

ASSEMBLY BILL

No. 164

Introduced by Assembly Member Wieckowski

January 23, 2013

An act to amend Section 5956.6 of the Government Code, relating to infrastructure financing.

LEGISLATIVE COUNSEL'S DIGEST

AB 164, as introduced, Wieckowski. Infrastructure financing.

Existing law permits a governmental agency to solicit proposals and enter into agreements with private entities for the design, construction, or reconstruction by, and may lease to, private entities, for specified types of fee-producing infrastructure projects. Existing law requires certain provisions to be included in the lease agreement between a governmental agency undertaking an infrastructure project and a private entity, as specified.

This bill would require a lease agreement between a governmental agency undertaking an infrastructure project and a private entity to include performance bonds as security to ensure the completion of the construction of the facility and payment bonds to secure the payment of claims of laborers, mechanics, and materialmen employed on the work under contract.

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 5956.6 of the Government Code is
2 amended to read:

1 5956.6. (a) For purposes of facilitating projects, the agreements
 2 specified in Section 5956.4 may include provisions for the lease
 3 of rights-of-way in, and airspace over, property owned by a
 4 governmental agency, for the granting of necessary easements,
 5 and for the issuance of permits or other authorizations to enable
 6 the private entity to construct infrastructure facilities supplemental
 7 to existing government-owned facilities. Infrastructure constructed
 8 by a private entity pursuant to this chapter shall, at all times, be
 9 owned by a governmental agency, unless the governmental agency,
 10 in its discretion, elects to provide for ownership of the facility by
 11 the private entity during the term of the agreement. The agreement
 12 shall provide for the lease of those facilities to, or ownership by,
 13 the private entity for up to 35 years. In consideration therefor, the
 14 agreement shall provide for complete reversion of the privately
 15 constructed facility to the governmental agency at the expiration
 16 of the lease at no charge to the governmental agency. Subsequent
 17 to the expiration of the lease or ownership period, the governmental
 18 agency may continue to charge fees for use of the infrastructure
 19 facility. If, after the expiration of the lease or ownership period,
 20 the governmental agency continues to lease airspace rights to the
 21 private entity, it shall do so at fair market value.

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

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

32 ~~(2) Security for the construction of the facility~~ *Performance*
 33 ~~bonds as security to ensure its completion;~~ *of the construction of*
 34 ~~the facility~~ and contractual provisions that are necessary to protect
 35 the revenue streams of the project.

36 (3) Adequate financial resources of the private entity to design,
 37 build, and operate the facility, after the date of the agreement.

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

1 this chapter. User fee revenues shall be dedicated exclusively to
2 payment of the private entity's direct and indirect capital outlay
3 costs for the project, direct and indirect costs associated with
4 operations, direct and indirect user fee collection costs, direct and
5 indirect costs of administration of the facility, reimbursement for
6 the direct and indirect costs of maintenance, and a negotiated
7 reasonable return on investment to the private entity.

8 (5) As a precondition to the imposition or increase of a user fee,
9 the governmental agency shall conduct at least one public hearing
10 at which public testimony will be received regarding a proposed
11 user fee revenue or increase in user fee revenues. The public
12 hearing shall precede the action by the governmental agency to
13 actually impose a user fee or to increase an existing user fee. The
14 governmental agency shall consider the public testimony prior to
15 imposing a new or increased user fee. The governmental agency
16 shall provide the following notices and utilize the following
17 procedures:

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

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

32 (C) (i) At least 10 days prior to the meeting, the governmental
33 agency shall publish a notice in a newspaper of general circulation
34 in that agency's jurisdiction stating the date, time, and place of the
35 meeting, including a general explanation of the matter to be
36 considered.

37 (ii) Any costs incurred by the governmental agency in
38 conducting the meeting or meetings required by this section may
39 be recovered from fees charged for the services that are the subject
40 of the fee.

1 (iii) For transportation projects specifically authorized by this
2 chapter, at least 10 days prior to the meeting, the governmental
3 agency shall publish for four consecutive times, a notice in the
4 newspaper of general circulation in the affected area stating in no
5 smaller than 10-point type a notice specifying the subject of the
6 hearing, the date, time, and place of the meeting, and in at least
7 8-point type a general explanation of the matter to be considered.

8 (D) No local agency shall levy a new fee or service charge or
9 increase an existing fee or service charge to an amount that exceeds
10 the estimated amount required to provide the service for which the
11 fee or service charge is levied and a reasonable rate of return on
12 investment, pursuant to paragraph (4). Any action by a local agency
13 to levy a new fee or service charge or to approve an increase in an
14 existing fee or service charge pursuant to this chapter shall be taken
15 only by ordinance or resolution. The legislative body of a local
16 agency shall not delegate the authority to adopt a new fee or service
17 charge, or to increase a fee or service charge.

18 (6) Require that if the legislative body of the governmental
19 agency determines that fees or service charges create revenues in
20 excess of the actual cost for which the user fee revenues are
21 dedicated and a reasonable rate of return on investment, pursuant
22 to paragraph (4), those revenues shall either be applied to any
23 indebtedness incurred by the private entity with respect to the
24 project, be paid into a reserve account in order to offset future
25 operation costs, be paid into the appropriate government account,
26 be used to reduce the user fee or service charge creating the excess,
27 or a combination of these sources.

28 (7) Require the private entity to maintain the facility in good
29 operating condition at all times, including the time the facility
30 reverts to the governmental agency.

31 (8) Preparation by the private entity of an annual audited report
32 accounting for the income received and expenses to operate the
33 facility. The private entity shall make that report available to any
34 member of the public for a cost not to exceed the cost of
35 reproduction of the report.

36 (9) Provision for a buyout of the private entity by the
37 governmental entity in the event of termination or default before
38 the end of the lease term.

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

1 (11) Provision requiring the private entity to maintain insurance
2 with those coverages and in those amounts that the governmental
3 agency deems appropriate.

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

7 (13) *Payment bonds to secure the payment of claims of laborers,*
8 *mechanics, and materialmen employed on the work under the*
9 *contract. Payment bonds required under this subdivision shall*
10 *conform to the requirements of Sections 3247 to 3252, inclusive,*
11 *of the Civil Code.*

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