

Senate Bill No. 9

Passed the Senate February 14, 2009

Secretary of the Senate

Passed the Assembly February 15, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 17250.30 and 81704 of the Education Code, to amend Section 6531 of the Government Code, to amend Section 1771.5 of, to amend and repeal Sections 1771.7 and 1771.8 of, to add Sections 1771.3, 1771.55, 1771.75 and 1771.85 to, and to repeal and add Section 1771.9 of, the Labor Code, to amend Sections 20133, 20175.2, 20193, 20209.7, 20209.24, and 20919.3 of the Public Contract Code, and to add Section 8007 to the Water Code, relating to public works, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 9, Padilla. Public works: labor compliance.

(1) Existing law defines “public works,” for purposes of regulating public works contracts, as, among other things, construction, alteration, demolition, installation, or repair work that is performed under contract and paid for, in whole or in part, out of public funds. Pursuant to existing law, all workers employed on public works shall be paid not less than the general prevailing rate of per diem wages for work, except for public works projects of \$1,000 or less.

This bill would specify that, for purposes of these provisions, the definition of “public works” includes a capital improvement project undertaken by a charter city to extend that city’s water, sewer, or storm drain system or similar system to a disadvantaged community in an unincorporated area, but would provide that it does not include any subsequent project to construct, expand, reconstruct, install, or repair such systems that have been so extended, where that project is conducted within that city’s political boundaries.

(2) Existing law authorizes the awarding body for a public works project to not require the payment of the general prevailing rate of per diem wages on public works projects of specified sizes and types of work, if the awarding body elects to initiate and enforce a labor compliance program containing specified requirements for every public works project under the authority of the awarding body.

This bill would instead authorize the awarding body for a public works project to not require the payment of the general prevailing rate of per diem wages on public works projects of specified sizes and types of work, if the awarding body elects to meet certain requirements with regard to any public works project under its authority, including payment of a fee to the Department of Industrial Relations for the enforcement of prevailing wage obligations, as specified, which would be determined by the department and deposited in the State Public Works Enforcement Fund.

This bill would establish the State Public Works Enforcement Fund in the State Treasury, and would continuously appropriate moneys in the fund for the department's enforcement of prevailing wage requirements applicable to public works projects and labor compliance enforcement. The bill would require the department to meet certain requirements with regard to all projects required to pay a fee into the State Public Works Enforcement Fund, including the adoption of regulations setting forth the manner in which the department will ensure compliance with and enforce prevailing wage requirements on the project, and would require the department to report to the Legislature on the fund, as specified.

(3) Existing law requires an awarding body that chooses to use funds from the Kindergarten-University Public Education Facilities Bond Act of 2002 for a public works project or an awarding body for any contract for a public works project financed in any part with funds made available by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 to initiate and enforce, or contract with a 3rd party to initiate and enforce, a labor compliance program for that public works project.

This bill would require the Director of Industrial Relations, with the approval of the Director of Finance, to assess a fee on any awarding body using funds derived from any bonds issued by the state to fund public works projects, as specified, which would be deposited in the State Public Works Enforcement Fund. The bill would also require an awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004, or the body awarding any contract for a public works project financed in any part with funds made available by the Water Security, Clean Drinking Water,

Coastal and Beach Protection Act of 2002 of the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, to pay a fee to the department sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project and labor compliance enforcement, as specified. The bill would require all fees collected pursuant to these provisions to be deposited in the State Public Works Enforcement Fund and to be used only for enforcement of prevailing wage requirements on those projects. The bill would authorize the department to waive the fee for an awarding body if specified criteria are met.

(4) Existing law gives specified authority for certain school district governing boards, governing boards of community college districts and community college facility construction projects, cities, counties, qualified entities that operate a wastewater facility, solid waste management facility, or water recycling facility, transit operators, and unified school districts to enter into design-build contracts for specified projects if certain requirements are met, including the establishment and enforcement of a labor compliance program or the contracting with a 3rd-party to operate a labor compliance program. Existing law gives specified authority for the San Diego Model School Development Agency to award construction contracts, as specified, and requires it to establish and enforce a labor compliance program or to contract with a 3rd-party to operate a labor compliance program.

This bill would instead require entities contracting under the above provisions to pay a fee to the department, established by the department as specified, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project and labor compliance. The bill would require all fees collected pursuant to these provisions to be deposited in the State Public Works Enforcement Fund and to be used only for enforcement of prevailing wages requirements on those projects. The bill would authorize the department to waive the fee if specified criteria are met.

Appropriation: yes.

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The Legislature has previously found that the prevailing wage law addresses statewide concerns (Section 1 of Chapter 892 of the Statutes of 2002; Section 1 of Chapter 868 of the Statutes of 2002) and has reaffirmed its intent that the prevailing wage law apply to all public projects, including the projects of charter cities (Chapter 135 of the Statutes of 2003).

(b) Nothing in Section 8007 of the Water Code shall be interpreted to be inconsistent with that intent. The legal issue whether the Legislature has the constitutional authority to apply the prevailing wage law to the municipal projects of charter cities was declared to be an “open” question by the California Supreme Court in *City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942, 947 and that legal question is presently under submission before the California Court of Appeal in *State Building and Construction Trades Council v. City of Vista*, Case No. D0521181.

(c) The purpose of Section 8007 of the Water Code is solely to provide that, if the Legislature does not have the constitutional authority to apply the prevailing wage law to the municipal projects of charter cities, then the extension of a city’s water, sewer, or storm drain system or similar system to a disadvantaged community in an unincorporated area shall not thereby subject future work on that system within that city’s boundaries to the prevailing wage law.

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

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

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

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

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

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

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

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

(4) (A) If the school district elects to award a project pursuant to this section, retention proceeds withheld by the school district from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(B) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the school district and the design-build entity. 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 to the design-build entity, then the design-build entity may 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.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions

shall be made in accordance with Section 22300 of the Public Contract Code.

(d) (1) For contracts awarded prior to the effective date of either the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fees established by the department pursuant paragraph (2), the school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

(2) For contracts awarded on or after the effective date of both the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fees established by the department pursuant to this paragraph, the school district shall pay a fee to the department, in an amount that the department shall establish, and as it may from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(3) The Department of Industrial Relations may waive the fee set forth in paragraph (2) for a school district that has previously been granted approval by the director to initiate and operate a labor compliance program on the district's projects, and that requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. The fee shall not be waived for a district that contracts with a third party to initiate and enforce labor compliance programs on the district's projects.

SEC. 3. Section 81704 of the Education Code is amended to read:

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

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

(c) (1) All subcontracts that were not listed by the design-build entity in accordance with Section 81703 shall be awarded by the design-build entity in accordance with the design-build process set forth by the community college district in the design-build package.

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

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

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

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

(4) (A) If the community college district elects to award a project pursuant to this section, retention proceeds withheld by the community college district from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(B) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the community college district and the design-build entity. 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 to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the community college district and the design-build entity from any payment made by the design-build entity to the subcontractor.

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

(d) (1) For contracts awarded prior to the effective date of either the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fees established by the department pursuant to paragraph (2), the community college district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the community college district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

(2) For contracts awarded on or after the effective date of both the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fees established by the department pursuant to this paragraph, the community college district shall pay a fee to the department, in an amount that the department shall establish, and as it may from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(3) The Department of Industrial Relations may waive the fee set forth in paragraph (2) for a community college district that has previously been granted approval by the director to initiate and operate a labor compliance program on the district's projects, and that requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. The fee shall not be waived for a district that contracts with a third party to initiate and enforce labor compliance programs on the district's projects.

SEC. 4. Section 6531 of the Government Code is amended to read:

6531. (a) The Legislature finds and declares all of the following:

(1) It is in the best interests of communities located within the City of San Diego for the local public agencies that have jurisdiction within the city to form a joint powers agency to provide for the orderly and coordinated acquisition, construction, and development of model school projects. These projects may include the acquisition of land by negotiation or eminent domain, the construction of schools, the construction of recreational facilities or park sites or both, and the construction of replacement and other housing, including market rate, moderate-income, and low-income housing.

(2) The coordinated construction of these projects by redevelopment agencies, school districts, housing authorities, housing commissions, and the city is of great public benefit and will save public money and time in supplying much needed replacement housing lost when schools are constructed within existing communities.

(3) Legislation is needed to allow redevelopment agencies, school districts, housing authorities, housing commissions, and the city to use their powers to the greatest extent possible to expedite, coordinate, and streamline the construction and eventual operation of such projects.

(b) (1) Notwithstanding any other provision of law, the Redevelopment Agency of the City of San Diego, the Housing Authority of the City of San Diego, the San Diego Housing Commission, the San Diego Unified School District, and the City of San Diego may enter into a joint powers agreement to create and operate a joint powers agency for the development and

construction of a model school project located within the City Heights Project Area. The agency created pursuant to this section shall be known as the San Diego Model School Development Agency. The San Diego Model School Development Agency shall have all the powers of a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, all of the powers of a housing authority pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code, and all of the powers of the San Diego Unified School District, as well as all the powers of a joint powers agency granted pursuant to this chapter, to acquire property and to construct and improve and finance one or more schools, housing projects, parks, recreational facilities, and any other facilities reasonably necessary for their proper operation. Further, the San Diego Model School Development Agency shall have all of the powers of the City of San Diego pursuant to its charter and state law to acquire property and to finance and operate parks and recreational facilities and any other facilities reasonably necessary for their proper operation.

(2) Notwithstanding paragraph (1), neither the San Diego Model School Development Agency nor the Redevelopment Agency of the City of San Diego shall expend any property tax increment revenues to acquire property, and to construct, improve, and finance a school within the City Heights Project Area.

(3) Nothing in this section shall relieve the San Diego Model School Development Agency or the Redevelopment Agency of the City of San Diego from its obligations to increase, improve, and preserve the community's supply of low- and moderate-income housing, including, but not limited to, the obligation to provide relocation assistance, the obligation to provide replacement housing, the obligation to meet housing production quotas, and the obligation to set aside property tax increment funds for those purposes.

(4) The San Diego Model School Development Agency shall perform any construction activities in accordance with the applicable provisions of the Public Contract Code, the Education Code, and the Labor Code that apply, respectively, to the redevelopment agency, housing authority, housing commission, school district, or city creating the San Diego Model School Development Agency. Funding pursuant to Proposition MM, a

local San Diego County bond measure enacted by the voters for the purpose of school construction, shall be used only for the design, development, construction, and financing of school-related facilities and improvements, including schools, as authorized and to the extent authorized under Proposition MM.

(c) Any member of the joint powers agency, including the school district, may, to the extent permitted by law, transfer and contribute funds to the agency, including bond funds, to be deposited into and to be held in a facility fund to be expended for purposes of the acquisition of property for, and the development and construction of, any school, housing project, or other facility described in this section.

(d) Nothing contained in this section shall preclude the joint powers agency from distributing funds, upon completion of construction, the school, housing project, park, recreational facility, or other facility to a member of the agency to operate the school, housing project, park, or other facility that the member is otherwise authorized to operate. These distribution provisions shall be set forth in the joint powers agreement, if applicable.

(e) The San Diego Model School Development Agency may construct a school in the City Heights Project Area pursuant to Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of the Education Code.

(f) (1) For contracts awarded prior to the effective date of either the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fees established by the department pursuant to paragraph (2), the San Diego Model School Development Agency shall establish and enforce, with respect to construction contracts awarded by the joint powers agency, a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing those requirements. This requirement shall not apply to projects that are subject to a collective bargaining agreement that binds all of the contractors and subcontractors performing work on the project, but nothing shall prevent the joint powers agency from operating a labor compliance program with respect to those projects.

(2) For contracts awarded on or after the effective date of both the regulations adopted by the Department of Industrial Relations

pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fees established by the department pursuant to this paragraph, the agency shall pay a fee to the department, in an amount that the department shall establish, and as it may from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(3) The Department of Industrial Relations may waive the fee set forth in paragraph (2) if the agency has previously been granted approval by the director to initiate and operate a labor compliance program on its projects and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. The fee shall not be waived for the agency if it contracts with a third party to initiate and enforce labor compliance programs on its projects.

(g) Construction workers employed as apprentices by contractors and subcontractors on contracts awarded by the San Diego Model School Development Agency shall be enrolled in a registered apprenticeship program, approved by the California Apprenticeship Council, that has graduated apprentices in the same craft in each of the preceding five years. This graduation requirement shall be applicable for any craft that was first deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft prior to January 1, 1998. A contractor or subcontractor need not submit contract award information to an apprenticeship program that does not meet the graduation requirements of this subdivision. If no apprenticeship program meets the graduation requirements of this subdivision for a particular craft, the graduation requirements shall not apply for that craft.

SEC. 5. Section 1771.3 is added to the Labor Code, to read:

1771.3. (a) (1) The State Public Works Enforcement Fund is hereby created as a special fund in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys

in the fund shall be continuously appropriated for the purposes the Department of Industrial Relations' enforcement of prevailing wage requirements applicable to public works pursuant to this chapter, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55, and shall not be used or borrowed for any other purpose.

(2) The Director of Industrial Relations, with the approval of the Director of Finance, shall determine and assess a fee on any awarding body using funds derived from any bond issued by the state to fund public works projects, in an amount not to exceed one-fourth of 1 percent of the bond proceeds. The fee shall be set to cover the expenses of the Department of Industrial Relations for administering the prevailing wage requirements on public works projects using those bond funds. All fees collected pursuant to this subdivision section shall be deposited in the State Public Works Enforcement Fund, and shall be used only for enforcement of prevailing wage requirements on projects using bond funds and other projects for which awarding bodies pay into the fund. The administration and enforcement of prevailing wage requirements is an administrative expense associated with public works construction.

(b) The fee imposed by this section shall not apply to any contract awarded prior to the effective date of regulations adopted by the department pursuant to paragraph (2) of subdivision (b) of Section 1771.55.

(c) The department shall report to the Legislature, not later than March 1, 2011, on its administration of the State Public Works Enforcement Fund, and the prevailing wage enforcement activities undertaken by the department utilizing that funding.

SEC. 6. Section 1771.5 of the Labor Code is amended to read:

1771.5. (a) Notwithstanding Section 1771, an awarding body may not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a labor compliance program pursuant

to subdivision (b) for every public works project under the authority of the awarding body.

(b) For purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(c) For purposes of this chapter, “labor compliance program” means a labor compliance program that is approved, as specified in state regulations, by the Director of the Department of Industrial Relations.

(d) For purposes of this chapter, the Director of the Department of Industrial Relations may revoke the approval of a labor compliance program in the manner specified in state regulations.

(e) This section shall not apply to contracts awarded after the latter of either the effective date of any fee adopted by the Department of Industrial Relations to be deposited in the State Public Works Enforcement Fund, pursuant to Sections 1771.3, 1771.55, 1771.75, 1771.85, and 1771.9 of this code, subdivision (d) of Section 17250.30 of, and subdivision (d) of Section 81704, of the Education Code, subdivision (f) of Section 6531 of the Government Code, and paragraph (3) of subdivision (b) of Section 20133 of, paragraph (5) of subdivision (b) of Section 20175.2 of, subdivision (b) of Section 20193 of, subdivision (c) of Section 20209.7 of, Section 20209.24 of, and subdivision (a) of Section 20919.3 of the Public Contract Code, or the effective date of the

regulations adopted by the department pursuant to paragraph (2) of subdivision (b) of Section 1771.55.

SEC. 7. Section 1771.55 is added to the Labor Code, to read:

1771.55. (a) Notwithstanding Section 1771, an awarding body may not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to undertake all of the following for every public works project under the authority of the awarding body:

(1) Ensure that all bid invitations and public works contracts contain appropriate language concerning the requirements of this chapter.

(2) Conduct a prejob conference with the contractor and subcontractor to discuss federal and state labor law requirements applicable to contract.

(3) Pay a fee to the Department of Industrial Relations for the enforcement of prevailing wage obligations in an amount that the department shall establish, and as it may from time to time amend, in an amount not to exceed one-fourth of 1 percent of the total public works project costs, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3, and shall be used only for enforcement of prevailing wage requirements on those projects.

(b) For all projects required to pay a fee into the State Public Works Enforcement Fund, the Department of Industrial Relations shall do the following:

(1) Review on a monthly basis, and if appropriate, audit payroll records to verify compliance with this chapter.

(2) Adopt reasonable regulations setting forth the manner in which the department will ensure compliance with and enforce prevailing wage requirements on the project. In adopting these regulations, the department shall give consideration to the duties

of labor compliance programs as set forth in Sections 16421 to 16439, inclusive, of Title 8 of the California Code of Regulations.

(c) The department may waive the fee set forth in this section for an awarding body that has previously been granted approval by the director to initiate and operate a labor compliance program on the awarding body's projects, and that requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b). This fee shall not be waived for an awarding body that contracts with a third party to initiate and enforce labor compliance programs on the awarding body's projects.

(d) Subdivisions (a) and (c) of this section shall only apply to a contract awarded on or after both the effective date of the department's adoption of the fee set forth in subdivision (a) and of regulations pursuant to paragraph (2) of subdivision (b).

SEC. 8. Section 1771.7 of the Labor Code is amended to read:

1771.7. (a) (1) An awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(2) If an awarding body described in paragraph (1) chooses to contract with a third party to initiate and enforce a labor compliance program for a project described in paragraph (1), that third party shall not review the payroll records of its own employees or the employees of its subcontractors, and the awarding body or an independent third party shall review these payroll records for purposes of the labor compliance program.

(b) This section applies to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the "awarding body" is the Chancellor of the

California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board shall not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of the Department of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this act, the State Allocation Board shall increase the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the labor compliance program.

(f) This section shall become inoperative upon the latter of the effective date of regulations adopted by the Department of Industrial Relations pursuant to paragraph (2) of subdivision (b) of Section 1771.55 or the effective date of the fees adopted by the department pursuant to Section 1771.75, and shall be repealed on the January 1 next following that date.

SEC. 9. Section 1771.75 is added to the Labor Code, to read:

1771.75. (a) An awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall pay a fee to the Department of Industrial Relations, in an amount that the department shall establish, and as it may from time to time amend, in an amount not to exceed one-fourth of 1 percent of the bond proceeds, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3, and shall be used only for enforcement of prevailing wage requirements on those projects. The department may waive the fee set forth in this section for an awarding body that has previously been granted

approval by the director to initiate and operate a labor compliance program on the awarding body's projects, and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. This fee shall not be waived for an awarding body that contracts with a third party to initiate and enforce labor compliance programs on the awarding body's projects.

(b) This section applies to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the awarding body is the Chancellor of the California State University and the chancellor is required by subdivision (a) to pay a fee to the Department of Industrial Relations.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to pay a fee to the Department of Industrial Relations, then the university shall review the payroll records on at least a monthly basis to ensure the university's compliance with prevailing wage obligations.

(d) The department shall notify the State Allocation Board of awarding bodies that have paid a fee as required by subdivision (a).

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this section, the State Allocation Board shall increase the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the fee required to be paid to the Department of Industrial Relations to ensure compliance with and enforcement of prevailing wage laws on the project. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3.

(f) This section shall only apply to a contract awarded on or after both the effective date of the department's adoption of the fee set forth in subdivision (a) and of regulations pursuant to paragraph (2) of subdivision (b) of Section 1771.55.

SEC. 10. Section 1771.8 of the Labor Code is amended to read:

1771.8. (a) The body awarding any contract for a public works project financed in any part with funds made available by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code) shall adopt and enforce, or contract with a third party to adopt and enforce, a labor compliance program pursuant to subdivision (b) of Section 1771.5 for application to that public works project.

(b) This section shall become operative only if the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code) is approved by the voters at the November 5, 2002, statewide general election.

(c) This section shall become inoperative on the latter of the effective date of the regulations adopted by the Department of Industrial Relations pursuant to paragraph (2) of subdivision (b) of Section 1771.55 or the effective date of the fees adopted by the department pursuant to Section 1771.85, and shall be repealed on the January 1 next following that date.

SEC. 11. Section 1771.85 is added to the Labor Code, to read:

1771.85. (a) The body awarding any contract for a public works project financed in any part with funds made available by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code) shall pay a fee to the Department of Industrial Relations, in an amount that the department shall establish, and as it may from time to time amend, in an amount not to exceed one-fourth of 1 percent of the bond proceeds, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3, and shall be used only for enforcement of prevailing wage requirements on those projects. The department

may waive the fee set forth in this section for an awarding body that has previously been granted approval by the director to initiate and operate a labor compliance program on the awarding body's projects, and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. This fee shall not be waived for an awarding body that contracts with a third party to initiate and enforce labor compliance programs on the awarding body's projects.

(b) This section shall only apply to a contract awarded on or after both the effective date of the department's adoption of the fee set forth in subdivision (a) and of regulations pursuant to paragraph (2) of subdivision (b) of Section 1771.55.

SEC. 12. Section 1771.9 of the Labor Code is repealed.

SEC. 13. Section 1771.9 is added to the Labor Code, to read:

1771.9. (a) The body awarding any contract for a public works project financed in any part with funds made available by the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code) shall pay a fee to the Department of Industrial Relations, in an amount that the department shall establish, and as it may from time to time amend, in an amount not to exceed one-fourth of 1 percent of the bond proceeds, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3, and shall be used only for enforcement of prevailing wage requirements on those projects. The department may waive the fee set forth in this section for an awarding body that has previously been granted approval by the director to initiate and operate a labor compliance program on the awarding body's projects, and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. This fee shall not be waived for an awarding body that contracts with a third party to initiate and enforce labor compliance programs on the awarding body's projects.

(b) This section shall apply only to a contract awarded on or after both the effective date of the department's adoption of the fee set forth in subdivision (a) and of regulations pursuant to paragraph (2) of subdivision (b) of Section 1771.55.

SEC. 14. Section 20133 of the Public Contract Code is amended to read:

20133. (a) A county, with approval of the board of supervisors, may utilize an alternative procedure for bidding on construction projects in the county in excess of two million five hundred thousand dollars (\$2,500,000) and may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable counties to utilize design-build for buildings and county sanitation wastewater treatment facilities. It is not the intent of the Legislature to authorize this procedure for other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructures.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process.

(3) (A) For contracts awarded prior to either the effective date of regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fees established by the department pursuant to subparagraph (B), if the board of supervisors elects to proceed under this section, the board of supervisors shall establish and enforce for design-build projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the county or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(B) For contracts awarded on or after both the effective date of regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fees established by the department pursuant to this subparagraph, the board of supervisors shall pay a fee to the department, in an amount that the department shall establish, and

as it may from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this paragraph shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wages requirements on those projects.

(C) The Department of Industrial Relations may waive the fee set forth in subparagraph (B) if the board of supervisors has previously been granted approval by the director to initiate and operate a labor compliance program on its projects and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. The fee shall not be waived for the board of supervisors if it contracts with a third party to initiate and enforce labor compliance programs on its projects.

(c) As used in this section:

(1) "Best value" means a value determined by objective criteria related to price, features, functions, and life-cycle costs.

(2) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(4) "Project" means the construction of a building and improvements directly related to the construction of a building, and county sanitation wastewater treatment facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The county shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the public improvement, performance specifications covering the quality of materials, equipment, and workmanship, preliminary

plans or building layouts, or any other information deemed necessary to describe adequately the county's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the county to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the county shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the county. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the county to inform interested parties of the contracting opportunity, to include the methodology that will be used by the county to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors that the county reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the county chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the county to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The county shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by

the county. In preparing the questionnaire, the county shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the county that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, or the federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance in which an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance in which the entity, or its owners, officers, or managing employees, defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the

Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec. 3101 et seq.) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

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

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(4) The county shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) A county may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors

shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design, and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the county shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.

(v) For purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

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

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for

the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the county.

(h) The county may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the county elects to award a project pursuant to this section, retention proceeds withheld by the county from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract

between the county and the design-build entity. 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 to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the county and the design-build entity from any payment made by the design-build entity to the subcontractor.

(l) Each county that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2009, a report containing a description of each public works project procured through the design-build process and completed after November 1, 2004, and before November 1, 2009. The report shall include, but shall not be limited to, all of the following information:

- (1) The type of project.
- (2) The gross square footage of the project.
- (3) The design-build entity that was awarded the project.
- (4) The estimated and actual length of time to complete the project.
- (5) The estimated and actual project costs.
- (6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.
- (7) An assessment of the prequalification process and criteria.
- (8) An assessment of the effect of retaining 5-percent retention on the project.
- (9) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.
- (10) A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.
- (11) An assessment of the project impact of "skilled labor force availability."
- (12) An assessment of the design-build dollar limits on county projects. This assessment shall include projects where the county wanted to use design-build and was precluded by the dollar

limitation. This assessment shall also include projects where the best value method was not used due to dollar limitations.

(13) An assessment of the most appropriate uses for the design-build approach.

(m) Any county that elects to not use the authority granted by this section may submit a report to the Legislative Analyst's Office explaining why the county elected to not use the design-build method.

(n) On or before January 1, 2010, the Legislative Analyst shall report to the Legislature on the use of the design-build method by counties pursuant to this section, including the information listed in subdivision (l). The report may include recommendations for modifying or extending this section.

(o) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.

(p) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 15. Section 20175.2 of the Public Contract Code is amended to read:

20175.2. (a) (1) A city, with approval of the appropriate city council, may utilize an alternative procedure for bidding on building construction projects in the city in excess of one million dollars (\$1,000,000), except as provided in subdivision (p).

(2) Cities may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable cities to utilize cost-effective options for building and modernizing public facilities. The Legislature also recognizes the national trend, including authorization in California, to allow public entities to utilize design-build contracts as a project delivery method. It is not the intent of the Legislature to authorize this procedure for transportation facilities, including, but not limited to, roads and bridges.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process. The Legislature also finds that the cost-effective benefits to cities are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(3) It is the intent of the Legislature to provide an alternative and optional procedure for bidding and building construction projects for cities.

(4) The design-build approach may be used, but is not limited to use, when it is anticipated that it will: reduce project cost, expedite project completion, or provide design features not achievable through the design-bid-build method.

(5) (A) For contracts awarded prior to the effective date of either the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fees established by the department pursuant to subparagraph (B), if a city council elects to proceed under this section, the city council shall establish and enforce, for design-build projects, a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the city or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(B) For contracts awarded on or after the effective date of both the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fees established by the department pursuant to this subparagraph, the city council shall pay a fee to the department, in an amount that the department shall establish, and as it may from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this paragraph shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(C) The Department of Industrial Relations may waive the fee set forth in subparagraph (2) if the city council has previously been granted approval by the director to initiate and operate a labor compliance program on its projects and requests to continue to operate that labor compliance program on its projects in lieu of

labor compliance by the department pursuant to subdivision (b) of Section 1771.55. The fee shall not be waived for the city council if it contracts with a third party to initiate and enforce labor compliance programs on its projects.

(c) As used in this section:

(1) “Best value” means a value determined by objectives relative to price, features, functions, and life-cycle costs.

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

(3) “Design-build entity” means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services, as needed, pursuant to a design-build contract.

(4) “Project” means the construction of a building and improvements directly related to the construction of a building, but does not include streets and highways, public rail transit, or water resource facilities and infrastructure.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The city shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the city’s needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the city to assist in the development of the project-specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the city shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the city. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed

necessary by the city to inform interested parties of the contracting opportunity, to include the methodology that will be used by the city to evaluate proposals, and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors which the city reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors, other than cost or price, when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the city chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately, or incorporate into the request for proposal, applicable rules and procedures to be observed by the city to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The city shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the city. In preparing the questionnaire, the city shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial

statement that assures the city that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596) settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance where an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance where the entity, its owners, officers, or managing employees defaulted on a construction contract.

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

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

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

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(4) The city shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) The city may use a design-build competition based upon best value and other criteria set forth in paragraph (2) of subdivision (d). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design and construction expertise, life-cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record. Each of these factors shall be weighted equally.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the city shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the

basis of the award. The notice of award shall also include the city's second and third ranked design-build entities.

(v) For purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

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

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services and errors and omissions insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the city.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the city in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the city.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the city.

(h) The city may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the city elects to award a project pursuant to this section, retention proceeds withheld by the city from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the city and the design-build entity. 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 to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the city and the design-build entity from any payment made by the design-build entity to the subcontractor.

(l) Each city that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2014, a report containing a description of each public works project procured through the design-build process that is completed after January

1, 2011, and before November 1, 2014. The report shall include, but shall not be limited to, all of the following information:

- (1) The type of project.
 - (2) The gross square footage of the project.
 - (3) The design-build entity that was awarded the project.
 - (4) The estimated and actual project costs.
 - (5) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.
 - (6) An assessment of the prequalification process and criteria.
 - (7) An assessment of the effect of retaining 5 percent retention on the project.
 - (8) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.
 - (9) A description of the method used to award the contract. If the best value method was used, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.
 - (10) An assessment of the project impact of “skilled labor force availability.”
 - (11) An assessment of the most appropriate uses for the design-build approach.
- (m) Any city that elects not to use the authority granted by this section may submit a report to the Legislative Analyst’s Office explaining why the city elected not to use the design-build method.
- (n) On or before January 1, 2015, the Legislative Analyst’s Office shall report to the Legislature on the use of the design-build method by cities pursuant to this section, including the information listed in subdivision (l). The report may include recommendations for modifying or extending this section.
- (o) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.
- (p) Before January 1, 2011, the project limitation of one million dollars (\$1,000,000), as set forth in subdivision (a), shall not apply to any city in the Counties of Solano and Yolo, or to the Cities of Stanton and Victorville.
- (q) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 16. Section 20193 of the Public Contract Code is amended to read:

20193. (a) (1) Notwithstanding any other law and subject to the limitations of this article, a qualified entity, with approval of its governing body, may utilize an alternative procedure on bidding on projects in excess of two million five hundred thousand dollars (\$2,500,000).

(2) Only 20 design-build projects shall be authorized under this article.

(3) A qualified entity may award a project using either the lowest responsible bidder or by best value.

(4) For purposes of this article, “qualified entity” means an entity that meets both of the following:

(A) The entity is any of the following:

(i) A city.

(ii) A county.

(iii) A city and county.

(iv) A special district.

(B) The entity operates wastewater facilities, solid waste management facilities, or water recycling facilities.

(b) (1) For contracts awarded prior to the effective date of either the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fees established by the department pursuant to paragraph (2), if a qualified entity elects to proceed under this section, the qualified entity shall establish and enforce for design-build projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the qualified entity or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(2) For contracts awarded on or after the effective date of both the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fees established by the department pursuant to this paragraph, the qualified entity shall pay a fee to the department, in an amount that the department shall establish, and as it may

from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(3) The Department of Industrial Relations may waive the fee set forth in paragraph (2) if the qualified entity has previously been granted approval by the director to initiate and operate a labor compliance program on its projects and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. The fee shall not be waived for the qualified entity if it contracts with a third party to initiate and enforce labor compliance programs on its projects.

(c) As used in this section:

(1) "Best value" means a value determined by objective criteria related to price, features, functions, small business contracting plans, past performance, and life-cycle costs.

(2) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(4) "Project" means the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, or regional and local water recycling facilities.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The qualified entity shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the project and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or project layouts, or any other information deemed necessary to describe adequately the qualified entity's needs. The

performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the qualified entity to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the qualified entity shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the qualified entity. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the qualified entity to inform interested parties of the contracting opportunity, to include the methodology that will be used by the qualified entity to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors that the qualified entity reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the qualified entity shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the qualified entity chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the qualified entity to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The qualified entity shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the qualified entity. In preparing the questionnaire, the qualified entity shall consult with the construction industry,

including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the special district that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance where an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

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

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of

federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

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

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(4) The qualified entity shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) A qualified entity may use a design-build competition based upon best value and other criteria set forth in paragraph (2) of subdivision (d). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of

consideration given to all criteria factors; price, technical design and construction expertise, life-cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the qualified entity shall publicly announce its award, identifying the contractor to which the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the qualified entity's second and third ranked design-build entities.

(v) For purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

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

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omissions insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build

entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the qualified entity.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the qualified entity in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the qualified entity.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the qualified entity.

(h) The qualified entity may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the qualified entity elects to award a project pursuant to this section, retention proceeds withheld by the qualified entity from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the qualified entity and the design-build entity. 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 to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the qualified entity and the design-build entity from any payment made by the design-build entity to the subcontractor.

(l) Each qualified entity that elects to proceed under this section and uses the design-build method on a public works project shall do both of the following:

(1) Notify the Legislative Analyst's Office upon initiation of the project and upon completion of the project.

(2) Submit to the Legislative Analyst's Office, upon completion of the project, a report containing a description of the public works project procured through the design-build process pursuant to this section and completed after January 1, 2009. The report shall include, but shall not be limited to, all of the following information:

(A) The type of project.

(B) The gross square footage of the project.

(C) The design-build entity that was awarded the project.

(D) The estimated and actual project costs.

(E) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.

(F) An assessment of the prequalification process and criteria.

(G) An assessment of the effect of retaining 5-percent retention on the project.

(H) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.

(I) A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(J) An assessment of the project impact of “skilled labor force availability.”

(K) An assessment of the most appropriate uses for the design-build approach.

(m) Any qualified entity that elects not to use the authority granted by this section may submit a report to the Legislative Analyst’s Office explaining why the qualified entity elected to not use the design-build method.

(n) (1) In order to comply with paragraph (2) of subdivision (a), the Office of Planning and Research is required to maintain the list of entities that have applied and are eligible to be qualified for this authority.

(2) Each entity that is interested in proceeding under the authority in this section must apply to the Office of Planning and Research.

(A) The application to proceed must be in writing.

(B) An entity must have complied with the California Environmental Quality Act review process pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code prior to its application, and must include its approved notice of determination or notice of completion in its application.

(3) The Office of Planning and Research must approve or deny an application, in writing, within 30 days. The authority to deny an application shall only be exercised if the conditions set forth in either or both paragraph (2) of subdivision (a) and subparagraph (B) of paragraph (2) of this subdivision have not been satisfied.

(4) An entity utilizing this section must, after it determines it no longer is interested in using this authority, notify the Office of Planning and Research in writing within 30 days of its determination. Upon notification, the Office of Planning and Research may contact any previous applicants, denied pursuant to paragraph (2) of subdivision (a), to inform them of the availability to proceed under this section.

(o) The Legislative Analyst shall report to the Legislature on the use of the design-build method by qualified entities pursuant to this section, including the information listed in subdivision (l). The report may include recommendations for modifying or extending this section, and shall be submitted on either of the following dates, whichever occurs first:

(1) Within one year of the completion of the 20 projects, if the projects are completed prior to January 1, 2019.

(2) No later than January 1, 2020.

SEC. 17. Section 20209.7 of the Public Contract Code is amended to read:

20209.7. Design-build projects shall progress in a three-step process, as follows:

(a) The transit operator shall prepare a set of documents setting forth the scope of the project. The documents shall include, but are not limited to, the size, type, and desired design character of the buildings, transit facilities, and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the transit operator's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in California.

(b) Any architectural or engineering firm or individual retained by the transit operator to assist in the development criteria or preparation of the request for proposal (RFP) is not eligible to participate in the competition for the design-build entity.

(c) (1) For contracts awarded prior to the effective date of either the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fee established by the department pursuant to paragraph (2), if the transit operator does not already have a labor compliance program, as defined in Section 1771.5 of the Labor Code, the transit operator shall establish and enforce a labor compliance program for the design-build contract containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate this labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement applies only to the design-build contract and does not apply to projects where the transit operator or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project, or to any other project of the transit operator that is not design-build.

(2) For contracts awarded on or after the effective date of both the regulations adopted by the Department of Industrial Relations

pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fee established by the department pursuant to this paragraph, the transit operator shall pay a fee to the department, in an amount that the department shall establish, and as it may from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55 of the Labor Code. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(3) The Department of Industrial Relations may waive the fee set forth in paragraph (2) if the transit operator has previously been granted approval by the director to initiate and operate a labor compliance program on its projects and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55 of the Labor Code. The fee shall not be waived for the transit operator if it contracts with a third party to initiate and enforce labor compliance programs on its projects.

(d) (1) Each RFP shall identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the contracting agency to inform interested parties of the contracting opportunity.

(2) Each RFP shall invite interested parties to submit competitive sealed proposals in the manner prescribed by the contracting agency.

(3) Each RFP shall include a section identifying and describing:

(A) All significant factors that the agency reasonably expects to consider in evaluating proposals, including cost or price and all nonprice-related factors.

(B) The methodology and rating or weighting process that will be used by the agency in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

(C) The relative importance or weight assigned to each of the factors identified in the RFP. If a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

- (i) Significantly more important than cost or price.
- (ii) Approximately equal in importance to cost or price.
- (iii) Significantly less important than cost or price.

(D) If the contracting agency wishes to reserve the right to hold discussions or negotiations with offerors, it shall specify the same in the RFP and shall publish separately or incorporate into the RFP applicable rules and procedures to be observed by the agency to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(e) (1) The transit operator shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of Industrial Relations. The standardized questionnaire shall not require prospective bidders to disclose any violations of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code committed prior to January 1, 1998, if the violation was based on a subcontractor's failure to comply with these provisions and the bidder had no knowledge of the subcontractor's violations and the bidder complied with the conditions set forth in subdivision (b) of Section 1775 of the Labor Code. In preparing the questionnaire, the director shall consult with the construction industry, building trades, transit operators, and other affected parties. This questionnaire shall require information relevant to the architecture or engineering firm that will be the lead on the design-build project. The questionnaire shall include, but is not limited to, all of the following:

(A) A listing of all the contractors that are part of the design-build entity.

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

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

(D) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance,

as well as a financial statement that assures the transit operator that the design-build entity has the capacity to complete the project.

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

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

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

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

(I) Information concerning the bankruptcy or receivership of any member of the entity, and information concerning all legal claims, disputes, or lawsuits arising from any construction project of any member of the entity during the past three years, including information concerning any work completed by a surety.

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

(K) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five-year period immediately preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

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

(2) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(f) The transit operator shall establish a procedure for final selection of the design-build entity. Selection shall be subject to the following conditions:

(1) In no case shall the transit operator award a contract to a design-build entity pursuant to this article for a capital maintenance or capacity-enhancing rail project unless that project exceeds twenty-five million dollars (\$25,000,000) in cost.

(2) For nonrail transit projects that exceed two million five hundred thousand dollars (\$2,500,000), the transit operator may award the project to the lowest responsible bidder or by using the best value method.

(3) For the acquisition and installation of technology applications or surveillance equipment designed to enhance safety, disaster preparedness, and homeland security efforts, there shall be no cost threshold and the transit operator may award the contract to the lowest responsible bidder or by using the best value method.

(g) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.

SEC. 18. Section 20209.24 of the Public Contract Code is amended to read:

20209.24. (a) For contracts awarded prior to the effective date of either the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fee established by the department pursuant to subdivision (b) the authority shall implement a labor compliance program as described in Section 1771.5 of the Labor Code, or it shall contract with a third party to implement on the authority's behalf a labor compliance program subject to that statute. This

requirement does not apply to any project where the authority or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(b) For contracts awarded on or after the effective date of both the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fee established by the department pursuant to this subdivision, the unified school district shall pay a fee to the department, in an amount that the department shall establish, and as it may from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55 of the Labor Code. All fees collected pursuant to this section shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(c) The Department of Industrial Relations may waive the fee set forth in subdivision (b) if the unified school district has previously been granted approval by the director to initiate and operate a labor compliance program on its projects and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55 of the Labor Code. The fee shall not be waived for the unified school district if it contracts with a third party to initiate and enforce labor compliance programs on its projects.

SEC. 19. Section 20919.3 of the Public Contract Code is amended to read:

20919.3. (a) (1) For contracts awarded prior to the effective date of either the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fees established by the department pursuant to paragraph (2), the unified school district shall establish and enforce for job order contracts a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in that provision. This requirement does not apply to any project where

the unified school district or the job order contractor has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(2) For contracts awarded on or after the effective date of both the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fees established by the department pursuant to this paragraph, the unified school district shall pay a fee to the department, in an amount that the department shall establish, and as it may from time to time amend, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55 of the Labor Code. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(3) The Department of Industrial Relations may waive the fee set forth in paragraph (2) if the unified school district has previously been granted approval by the director to initiate and operate a labor compliance program on its projects and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55 of the Labor Code. The fee shall not be waived for the unified school district if it contracts with a third party to initiate and enforce labor compliance programs on its projects.

(b) The unified school district shall prepare an execution plan for all modernization projects that may be eligible for job order contracting pursuant to this article. The unified school district shall select from that plan a sufficient number of projects to be initiated as job order contracts during each calendar year and shall determine for each selected project that job order contracting will reduce the total cost of that project. Job order contracting shall not be used if the unified school district finds that it will increase the total cost of the project.

(c) No later than June 30, 2005, the unified school district shall submit an interim report on all job order contract projects completed by December 31, 2004, to the Office of Public School

Construction in the Department of General Services and the Senate and the Assembly Committees on Business and Professions and the Senate and Assembly Committees on Education. The interim report shall be prepared by an independent third party and the unified school district shall pay for the cost of the report. The report shall include the information specified in subdivisions (a) through (h) of Section 20919.12.

SEC. 20. Section 8007 is added to the Water Code, to read:

8007. A capital improvement project undertaken by a charter city to extend that city's water, sewer, or storm drain system or similar system to a disadvantaged community in an unincorporated area shall be considered a public work for the purpose of Section 1720 of the Labor Code, but any subsequent project to construct, expand, reconstruct, install, or repair such systems that have been so extended and that are conducted within that city's political boundaries shall not be considered a public work for the purpose of Section 1720 of the Labor Code as a result of the extension. For the purpose of this section, "disadvantaged community" means a disadvantaged community as defined in Section 79505.5.

Approved _____, 2009

Governor