

AMENDED IN ASSEMBLY MAY 22, 2012
AMENDED IN ASSEMBLY JUNE 20, 2011
AMENDED IN ASSEMBLY JUNE 6, 2011
AMENDED IN SENATE MAY 3, 2011
AMENDED IN SENATE APRIL 12, 2011
AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 475

Introduced by Senators Wright and Emmerson

February 17, 2011

An act to amend ~~Sections 5956, 5956.1, 5956.2, 5956.3, 5956.4, 5956.5, 5956.6, 5956.7, 5956.8, 5956.9, and 5956.10 of, and to add Section 5956.12 to, Section 54953 of the Government Code, relating to infrastructure financing~~ *local agencies*.

LEGISLATIVE COUNSEL'S DIGEST

SB 475, as amended, Wright. ~~Infrastructure financing~~. *Local agencies: open meetings: teleconferences.*

(1) The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend. The act authorizes a legislative body to use teleconferencing, subject to specified requirements, including that each teleconference location be accessible to the public and that at least a quorum of the members of the body participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.

Existing law provides that, in counties selected by the Director of Health Care Services with the concurrence of the county, a special county health authority may be established in order to meet the problems of delivery of publicly assisted medical care in each county, and to demonstrate ways of promoting quality care and cost efficiency.

This bill would provide that, notwithstanding the provisions of the act on teleconferencing, with respect to a teleconference meeting of a county health authority established in a county under specified provisions, members of a health authority who are outside the jurisdiction may be counted toward the establishment of a quorum when participating in the teleconference if at least 50% of the number of members that would establish a quorum are present within the jurisdiction and the health authority provides a teleconference number and associated access codes, if any, that allows any person to call in to participate in the meeting, and that number and access codes are identified in the notice and agenda of the meeting.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

~~Existing law authorizes a governmental agency, as defined, to solicit proposals and enter into agreements with private entities for the design, construction, or reconstruction by, and lease to, private entities, for specified types of fee-producing infrastructure projects. Existing law permits these agreements to provide for infrastructure facilities owned by a governmental entity, but constructed by a private entity, to be leased to or owned by that private entity for a period of up to 35 years, after which time the project would revert to the governmental agency.~~

~~This bill would authorize a local governmental agency to enter into an agreement with a private entity for financing for specified types of revenue-generating infrastructure projects. The bill would require an agreement entered into under these provisions to include adequate financial resources to perform the agreement, and would additionally permit the agreements to lease or license to, or provide other permitted uses by, the private entity.~~

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

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

1 SECTION 1. Section 54953 of the Government Code is
2 amended to read:

3 54953. (a) All meetings of the legislative body of a local
4 agency shall be open and public, and all persons shall be permitted
5 to attend any meeting of the legislative body of a local agency,
6 except as otherwise provided in this chapter.

7 (b) (1) Notwithstanding any other provision of law, the
8 legislative body of a local agency may use teleconferencing for
9 the benefit of the public and the legislative body of a local agency
10 in connection with any meeting or proceeding authorized by law.
11 The teleconferenced meeting or proceeding shall comply with all
12 requirements of this chapter and all otherwise applicable provisions
13 of law relating to a specific type of meeting or proceeding.

14 (2) Teleconferencing, as authorized by this section, may be used
15 for all purposes in connection with any meeting within the subject
16 matter jurisdiction of the legislative body. All votes taken during
17 a teleconferenced meeting shall be by rollcall.

18 (3) If the legislative body of a local agency elects to use
19 teleconferencing, it shall post agendas at all teleconference
20 locations and conduct teleconference meetings in a manner that
21 protects the statutory and constitutional rights of the parties or the
22 public appearing before the legislative body of a local agency.
23 Each teleconference location shall be identified in the notice and
24 agenda of the meeting or proceeding, and each teleconference
25 location shall be accessible to the public. During the teleconference,
26 at least a quorum of the members of the legislative body shall
27 participate from locations within the boundaries of the territory
28 over which the local agency exercises jurisdiction, except as
29 provided in subdivision (d). The agenda shall provide an
30 opportunity for members of the public to address the legislative
31 body directly pursuant to Section 54954.3 at each teleconference
32 location.

33 (4) For the purposes of this section, “teleconference” means a
34 meeting of a legislative body, the members of which are in different
35 locations, connected by electronic means, through either audio or
36 video, or both. Nothing in this section shall prohibit a local agency
37 from providing the public with additional teleconference locations.

1 (c) No legislative body shall take action by secret ballot, whether
2 preliminary or final.

3 (d) (1) Notwithstanding the provisions relating to a quorum in
4 paragraph (3) of subdivision (b), when a health authority conducts
5 a teleconference meeting, members who are outside the jurisdiction
6 of the authority may be counted toward the establishment of a
7 quorum when participating in the teleconference if at least 50
8 percent of the number of members that would establish a quorum
9 are present within the boundaries of the territory over which the
10 authority exercises jurisdiction, and the health authority provides
11 a teleconference number, and associated access codes, if any, that
12 allows any person to call in to participate in the meeting and that
13 number and access codes are identified in the notice and agenda
14 of the meeting.

15 (2) Nothing in this subdivision shall be construed as
16 discouraging health authority members from regularly meeting at
17 a common physical site within the jurisdiction of the authority or
18 from using teleconference locations within or near the jurisdiction
19 of the authority. A teleconference meeting for which a quorum is
20 established pursuant to this subdivision shall be subject to all other
21 requirements of this section.

22 (3) For purposes of this subdivision, a health authority means
23 any entity created pursuant to Sections 14018.7, 14087.31,
24 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare
25 and Institutions Code, any joint powers authority created pursuant
26 to Article 1 (commencing with Section 6500) of Chapter 5 of
27 Division 7 for the purpose of contracting pursuant to Section
28 14087.3 of the Welfare and Institutions Code, and any advisory
29 committee to a county sponsored health plan licensed pursuant to
30 Chapter 2.2 (commencing with Section 1340) of Division 2 of the
31 Health and Safety Code if the advisory committee has 12 or more
32 members.

33 ~~(4) This subdivision shall remain in effect only until January 1,~~
34 ~~2009.~~

35 *SEC. 2. The Legislature finds and declares that Section 1 of*
36 *this act, which amends Section 54953 of the Government Code,*
37 *imposes a limitation on the public's right of access to the meetings*
38 *of public bodies or the writings of public officials and agencies*
39 *within the meaning of Section 3 of Article I of the California*
40 *Constitution. Pursuant to that constitutional provision, the*

1 *Legislature makes the following findings to demonstrate the interest*
2 *protected by this limitation and the need for protecting that*
3 *interest:*

4 *Local health initiatives are an essential component of*
5 *California’s health care delivery system, and their ability to meet*
6 *regularly to address the health care concerns of Medi-Cal*
7 *beneficiaries is vital. The membership of local health initiative*
8 *boards of directors is required by statute to represent a diverse*
9 *group of health care professionals, and, as a result, these boards*
10 *frequently are large and comprised of persons working and*
11 *residing outside of the board’s jurisdiction. Accordingly, these*
12 *boards have a demonstrated difficulty in obtaining a quorum of*
13 *members located within the board’s jurisdiction as required by*
14 *the teleconference provisions of the Ralph M. Brown Act.*

15 ~~SECTION 1. Section 5956 of the Government Code is amended~~
16 ~~to read:~~

17 ~~5956.—Local governmental agencies have experienced a~~
18 ~~significant decrease in available tax revenues to fund necessary~~
19 ~~infrastructure improvements. If local governmental agencies are~~
20 ~~going to maintain the quality of life that infrastructure provides,~~
21 ~~they must find new funding sources. One source of new money is~~
22 ~~private sector financing utilized to study, plan, design, develop,~~
23 ~~finance, construct, maintain, improve, rebuild, repair, operate, or~~
24 ~~any combination thereof, infrastructure facilities. Infrastructure~~
25 ~~projects may be financed by a combination of public funding and~~
26 ~~private sector financing under this chapter. Private sector financing~~
27 ~~for an infrastructure project under this chapter may include, but is~~
28 ~~not limited to, cash, cash equivalents, loans, debt assumption,~~
29 ~~letters of credit, capital investment, in-kind contributions of~~
30 ~~materials or equipment, construction or equipment financing,~~
31 ~~carrying of costs during construction, or any combination thereof.~~
32 ~~Unless private sector financing becomes available to study, plan,~~
33 ~~design, develop, finance, construct, maintain, improve, rebuild,~~
34 ~~repair, or any combination thereof, fee-producing infrastructure~~
35 ~~facilities, some local governmental agencies will be unable to~~
36 ~~replace deteriorating infrastructure. Further, some local~~
37 ~~governmental agencies will be unable to expand and build new~~
38 ~~infrastructure facilities to serve an increasing population.~~

39 ~~SEC. 2. Section 5956.1 of the Government Code is amended~~
40 ~~to read:~~

1 ~~5956.1. It is the intent of the Legislature that local governmental~~
2 ~~agencies have the authority and flexibility to utilize private sector~~
3 ~~financing alone or in concert with public financing to study, plan,~~
4 ~~design, construct, develop, finance, maintain, rebuild, improve,~~
5 ~~repair, or operate, or any combination thereof, fee-producing~~
6 ~~infrastructure facilities. Without the ability to utilize these sources~~
7 ~~of financing to study, plan, design, construct, develop, finance,~~
8 ~~maintain, rebuild, improve, repair, or operate, or any combination~~
9 ~~thereof, fee-producing infrastructure facilities, the Legislature finds~~
10 ~~that some local governmental agencies will not be able to~~
11 ~~adequately, competently, or satisfactorily retrofit, reconstruct,~~
12 ~~repair, or replace existing infrastructure and will not be able to~~
13 ~~adequately, competently, or satisfactorily design and construct~~
14 ~~new infrastructure.~~

15 ~~SEC. 3. Section 5956.2 of the Government Code is amended~~
16 ~~to read:~~

17 ~~5956.2. It is the intent of the Legislature that this chapter be~~
18 ~~construed as creating a new and independent authority for local~~
19 ~~governmental agencies to utilize private sector financing alone or~~
20 ~~in concert with public financing to study, plan, design, construct,~~
21 ~~develop, finance, maintain, rebuild, improve, repair, or operate,~~
22 ~~or any combination thereof, fee-producing infrastructure facilities.~~
23 ~~To that end, this authority is intended to supplement and be~~
24 ~~independent of any existing authority and does not limit, replace,~~
25 ~~or detract from existing authority. This chapter may be used by~~
26 ~~local governmental entities when they deem it appropriate in the~~
27 ~~exercise of their discretion. It is the intent of the Legislature that~~
28 ~~this act create no new governmental entities.~~

29 ~~SEC. 4. Section 5956.3 of the Government Code is amended~~
30 ~~to read:~~

31 ~~5956.3. For purposes of this chapter, the following definitions~~
32 ~~shall apply:~~

33 ~~(a) “Fee-producing infrastructure project” or “fee-producing~~
34 ~~infrastructure facility” means the operation of the infrastructure~~
35 ~~project or facility will be paid for, in whole or in part, by the~~
36 ~~persons or entities benefited by or utilizing the project or facility.~~

37 ~~(b) “Governmental agency” includes a city, county, city and~~
38 ~~county, including a charter city or county, school district,~~
39 ~~community college district, public district, county board of~~

1 education, joint powers authority, transportation commission or
2 authority, or any other public or municipal corporation.

3 (e) “Private entity” includes a person, business entity,
4 combination of persons and business entities, or a combination of
5 business entities.

6 ~~SEC. 5. Section 5956.4 of the Government Code is amended~~
7 ~~to read:~~

8 ~~5956.4. A governmental agency may solicit proposals and enter~~
9 ~~into agreements as authorized under this chapter for the following~~
10 ~~types of fee-producing infrastructure projects:~~

11 ~~(a) Irrigation.~~

12 ~~(b) Drainage and sanitary sewer systems.~~

13 ~~(c) Energy or power production.~~

14 ~~(d) Water supply, treatment, and distribution.~~

15 ~~(e) Flood control.~~

16 ~~(f) Inland waterways.~~

17 ~~(g) Harbors.~~

18 ~~(h) Municipal improvements.~~

19 ~~(i) Commuter and light rail.~~

20 ~~(j) Highways or bridges.~~

21 ~~(k) Tunnels.~~

22 ~~(l) Airports and runways.~~

23 ~~(m) Purification of water.~~

24 ~~(n) Sewage treatment, disposal, and water recycling.~~

25 ~~(o) Refuse disposal.~~

26 ~~(p) Structures or buildings, except structures or buildings that~~
27 ~~are to be utilized primarily for sporting or entertainment events.~~

28 ~~SEC. 6. Section 5956.5 of the Government Code is amended~~
29 ~~to read:~~

30 ~~5956.5. (a) Notwithstanding Chapter 10 (commencing with~~
31 ~~Section 4525) of Division 5, or Part 2 (commencing with Section~~
32 ~~10100) or Part 3 (commencing with Section 20100) of Division 2~~
33 ~~of the Public Contract Code, the governmental agency soliciting~~
34 ~~proposals and entering into agreements with private entities for~~
35 ~~the studying, planning, design, developing, financing, construction,~~
36 ~~maintenance, rebuilding, improvement, repair, or operation, or any~~
37 ~~combination thereof, by private entities for fee-producing~~
38 ~~infrastructure projects shall ensure that the contractor is selected~~
39 ~~pursuant to a competitive negotiation process. Projects may be~~
40 ~~proposed by the private entity and selected by the governmental~~

1 agency at the discretion of the governmental agency. Projects may
2 be proposed and selected individually or as part of a related or
3 larger project. The competitive negotiation process shall utilize
4 criteria that the governmental agency identifies in the solicitation
5 documents. The selection criteria shall, to the extent applicable to
6 the proposed project, include the following factors: financial
7 approach or price proposal, features, life cycle costs, technical
8 approach, an acceptable safety and labor code compliance record,
9 experience and qualifications of the private entity to perform the
10 services under the agreement, and any other criteria specifically
11 identified by the governmental agency. The selection criteria shall
12 also ensure that the facility be operated at fair and reasonable prices
13 to the user of the infrastructure facility services. The competitive
14 negotiation process shall not require competitive bidding. The
15 competitive negotiation process shall specifically prohibit practices
16 that may result in unlawful activity including, but not limited to,
17 rebates, kickbacks, or other unlawful consideration, and shall
18 specifically prohibit governmental agency employees from
19 participating in the selection process when those employees have
20 a relationship with a person or business entity seeking a contract
21 under this section that would subject those employees to the
22 prohibition of Section 87100. Other than these criteria and
23 applicable provisions related to providing security for any required
24 construction and completion of the facility, the governmental
25 agency soliciting proposals is not subject to any other provisions
26 of the Public Contract Code, this code, or any other statutory
27 provision that relates to public procurements.

28 (b) Prior to entering into an agreement with a private entity
29 pursuant to Section 5956.4 that includes at least some public
30 financing and relates to a project for which public financing is
31 available to finance the entire project, the governmental agency
32 shall assess whether that agreement provides greater benefits or
33 value for money to the governmental agency as compared with a
34 project that is financed entirely with public financing and is subject
35 to competitive bidding.

36 SEC. 7. Section 5956.6 of the Government Code is amended
37 to read:

38 5956.6. (a) For purposes of facilitating projects, the agreements
39 specified in Section 5956.4 may include provisions for the lease,
40 license, or other permissive use of rights-of-way in, and airspace

1 over, property owned by a governmental agency, for the granting
2 of necessary easements, and for the issuance of permits or other
3 authorizations to enable the private entity to construct, maintain,
4 rebuild, improve, or repair infrastructure facilities supplemental
5 to existing government-owned facilities. Infrastructure constructed
6 by a private entity pursuant to this chapter shall, at all times, be
7 owned by a governmental agency. All construction, alteration,
8 demolition, installation, and repair work performed pursuant to
9 this chapter shall comply with Chapter 1 (commencing with Section
10 1720) of Part 7 of Division 2 of the Labor Code. The agreement
11 may provide for the lease or license of those facilities to, or their
12 other permissive use by, the private entity for up to 35 years. In
13 consideration therefor, the agreement shall provide for complete
14 reversion of the privately constructed facility to the governmental
15 agency at the expiration of the lease, license, or other permissive
16 use at no charge to the governmental agency. Subsequent to the
17 expiration of the period of the lease, license, or other permissive
18 use, the governmental agency may continue to charge fees for use
19 of the infrastructure facility. If, after the expiration of the period
20 of the lease, license, or other permissive use, the governmental
21 agency continues to lease airspace rights to the private entity, it
22 shall do so at fair market value.

23 (b) The agreement between the governmental agency and the
24 private entity shall include, but need not be limited to, provisions
25 to ensure the following:

26 (1) Compliance with the California Environmental Quality Act
27 (Division 13 (commencing with Section 21000) of the Public
28 Resources Code). Neither the act of selecting a proposed project
29 or a private entity, nor the execution of an agreement with a private
30 entity, shall require prior compliance with that act. However,
31 appropriate compliance with that act shall thereafter occur before
32 project development commences.

33 (2) Security for the performance of the agreement and
34 contractual provisions that are necessary to protect the funding
35 and financial terms of the agreement.

36 (3) Adequate financial resources of the private entity to perform
37 the agreement.

38 (4) Authority for the governmental agency to impose user fees,
39 in whole or in part, for use of the facility in an amount sufficient
40 to protect the revenue streams necessary for projects or facilities

1 undertaken pursuant to this chapter. User fee revenues, used in
2 whole or in part, may be paid to the governmental agency or the
3 private entity and shall be dedicated exclusively to payment of all
4 of the following costs relating to the facility, including, but not
5 limited to, the private entity's and the governmental agency's direct
6 and indirect capital outlay costs for the project, direct and indirect
7 costs associated with financing of the facility, including interest,
8 principal, repayment, issuance, and refinancing costs, direct and
9 indirect costs associated with operations, direct and indirect user
10 fee collection costs, direct and indirect costs of administration of
11 the facility, direct and indirect costs of maintenance, and other
12 project-related costs, including a reasonable return on investment
13 to the private entity as set forth specifically in the agreement, or
14 included as part of the costs and fees, as negotiated or determined
15 during the procurement process.

16 (5) As a precondition to the imposition or increase of a user fee,
17 the governmental agency shall conduct at least two public hearings
18 at which public testimony will be received regarding a proposed
19 user fee revenue or increase in user fee revenues. The public
20 hearings shall precede the action by the governmental agency to
21 actually impose a user fee or to increase an existing user fee. The
22 governmental agency shall consider the public testimony prior to
23 imposing a new or increased user fee. The governmental agency
24 shall provide the following notices and utilize the following
25 procedures:

26 (A) Notice of the date, time, and place of the meeting, including
27 a general explanation of the matter to be considered, shall be mailed
28 at least 14 days prior to the meeting to any interested party who
29 files a written request with the governmental agency for mailed
30 notice of the meeting on new or increased fees or service charges.
31 Any written request for mailed notices shall be valid for one year
32 from the date on which it is filed unless a renewal request is filed
33 prior to the expiration of the one-year period for which the written
34 request was filed. The legislative body may establish a reasonable
35 annual charge for sending notices based on the estimated cost of
36 providing the service.

37 (B) At least 10 days prior to the meeting, the governmental
38 agency shall make available to the public data that supports the
39 amount of the fee or the increase in the fee.

1 ~~(C) (i) At least 10 days prior to the meeting, the governmental~~
2 ~~agency shall publish a notice in a newspaper of general circulation~~
3 ~~in that agency's jurisdiction stating the date, time, and place of the~~
4 ~~meeting, including a general explanation of the matter to be~~
5 ~~considered.~~

6 ~~(ii) Any costs incurred by the governmental agency in~~
7 ~~conducting the meeting or meetings required by this section may~~
8 ~~be recovered from fees charged for the services that are the subject~~
9 ~~of the fee.~~

10 ~~(iii) For infrastructure projects specifically authorized by this~~
11 ~~chapter, at least 10 days prior to the meeting, the governmental~~
12 ~~agency shall publish for four consecutive times, a notice in the~~
13 ~~newspaper of general circulation in the affected area stating in no~~
14 ~~smaller than 10-point type a notice specifying the subject of the~~
15 ~~hearing, the date, time, and place of the meeting, and in at least~~
16 ~~8-point type a general explanation of the matter to be considered.~~

17 ~~(D) No governmental agency shall levy a new fee or service~~
18 ~~charge or increase an existing fee or service charge to an amount~~
19 ~~that exceeds the estimated cost for which the user fee revenues are~~
20 ~~dedicated pursuant to paragraph (4). Any action by a governmental~~
21 ~~agency to levy a new fee or service charge or to approve an increase~~
22 ~~in an existing fee or service charge pursuant to this chapter shall~~
23 ~~be taken only by ordinance or resolution. The legislative body of~~
24 ~~a governmental agency shall not delegate the authority to adopt a~~
25 ~~new fee or service charge, or to increase a fee or service charge.~~

26 ~~(6) Require that if the legislative body of the governmental~~
27 ~~agency determines that fees or service charges create revenues in~~
28 ~~excess of the actual cost for which the user fee revenues are~~
29 ~~dedicated pursuant to paragraph (4), those revenues shall either~~
30 ~~be applied to any indebtedness incurred by the private entity or~~
31 ~~the governmental agency with respect to the project, be paid into~~
32 ~~a reserve account in order to offset future operation costs, be paid~~
33 ~~into the appropriate government account, be used to reduce the~~
34 ~~user fee or service charge creating the excess, or a combination of~~
35 ~~these sources.~~

36 ~~(7) If the private entity operates the facility, require the private~~
37 ~~entity to maintain the facility in good operating condition at all~~
38 ~~times, including the time the facility reverts to the governmental~~
39 ~~agency.~~

1 ~~(8) Preparation by the private entity of an annual audited report~~
2 ~~accounting for the income received and expenses to operate the~~
3 ~~facility. The private entity shall make that report available to any~~
4 ~~member of the public for a cost not to exceed the cost of~~
5 ~~reproduction of the report.~~

6 ~~(9) Provision for a buyout of the private entity’s capital~~
7 ~~investment by the governmental entity in the event of termination~~
8 ~~or default before the end of the lease term.~~

9 ~~(10) Provision for appropriate indemnity promises between the~~
10 ~~governmental agency and the private entity.~~

11 ~~(11) Provision requiring the private entity to maintain insurance~~
12 ~~with those coverages and in those amounts that the governmental~~
13 ~~agency deems appropriate.~~

14 ~~(12) In the event of a dispute between the governmental agency~~
15 ~~and the private entity, both parties shall be entitled to all available~~
16 ~~legal or equitable remedies.~~

17 ~~SEC. 8. Section 5956.7 of the Government Code is amended~~
18 ~~to read:~~

19 ~~5956.7. (a) The governmental agency may exercise any power~~
20 ~~possessed by it with respect to the development and construction~~
21 ~~of infrastructure projects pursuant to this chapter. Agreements for~~
22 ~~the maintenance and operation of services entered into pursuant~~
23 ~~to this chapter shall provide for full reimbursement for services~~
24 ~~rendered by the governmental agency in accordance with the terms~~
25 ~~and conditions specified in the agreement. The governmental~~
26 ~~agency may provide services for which it is reimbursed with respect~~
27 ~~to preliminary planning, environmental certification, and~~
28 ~~preliminary design of the infrastructure projects. The governmental~~
29 ~~agency may consult with legal, financial, and other consultants in~~
30 ~~the negotiation and development of the agreement. To the extent~~
31 ~~existing public utility infrastructure is necessarily required to be~~
32 ~~modified, relocated, or removed in order for an infrastructure~~
33 ~~project authorized by this chapter to be constructed, the cost of~~
34 ~~modification, relocation, or removal of the existing infrastructure~~
35 ~~shall be borne by the private entity and included as a recoverable~~
36 ~~capital cost of the project. This cost shall not be construed to~~
37 ~~include costs of increasing the capacity, or upgrading, or improving~~
38 ~~the existing public utility infrastructure.~~

39 ~~(b) The private entity’s responsibility to modify, relocate, or~~
40 ~~remove existing public utility infrastructure shall not alter any~~

1 agreements that may be in place between the governmental agency
2 and any public utility regarding projects funded by the
3 governmental agency.

4 (e) In the event of a dispute regarding the reimbursement
5 required, a private entity may request an audit of the public utility's
6 costs by a mutually acceptable certified public accountant. The
7 result of the audit shall determine the actual costs. If the audit
8 indicates that the public utility's actual costs were less than 95
9 percent of the cost claimed, the cost of the audit shall be borne by
10 the public utility. If the audit indicates that the public utility's
11 actual costs were 95 percent or more of the cost claimed, the cost
12 of the audit shall be borne by the private entity.

13 SEC. 9. Section 5956.8 of the Government Code is amended
14 to read:

15 5956.8. The plans and specifications for each project
16 constructed pursuant to this chapter shall comply with all applicable
17 governmental design standards for that particular infrastructure
18 project. The private entity performing the agreement shall utilize
19 private sector design and construction firms to design and construct
20 the infrastructure facilities. However, a facility subject to this
21 chapter and leased, licensed, or permitted to a private entity shall,
22 during the term of the lease, license, or permit, be deemed to be
23 public property for purposes of identification, maintenance,
24 enforcement of laws, and for purposes of Division 3.6
25 (commencing with Section 810). All construction, alteration,
26 demolition, installation, and repair work pursuant to this chapter
27 shall comply with Chapter 1 (commencing with Section 1720) of
28 Part 7 of Division 2 of the Labor Code.

29 SEC. 10. Section 5956.9 of the Government Code is amended
30 to read:

31 5956.9. In order to use the authority conferred by this chapter
32 to the maximum extent, a governmental agency may use private
33 infrastructure financing pursuant to this chapter as the exclusive
34 funding or revenue source or as a supplemental funding or revenue
35 source with federal or local funds. The governmental agency
36 involved may be a local governmental agency or a combination
37 of local governmental agencies. The governmental agency may
38 work cooperatively with the California Infrastructure and Economic
39 Development Board with regard to the design, construction,

1 operation, and financing of privately financed facilities, but the
2 projects will not be subject to the review or approval of that board.

3 SEC. 11. Section 5956.10 of the Government Code is amended
4 to read:

5 5956.10. Notwithstanding any provision of this chapter, neither
6 the state or any state agency may directly or indirectly use the
7 authority in this chapter, nor may any governmental agency as
8 defined in Section 5956.3, use the authority in this chapter, to
9 design, construct, finance, or operate a state project. For purposes
10 of this section, a state project includes any of the following:

- 11 (a) Toll roads on state highways.
- 12 (b) State water projects.
- 13 (c) State park and recreation projects.
- 14 (d) State financed projects.

15 These limitations shall not prohibit the state, any state agency,
16 or any governmental agency as defined in subdivision (b) of
17 Section 5956.3, from utilizing authorizations contained in other
18 provisions of law.

19 SEC. 12. Section 5956.12 is added to the Government Code,
20 to read:

21 5956.12. The governmental agency may determine the validity
22 of any permits, authorizations or approvals, contracts and
23 agreements, user fees, and other actions taken pursuant to this
24 chapter, by initiating a validating proceeding, as provided in
25 Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of
26 the Code of Civil Procedure. The validating action may also be
27 initiated by interested persons as provided in Chapter 9
28 (commencing with Section 860) of Title 10 of Part 2 of the Code
29 of Civil Procedure.