

AMENDED IN ASSEMBLY APRIL 18, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1402**

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**Introduced by Assembly Member Simitian**

February 23, 2001

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~~An act to add Section 14670.65 to the Government Code, relating to state public works. An act to add and repeal Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of the Education Code, relating to public works.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1402, as amended, Simitian. ~~State public works: Sacramento~~  
*Public works: design-build contracts.*

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

*Existing law also requires school districts constructing school facilities to meet various requirements, including requirements pertaining to seismic safety, the contents of plans for school construction, use of factory-built school buildings, and the acquisition of proposed schoolsites.*

*This bill would authorize school district governing boards to enter into a design-build contract, as defined, in which factors in addition to price and cost may be considered in awarding a contract for the design and construction of a school facility that exceeds \$10,000,000. The bill would require the Superintendent of Public Instruction to develop guidelines for design-build projects within 6 months after the operative date of the bill. The bill would require each contract to prohibit*

*construction or alteration of any school building without the prior written approval of the plans by the Department of General Services, and would prescribe related matters. The bill would require a school district that elects to use the design-build process to submit its report to the Legislative Analyst, and would require the Legislative Analyst to submit a report to the chairs of the education policy committees of the Senate and the Assembly with any recommendations by January 1, 2005. The provisions of the bill would become inoperative on January 1, 2007.*

~~Existing law generally authorizes the Director of General Services to hire, lease, lease-purchase, or lease with the option to purchase any real or personal property for the use of any state agency, if the director deems the hiring or leasing is in the best interest of the state. Existing law prohibits the director from entering into a lease-purchase agreement that involves office space, unless specifically authorized to do so by the Legislature.~~

~~This bill would authorize the director to purchase, exchange, or otherwise acquire real property and construct facilities within the County of Sacramento or the City of West Sacramento for use by the Department of General Services and other state agencies. The State Public Works Board would be authorized to issue revenue bonds, negotiable notes, or negotiable bond anticipation notes to finance all costs associated with acquisition, design, and construction of office and parking facilities.~~

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.—Section 14670.65 is added to the Government~~  
2     ~~SECTION 1. Chapter 2.5 (commencing with Section~~  
3     ~~17250.10) is added to Part 10.5 of the Education Code, to read:~~

4  
5             ~~CHAPTER 2.5. DESIGN-BUILD CONTRACTS~~

6  
7     ~~17250.10. (a) It is the intent of the Legislature to enable~~  
8     ~~school districts to utilize safe and cost-effective options for~~  
9     ~~building and modernizing school facilities. The Legislature has~~  
10    ~~recognized the merits of the design build procurement process in~~  
11    ~~the past by authorizing its use for projects undertaken by the~~



1 *University of California, specified local government projects, and*  
2 *state office buildings.*

3 *(b) The Legislature also finds and declares that school districts*  
4 *utilizing a design-build contract require a clear understanding of*  
5 *the roles and responsibilities of each participant in the*  
6 *design-build process. The benefits of a design-build contract*  
7 *project delivery system include an accelerated completion of the*  
8 *projects, cost containment, reduction of construction complexity,*  
9 *and reduced exposure to risk for the school district. The*  
10 *Legislature also finds that the cost-effective benefits to the school*  
11 *districts are achieved by shifting the liability and risk for cost*  
12 *containment and project completion to the design-build entity.*

13 *(c) It is the intent of the Legislature to provide an optional,*  
14 *alternative procedure for bidding and building school*  
15 *construction projects.*

16 *(d) In addition, it is the intent of the Legislature that the full*  
17 *scope of design, construction, and equipment awarded to a*  
18 *design-build entity shall be authorized in a single funding phase.*  
19 *The funding phase may be authorized concurrently with, or*  
20 *separately from, the phase that authorizes the creation of the*  
21 *performance criteria and concept drawings.*

22 *(e) It is the intent of the Legislature that design-build*  
23 *procurement as authorized by the act adding this chapter shall not*  
24 *be construed to extend, limit, or change in any manner the legal*  
25 *responsibility of public agencies and contractors to comply with*  
26 *existing laws.*

27 *17250.15. 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 school 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*  
38 *provide appropriately licensed contracting, architectural, and*  
39 *engineering services as needed pursuant to a design-build*  
40 *contract.*



1 17250.20. Upon making a determination by a school district  
2 governing that it is in the best interest of the school district, the  
3 governing board may enter into a design-build contract for both  
4 the design and construction of a school facility if that expenditure  
5 exceeds ten million dollars (\$10,000,000) if, after evaluation of the  
6 traditional design, bid, and build process of school construction  
7 and of the design-build process in a public meeting, the governing  
8 board makes written findings that use of the design-build process  
9 on the specific project under consideration will accomplish one of  
10 the following objectives: reduce comparable project costs,  
11 expedite the project's completion, or provide features not  
12 achievable through the traditional design-bid-build method. The  
13 governing board shall also review the guidelines developed  
14 pursuant to Section 17250.40 and shall adopt a resolution  
15 approving the use of a design-build contract pursuant to this  
16 article prior to entering into a design-build contract.

17 17250.25. Design-build projects shall progress as follows:

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

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

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

33 (B) Invite interested parties to submit competitive sealed  
34 proposals in the manner prescribed by the school district.

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

36 (i) All significant factors and subfactors that the school district  
37 reasonably expects to consider in evaluating proposals, including  
38 cost or price and all nonprice related factors and subfactors.

39 (ii) The methodology and rating or weighting scheme that will  
40 be used by the school district governing board in evaluating



1 *competitive proposals and specifically whether proposals will be*  
2 *rated according to numeric or qualitative values.*

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

5 *(iv) As an alternative to clause (iii), the governing board of a*  
6 *school district shall specifically disclose whether all evaluation*  
7 *factors other than cost or price, when combined, are any of the*  
8 *following:*

9 *(I) Significantly more important than cost or price.*

10 *(II) Approximately equal in importance to cost or price.*

11 *(III) Significantly less important than cost or price.*

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

19 *(3) Notwithstanding Section 4-315 of Title 24 of the California*  
20 *Code of Regulations, an architect or structural engineer who is*  
21 *party to a design-build entity may perform the services set forth in*  
22 *Section 17302.*

23 *(b) (1) The school district shall establish a procedure to*  
24 *prequalify design-build entities using a standard questionnaire*  
25 *developed by the Director of the Department of Industrial*  
26 *Relations. In preparing the questionnaire, the director shall*  
27 *consult with the construction industry, including representatives of*  
28 *the building trades, surety industry, school districts, and other*  
29 *affected parties. This questionnaire shall require information*  
30 *including, but not limited to, all of the following:*

31 *(A) If the design-build entity is a partnership, limited*  
32 *partnership, or other association, a listing of all of the partners,*  
33 *general partners, or association members who will participate as*  
34 *subcontractors in the design-build contract.*

35 *(B) Evidence that the members of the design-build entity have*  
36 *completed, or demonstrated, the experience, competency,*  
37 *capability, and capacity to complete projects of similar size, scope*  
38 *or complexity, and that proposed key personnel have sufficient*  
39 *experience and training to competently manage and complete the*  
40 *design and construction of the project.*



1 (C) *The licenses, registration, and credentials required to*  
2 *design and construct the project, including information on the*  
3 *revocation or suspension of any license, credential, or*  
4 *registration.*

5 (D) *Evidence that establishes that the design-build entity has*  
6 *the capacity to obtain all required payment and performance*  
7 *bonding, liability insurance, and errors and omissions insurance,*  
8 *as well as a financial statement that assures the school district that*  
9 *the design-build entity has the capacity to complete the project.*

10 (E) *Any prior serious or willful violation of the California*  
11 *Occupational Safety and Health Act of 1973 (Part 1 (commencing*  
12 *with Section 6300) of Division 5 of the Labor Code) or the Federal*  
13 *Occupational Safety and Health Act of 1970 (P.L. 91-596), settled*  
14 *against any member of the design-build entity, and information*  
15 *concerning a contractor member's workers' compensation*  
16 *experience history and worker safety program.*

17 (F) *Information concerning any debarment, disqualification,*  
18 *or removal from a federal, state or local government public works*  
19 *project. Any instance where an entity, its owners, officers, or*  
20 *managing employees, submitted a bid on a public works project*  
21 *and were found by an awarding body not to be a responsive bidder.*

22 (G) *Any instance where the entity, its owner, officers, or*  
23 *managing employees defaulted on a construction contract.*

24 (H) *Any prior violations of the Contractors' State License Law*  
25 *(Chapter 9 (commencing with Section 7000) of Division 3 of the*  
26 *Business and Professions Code), excluding alleged violations of*  
27 *federal or state law including the payment of wages, benefits,*  
28 *apprenticeship requirements, or personal income tax withholding,*  
29 *or of Federal Insurance Contribution Act (FICA) withholding*  
30 *requirements, settled against any member of the design-build*  
31 *entity.*

32 (I) *Information concerning the bankruptcy or receivership of*  
33 *any member of the entity, including information concerning any*  
34 *work completed by a surety.*

35 (J) *Information concerning all settled adverse claims, disputes,*  
36 *or lawsuits between the owner of a public works project and any*  
37 *member of the design-build entity during the five-year period*  
38 *preceding submission of the bid pursuant to this section, in which*  
39 *the claim, settlement, or judgment exceeds fifty thousand dollars*



1 (\$50,000). Information shall also be provided concerning any  
2 work completed by a surety during this period.

3 (K) In the case of a partnership or other association that is not  
4 a legal entity, a copy of the agreement creating the partnership or  
5 association and specifying that all partners or association  
6 members agree to be liable for full performance under the  
7 design-build contract.

8 (2) The information required pursuant to this subdivision shall  
9 be verified under oath by the entity and its members in the manner  
10 in which civil pleadings in civil actions are verified. Information  
11 that is not a public record pursuant to the California Public  
12 Records Act (Chapter 3.5 (commencing with Section 6250) of  
13 Division 7 of Title I of the Government Code) shall not be open to  
14 public inspection.

15 (c) The school district shall establish a procedure for final  
16 selection of the design-build entity. Selection shall be based on  
17 either of the following criteria:

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

21 (2) Notwithstanding any other provision of this code or of  
22 Section 20110 of the Public Contract Code, a school district may  
23 use a design-build competition based upon performance and other  
24 criteria set forth by the governing board in the solicitation of  
25 proposals. Criteria used in this evaluation of proposals may  
26 include, but need not be limited to, the proposed design approach,  
27 life cycle costs, project features, and project functions. However,  
28 competitive proposals shall be evaluated by using the criteria and  
29 source selection procedures specifically identified in the request  
30 for proposal. Once the evaluation is complete, all responsive  
31 bidders shall be ranked from the most advantageous to least  
32 advantageous to the school district.

33 (A) Any architectural or engineering firm or individual  
34 retained by the governing body of the school district to assist in the  
35 development criteria or preparation of the request for proposal  
36 shall not be eligible to participate in the competition with the  
37 design-build entity.

38 (B) The award of the contract shall be made to the responsible  
39 bidder whose proposal is determined, in writing by the school  
40 district, to be the best value to the school district.



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

8 (D) The school district governing board shall issue a written  
9 decision supporting its contract award and stating in detail the  
10 basis of the award. The decision and the contract file must be  
11 sufficient to satisfy an external audit.

12 (E) Notwithstanding any provision of the Public Contract  
13 Code, upon issuance of a contract award, the school district  
14 governing board shall publicly announce its awards identifying  
15 the contractor to whom the award is made, the winning  
16 contractor's price proposal and its overall combined rating on the  
17 request for proposal evaluation factors. The notice of award shall  
18 also include the agency's ranking in relation to all other responsive  
19 bidders and their respective price proposals and a summary of the  
20 school district's rationale for the contract award.

21 (F) For the purposes of this chapter, "skilled labor force  
22 availability" means that an agreement exists with a registered  
23 apprenticeship program, approved by the California  
24 Apprenticeship Council, which has graduated apprentices in the  
25 preceding two years. This graduation requirement shall not apply  
26 to programs providing apprenticeship training for any craft that  
27 has not been deemed by the Department of Labor and the  
28 Department of Industrial Relations to be an apprenticable craft in  
29 the two years prior to enactment of this act.

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

38 17250.30. (a) Any design-build entity that is selected to  
39 design and build a project pursuant to this chapter shall possess  
40 or obtain sufficient bonding to cover the contract amount for



1 *nondesign services, and errors and omission insurance coverage*  
2 *sufficient to cover all design and architectural services provided*  
3 *in the contract. This chapter does not prohibit a general or*  
4 *engineering contractor from being designated the lead entity on a*  
5 *design-build entity for the purposes of purchasing necessary*  
6 *bonding to cover the activities of the design-build entity.*

7 *(b) Any payment or performance bond written for the purposes*  
8 *of this chapter shall use a bond form developed by the Department*  
9 *of General Services pursuant to subdivision (i) of Section 14661*  
10 *of the Government Code. The purpose of this subdivision is to*  
11 *promote uniformity of bond forms to be used on school district*  
12 *design-build projects throughout the state.*

13 *(c) (1) All subcontracts that were not listed by the design-build*  
14 *entity in accordance with Section 17250.25 shall be awarded by*  
15 *the design-build entity.*

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

17 *(A) Provide public notice of the availability of work to be*  
18 *subcontracted.*

19 *(B) Provide a fixed date and time on which the subcontracted*  
20 *work will be awarded.*

21 *(3) Subcontractors bidding on contracts pursuant to this*  
22 *subdivision shall be afforded the protections contained in Chapter*  
23 *4 (commencing with Section 4100) of Part 1 of Division 2 of the*  
24 *Public Contract Code.*

25 *17250.35. (a) The minimum performance criteria and design*  
26 *standards established pursuant to this chapter by a school district*  
27 *for quality, durability, longevity, and life-cycle costs, and other*  
28 *criteria deemed appropriate by the school district shall be adhered*  
29 *to by the design-build entity. Any deviations from those standards*  
30 *may only be allowed by written consent of the school district. The*  
31 *governing board may retain the services of an architect or*  
32 *structural engineer who is duly licensed and registered in*  
33 *California through the course of the project, in order to ensure*  
34 *compliance with this chapter.*

35 *(b) The school district governing board shall be the employer*  
36 *of the inspector. The project inspector shall be fully independent*  
37 *from any member of the design-build entity and may not have any*  
38 *affiliation with any member of the design-build entity or any of the*  
39 *project subcontractors. The total price of the project shall be*  
40 *determined either upon receipt of the lump-sum bids as set forth in*



1 paragraph (1) of subdivision (c) of Section 17250.25, or by  
2 completion of the process pursuant to paragraph (2) of subdivision  
3 (c) of Section 17250.25.

4 (c) Each contract with a design-build entity shall provide that  
5 no construction or alteration of any school building pursuant to  
6 this section shall commence prior to the receipt of the written  
7 approval of the plans, as to the safety of design and construction,  
8 from the Department of General Services. Compliance with this  
9 provision shall be deemed to be compliance with Sections 17267  
10 and 17297.

11 (d) The design-build entity and each member of the  
12 design-build entity, shall be liable for building the facility to  
13 specifications as set forth in the design-build contract, and shall  
14 assume the risk of any cost overruns, beyond the costs to the school  
15 district set forth in the design-build contract, that are necessary to  
16 accomplish full performance under the design-build contract.

17 17250.40. The Secretary for Education shall, in consultation  
18 with the Department of General Services, the Energy Resources,  
19 Conservation and Development Commission, Seismic Safety  
20 Commission, school district representatives, and industry  
21 representatives, develop guidelines for design-build projects. The  
22 guidelines shall be developed within six months of the operative  
23 date of this chapter.

24 17250.45. Each school district governing board that adopts  
25 the design-build process for a school construction project shall  
26 submit to the Legislative Analyst a report on the project at the  
27 completion of the project. Completion shall have the same  
28 meaning as defined in subdivision (c) of Section 7107 of the Public  
29 Contract Code. This report shall be submitted within 60 days after  
30 completion of the project. The Legislative Analyst shall report to  
31 the chairs of the education policy committees of the Senate and the  
32 Assembly with any recommendations for changing the  
33 design-build legislation. The Legislative Analyst shall submit the  
34 report by January 1, 2005. The report shall include, but not be  
35 limited to, all of the following information:

36 (a) The type of facility.

37 (b) The gross square footage of the facility.

38 (c) The company or contractor who was awarded the project.

39 (d) The estimated and actual length of time to complete the  
40 project.



1 (e) *The estimated and actual project cost.*

2 (f) *A description of the relative merits of a project procured*  
3 *pursuant to this chapter and similar projects procured pursuant to*  
4 *other provisions of this code.*

5 (g) *A description of any written protest concerning any aspect*  
6 *of the solicitation, bid, proposal, or award of the design-build*  
7 *project, including the resolution of the protest.*

8 (h) *Other pertinent information that may be instructive in*  
9 *evaluating whether the design-build method of procurement*  
10 *should be continued, expanded, or prohibited.*

11 (i) *The findings established pursuant to Section 17250.20 and*  
12 *a post-completion evaluation to whether the findings were*  
13 *achieved.*

14 (j) *Any Labor Code violations discovered during the course of*  
15 *construction or following completion of the project, as well as any*  
16 *finest or penalties assessed.*

17 *SEC. 2. This act does not exempt design-build contracts from*  
18 *otherwise applicable provisions of the Public Contract Code*  
19 *unless the exemption is granted expressly, or by necessary*  
20 *implication.*

21 *SEC. 3. Unless expressly authorized in this act, no otherwise*  
22 *applicable provision of the Field Act (Article 3 (commencing with*  
23 *Section 17365) of Chapter 3 of Part 10.5 of, and Article 7*  
24 *(commencing with Section 81130) of Chapter 1 of Part 49 of, the*  
25 *Education Code) may be waived, amended, or ignored by the*  
26 *school district or the design-build entity.*

27 *SEC. 4. This act shall remain in effect only until January 1,*  
28 *2007, and as of that date is repealed, unless a later enacted statute,*  
29 *that is enacted before January 1, 2007, deletes or extends that date.*

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

34 ~~Code, to read:~~

35 ~~14670.65. (a) The director may purchase, exchange, or~~  
36 ~~otherwise acquire real property and construct facilities, including~~  
37 ~~any improvements, betterments, and related facilities, within the~~  
38 ~~County of Sacramento or the City of West Sacramento pursuant to~~  
39 ~~this section, for use by the department and other state agencies.~~  
40 ~~The department may contract for the lease, lease purchase, lease~~



1 ~~with an option to purchase, acquisition, design, design-build,~~  
2 ~~construction, construction management, and other services related~~  
3 ~~to the design and construction of the office and parking facilities~~  
4 ~~authorized to be acquired pursuant to this section. The total~~  
5 ~~authorized scope of the project shall not exceed \_\_\_\_\_ square feet~~  
6 ~~and the total authorized costs of the facilities, including land~~  
7 ~~acquisition, preliminary plans, working drawings, construction,~~  
8 ~~and other costs shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_).~~  
9 Notwithstanding Section 13332.11, the State Public Works Board  
10 may authorize the augmentation of the costs authorized by the  
11 annual Budget Act pursuant to this subdivision by up to 10 percent  
12 of the amount authorized.

13 ~~(b) The State Public Works Board may issue revenue bonds,~~  
14 ~~negotiable notes, or negotiable bond anticipation notes pursuant to~~  
15 ~~Chapter 5 (commencing with Section 15830) of Part 10b of~~  
16 ~~Division 3 to finance all costs associated with acquisition, design,~~  
17 ~~and construction of office and parking facilities for the purposes~~  
18 ~~of this section. The board and the department may borrow funds~~  
19 ~~for project costs from the Pooled Money Investment Account~~  
20 ~~pursuant to Sections 16312 and 16313. It is the intent of the~~  
21 ~~Legislature that this commitment shall be included in future~~  
22 ~~Budget Acts until all outstanding loans from the Pooled Money~~  
23 ~~Investment Account are repaid either through the proceeds from~~  
24 ~~the sale of bonds or from an appropriation.~~

25 ~~(c) The director may execute and deliver a contract with the~~  
26 ~~State Public Works Board for the lease of the facilities described~~  
27 ~~in this section that are financed with the proceeds of the board's~~  
28 ~~bonds, notes, or bond anticipation notes issued in accordance with~~  
29 ~~this section.~~

