

AMENDED IN SENATE AUGUST 28, 2006

AMENDED IN SENATE JUNE 27, 2006

AMENDED IN SENATE JULY 7, 2005

AMENDED IN SENATE JUNE 20, 2005

AMENDED IN ASSEMBLY MAY 9, 2005

AMENDED IN ASSEMBLY MAY 2, 2005

AMENDED IN ASSEMBLY APRIL 28, 2005

AMENDED IN ASSEMBLY APRIL 25, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 521

Introduced by Assembly Member Sharon Runner

February 16, 2005

An act to amend Section 1872.83 of the Insurance Code, relating to workers' compensation. An act to amend Section 143 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 521, as amended, Sharon Runner. ~~Workers' compensation: fraud: grants. Transportation facilities: public-private partnerships.~~

Existing law, as amended by Chapter 32 of the Statutes of 2006, authorizes the Department of Transportation and regional transportation agencies, as defined, until January 1, 2012, to enter into up to 4 comprehensive development lease agreements with public and private entities, or consortia of those entities, for certain transportation projects that may charge certain users of those projects

tolls and user fees, subject to various terms and requirements. Under these provisions, all negotiated lease agreements must be submitted to the Legislature for approval or rejection, with approval to be achieved by enactment of a statute.

This bill would modify these provisions to instead provide that the Legislature has 60 legislative days to act after submittal of a negotiated lease agreement. The agreement would be deemed approved unless both houses of the Legislature concur in the passage of a resolution rejecting the agreement.

~~Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.~~

~~Existing law requires the Director of Industrial Relations to levy and collect assessments from employers that are deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is only expended, upon appropriation by the Legislature, for the investigation and prosecution of workers' compensation fraud and the willful failure to secure payment of workers' compensation. Existing law requires that a certain percentage of the funds in this account be distributed to district attorneys for those purposes, and requires each district attorney seeking a portion of the funds to submit to the Insurance Commissioner an application, as specified.~~

~~This bill would allow a grant to a district attorney under these provisions to be awarded on the basis of a single application for a period of three years, after certain actions are taken by the Fraud Assessment Commission and the Insurance Commissioner. However, the grant money would be distributed annually, each of the three years.~~

~~This bill would incorporate additional amendments proposed by SB 1847 contingent upon the prior enactment of that bill.~~

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

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

- 1 SECTION 1. Section 143 of the Streets and Highways Code,
- 2 as amended by Chapter 32 of the Statutes of 2006, is amended to
- 3 read:

1 143. (a) (1) “Regional transportation agency” means any of
2 the following:

3 (A) A transportation planning agency as defined in Section
4 29532 or 29532.1 of the Government Code.

5 (B) A county transportation commission as defined in Section
6 130050, 130050.1, or 130050.2 of the Public Utilities Code.

7 (C) Any other local or regional transportation entity that is
8 designated by statute as a regional transportation agency.

9 (D) A joint exercise of powers authority as defined in Chapter
10 5 (commencing with Section 6500) of Division 7 of Title 1 of the
11 Government Code, with the consent of a transportation planning
12 agency or a county transportation commission for the jurisdiction
13 in which the transportation project will be developed.

14 (2) “Transportation project” means one or more of the
15 following: planning, design, development, finance, construction,
16 reconstruction, rehabilitation, improvement, acquisition, lease,
17 operation, or maintenance of highway, public street, rail, or
18 related facilities supplemental to existing facilities currently
19 owned and operated by the department or regional transportation
20 agencies that is consistent with the requirements of paragraph (2)
21 of subdivision (b).

22 (b) (1) Notwithstanding any other provision of law, only the
23 department, in cooperation with regional transportation agencies,
24 and regional transportation agencies, may solicit proposals,
25 accept unsolicited proposals, negotiate, and enter into
26 comprehensive development lease agreements with public or
27 private entities, or consortia thereof, for transportation projects.

28 (2) The number of projects authorized pursuant to this section
29 shall be limited to two projects in northern California and two
30 projects in southern California. The California Transportation
31 Commission shall select the candidate projects from projects
32 nominated by the department or a regional transportation agency.
33 No less than two of the selected projects shall be nominated by a
34 regional transportation agency. The projects shall be primarily
35 designed to improve goods movement, including, but not limited
36 to, exclusive truck lanes and rail access and operational
37 improvements. The projects shall address a known forecast
38 demand, as determined by the department or regional
39 transportation agency.

1 (3) All negotiated lease agreements shall be submitted to the
2 Legislature for approval or rejection. ~~Any approval shall be~~
3 ~~achieved by the enactment of a statute.~~ Prior to submitting a lease
4 agreement to the Legislature, the department or regional
5 transportation agency shall conduct at least one public hearing at
6 a location at or near the proposed facility for purposes of
7 receiving public comment on the lease agreement. Public
8 comments made during this hearing shall be submitted to the
9 Legislature with the lease agreement. *Unless the Legislature*
10 *passes a resolution, with both houses concurring, rejecting a*
11 *negotiated lease agreement within 60 legislative days of the*
12 *agreement being submitted to it, the agreement shall be deemed*
13 *approved. A lease agreement may not be amended by the*
14 *Legislature.*

15 (c) For the purpose of facilitating those projects, the
16 agreements between the parties may include provisions for the
17 lease of rights-of-way in, and airspace over or under, highways,
18 public streets, rail, or related facilities for the granting of
19 necessary easements, and for the issuance of permits or other
20 authorizations to enable the construction of transportation
21 projects. Facilities subject to an agreement under this section
22 shall, at all times, be owned by the department or the regional
23 transportation agency, as appropriate. For department projects,
24 the commission shall certify the department's determination of
25 the useful life of the project in establishing the lease agreement
26 terms. In consideration therefor, the agreement shall provide for
27 complete reversion of the leased facility, together with the right
28 to collect tolls and user fees, to the department or regional
29 transportation agency, at the expiration of the lease at no charge
30 to the department or regional transportation agency. At time of
31 reversion, the facility shall be delivered to the department or
32 regional transportation agency, as applicable, in a condition that
33 meets the performance and maintenance standards established by
34 the department and that is free of any encumbrance, lien, or other
35 claims.

36 (d) (1) The department or a regional transportation agency
37 may exercise any power possessed by it with respect to
38 transportation projects to facilitate the transportation projects
39 pursuant to this section. The department, regional transportation
40 agency, and other state or local agencies may provide services to

1 the contracting entity for which the public entity is reimbursed,
2 including, but not limited to, planning, environmental planning,
3 environmental certification, environmental review, preliminary
4 design, design, right-of-way acquisition, construction,
5 maintenance, and policing of these transportation projects. The
6 department or regional transportation agency, as applicable, shall
7 regularly inspect the facility and require the lessee to maintain
8 and operate the facility according to adopted standards. The
9 lessee shall be responsible for all costs due to development,
10 maintenance, repair, rehabilitation, and reconstruction, and
11 operating costs.

12 (2) In selecting private entities with which to enter into these
13 agreements, notwithstanding any other provision of law, the
14 department and regional transportation agencies may, but are not
15 limited to, utilizing one or more of the following procurement
16 approaches:

17 (A) Solicitations of proposals for defined projects and calls for
18 project proposals within defined parameters.

19 (B) Prequalification and short-listing of proposers prior to
20 final evaluation of proposals.

21 (C) Final evaluation of proposals based on qualifications, best
22 value, or both. If final evaluation is to be based on best value, the
23 California Transportation Commission shall develop and adopt
24 criteria for making that evaluation prior to evaluation of a
25 proposal.

26 (D) Negotiations with proposers prior to award.

27 (E) Acceptance of unsolicited proposals, with issuance of
28 requests for competing proposals.

29 (3) No agreement entered into pursuant to this section shall
30 infringe on the authority of the department or a regional
31 transportation agency to develop, maintain, repair, rehabilitate,
32 operate, or lease any transportation project. Lease agreements
33 may provide for reasonable compensation to the leaseholder for
34 the adverse effects on toll revenue or user fee revenue due to the
35 development, operation, or lease of supplemental transportation
36 projects with the exception of any of the following:

37 (A) Projects identified in regional transportation plans
38 prepared pursuant to Section 65080 of the Government Code and
39 submitted to the commission as of the date the commission
40 selected the project to be developed through a lease agreement,

1 as provided in this section, unless provided by the lease
2 agreement approved by the department or regional transportation
3 agency and the commission.

4 (B) Safety projects.

5 (C) Improvement projects that will result in incidental capacity
6 increases.

7 (D) Additional high-occupancy vehicle lanes or the conversion
8 of existing lanes to high-occupancy vehicle lanes.

9 (E) Projects located outside the boundaries of a public-private
10 partnership project, to be defined by the lease agreement.

11 However, compensation to a leaseholder shall only be made
12 after a demonstrable reduction in use of the facility resulting in
13 reduced toll or user fee revenues, and may not exceed the
14 reduction in those revenues.

15 (e) (1) Agreements entered into pursuant to this section shall
16 authorize the contracting entity to impose tolls and user fees for
17 use of a facility constructed by it, and shall require that over the
18 term of the lease the toll revenues and user fees be applied to
19 payment of the capital outlay costs for the project, the costs
20 associated with operations, toll and user fee collection,
21 administration of the facility, reimbursement to the department or
22 other governmental entity for the costs of services to develop and
23 maintain the project, police services, and a reasonable return on
24 investment. The agreement shall require that, notwithstanding
25 Sections 164, 188, and 188.1, any excess toll or user fee revenue
26 either be applied to any indebtedness incurred by the contracting
27 entity with respect to the project, improvements to the project, or
28 be paid into the State Highway Account, or for all three purposes,
29 except that any excess toll revenue under a lease agreement with
30 a regional transportation agency may be paid to the regional
31 transportation agency for use in improving public transportation
32 in and near the project boundaries.

33 (2) Lease agreements shall establish specific toll or user fee
34 rates. Any proposed increase in those rates during the term of the
35 agreement shall first be approved by the department or regional
36 transportation agency after at least one public hearing conducted
37 at a location near the proposed or existing facility.

38 (3) The collection of tolls and user fees for the use of these
39 facilities may be extended by the commission or regional
40 transportation agency at the expiration of the lease agreement.

1 However, those tolls or user fees may not be used for any
2 purpose other than for the improvement, continued operation, or
3 maintenance of the facility.

4 (4) Toll and user fees may not be charged to noncommercial
5 vehicles with three or fewer axles.

6 (f) The plans and specifications for each transportation project
7 developed, maintained, repaired, rehabilitated, reconstructed, or
8 operated pursuant to this section shall comply with the
9 department's standards for state transportation projects. The lease
10 agreement shall include performance standards, including, but
11 not limited to, levels of service. The agreement shall require
12 facilities on the state highway system to meet all requirements
13 for noise mitigation, landscaping, pollution control, and safety
14 that otherwise would apply if the department were designing,
15 building, and operating the facility. If a facility is on the state
16 highway system, the facility leased pursuant to this section shall,
17 during the term of the lease, be deemed to be a part of the state
18 highway system for purposes of identification, maintenance,
19 enforcement of traffic laws, and for the purposes of Division 3.6
20 (commencing with Section 810) of Title 1 of the Government
21 Code.

22 (g) Failure to comply with the lease agreement in any
23 significant manner shall constitute a default under the agreement
24 and the department or the regional transportation agency, as
25 appropriate, shall have the option to initiate processes to revert
26 the facility to the public agency.

27 (h) The assignment authorized by subdivision (c) of Section
28 130240 of the Public Utilities Code is consistent with this
29 section.

30 (i) A lease to a private entity pursuant to this section is deemed
31 to be public property for a public purpose and exempt from
32 leasehold, real property, and ad valorem taxation, except for the
33 use, if any, of that property for ancillary commercial purposes.

34 (j) Nothing in this section is intended to infringe on the
35 authority to develop high-occupancy toll lanes pursuant to
36 Section 149.4, 149.5, or 149.6.

37 (k) Nothing in this section shall be construed to allow the
38 conversion of any existing nontoll or non-user-fee lanes into
39 tolled or user fee lanes with the exception of a high-occupancy
40 vehicle lane that may be operated as a high-occupancy toll lane

1 for vehicles not otherwise meeting the requirements for use of
2 that lane.

3 (l) The lease agreement shall require the lessee to provide any
4 information or data requested by the California Transportation
5 Commission or the Legislative Analyst. The commission, in
6 cooperation with the Legislative Analyst, shall annually prepare
7 a report on the progress of each project and ultimately on the
8 operation of the resulting facility. The report shall include, but
9 not be limited to, a review of the performance standards, a
10 financial analysis, and any concerns or recommendations for
11 changes in the future.

12 (m) No lease agreements may be entered into under this
13 section on or after January 1, 2012.

14 (n) To the extent that the design-build procurement method is
15 utilized for the award of construction or design contracts for
16 projects authorized under this section, those contracts shall be
17 subject to the requirements, parameters, and processes set forth in
18 Chapter 6.5 (commencing with Section 6800) of Part 1 of
19 Division 2 of the Public Contract Code, if that chapter is added
20 by either Assembly Bill 143 of the 2005–06 Regular Session or
21 Senate Bill 59 of the 2005–06 Regular Session.

22
23
24
25
26
27
28
29
30
31
32
33

**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, June 27, 2006 (JR11)**

CORRECTIONS:

Text - Page 3.

JR Box - Page 8.

O