

AMENDED IN ASSEMBLY AUGUST 27, 2007

AMENDED IN ASSEMBLY AUGUST 20, 2007

AMENDED IN SENATE MAY 15, 2007

AMENDED IN SENATE MAY 2, 2007

AMENDED IN SENATE APRIL 23, 2007

**SENATE BILL**

**No. 614**

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**Introduced by Senator Simitian  
(Coauthors: Senators Alquist and Torlakson)**

February 22, 2007

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An act to amend Sections 17250.20, 17250.30, 17250.35, 81700, and 81702 of, and to repeal Sections 81700.5 and 81700.7 of, the Education Code, *and to repeal Sections 18 and 19 of Chapter 35 of the Statutes of 2006*, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 614, as amended, Simitian. Public works: design-build contracts.

(1) Existing law authorizes, until January 1, 2010, a school district governing board 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.

This bill instead would authorize a school district governing board to enter into those contracts that exceed \$2,000,000, *and would make this authority permanent by deleting the repeal date.*

(2) Existing law authorizes the design-build entity to withhold retention proceeds in excess of the percentage specified in the contract between the school district and the design-build entity from any payment

made by the design-build entity to the subcontractor if the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond.

This bill would delete the requirement that the written notice be provided prior to or at the time the bid is requested.

(3) Existing law requires each contract with a design-build entity to provide that no construction or alteration of any school building is to commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services.

This bill would define “plans” for these purposes to include, but is not limited to, plans for foundations or other building systems, as determined by the Division of the State Architect, based on design criteria provided by the architect or structural engineer of the design-build entity to the Department of General Services prior to the receipt of completed building plans.

(4) Existing law authorizes the governing boards of 3 specified community college districts and up to 5 community college facility construction projects selected by the Chancellor of the California Community Colleges to enter into a design-build contract, as defined, until January 1, 2011, in which factors in addition to price and cost may be considered in awarding a contract for the design and construction of a community college facility for an amount that exceeds \$10,000,000.

This bill instead would make those provisions applicable to any community college district governing board and would authorize the governing board of a community college district to enter into those contracts that exceed \$2,000,000, *and would make this authority permanent by deleting the repeal date.*

(5) This bill would provide that, except as provided in the bill, nothing in the bill is to be construed to affect the application of any other law.

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 17250.20 of the Education Code is  
2 amended to read:

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

17 SEC. 2. Section 17250.30 of the Education Code is amended  
18 to read:

19 17250.30. (a) Any design-build entity that is selected to design  
20 and build a project pursuant to this chapter shall possess or obtain  
21 sufficient bonding to cover the contract amount for nondesign  
22 services, and errors and omissions insurance coverage sufficient  
23 to cover all design and architectural services provided in the  
24 contract. This chapter does not prohibit a general or engineering  
25 contractor from being designated the lead entity on a design-build  
26 entity for the purposes of purchasing necessary bonding to cover  
27 the activities of the design-build entity.

28 (b) Any payment or performance bond written for the purposes  
29 of this chapter shall use a bond form developed by the Department  
30 of General Services pursuant to subdivision (g) of Section 14661  
31 of the Government Code. The purpose of this subdivision is to  
32 promote uniformity of bond forms to be used on school district  
33 design-build projects throughout the state.

34 (c) (1) All subcontracts that were not listed by the design-build  
35 entity in accordance with Section 17250.25 shall be awarded by  
36 the design-build entity.

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

38 (A) Provide public notice of the availability of work to be  
39 subcontracted.

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

3 (3) Subcontractors bidding on contracts pursuant to this  
4 subdivision shall be afforded the protections contained in Chapter  
5 4 (commencing with Section 4100) of Part 1 of Division 2 of the  
6 Public Contract Code.

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

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

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

34 SEC. 3. Section 17250.35 of the Education Code is amended  
35 to read:

36 17250.35. (a) The minimum performance criteria and design  
37 standards established pursuant to this chapter by a school district  
38 for quality, durability, longevity, and life-cycle costs, and other  
39 criteria deemed appropriate by the school district shall be adhered  
40 to by the design-build entity. Any deviations from those standards

1 may only be allowed by written consent of the school district. The  
2 governing board may, and is strongly encouraged to, retain the  
3 services of an architect or structural engineer throughout the course  
4 of the project in order to ensure compliance with this chapter. Any  
5 architect or structural engineer retained pursuant to this subdivision  
6 shall be duly licensed and registered in California.

7 (b) The school district governing board shall be the employer  
8 of the project inspector. The project inspector shall be fully  
9 independent from any member of the design-build entity and shall  
10 not have an affiliation with any member of the design-build entity  
11 or any of the project subcontractors. The project inspector shall  
12 act under the direction of either the Director of General Services  
13 or a competent, qualified agent of the school district.

14 (c) The total price of the project shall be determined either upon  
15 receipt of the lump-sum bids as set forth in paragraph (1) of  
16 subdivision (c) of Section 17250.25, or by completion of the  
17 process pursuant to paragraph (2) of subdivision (c) of Section  
18 17250.25.

19 (d) (1) Each contract with a design-build entity shall provide  
20 that no construction or alteration of any school building pursuant  
21 to this section shall commence prior to the receipt of the written  
22 approval of the plans, as to the safety of design and construction,  
23 from the Department of General Services.

24 (2) For purposes of this subdivision, “plans” includes, but is not  
25 limited to, plans for foundations or other building systems based  
26 on design criteria provided by the architect or structural engineer  
27 of the design-build entity to the Department of General Services  
28 prior to the receipt of completed building plans. For purposes of  
29 this paragraph, “other building systems” are building systems  
30 determined by the Division of the State Architect.

31 (3) Compliance with paragraph (1) shall be deemed to be in  
32 compliance with Sections 17267 and 17297.

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

36 SEC. 4. Section 81700 of the Education Code is amended to  
37 read:

38 81700. (a) It is the intent of the Legislature to enable  
39 community college districts to utilize safe and cost effective options  
40 for building and modernizing community college facilities. The

1 Legislature has recognized the merits of the design-build  
2 procurement process in the past by authorizing its use for projects  
3 undertaken by the University of California, specified local  
4 government projects, including school districts, and state office  
5 buildings.

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

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

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

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

30 SEC. 5. Section 81700.5 of the Education Code is repealed.

31 SEC. 6. Section 81700.7 of the Education Code is repealed.

32 SEC. 7. Section 81702 of the Education Code is amended to  
33 read:

34 81702. (a) Upon a determination by a community college  
35 district governing board that it is in the best interest of the  
36 community college district, the governing board may enter into a  
37 design-build contract for both the design and construction of a  
38 community college facility if that expenditure exceeds two million  
39 dollars (\$2,000,000) if, after evaluation of the traditional design,  
40 bid, and build process of community college facility construction

1 and of the design-build process in a public meeting, the governing  
2 board makes written findings that use of the design-build process  
3 on the specific project under consideration will accomplish one of  
4 the following objectives: reduce comparable project costs, expedite  
5 the project's completion, or provide features not achievable through  
6 the traditional design-bid-build method. The governing board shall  
7 also review the guidelines developed pursuant to Section 81706  
8 and shall adopt a resolution approving the use of a design-build  
9 contract pursuant to this chapter prior to entering into a  
10 design-build contract.

11 (b) No state funds appropriated for a design-build capital outlay  
12 project may be expended until the Department of Finance and the  
13 State Public Works Board have approved performance criteria, or  
14 performance criteria and concept drawings, for the project to be  
15 financed from the appropriation for capital outlay.

16 *SEC. 8. Section 18 of Chapter 35 of the Statutes of 2006 is*  
17 *repealed.*

18 ~~SEC. 18. Section 4 of Chapter 421 of the Statutes of 2001 is~~  
19 ~~amended to read:~~

20 ~~Sec. 4. This act shall remain in effect only until January 1,~~  
21 ~~2010, and as of that date is repealed, unless a later enacted statute,~~  
22 ~~that is enacted before January 1, 2010, deletes or extends that date.~~

23 *SEC. 9. Section 19 of Chapter 35 of the Statutes of 2006 is*  
24 *repealed.*

25 ~~SEC. 19. Section 4 of Chapter 637 of the Statutes of 2002 is~~  
26 ~~amended to read:~~

27 ~~Sec. 4. This act shall remain in effect only until January 1,~~  
28 ~~2011, and as of that date is repealed, unless a later enacted statute,~~  
29 ~~that is enacted before January 1, 2011, deletes or extends that date.~~

30 ~~SEC. 8.~~

31 *SEC. 10.* Except as provided in this act, nothing in this act shall  
32 be construed to affect the application of any other law.