

ASSEMBLY BILL

No. 610

Introduced by Assembly Member Caballero

February 25, 2009

An act to add Section 65040.15 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 610, as introduced, Caballero. Local infrastructure.

Existing law provides that the Office of Planning and Research within the Governor's office serves as the state's comprehensive planning agency in the formulation, evaluation, and updating of, among other things, long-range goals and policies for land use, population growth and distribution, urban expansion, development, open space, resource preservation and utilization, air and water quality, and other factors that shape statewide development patterns and significantly influence the quality of the state's environment.

This bill would require the Office of Planning and Research to advise and educate local agencies and other interested stakeholders about the role that public-private partnerships can play in planning, studying, designing, financing, constructing, operating, maintaining, or managing local infrastructure projects.

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. (a) It is the intent of the Legislature that the
- 2 Office of Planning and Research assist local agencies interested

1 in public-private partnerships by providing information and
2 practical assistance that will help educate local agencies about the
3 appropriate application of public-private partnerships to some
4 types of local infrastructure projects, and help ensure that
5 public-private partnership agreements protect the public interest.

6 (b) It is not the intent of the Legislature to enact legislation that
7 biases local agencies' decisions about the use of a public-private
8 partnership to build infrastructure, as compared with the use of
9 traditional procurement methods, or to promote the outsourcing
10 of public sector jobs.

11 SEC. 2. Section 65040.15 is added to the Government Code,
12 to read:

13 65040.15. (a) For the purposes of this section, the following
14 terms have the following meanings, unless the context clearly
15 requires otherwise:

16 (1) "Adjusted private party bid" means the estimated bid by a
17 private entity for an infrastructure project adjusted for risks retained
18 by the public sector under alternative financing and procurement
19 and for ancillary costs.

20 (2) "Alternative financing and procurement (AFP)" means a
21 range of infrastructure project delivery methods that use private
22 expertise and financing to build, repair, or rebuild vital
23 infrastructure, on time and on budget, while ensuring appropriate
24 public control and ownership.

25 (3) "Estimated private sector bid" means an estimate of the
26 expected bid by a private entity, including financing costs, for a
27 particular project using alternative financing and procurement
28 delivery methods.

29 (4) "Public-private partnership" means a contractual agreement
30 between a public agency and a private sector entity that utilizes
31 private sector capital to study, plan, design, construct, develop,
32 finance, maintain, rebuild, improve, repair, or operate, or any
33 combination thereof, infrastructure facilities, if the facilities remain
34 a public good.

35 (5) "Public sector comparator" means the estimated total costs,
36 including adjustments for risks retained and ancillary costs, to the
37 public sector of delivering an infrastructure project using traditional
38 procurement processes.

39 (6) "Value for money" means the difference between the public
40 sector comparator and the estimated private sector bid. A positive

1 value for money occurs for a project using alternative financing
2 and procurement when the adjusted private sector bid is less than
3 the public sector comparator.

4 (b) The Office of Planning and Research shall advise and
5 educate local agencies and other interested stakeholders about the
6 role that public-private partnerships can play in planning, studying,
7 designing, financing, constructing, operating, maintaining, or
8 managing local infrastructure projects.

9 (c) Assistance provided by the Office of Planning and Research
10 pursuant to subdivision (b) shall include, but is not limited to, all
11 of the following:

12 (1) Developing information that would help a local governmental
13 agency determine whether a local infrastructure project would
14 benefit from a public-private partnership that provides an
15 alternative financing and procurement approach. This information
16 may include, but is not limited to, all of the following:

17 (A) A description of the kinds of private party participation that
18 could be subject to an agreement, including, but not limited to,
19 study, planning, finance, design, construction, operations,
20 maintenance, or management.

21 (B) A public sector comparator to be used in conjunction with
22 an estimated private sector bid to help the local agency determine
23 whether an alternative financing and procurement approach would
24 result in a positive value for money, or whether the agency would
25 receive greater value by pursuing a traditional public sector
26 procurement approach.

27 (C) Guidelines to assist local agencies in following processes
28 that incorporate the following principles in all alternative financing
29 and procurement agreements:

30 (i) The public interest is paramount.

31 (ii) Value for money must be demonstrable.

32 (iii) Appropriate public control and ownership must be
33 preserved.

34 (iv) Accountability must be maintained.

35 (v) All processes must be transparent while protecting the
36 confidentiality of trade secrets.

37 (D) Information regarding the state's goal of reducing
38 greenhouse gases by 25 percent by the year 2020, and the role, if
39 any, that well-designed and innovative infrastructure can play in
40 helping to achieve that goal.

- 1 (E) Case studies of the use of public-private partnerships in
- 2 completed public infrastructure projects, including case studies of
- 3 projects in which public sector employees retained their jobs or
- 4 otherwise benefited from the project.
- 5 (2) Providing the information described in paragraph (1) to local
- 6 agencies and other interested stakeholders through educational
- 7 seminars, factsheets, and other materials.
- 8 (3) Serving as a clearinghouse of information regarding the use
- 9 of public-private partnerships in infrastructure projects in this state
- 10 and elsewhere. Specific clearinghouse functions may include, but
- 11 are not limited to, the following:
- 12 (A) Establishing an Internet Web site to post information
- 13 regarding local agency public-private partnership projects.
- 14 (B) Establishing a service to link local agencies with technical
- 15 and legal resources to assist in developing and evaluating requests
- 16 for proposals for public-private partnership projects and to assist
- 17 in structuring agreements to protect a local agency's interests in a
- 18 public-private partnership.
- 19 SEC. 3. Except as it adds Section 65040.15 to the Government
- 20 Code, nothing in this act shall be construed to affect the application
- 21 of any other law.