportation, housing, water and wastewater infrastructure, and legacy pollution reduction;
    - vi) Remediation and reduction of legacy pollution; or
    - vii) Critical clean water and waste infrastructure.
  - b) "Construction" as construction, reconstruction, rehabilitation, modernization, alternation, conversion, extension, repair, or improvement of building, structures, highways, or other real property.
  - c) "Infrastructure" as all sectors included in the federal IJIA, including transportation, water, energy, broadband, and resilience and rehabilitation of the nation's natural resources.
  - d) "Historically used" as a definition that a state agency has used to allocate funding, resources, or technical assistance for a given program and has either given the public the opportunity to submit a public comment on the definition or has been codified in statute or adopted through program guidelines or regulatory processes.
  - e) "Disadvantaged community" as a community identified as disadvantaged by the CalEPA using the CalEnviroScreen or an alternate definition historically used by a state agency for its programs to equitably reach communities, geographic areas, or individuals in most need of investment.
  - f) "Disadvantaged unincorporated community" as a fringe, island, or legacy community in which the median household income is 80 percent or less than the statewide median household income.
  - g) "Low-income communities" as census tracts with median household incomes at or below 80 percent of the statewide median income, median household incomes below the threshold designated by the Department of Housing and Community Development, or an alternate definition historically used by a state agency.

- h) “Low-income households” as households with household incomes that are at the same thresholds as those for low-income communities.
- 2) Requires state agencies, to the extent applicable and not in conflict with federal law and funding guidelines, allocate a minimum of 50 percent of appropriated IJJA funds to projects that provide direct benefits to disadvantaged and disadvantaged unincorporated communities in the state.
  - 3) Requires state agencies, to the extent applicable and not in conflict with federal law and funding guidelines, allocate a minimum of an additional 10 percent of appropriated IJJA funds to projects that provide direct benefits to low-income communities or low-income households in the state.
  - 4) Requires each state agency to submit to the appropriate Budget Committees a plan on how it will meet these requirements when making a budget request and annually provide a public update on the implementation of these requirements until the appropriated moneys are fully expended.
  - 5) Requires a state agency using an alternative, historically used, definition when appropriating these funds to post the definition on their website, include the definition to its report to the Legislature, and solicit public comment for that report for 20 days and hold at least one public hearing.
  - 6) Clarifies it is the intent of the Legislature that each state agency, to the extent applicable and not in conflict with federal law, ensure that any funds avoid substantial burden to disadvantaged, unincorporated disadvantaged, low-income communities, and low-income households and maximize economic co-benefits by including labor workforce standards, give preference to projects with wage standards, and other project labor agreements.
  - 7) Requires that to receive IJJA funds, to the extent permitted by federal law, which any project costing more than five million dollars must be carried out pursuant to a project labor agreement that includes provisions to encourage apprenticeship training and the hiring of disadvantaged workers.
  - 8) Requires state agencies administering IJJA funds, to the extent applicable and not in conflict with federal law and funding guidelines, to:
    - a) Provide direct, meaningful, and assured benefits that address an important community need for disadvantaged, unincorporated disadvantaged, and low-income communities, and low-income households, in alignment with

- the Funding Guidelines for Agencies that Administer California Climate Investments established by the Air Resources Board;
- b) Conduct, or participate in, outreach and engagement with disadvantaged, unincorporated disadvantaged, and low-income communities and prioritize projects that demonstrate community support;
  - c) Consider a project's potential impacts on goals that include advancing environmental justice, reducing greenhouse gas emissions, promoting climate adaptation and resilience, consulting with and incorporating input from communities, promoting register apprenticeship programs, and creating high-road jobs; and
  - d) Coordinate with the Strategic Growth Council's Community Assistance for Climate Equity Program to assist communities in applying for and accessing federal funds for infrastructure projects.
- 9) Establishes within the Strategic Growth Council the Justice40 Advisory Committee, authorized to:
- a) Identify infrastructure deficiencies in disadvantaged, unincorporated disadvantaged, and low-income communities throughout the state;
  - b) Recommend projects under any covered program for federal funding;
  - c) Recommend guidelines for how state agencies can use federal funds to achieve better climate, labor, and equity outcomes.
- 10) Requires the Justice40 Advisory Committee to consist of not less than eight members appointed by the Strategic Growth Council including:
- a) At least one representative of a Native American tribal community;
  - b) At least one representative of a local or regional group that works on environmental issues affecting frontline communities;
  - c) A representative of a local or regional group that works on transportation equity;
  - d) A representative of an environmental justice organization;
  - e) At least one representative of an equity- or racial justice-focused organization that works with a disadvantaged community;
  - f) At least one representative of a local or regional group that works with a low-income community;
  - g) A representative of a public sector labor union; and
  - h) A representative from a labor union that represents building and construction trades.
- 11) Requires the committee to submit a report to the Legislature on or before December 31, 2024 that identifies any recommendations it has developed.

Requires the committee to submit a report on or before December 31, 2027 on the expenditure of IIJA funds and an evaluation of state agencies' success in meeting the requirements of this bill.

- 12) Sunsets the bill's provisions on January 1, 2031, or until January 1 of the year following the submission of the 2027 report, whichever is earlier.

## Background

- 1) *Executive Order tackling the Climate Crisis and the Justice 40 Initiative.* On January 27, 2021, President Biden signed Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad. Within this Executive Order was the creation of the Justice40 Initiative, tasked with publishing recommendations on how to deliver at least 40% of the overall benefits from federal investments in clean energy, transit, housing, workforce development, pollution remediation, and the development of clean water infrastructure to disadvantaged communities.

On July 20, 2021, OMB, the Council on Environmental Quality, and the White House Office of Domestic Climate Policy issued interim guidance for federal agencies on implementing the Justice40 Initiative, launched the Justice40 Pilot Program, and established accountability and transparency tools. The interim guidance document instructs agencies on defining DACs, types of programs covered by the guidance, how to calculate benefits to disadvantaged communities, stakeholder engagement, and reporting. This guidance covers programs that include direct and indirect investments (and program outcomes) that positively impact disadvantaged communities, such as reduction of GHG emissions, capping of abandoned oil and gas wells, improvement in public transportation accessibility, reduction in housing costs, and increased access to safe drinking water.

The Justice40 Pilot Program identifies 21 priority programs that are to immediately begin increasing benefits to DACs. The goal of the Pilot Program is to provide a model for other agencies to inform their work to achieve the goals of the Justice40 Initiative. The programs include, in part, the Department of Homeland Security Flood Mitigation Assistance program, the Environmental Protection Agency Drinking Water State Revolving Fund, the Department of Housing and Urban Development Lead Hazard Reduction and Healthy Homes Grants, and the Department of Agriculture Rural Energy for America Program.

- 2) *Infrastructure Investment and Jobs Act*. In the fall of 2021, Congress passed and the President signed the Infrastructure and Investment and Jobs Act (Public Law 117-58) or Bipartisan Infrastructure Deal, which provides \$1.2 trillion (\$550 billion of which is new spending) to invest in infrastructure. According to the White House, the IIA:

“Will rebuild America’s roads, bridges and rails, expand access to clean drinking water, ensure every American has access to high-speed internet, tackle the climate crisis, advance environmental justice, and invest in communities that have too often been left behind. The legislation will help ease inflationary pressures and strengthen supply chains by making long overdue improvements for our nation’s ports, airports, rail, and roads. It will drive the creation of good-paying union jobs and grow the economy sustainably and equitably so that everyone gets ahead for decades to come. Combined with the President’s Build Back Framework, it will add on average 1.5 million jobs per year for the next 10 years.”

Among the IIA’s spending priorities, it will invest: \$55 billion to expand access to safe drinking water and remove lead pipes, including in Tribal Nations and DACs; \$65 billion to provide reliable, high-speed internet through broadband infrastructure; \$110 billion to repair roads, bridges, and support major, transformational projects; \$39 billion for public transit; \$17 billion in port infrastructure and waterways; \$25 billion in airports to address repair and maintenance backlogs, reduce congestion and emissions, and drive electrification and other low-carbon technologies; \$66 billion in additional rail funding; \$47.5 billion for a national network of electric vehicle chargers; \$65 billion in clean energy transmission infrastructure; \$50 billion to improve climate resilience; and, \$21 billion to clean up Superfund and brownfield sites.

## Comments

- 1) *Purpose of Bill*. According to the author, “President Biden’s Justice40 Initiative is a remarkable federal goal for 40% of federal Infrastructure dollars to go to disadvantaged communities. States will ultimately determine if these investments are implemented equitably. Without deliberate attention to ensure high-road outcomes, these investments run the risk of repeating inequitable infrastructure development and inadvertently funding a race-to-the-bottom approach that hurts vulnerable Californians and undermines labor and climate goals. By implementing this Advisory Committee composed of stakeholders from impacted frontline communities, labor, tribal communities, and others, the neighborhoods that are most vulnerable to the health hazards of development but which are in need of investment will have leaders making

sure the investment of the State's future is not unduly bore on those same communities' backs. This Advisory Committee will review budget proposals from state agencies and recommend projects for the federal funding.

“As a global leader on climate policy, California is in the position to model best practices. When President Biden announced the Justice40 Initiative, and Governor Newsom accepted the call, the responsibility then fell on the legislature to craft the framework that will allow us to invest the resources we need in the communities that have been starving for them for far too long. With an additional 10% of funds designated for low-income communities, the Justice 40 Act targets both populations with poor air quality as well as those in low-income regions.”

- 2) *A rising tide won't lift all boats equally – on its own.* In order to respond to the climate crisis, we need to make massive investments in new technologies and infrastructure. When large amounts of government funds become available it is people who already have access to capital that are best positioned to take advantage of the opportunity and benefit from the investment. This has occurred often in history, such as in the 1862 Homestead Act which didn't provide subsidies for black Americans or the way white enclaves were able to leverage their power so that California's highways were built not in their neighborhoods, but in communities of color. The Justice40 Initiative and this bill seek to prevent repeating that mistake and instead ensure that investments are targeted to help those most in need and not just those best positioned to advocate for themselves.

According to a forthcoming report by the Gender Equity Policy Institute, 58% of all Californians live in communities targeted for investment under AB 2419. Their demographic analysis of the targeted communities found that 69% of people of color in California live in a targeted community. The disadvantaged communities are primarily located in central California and in major metro areas like Los Angeles and San Francisco. The low-income communities are more broadly distributed, though many are in northern California, and encompass several rural areas of the state.

- 3) *Building the high road.* Optimizing climate policy outcomes while supporting the creation of, and access to, family-supporting jobs is known as a “high-road” approach to economic development. A high-road economy supports businesses that compete on the basis of the quality of their products and services by investing in their workforces; these businesses pay the wages and benefits necessary to attract and retain skilled workers, who in turn perform high-



quality work. Both the Justice40 Initiative and this bill are intended to support the creation of high-road jobs.

- 4) *Defining disadvantaged.* There are a number of ways to define what makes a community disadvantaged. In general, DAC refers to communities that disproportionately face a combination of environmental, economic, and health burdens, but developing specific definitions for programs is challenging. Federally, different agencies have varying definitions, depending on the focus of the agency. Similarly, California has different definitions of disadvantaged. For most programs within CalEPA, statute generally relies on CalEPA's CalEnviroScreen mapping tool that identifies communities by census tract that are most affected by multiple sources of pollution, and where people are especially vulnerable to the effects of pollution. Department of Water Resources and State Water Resources Control Board programs rely on a definition based solely on household income. Choosing one of these definitions over the other runs the risk of excluding vulnerable groups that have historically relied on interventions from these agencies. The author has recently amended the bill with a new definition that gives recognition to previous definitions of disadvantaged communities while maintaining the primary reference to the widely used CalEnviroScreen-based definition.

#### **DOUBLE REFERRAL:**

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Governmental Organization Committee.

**SOURCE:** APEN, California Green New Deal Coalition, Greenlining Institute, SCOPE LA

#### **SUPPORT:**

350 Bay Area Action  
 350 Conejo / San Fernando Valley  
 350 South Bay Los Angeles  
 350 Southland Legislative Alliance  
 350 Ventura County Climate Hub  
 Active San Gabriel Valley  
 Advancement Project  
 Alliance of Catholic Health Care  
 Asian Pacific Environmental Network  
 Black Women for Wellness  
 CA Coalition for Clean Air

California Calls  
California Environmental Voters  
California Labor Federation, Afl-cio  
Ceja Action  
Center for Climate Change & Health  
Center for Community Action and Environmental Justice  
Center for Environmental Health  
Center on Race, Poverty & the Environment  
Central Coast Energy Services  
Central Valley Partnership  
Ceres  
Clean Air Task Force  
Climate Action Campaign  
Climate Center; the  
Climate Equity Policy Center  
Climate Resolve  
Climateplan  
Cloverdale Indivisible  
Coalition for A California Green New Deal  
Communities for A Better Environment  
Community Water Center  
Community Clinic Association of Los Angeles County (CCALAC)  
County of Los Angeles Board of Supervisors  
Courage California  
Del Paso Heights Growers' Alliance  
Emerald Cities Collaborative  
Environmental Defense Fund  
Esperanza Community Housing Corp  
Green for All  
Greenlining Institute  
Grid Alternatives  
I Am Green, INC.  
Idle No More Sf Bay  
Indivisible Alta Pasadena  
Indivisible California Green Team  
Indivisible Marin  
Indivisible Media City Burbank  
Indivisible Mendocino  
Indivisible Riverside  
Indivisible Sacramento  
Indivisible San Jose  
Indivisible Sonoma County  
Indivisible South Bay LA  
Indivisible Stanislaus

Indivisible Ventura  
Inglewood; City of  
Jobs With Justice San Francisco  
LA Waterkeeper  
Latino Coalition for A Healthy California  
Leadership Counsel for Justice and Accountability  
Let's Green Ca!  
Little Manila Rising  
Livermore Indivisible  
Long Beach Alliance for Clean Energy  
Los Angeles Alliance for A New Economy  
Move LA  
National Resources Defense Council  
Nextgen California  
Pacoima Beautiful  
Physicians for Social Responsibility - Los Angeles  
Poder  
Policylink  
Public Advocates INC.  
Richmond Our Power Coalition  
Rising Sun Center for Opportunity  
Romero Institute  
Rooted in Resistance  
San Diego Green New Deal Alliance  
San Diego350  
San Francisco Peninsula Energy Services  
San Francisco Peninsula Services  
Sierra Club California  
Stand Strong LA Indivisible  
State Building & Construction Trades Council of California  
Strategic Concepts in Organizing and Policy Education  
Union of Concerned Scientists  
Upte Local 9  
Valley Women's Club of San Lorenzo Valley  
Voices for Progress  
Vote Solar

**OPPOSITION:**

Association of California Water Agencies (ACWA)  
Orange County Water District  
Western Electrical Contractors Association

**ARGUMENTS IN SUPPORT:** According to the sponsors of the bill, “Throughout the history of the United States, many infrastructure policies and investments have cemented inequities in housing, education, economic opportunity, health, and environmental pollution. In California, we are directly witnessing the ways that under-investment in disadvantaged communities results in disproportionate burdens on the one hand, and a lack of opportunity on the other. These highly impacted and disadvantaged communities are overwhelmingly low-income communities of color...

“AB 2419 commits California to the Justice40 Initiative by requiring at least 40% of federal climate, clean energy, and infrastructure funds go to projects that provide direct benefits to disadvantaged communities, and an additional 10% of funds provide benefits to low-income communities and households. By putting investment targets into law, AB 2419 makes sure that federal climate and infrastructure funds will address decades of underinvestment, especially in highly impacted, low-income communities of color that have been historically disadvantaged through policy choices. These targets ensure equitable investment while also giving state agencies flexibility to use definitions of “disadvantaged communities” that each agency has historically used to equitably reach communities, geographic areas, or individuals most in need of investment. AB 2419 also ensures that these investments create good jobs by requiring all investments with federal funds to uphold high-road labor standards. AB 2419 will also establish an Advisory Committee to ensure community representation, accountability, and provide recommendations on how to improve climate, equity, and labor outcomes.

“Without AB 2419, California risks reproducing the same inequitable outcomes that exist now from decades of neglect and disinvestment. This bill puts the state on a path for infrastructure to be a driver of inclusive economic opportunity.”

**ARGUMENTS IN OPPOSITION:** According to the Western Electrical Contractors Association “Among its other provisions, AB 2419 requires, “To the extent permitted by federal law, federal funds may be allocated or used to support a construction project that will cost in excess of five million dollars (\$5,000,000) only if the construction work will be performed pursuant to a project labor agreement that includes provisions to encourage apprenticeship training and the hiring of disadvantaged workers.

“As you undoubtedly know, projects funded by the State above a de-minimis amount are public works. As such, these projects must pay union wages (aka “prevailing wages”), employ apprentices in specific ratios, and use, in many cases, disadvantaged business enterprises (DBE) or disabled veteran business enterprises

(DVBE). None of these requirements in State law require a Project Labor Agreement (PLA).

“Unions created PLAs to keep non-signatory contractors, apprentices, and journeyworkers from being employed on publicly funded projects. PLAs include discriminatory hiring requirements that prefer certain construction contractors and force employer contributions to union trust funds. In addition, the covered employee may never vest – resulting in “wage theft” from these workers. Also, PLAs have increased construction costs by as much as 20%.

“In addition, WECA believes that PLAs reduce the work performed for each dollar spent. For example, in July 2011, National University’s Institute for Policy Research concluded that costs are 13 to 15 percent higher when California school districts perform school construction under a Project Labor Agreement. In inflation-adjusted dollars, a PLA results in \$28.90 to \$32.49 per square foot higher construction costs.”

**-- END --**