

## Taking the High Road to Cleaner Air for Kids and Communities

*Memo for Local Progress members on how to use high-road procurement policy to clean our air and create good jobs with electric vehicles*

### Part I: The status quo is harmful to communities of color, workers and the environment

**Medium and heavy duty vehicles (MHDVs) owned by local governments, like school buses, emit significant amounts of pollution which disproportionately impact communities of color.**

Because of the size and significance of the fleets they serve in, school buses, transit buses, garbage trucks, and other MHDVs owned and operated by school districts and local governments present a key opportunity to address environmental injustice and climate change. Buses and trucks contribute 27 percent of U.S. greenhouse gas emissions from transportation, despite only representing 10 percent of vehicles on the road and are responsible for 57% of on-road fine particle (PM2.5) emissions, a harmful form of air pollution.<sup>1</sup> Due to environmental racism in zoning and land use, the public health impacts of these diesel fleets are often concentrated in low income communities of color. For example, a study of West Oakland found three times higher diesel pollution than in the rest of the surrounding area because of heavy duty vehicles, which led to higher rates of asthma, stroke and congestive heart failure among residents.<sup>2</sup> Or look to Ward 5 in D.C., where a sprawling city bus depot is planned in the historically Black Brentwood neighborhood after years of similar environmental justice fights against concentrated pollution.<sup>3</sup> Local Progress members are encouraged to deepen their understanding of local environmental justice communities using tools such as the [EPA's EJScreen](#), which map pollution and population data, and can be used to target the electrification of bus/fleet depots to neighborhoods disproportionately burdened by diesel pollution.<sup>4</sup>

### Manufacturing workers face a race to the bottom

Union jobs in vehicle manufacturing in the United States have provided living wages and stability to hundreds of thousands of American working families. Union representation brings higher wages, better benefits, and respect in the workplace for all workers; and what's more, unions are particularly effective at helping close the racial and gender wage gaps.<sup>5</sup> Decades of outsourcing to anti-union jurisdictions have harmed workers and lowered standards. The transition to electric vehicles is urgent and necessary, but it is disrupting the industry and is opening the door to new manufacturers like Tesla with a track record of

<sup>1</sup> [Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020](#), EPA 430-P-22-001 (Washington, D.C.: EPA, 2022); Jimmy O'Dea, [Ready for Work: Now Is the Time for Heavy-Duty Electric Vehicles](#) (Washington, D.C.: Union of Concerned Scientists, December 11, 2019).

<sup>2</sup> "How Pollution Impacts Health in West Oakland," Environmental Defense Fund, accessed July 25, 2022.

<sup>3</sup> Darryl Fears, ["A Black Community in Northeast D.C. is Surrounded by Industrial Pollution. The City Plans to Add More."](#) *Washington Post*, August 4, 2021.

<sup>4</sup> Members in New York City are encouraged to use the [NYC Neighborhood Air Quality and School Bus Depot](#) maps created by the Clean School Bus Coalition. Members in California are encouraged to use CalEPA's [CalEnviroScreen](#).

<sup>5</sup> Natalie Spievaack, ["Can labor unions help close the black-white wage gap?"](#) Urban Institute, February 1, 2019; Economic Policy Institute, ["Unions help reduce disparities and strengthen our democracy,"](#) April 23, 2021.

anti-union behavior. Without thoughtful policies in place, the transition could also trigger a dramatic round of outsourcing, lost jobs and degraded work standards.<sup>6</sup> But there is hope: if done right, the transition to electric vehicles can create new, family-sustaining union jobs from battery and electronics manufacturing to vehicle assembly and installation of charging infrastructure. Local governments have an important role to play in encouraging a high road for workers and communities throughout the transportation supply chain.

**The Solution:** Promote the development of a high road electric vehicle (EV) industry through public purchasing

Thanks to years of advocacy from activists, funding is finally coming from the federal government through the Infrastructure Investment and Jobs Act (IIJA), the Inflation Reduction Act (IRA), and some states including California have offered additional incentives. The IIJA allocates \$5 billion dollars to the EPA's Clean School Bus Program for school bus electrification.<sup>7</sup> The IRA, passed in August 2022, allocates an additional \$1 billion in grants and rebates for electrification of heavy-duty vehicles, including maintenance, training and planning. It also includes major tax credits for commercial EVs, which government entities can receive in the form of a direct tax refund.<sup>8</sup> Local jurisdictions can leverage these funds and use their procurement power to ensure high job standards and inclusive hiring, training and promotion practices, and can target the deployment of electric fleets to neighborhoods most impacted by the public health harms of environmental racism.

## Part II: High Road Procurement Policies

***Public purchasing provides progressive public officials with the opportunity to stop the race to the bottom in job quality and environmental impact.***

When states, counties, and cities purchase goods and services, they have a lot of say over employment conditions at the companies that make the goods or provide the services. As market participants, governments can often require that their vendors pay higher wages and recruit, hire, train, and promote workers fairly and inclusively. Each year, state and local governments spend an estimated \$1.5 trillion on goods and services, giving them significant power to shape the market.<sup>9</sup>

For manufacturing in particular, one of the fundamental challenges for public officials who want to promote good jobs or a healthy environment is the race-to-the-bottom competition between states and localities. State and local governments have some power to require fair employment and environmental practices within their borders; however, companies in many sectors—especially manufacturing—can thwart such measures by simply locating somewhere else. Many U.S. manufacturers take the low road by deliberately planting themselves in the jurisdictions with the fewest worker protections and worst environmental standards. However, by factoring in job quality when awarding contracts to purchase manufactured goods, progressive officials can help spark a race to the top in which companies no longer compete on how much they can exploit their workers, but on efficiently providing high-quality goods and services that create good, inclusive jobs.

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<sup>6</sup> Michael Sainato, "[Tesla workers speak out: 'Anything pro-union is shut down really fast.'](#)" *Guardian*, September 10, 2018; Jim Barrett and Josh Bivens, "[The stakes for workers in how policymakers manage the coming shift to all-electric vehicles](#)," Economic Policy Institute, September 2021.

<sup>7</sup> "[Clean School Bus Program](#)," Environmental Protection Agency, accessed July 25, 2022.

<sup>8</sup> 26 U.S.C. 45W. The credit for commercial EVs is equal to 30% of the vehicle cost, up to \$7,500 for light duty vehicles and \$40,000 for heavy duty vehicles.

<sup>9</sup> Danielle M. Conway, "Sustainable Procurement Policies and Practices at the State and Local Government Level," *Greening Local Government*, eds. Keith H. Hirokawa and Patricia E. Salkin (Chicago: American Bar Association, 2012), 43-74.

There is an even more fundamental reason to use progressive purchasing policies: it's the principle that when the government spends public money, it should do so in ways that truly benefit the public. That means thinking about how purchasing can do the most benefit to workers, communities, and the environment.

### ***U.S. Jobs Plans: an effective and innovative progressive procurement policy***

The U.S. Jobs Plan (USJP) is a policy template which enables local governments to take job quality and inclusion into account when awarding purchase contracts or grants—and hold companies accountable to their commitments. It has been successfully implemented for purchases of buses and trains at the nation's three largest transit agencies (New York's MTA, CTA in Chicago, and LA Metro) as well as Amtrak, and can be used by local governments. When agencies put out a request for proposals to purchase trains or buses, they can encourage manufacturers to include a USJP in their submission. In the USJP, the manufacturer commits to how many jobs they will create to complete the project, compensation levels for those jobs, and a plan for hiring inclusively. The agency would score these commitments, use the scores as a factor in their evaluation of bids, and include USJP commitments in their final purchase contracts. Manufacturers can earn higher scores by providing USJPs for their suppliers as well.

The specific details of USJP policies can vary, but critical elements include the following:

- Require commitments to be concrete, specific and measurable. Ideally, this should include information on the number of full-time equivalent jobs (FTEs) created for each job classification along with the minimum total hourly compensation they will pay each employee in that classification; total amounts to be spent on training for each employee, and a clear narrative on the company's plans to inclusively recruit, hire, train, retain, and promote workers from underrepresented communities including women, people of color, veterans, and systems-impacted workers. Commitments should not be vague (e.g. applicant simply committing to paying "high-paying jobs") or aspirational (e.g. applicant simply stating it will "work towards increasing workplace diversity" without specific steps or benchmarks.)
- Explicit provisions for transparency. USJPs should be public information, and ideally should be published on the government agency's website to advance transparency and good governance.
- Reporting requirements. Companies must provide information to the agency sufficient to assess the extent to which they met their USJP commitments. This should include a final report and, for contracts that extend over a longer period of time, reports at regular intervals (such as quarterly).
- Penalties, fees, or damages when commitments are not met. The contract must include clear and effective disincentives from falling short on USJP commitments.
- Strong incentives for manufacturers to participate. The USJP score should be a significant factor in the evaluation of bids in order to provide an incentive for manufacturers to make strong workforce commitments.
- Clear description of USJP components and evaluation criteria so that plans can be scored fairly.

The principles behind the USJP can also be adapted for a variety of different jurisdictions and political contexts; Appendix B describes some possibilities in greater detail.

### Part III: Introduction to Community Benefits Agreements

Organized communities can play a powerful role in holding corporations accountable and ensuring that companies respect their workers and the cities in which they locate. A community benefits agreement (CBA) is a binding agreement between a private company and at least one community or labor organization or municipal body.<sup>10</sup> While the specific community benefits can vary depending on the CBA's purpose, a CBA with an EV manufacturer, for example, could outline commitments to specific high-road job quality standards and equity measures including inclusive hiring practices and workforce training. CBAs can also include commitments around affordable housing, environmental protection, and other measures to ensure projects actually benefit the community where they are being built.

Pioneered by the Los Angeles Alliance for a New Economy (LAANE) in the 1990s, CBAs were originally applied to large-scale real estate developments such as stadiums or other downtown redevelopments.<sup>11</sup> The contractors who built such projects had historically used a mostly white, male, out-of-town workforce; but thanks to binding provisions in strong CBAs, companies increasingly have recruited, trained, and employed local residents, people of color and women in high-paying union jobs.

In the context of vehicle manufacturing, the provisions of a CBA are negotiated between the local community coalition and the company, and typically include commitments to equitable hiring, a jobs pipeline with skills training, and provisions to ensure an opportunity for worker voice on the job. Companies also benefit from these agreements, thanks to the broad expertise of community, workforce, education, labor, and environmental partners to help them hire well-trained people from the local community. CBAs can give priority to workers of color, women, veterans, and returning citizens who face systemic barriers to manufacturing careers. Public agencies, particularly in early EV adopting states, are increasingly scoring companies' bids based in part on job quality, training opportunities, and equitable hiring—and CBAs are a good way for companies to make and meet strong commitments that give them an advantage in the bidding process. These are win-win partnerships.

Local elected officials can support CBAs and local job creation by adopting high-road procurement policies like the U.S. Jobs Plan. Public officials can also encourage companies to partner with community coalitions on job training and equitable hiring.

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<sup>10</sup> "CBA" also frequently stands for "collective bargaining agreement," which is an agreement between a labor organization representing workers and their employer that establishes the terms and conditions of employment.

<sup>11</sup> See Local Progress's 2019 policy brief on community benefits agreements at <https://localprogress.org/wp-content/uploads/2019/01/Community-Benefits.pdf>.

## Community benefits agreement with Proterra in Southern California

Proterra is a major manufacturer of electric public transit buses, which have been deployed in more than 100 cities across the country. Signed in late 2020, the CBA between Proterra, United Steelworkers Local 675, and Jobs to Move America is bringing about transformative investments in Los Angeles communities to hire, train, and support workers for skilled union jobs in zero-emissions bus manufacturing at Proterra's City of Industry facility. The CBA has led to the development of a specialized electric bus manufacturing technology pre-hire training program. JMA coalition partners also provide services to help workers overcome employment barriers such as child care and transportation access. Three cohorts have completed the pre-hire and apprenticeship training, and more than a dozen graduates have been hired full-time.



### **One Proterra worker's story**

Armando was born and raised in East LA in a low-income family of 12 brothers, many of whom he saw impacted by the criminal legal system. Earlier in his life, Acosta struggled with addiction. Now, at 51 years old, he is working through a successful recovery, has a good union job, and is supporting others in their own recovery.



Armando completed the pre-hire training program in 2021 and got a job with good pay and benefits, including medical, dental and vision insurance; a 401K; stock ownership; and union membership. "The benefits are great, people are very nice, the money is good, hours are good," Armando says.

Armando now works the night shift as a battery technician during the week, and then works as an addiction counselor on the weekends.

Armando credits his good, union job for providing a healthy work-life balance, which allows him to enjoy and maintain his sobriety while also serving as a guide to others who are struggling with some of the same challenges he has faced. "I get to save lives and change the world as well. Proterra's making a huge difference when it comes to clean air. They're going to change the industry, and it's awesome to be a part of that."

**Photo captions:** [Top right] Newly-hired Proterra worker Jeffrey Cleveland receives his new pair of work boots. Photo: Dr. Michelle Yanez, 2021. [Bottom left] Photo from Proterra's pre-hire training program's first cohort, (from left to right): Jacob (Proterra worker), Bryce (Citrus College Instructor/Program Coordinator), and Armando. Photo: Dr. Michelle Yanez, 2021.

## Conclusion

Now is the time to adopt resolutions and policies to transition municipal fleets to electric. Electric technology has arrived and local governments are in a position to hasten the pace of adoption through deliberate policy choices.. The sooner we electrify, the sooner we can reduce the harm being done to our climate and our communities. And by adopting electric vehicles faster, local governments can help the U.S. develop its EV industry and prevent major job losses in vehicle manufacturing.

However, it is not enough to just electrify. As with any major technological change, electrification comes with big impacts on workers. Adopting progressive purchasing policies at the same time will help minimize job losses, create new jobs in the EV sector, and set up a race-to-the-top to create good, inclusive jobs.

The discussion above can help local governments and school districts get a start. For more information on transitioning to electric school buses, see Jobs to Move America's comprehensive report, [\*Driving the Future\*](#).<sup>12</sup>

Organizations like Local Progress and JMA can provide assistance to officials who are seeking to pass these policies in their own jurisdictions. For additional information, please contact:

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- Nate Horrell, Policy and Research Analyst, Local Progress, [nhorrell@localprogress.org](mailto:nhorrell@localprogress.org).

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<sup>12</sup> Ian Elder, [\*Driving the Future: How to Electrify our School Buses and Center Kids, Communities, and Workers in the Transition\*](#) (Los Angeles, CA: Jobs to Move America, May 2022).

## Appendix A: Constraints and opportunities for local good jobs policies

### ***Promoting unions and federal labor law preemption***

By far, the most effective way to make sure that jobs provide high wages, family-sustaining benefits, safe and fair working conditions, and respect on the job is to promote unionization. However, federal preemption severely restricts the ability of local and state government entities to take any regulatory action that touches upon labor relations. There are narrow circumstances in which governments with a proprietary interest in an economic project can require the companies they do business with to enter into project labor agreements or labor peace agreements that include no-strike clauses, but such requirements are typically imposed on a case-by-case basis and must be narrowly tailored to promote or protect the business purpose of the project.<sup>13</sup> We recommend working with your local unions and attorneys that advise your jurisdiction to best understand what is permissible under federal law.

### ***Living wages, minimum wages, fair scheduling laws, and more***

Given the broadness of federal labor law preemption, what can states and localities do? Potentially, quite a lot. There is a critical distinction to be made between labor law and employment law. Labor law deals explicitly with collective action by workers, including organizing within traditional labor unions. As described above, labor law is comprehensively covered by the federal National Labor Relations Act (NLRA) and states and localities have almost no ability to regulate in that arena. However, state power over employment law, which deals explicitly with the conditions of employment, is much less restricted federally. Starting in 1994, when Baltimore enacted the nation's first *living wage* law which required higher minimum wages for employees working under city contracts, hundreds of jurisdictions have adopted living wages, higher minimum wages, and other employee protections thanks to sustained organizing by communities, faith groups, labor, and other allies.

Living wage laws, higher minimum wages, prevailing wage laws, and other workplace protections are critical tools for improving conditions for millions of workers, but they have some limitations. First of all, many of these provisions are not specific to one sector of the economy, and therefore can be blunt instruments. What may be an ambitious minimum wage in one industry can be anemic in another. Even within an industry, different classifications have different needs and may be subject to different parts of the labor market. That's one of many reasons unions are an ideal way to maximize working conditions: each union negotiates with their own industry to win the best possible benefits for their members in their sector, occupation, and region.

Second, many states governed by the political right have enacted their own preemption laws to prevent progressive policymakers from passing laws to ensure fair wages and working conditions. For just one example, in 2017, Wisconsin Governor Scott Walker signed a law prohibiting localities from requiring project labor agreements, despite the fact that PLAs create good jobs and help ensure timely and efficient

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<sup>13</sup> *San Diego Building Trades v. Garmon*, 359 U.S. 236 (1959) and *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S.132 (1976); but *Building & Construction Trades Council v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218 (1993) (known as *Boston Harbor*).



construction practices on government projects.<sup>14</sup> The Economic Policy Institute has created an [informative map](#) of preemption policies by state.<sup>15</sup>

Finally, it is extremely challenging for regulatory policies to impact wages for goods and services that are imported into a state or municipality. That's a problem because states and localities often engage in race-to-the bottom competitions to win over companies through tax giveaways, weak environmental laws, and poor working conditions. For example, a city like Nashville may be afraid that if it sets a high minimum wage, they will lose manufacturing jobs or fail to gain new ones. In the end, not only do wages outside the city remain low, but the city itself feels it cannot raise standards in its own city.

Progressive procurement policies can address all three of the above issues. The basic principle is this: when governments spend public dollars to purchase goods or services, they should do so in a way that promotes their public policy goals, such as combating climate change, promoting social equity, and creating good jobs. Such policies can incentivize the adoption of high-road labor practices, while avoiding concerns around preemption. And in many cases, they can promote better wages and working conditions without governments needing to determine what the ideal minimum wages for each sector and jobs classification should be; instead, companies can compete, in part, on how well they can pay their workers, creating a race to the top.

## Appendix B: Variations on the U.S. Jobs Plan

The USJP can be adapted for a variety of different situations and policy environments. With some tweaks, it can be a valuable tool in government investments other than direct purchases, and can be helpfully applied to sectors beyond manufacturing. Sometimes, state rules may constrain the extent to which local jurisdictions can fully implement the USJP. Even so, elements of the USJP can still help create transparency and promote good jobs and a cleaner environment. Below are some ways in which USJP can be adapted:

- USJP to create good service jobs. The USJP has so far been used to promote good jobs in manufacturing, but in many cases, may also be a valuable tool for promoting high-road labor practices for government-contracted services as well.
- USJP for funding programs. The USJP was originally designed to be used in public procurement processes, but it also could be an ideal tool for use in government funding initiatives, such as EV incentive programs or economic development grants. Such programs usually include explicit job-creation aims—all the more reason to ensure that the jobs being created pay family-sustaining wages and benefits and hire and promote inclusively.
- State procurement law and best-value procurement. In order to be able to include job quality as part of the bid evaluation process, state law must allow (or not prohibit) the use of *best-value procurement*. “Best-value,” as opposed to “lowest-bidder,” means that agencies may use a variety of factors to evaluate bids, rather than being forced to award contracts to the lowest “responsible” bidder. Best value purchasing is commonly used in public procurements; however, sometimes state governments require lowest-bidder purchasing. Even when agencies can’t use best-value procurement, they can still likely require bidders to make enforceable, transparent commitments on job quality and inclusion; they simply cannot use that information as a factor in awarding bids. Depending on the nuances of procurement laws in each state, government officials can creatively

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<sup>14</sup> Wis. SB 3 (Reg. Session 2017).

<sup>15</sup> “Workers’ rights preemption in the U.S.,” Economic Policy Institute, <https://www.epi.org/preemption-map/>.



tweak the USJP policy to design the most effective policy possible within the framework of state law.

- Local or state job bonus when no federal funds are used. Because of rules imposed in the Uniform Guidance of the Office of Management and Budget (OMB) during the Reagan Administration, projects using federal grants cannot typically include any type of preference for contractors who create local or in-state jobs. However, this restriction does not apply when governments use only in-state funds. In such cases, agencies can provide a bonus for jobs that are created locally or in-state. Even without local preferences, USJPs can support local jobs by cutting off the low road.
- Race to the top for environmental impact. Finally, a USJP-style procurement policy could be used to promote socially just environmental outcomes as well. For example, agencies could score manufacturing companies' plans around recycling minerals and use of sourcing responsibly mined minerals, or transportation operators' use of electric vehicles.

A final way that local governments can use their procurement power is to reach out directly to companies with their concerns. This tactic can be especially powerful when taken as a collective action.