

AMENDED IN SENATE JUNE 28, 2002

AMENDED IN SENATE JUNE 10, 2002

AMENDED IN ASSEMBLY JANUARY 10, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1000**

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**Introduced by Assembly Member Simitian**

February 23, 2001

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An act to add and repeal Chapter 3.5 (commencing with Section 81700) of Part 49 of the Education Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 1000, as amended, Simitian. Public works: design-build contracts.

Under existing law, a community college district governing board is required to ~~let award~~ any contract for a public project that costs \$15,000 or more to the lowest responsible bidder.

Existing law also requires community college districts constructing community college facilities to meet various requirements, including requirements pertaining to seismic safety, the contents of plans for school construction, and the acquisition of proposed schoolsites.

This bill would authorize ~~the governing boards of 4 specified community college districts~~ *community college district boards* to enter into a design-build contract, as defined, until January 1, 2008. The bill would authorize factors in addition to price and cost to be considered in awarding a contract for the design and construction of a community college facility that exceeds \$10,000,000. The bill would require the Board of Governors of the California Community Colleges to develop



guidelines for design-build projects no later than June 30, 2003. The bill would, among other things, would require each contract to prohibit construction or alteration of any community college facility without the prior written approval of the plans by the Department of General Services. *The bill would require the chancellor to notify community college districts about their ability to use the design-build process under the bill.* The bill would require a community college district that elects to use the design-build process to submit a report to the Legislative Analyst, and would require the Legislative Analyst to submit an interim report and a final report to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 3.5 (commencing with Section 81700)  
2 is added to Part 49 of the Education Code, to read:

3  
4 CHAPTER 3.5. DESIGN-BUILD CONTRACTS  
5

6 81700. (a) It is the intent of the Legislature to enable  
7 community college districts to utilize safe and cost effective  
8 options for building and modernizing community college  
9 facilities. The Legislature has recognized the merits of the  
10 design-build procurement process in the past by authorizing its use  
11 for projects undertaken by the University of California, specified  
12 local government projects, including school districts, and state  
13 office buildings.

14 (b) The Legislature also finds and declares that community  
15 college districts utilizing a design-build contract require a clear  
16 understanding of the roles and responsibilities of each participant  
17 in the design-build process. The benefits of a design-build contract  
18 project delivery system include an accelerated completion of the  
19 projects, cost containment, reduction of construction complexity,  
20 and reduced exposure to risk for the community college district.  
21 The Legislature also finds that the cost effective benefits to the  
22 community college districts are achieved by shifting the liability  
23 and risk for cost containment and project completion to the  
24 design-build entity.

1       (c) It is the intent of the Legislature to provide an optional,  
2 alternative procedure for bidding and building community college  
3 construction projects.

4       (d) In addition, it is the intent of the Legislature that the full  
5 scope of design, construction, and equipment awarded to a  
6 design-build entity under this chapter shall be authorized in a  
7 single funding phase. The funding phase may be authorized  
8 concurrently with, or separately from, the phase that authorizes the  
9 creation of the performance criteria and concept drawings.

10     (e) It is the intent of the Legislature that design-build  
11 procurement as authorized by this chapter shall not be construed  
12 to extend, limit, or change in any manner the legal responsibility  
13 of public agencies and contractors to comply with existing laws.

14     (f) It is the intent of the Legislature to authorize four  
15 community college districts to use the procedures of this chapter  
16 and to receive a report detailing the effectiveness of these  
17 procedures.

18     81700.5. This chapter applies only to the following  
19 community college districts:

20     (a) The Los Angeles Community College District.

21     (b) The San Jose Evergreen Community College District.

22     (c) The San Mateo Community College District.

23     (d) The West Valley Mission Community College District.

24     81700.5. *The chancellor shall notify community college*  
25 *districts about their ability to use the design-build process under*  
26 *this chapter.*

27     81701. As used in this chapter, the following terms have the  
28 following meanings:

29     (a) “Best value” means a value determined by objective  
30 criteria and may include, but need not be limited to, price, features,  
31 functions, life-cycle costs, and other criteria deemed appropriate  
32 by the community college district.

33     (b) “Design-build” means a procurement process in which  
34 both the design and construction of a project are procured from a  
35 single entity.

36     (c) “Design-build entity” means a corporation, limited  
37 partnership, partnership, or other association that is able to provide  
38 appropriately licensed contracting, architectural, and engineering  
39 services as needed pursuant to a design-build contract.

1       81702. Upon a determination by a community college district  
2 governing board that it is in the best interest of the community  
3 college district, the governing board may enter into a design-build  
4 contract for both the design and construction of a community  
5 college facility if that expenditure exceeds ten million dollars  
6 (\$10,000,000) if, after evaluation of the traditional design, bid,  
7 and build process of community college facility construction and  
8 of the design-build process in a public meeting, the governing  
9 board makes written findings that use of the design-build process  
10 on the specific project under consideration will accomplish one of  
11 the following objectives: reduce comparable project costs,  
12 expedite the project's completion, or provide features not  
13 achievable through the traditional design-bid-build method. The  
14 governing board shall also review the guidelines developed  
15 pursuant to Section 81706 and shall adopt a resolution approving  
16 the use of a design-build contract pursuant to this chapter prior to  
17 entering into a design-build contract.

18      81703. Design-build projects shall progress as follows:

19       (a) (1) The community college district governing board shall  
20 prepare a request for proposal setting forth the scope of the project  
21 that may include, but is not limited to, the size, type and desired  
22 design character of the buildings and site, performance  
23 specifications covering the quality of materials, equipment, and  
24 workmanship, preliminary plans or building layouts, or any other  
25 information deemed necessary to describe adequately the  
26 community college district's needs. The performance  
27 specifications and any plans shall be prepared by a design  
28 professional duly licensed or registered in this state to perform the  
29 services required by the Field Act, as defined in Section 17281.

30       (2) Each request for proposal shall do all of the following:

31          (A) Identify the basic scope and needs of the project or  
32 contract, the expected cost range, and other information deemed  
33 necessary by the community college district to inform interested  
34 parties of the contracting opportunity.

35          (B) Invite interested parties to submit competitive sealed  
36 proposals in the manner prescribed by the community college  
37 district.

38          (C) Include a section identifying and describing the following:

39            (i) All significant factors and subfactors that the community  
40 college district reasonably expects to consider in evaluating

1 proposals, including cost or price and all nonprice related factors  
2 and subfactors.

3       (ii) The methodology and rating or weighting scheme that will  
4 be used by the community college district governing board in  
5 evaluating competitive proposals and specifically whether  
6 proposals will be rated according to numeric or qualitative values.

7       (iii) The relative importance or weight assigned to each of the  
8 factors identified in the request for proposal.

9       (iv) As an alternative to clause (iii), the governing board of a  
10 community college district shall specifically disclose whether all  
11 evaluation factors other than cost or price, when combined, are any  
12 of the following:

- 13       (I) Significantly more important than cost or price.
- 14       (II) Approximately equal in importance to cost or price.
- 15       (III) Significantly less important than cost or price.

16       (v) If the community college district governing board wishes  
17 to reserve the right to hold discussions or negotiations with  
18 responsive bidders, it shall so specify in the request for proposal  
19 and shall publish separately or incorporate into the request for  
20 proposal applicable rules and procedures to be observed by the  
21 community college district to ensure that any discussions or  
22 negotiations are conducted in a fair and impartial manner.

23       (3) Notwithstanding Section 4-315 of Title 24 of the California  
24 Code of Regulations, an architect or structural engineer who is  
25 party to a design-build entity may perform the services set forth in  
26 Section 81138.

27       (b) The community college district shall establish a procedure  
28 to prequalify design-build entities using a standard questionnaire  
29 developed by the Director of the Department of Industrial  
30 Relations pursuant to subdivision (b) of Section 17250.25.

31       (c) The community college district shall establish a procedure  
32 for final selection of the design-build entity. Selection shall be  
33 based on either of the following criteria:

34       (1) A competitive bidding process resulting in lump-sum bids  
35 by the prequalified design-build entities. Award shall be made on  
36 the basis of the lowest responsible bid.

37       (2) Notwithstanding any other provision of this code or of  
38 Section 20650 of the Public Contract Code, a community college  
39 district may use a design-build competition based upon  
40 performance and other criteria set forth by the governing board in

1 the solicitation of proposals. Criteria used in this evaluation of  
2 proposals may include, but need not be limited to, the proposed  
3 design approach, life cycle costs, project features, and project  
4 functions. However, competitive proposals shall be evaluated by  
5 using the criteria and source selection procedures specifically  
6 identified in the request for proposal. Once the evaluation is  
7 complete, all responsive bidders shall be ranked from the most  
8 advantageous to least advantageous to the school district.

9 (A) Any architectural or engineering firm or individual  
10 retained by the governing body of the community college district  
11 to assist in the development criteria or preparation of the request  
12 for proposal shall not be eligible to participate in the competition  
13 with the design-build entity.

14 (B) The award of the contract shall be made to the responsible  
15 bidder whose proposal is determined, in writing by the community  
16 college district, to be the best value to the community college  
17 district.

18 (C) Proposals shall be evaluated and scored solely on the basis  
19 of the factors and source selection procedures identified in the  
20 request for proposal. However, the following minimum factors  
21 shall collectively represent at least 50 percent of the total weight  
22 or consideration given to all criteria factors: price, technical  
23 expertise, life cycle costs over 15 years or more, skilled labor force  
24 availability, and acceptable safety record.

25 (D) The community college district governing board shall issue  
26 a written decision supporting its contract award and stating in  
27 detail the basis of the award. The decision and the contract file  
28 must be sufficient to satisfy an external audit.

29 (E) Notwithstanding any provision of the Public Contract  
30 Code, upon issuance of a contract award, the community college  
31 district governing board shall publicly announce its awards  
32 identifying the contractor to whom the award is made, the winning  
33 contractor's price proposal and its overall combined rating on the  
34 request for proposal evaluation factors. The notice of award shall  
35 also include the agency's ranking in relation to all other responsive  
36 bidders and their respective price proposals and a summary of the  
37 community college district's rationale for the contract award.

38 (F) For the purposes of this chapter, "skilled labor force  
39 availability" means that an agreement exists with a registered  
40 apprenticeship program, approved by the California

1 Apprenticeship Council, which has graduated apprentices in the  
2 preceding five years. This graduation requirement shall not apply  
3 to programs providing apprenticeship training for any craft that  
4 has not been deemed by the Department of Labor and the  
5 Department of Industrial Relations to be an apprenticable craft in  
6 the two years prior to enactment of the act adding this section.

7 (G) For the purposes of this chapter, a bidder's "safety record"  
8 shall be deemed "acceptable" if its experience modification rate  
9 for the most recent three-year period is an average of 1.00 or less,  
10 and its average total recordable injury or illness rate and average  
11 lost work rate for the most recent three-year period does not exceed  
12 the applicable statistical standards for its business category, or if  
13 the bidder is a party to an alternative dispute resolution system as  
14 provided for in Section 3201.5 of the Labor Code.

15 81704. (a) Any design-build entity that is selected to design  
16 and build a project pursuant to this chapter shall possess or obtain  
17 sufficient bonding to cover the contract amount for nondesign  
18 services, and errors and omission insurance coverage sufficient to  
19 cover all design and architectural services provided in the contract.  
20 This chapter does not prohibit a general or engineering contractor  
21 from being designated the lead entity on a design-build entity for  
22 the purposes of purchasing necessary bonding to cover the  
23 activities of the design-build entity.

24 (b) Any payment or performance bond written for the purposes  
25 of this chapter shall use a bond form developed by the Department  
26 of General Services pursuant to subdivision (i) of Section 14661  
27 of the Government Code. The purpose of this subdivision is to  
28 promote uniformity of bond forms to be used on community  
29 college district design-build projects throughout the state.

30 (c) (1) All subcontracts that were not listed by the design-build  
31 entity in accordance with Section 81703 shall be awarded by the  
32 design-build entity.

33 (2) The design-build entity shall do all of the following:

34 (A) Provide public notice of the availability of work to be  
35 subcontracted.

36 (B) Provide a fixed date and time on which the subcontracted  
37 work will be awarded.

38 (3) Subcontractors bidding on contracts pursuant to this  
39 subdivision shall be afforded the protections contained in Chapter

1 4 (commencing with Section 4100) of Part 1 of Division 2 of the  
2 Public Contract Code.

3 (4) In a contract between the design-build entity and a  
4 subcontractor, and in a contract between a subcontractor and any  
5 subcontractor thereunder, the percentage of the retention proceeds  
6 withheld may not exceed the percentage specified in the contract  
7 between the community college district and the design-build  
8 entity. If the design-build entity provides written notice to any  
9 subcontractor who is not a member of the design-build entity, prior  
10 to or at the time the bid is requested, that a bond may be required  
11 and the subcontractor subsequently is unable or refuses to furnish  
12 a bond to the design-build entity, then the design-build entity may  
13 withhold retention proceeds in excess of the percentage specified  
14 in the contract between the community college district and the  
15 design-build entity from any payment made by the design-build  
16 entity to the subcontractor.

17 (5) In accordance with the provisions of applicable state law,  
18 the design-build entity may be permitted to substitute securities in  
19 lieu of the withholding from progress payments. Substitutions  
20 shall be made in accordance with Section 22300 of the Public  
21 Contract Code.

22 (d) The community college district shall establish and enforce  
23 a labor compliance program containing the requirements outlined  
24 in Section 1771.5 of the Labor Code or shall contract with a third  
25 party to operate a labor compliance program containing the  
26 requirements outlined in Section 1771.5 of the Labor Code. This  
27 requirement shall not apply to projects where the school district or  
28 the design-build entity has entered into a collective bargaining  
29 agreement that binds all of the contractors performing work on the  
30 project.

31 81705. (a) The minimum performance criteria and design  
32 standards established pursuant to this chapter by a community  
33 college district for quality, durability, longevity, and life cycle  
34 costs, and other criteria deemed appropriate by the community  
35 college district shall be adhered to by the design-build entity. Any  
36 deviations from those standards may only be allowed by written  
37 consent of the community college district. The governing board  
38 may, and is strongly encouraged to, retain the services of an  
39 architect or structural engineer throughout the course of the project  
40 in order to ensure compliance with this chapter. Any architect or

1 structural engineer retained pursuant to this subdivision shall be  
2 duly licensed and registered in California.

3 (b) The community college district governing board shall be  
4 the employer of the inspector. The project inspector shall be fully  
5 independent from any member of the design-build entity and may  
6 not have any affiliation with any member of the design-build entity  
7 or any of the project subcontractors. The total price of the project  
8 shall be determined either upon receipt of the lump-sum bids as set  
9 forth in paragraph (1) of subdivision (c) of Section 81703, or by  
10 completion of the process pursuant to paragraph (2) of subdivision  
11 (c) of Section 81703.

12 (c) The project inspector shall act under the direction of either  
13 the Director of General Services or a competent, qualified agent  
14 of the community college district.

15 (d) Each contract with a design-build entity shall provide that  
16 no construction or alteration of any community college facility  
17 pursuant to this section shall commence prior to the receipt of the  
18 written approval of the plans, as to the safety of design and  
19 construction, from the Department of General Services.  
20 Compliance with this provision shall be deemed to be in  
21 compliance with Section 81133.

22 (e) The design-build entity shall be liable for building the  
23 facility to specifications set forth in the design-build contract in the  
24 absence of contractual language to the contrary.

25 81706. The Board of Governors of the California Community  
26 Colleges, in consultation with the Secretary for Education, the  
27 Department of General Services, the Energy Resources,  
28 Conservation and Development Commission, Seismic Safety  
29 Commission, community college district representatives, and  
30 industry representatives, develop guidelines for design-build  
31 projects. The guidelines shall be developed no later than June 30,  
32 2003.

33 81707. Each community college district governing board that  
34 adopts the design-build process for a project pursuant to this  
35 chapter shall submit to the Legislative Analyst a report on the  
36 project at the completion of the project. Completion shall have the  
37 same meaning as defined in subdivision (c) of Section 7107 of the  
38 Public Contract Code. This report shall be submitted within 60  
39 days after completion of the project. The Legislative Analyst shall  
40 submit an interim report to the Legislature by January 1, 2005, and

1 a final report to the Legislature by January 1, 2007. The reports  
2 shall include, but not be limited to, all of the following information  
3 as to each project:  
4     (a) The type of facility.  
5     (b) The gross square footage of the facility.  
6     (c) The company or contractor who was awarded the project.  
7     (d) The estimated and actual length of time to complete the  
8 project.  
9     (e) The estimated and actual project cost.  
10    (f) A description of the relative merits of a project procured  
11 pursuant to this chapter and similar projects procured pursuant to  
12 other provisions of this code.  
13    (g) A description of any written protest concerning any aspect  
14 of the solicitation, bid, proposal, or award of the design-build  
15 project, including the resolution of the protest.  
16    (h) Other pertinent information that may be instructive in  
17 evaluating whether the design-build method of procurement  
18 should be continued, expanded, or prohibited.  
19    (i) The findings established pursuant to Section 81702 and a  
20 postcompletion evaluation as to whether the findings were  
21 achieved.  
22    (j) Any Labor Code violations discovered during the course of  
23 construction or following completion of the project, as well as any  
24 fines or penalties assessed.  
25    81708. A community college district shall not commence any  
26 additional design-build projects if 60 days has elapsed after  
27 completion of a design-build project without having filed the  
28 report to the Legislative Analyst's Office required pursuant to  
29 Section 81707.  
30    SEC. 2. This act does not exempt design-build contracts from  
31 otherwise applicable provisions of the Public Contract Code  
32 unless the exemption is granted expressly, or by necessary  
33 implication.  
34    SEC. 3. Unless expressly authorized in this act, no otherwise  
35 applicable provision of the Field Act (Article 3 (commencing with  
36 Section 17365) of Chapter 3 of Part 10.5 of, and Article 7  
37 (commencing with Section 81130) of Chapter 1 of Part 49 of, the  
38 Education Code) may be waived, amended, or ignored by the  
39 community college district or the design-build entity.

1 SEC. 4. This act shall remain in effect only until January 1,  
2 2008, and as of that date is repealed, unless a later enacted statute,  
3 that is enacted before January 1, 2008, deletes or extends that date.

4 SEC. 5. This act shall not apply to contracts in effect prior to  
5 the operative date of this act. Unless expressly set forth in this act,  
6 nothing in this act is intended to affect, expand, alter, or limit rights  
7 or remedies otherwise available at law.

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