

**Introduced by Senator Vargas**February 24, 2012

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An act to add Chapter 6.6 (commencing with Section 6950) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts, and making an appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1549, as introduced, Vargas. Transportation projects: construction Manager/General Contractor project method.

Existing law sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by state agencies for projects, as specified, and for local agencies for public works contracts, as specified.

This bill would, upon authorization by the California Transportation Commission, allow a consolidated San Diego regional transportation entity, as specified, or the Department of Transportation to engage in a Construction Manager/General Contractor project delivery method, as specified, for up to 20 total projects for either local street or road, bridge, tunnel, or public transit projects within the jurisdiction of the local transportation entity or state highway, bridge, or tunnel projects by the Department of Transportation. The bill would require a transportation entity, as defined, to pay fees related to prevailing wage monitoring and enforcement into the State Public Works Enforcement Fund, a continuously appropriated fund, except as specified, and, thus, would make an appropriation. The bill would also require a progress report to be submitted by the transportation agency to the commission every year following the award of a contract under these provisions, and would require the commission to submit an annual report to the Legislature that includes the information in the report submitted by the

transportation agency, as specified. This bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of an existing crime. The bill would provide that its provisions are severable.

This bill would make legislative findings and declarations as to the necessity of a special statute for San Diego regional transportation entities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Chapter 6.6 (commencing with Section 6950) is  
2 added to Part 1 of Division 2 of the Public Contract Code, to read:

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4 CHAPTER 6.6. THE ALTERNATIVE PROJECT DELIVERY  
5 DEMONSTRATION PROGRAM: CONSTRUCTION MANAGER/GENERAL  
6 CONTRACTOR AUTHORITY

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8 6950. The Legislature finds and declares all of the following:

9 (a) The alternative public works project delivery methods  
10 authorized under this chapter should be evaluated for the purposes  
11 of exploring whether the potential exists for reduced project costs,  
12 expedited project completion, or design features that are not  
13 achievable through the traditional project delivery methods.

14 (b) The design sequencing and Construction Manager/General  
15 Contractor project delivery methods rely on existing  
16 design-bid-build and design build procurement methods  
17 respectively and have been successfully used by both public and  
18 private sector entities in California and other states for over a  
19 decade on projects that require a quick startup as they allow  
20 construction to begin before the design plans are complete for the  
21 entire project.

22 (c) Both methods also have the benefit of allowing for earlier  
23 collaboration between the project owner and construction

1 contractor. A demonstration program for alternative project  
2 delivery methods will allow for a careful examination of the  
3 benefits and challenges associated with these methods.

4 (d) This chapter shall not be deemed to provide a preference  
5 for these project delivery methods over other delivery  
6 methodologies.

7 6951. For purposes of this chapter, the following definitions  
8 apply:

9 (a) “Commission” means the California Transportation  
10 Commission.

11 (b) “Construction Manager/General Contractor method” or  
12 “CMGC” means a project delivery method using a best value  
13 procurement process in which a construction manager is procured  
14 to provide preconstruction services during the design phase of the  
15 project and construction services during the construction phase of  
16 the project. The contract for construction services may be entered  
17 into at the same time as the contract for preconstruction services,  
18 or at a later time. The execution of the design and the construction  
19 of the project may be in sequential phases or concurrent phases.

20 (c) “Construction manager” means a partnership, corporation,  
21 or other legal entity that is able to provide appropriately licensed  
22 contracting and engineering services as needed pursuant to a  
23 CMGC contract.

24 (d) “Design sequencing” means a method of project delivery  
25 using the design-bid-build contracting process that enables the  
26 sequencing of design activities to permit each construction phase  
27 to commence when 30 percent or more of the design for that phase  
28 is complete, instead of requiring design for the entire project to be  
29 completed before commencing construction.

30 (e) “Department” means the Department of Transportation as  
31 established under Part 5 (commencing with Section 14000) of  
32 Division 3 of the Government Code.

33 (f) “Local transportation entity” means the consolidated agency  
34 created pursuant to Chapter 3 (commencing with Section 132350)  
35 of Division 12.7 of the Public Utilities Code.

36 (g) “Transportation entity” means the department or a local  
37 transportation entity.

38 6952. (a) Subject to the limitations of this chapter, a local  
39 transportation entity, if authorized by the commission, may utilize  
40 the design sequencing or CMGC methods of project delivery for

1 projects that may be for local street or road, bridge, tunnel, or  
2 public transit projects within the jurisdiction of the entity.

3 (b) Subject to the limitations of this chapter, the department, if  
4 authorized by the commission, may utilize the design sequencing  
5 or CMGC methods of procurement for state highway, bridge, or  
6 tunnel projects.

7 6953. (a) Up to 20 projects shall be authorized under this  
8 chapter. The transportation entities authorized to use the design  
9 sequencing and CMGC project delivery methods pursuant to this  
10 chapter shall endeavor to select projects that vary in size, type,  
11 and geographical location.

12 (b) The commission shall establish a peer review committee to  
13 conduct an evaluation of the projects selected to utilize the  
14 alternative project delivery methods under this chapter.

15 6954. (a) Except as specified in subdivision (b), the  
16 transportation entity shall comply with subdivision (f) of Section  
17 1771.5 of the Labor Code and shall reimburse the Department of  
18 Industrial Relations for its reasonable and directly related costs of  
19 performing prevailing wage monitoring and enforcement on public  
20 works projects pursuant to rates established by the department as  
21 set forth in subdivision (h) of that section. All moneys collected  
22 pursuant to this subdivision shall be deposited in the State Public  
23 Works Enforcement Fund, created by Section 1771.3 of the Labor  
24 Code, and shall be used only for enforcement of prevailing wage  
25 requirements on those projects.

26 (b) In lieu of complying with subdivision (a), the transportation  
27 entity may elect to operate a labor compliance program approved  
28 by the Department of Industrial Relations to monitor and enforce  
29 prevailing wage requirements on the project if it requests and  
30 receives approval from the department to use its own labor  
31 compliance program or it enters into a collective bargaining  
32 agreement that binds all of the contractors performing work on the  
33 project and that includes a mechanism for resolving disputes about  
34 the payment of wages.

35 6955. (a) All CMGC contracts awarded pursuant to this chapter  
36 shall be subject to the procurement method requirements for design  
37 build contracts set forth in Chapter 6.5 (commencing with Section  
38 6800) of Part 1 of Division 2, except insofar as they may conflict  
39 with the provisions of this chapter. The limitation on the number

1 of design build projects authorized by that chapter shall not apply  
2 to projects authorized under this chapter.

3 (b) All design sequencing contracts awarded pursuant to this  
4 chapter shall be subject to Chapter 10 (commencing with Section  
5 4525) and Chapter 10.1 (commencing with Section 4529.10) of  
6 Division 5 of the Government Code and Part 1 (commencing with  
7 Section 1100) of, Chapter 1 (commencing with Section 10100) of  
8 Part 2 of, and Part 3 (commencing with Section 20100) of, Division  
9 2 of this code, as applicable, except that construction may be  
10 commenced as specified in subdivision (d) of Section 6951.

11 6956. If a contract for CMGC services is entered into pursuant  
12 to this chapter and includes preconstruction services by the  
13 construction manager, the transportation entity shall enter into a  
14 written contract with the construction manager for preconstruction  
15 services, under which the transportation entity shall pay the  
16 construction manager a fee for preconstruction services in an  
17 amount agreed upon by the transportation entity and the  
18 construction manager. The preconstruction services contract may  
19 include fees for services to be performed during the contract period;  
20 provided, however, the transportation entity shall not request or  
21 obtain a fixed price or a guaranteed maximum price for the  
22 construction contract from the construction manager or enter into  
23 a construction contract with the construction manager until after  
24 the transportation entity has entered into a services contract. Every  
25 preconstruction services contract shall provide for the subsequent  
26 negotiation for construction of all or any discreet phase or phases  
27 of the project and shall provide for the awarding transportation  
28 entity to own the design plans and other preconstruction services  
29 work product. A contract for construction services will be awarded  
30 after the plans have been sufficiently developed and either a fixed  
31 price or a guaranteed maximum price has been successfully  
32 negotiated. In the event that a fixed price or a guaranteed maximum  
33 price is not negotiated, the transportation entity may award the  
34 contract for construction services utilizing any other procurement  
35 method authorized by law.

36 6957. (a) Notwithstanding any other provision of this chapter,  
37 for a project authorized under this chapter that will be constructed  
38 on state owned right of way, the department is the responsible  
39 agency for the performance of project development services,  
40 including performance specifications, preliminary engineering,

1 prebid services, the preparation of project reports and  
2 environmental documents, and construction inspection services.  
3 The department is also the responsible agency for the preparation  
4 of documents that may include, but need not be limited to, the size,  
5 type, and desired design character of the project, performance  
6 specifications covering quality of materials, equipment, and  
7 workmanship, preliminary plans, and any other information deemed  
8 necessary to describe adequately the needs of the transportation  
9 entity.

10 (b) The department may use department employees or  
11 consultants to perform the services described in subdivision (a),  
12 consistent with Article XXII of the California Constitution.  
13 Department resources, including personnel requirements, necessary  
14 for the performance of those services shall be included in the  
15 department's capital outlay support program for workload purposes  
16 in the annual Budget Act.

17 6958. Nothing in this chapter affects, expands, alters, or limits  
18 any rights or remedies otherwise available at law.

19 6959. (a) Not later than June 30 of each year after a contract  
20 is awarded using the CMGC or design sequencing project delivery  
21 method, the awarding transportation entity shall submit a progress  
22 report to the commission. The progress report shall include, but  
23 shall not be limited to, all of the following information:

24 (1) A description of the project.

25 (2) The entity that was awarded the project.

26 (3) The estimated and actual costs of the project.

27 (4) The estimated and actual schedule for project completion.

28 (5) A description of any written protests concerning any aspect  
29 of the solicitation, bid, proposal, or award of the project, including,  
30 but not limited to, the resolution of the protests.

31 (6) An assessment of the prequalification process and criteria  
32 utilized under this chapter if the design build procurement method  
33 is used.

34 (7) A description of the labor compliance program required  
35 under Section 6954 and an assessment of the impact of this  
36 requirement on a project.

37 (8) A description of the method used to evaluate the bid or  
38 proposal, including the weighting of each factor and an assessment  
39 of the impact of this requirement on a project.

1 (9) A description of any challenges or unexpected problems  
2 that arose during the construction of the project and a description  
3 of the solutions that were considered and ultimately implemented  
4 to address those challenges and problems.

5 (10) Recommendations to improve the alternative project  
6 delivery methods authorized under this chapter.

7 (b) (1) The commission shall submit an annual report to the  
8 Legislature that includes the information provided pursuant to  
9 subdivision (a).

10 (2) A report to be submitted pursuant to paragraph (1) shall be  
11 submitted in compliance with Section 9795 of the Government  
12 Code.

13 6960. The provisions of this chapter are severable. If any  
14 provision of this chapter or its application is held invalid, that  
15 invalidity shall not affect other provisions or applications that can  
16 be given effect without the invalid provision or application.  
17 Contracts awarded pursuant to this section shall be valid until the  
18 project is completed.

19 SEC. 2. The Legislature finds and declares that a special law  
20 is necessary and that a general law cannot be made applicable  
21 within the meaning of Section 16 of Article IV of the California  
22 Constitution because of the unique need for alternative contracting  
23 authority for local transportation projects under the jurisdiction of  
24 San Diego regional transportation entities.

25 SEC. 3. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.