

AMENDED IN SENATE AUGUST 12, 2013
AMENDED IN ASSEMBLY MAY 20, 2013
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AMENDED IN ASSEMBLY APRIL 22, 2013
AMENDED IN ASSEMBLY APRIL 3, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 401

**Introduced by Assembly Member Daly
(Coauthor: Assembly Member Linder)**

February 15, 2013

An act to add and repeal Chapter 6.5 (commencing with Section 6820) of Part 1 of Division 2 of the Public Contract Code, *and to amend Section 143 of, and to add and repeal Section 91.2 of, the Streets and Highway Code*, relating to ~~highways~~ *transportation*, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 401, as amended, Daly. ~~Public contracts: design-build: State Highway Route 405. Transportation: design-build: streets and highways.~~

Existing law, until January 1, 2014, authorizes certain state and local transportation entities, if authorized by the California Transportation Commission, to use a design-build process for contracts on transportation projects, as specified. Existing law establishes a procedure for submitting bids that includes a requirement that design-build entities

provide a statement of qualifications submitted to the transportation entity that is verified under oath, subject to penalty of perjury.

This bill, ~~until January 1, 2018,~~ would authorize the ~~Orange County Transportation Authority~~ *Department of Transportation* to utilize design-build procurement for ~~the Interstate 405 Improvement Project up to 10 projects~~ on the state highway system, based on either best value or lowest responsible bid. *The bill would authorize regional transportation agencies, as defined, to utilize design-build procurement for projects on streets, roads, or the state highway system. The bill would repeal these provisions on January 1, 2024, or one year from the date that the Department of Transportation posts on its Internet Web site that the provisions related to the construction inspection services of these projects are invalid. The bill would provide that these design-build authorizations do not include construction inspection services for projects on or interfacing with the state highway system.* The bill would require the Department of Transportation to perform construction inspection services for ~~the project~~ *projects on or interfacing with the state highway system*, as specified. The bill would require a transportation entity, as defined, awarding a contract for a public works project pursuant to these provisions, to reimburse the Department of Industrial Relations for costs of performing prevailing wage monitoring and enforcement of the public works project and would require moneys collected to be deposited into the State Public Works Enforcement Fund, a continuously appropriated fund. By depositing money in a continuously appropriated fund, the bill would make an appropriation.

~~The bill would make findings and declarations as to the necessity of a special statute for Orange County.~~

Because the bill would extend the use of design-build procurement to ~~the authority,~~ *regional transportation entities*, subject to existing procedures, the bill would, by extension, impose the statement of qualifications requirement upon ~~the authority,~~ *regional transportation entities*, subject to penalty of perjury, thereby creating a new crime and imposing a state-mandated local program.

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. The Legislature finds and declares the following:*

2 *(a) The Department of Transportation has statutory authority*
3 *over the state highway system, including possession, control, and*
4 *responsibility for improvements to and maintenance of that system.*

5 *(b) The Department of Transportation is authorized to construct*
6 *and maintain detours as may be necessary to facilitate movement*
7 *of traffic where state highways are closed or obstructed by*
8 *construction or otherwise.*

9 *(c) The Department of Transportation and any county, city, or*
10 *public entity are authorized to enter into a contract with respect*
11 *to the sharing of the expense of the acquisition, construction,*
12 *improvement, or maintenance of any state highway.*

13 *(d) When an improvement to a portion of a state highway is*
14 *completed by a local entity, the control of that portion of the state*
15 *highway reverts to the state and the state is liable for its future*
16 *maintenance and care.*

17 *SEC. 2. It is the intent of the Legislature to do the following:*

18 *(a) Authorize the Department of Transportation and regional*
19 *transportation agencies to undertake improvements on streets and*
20 *highways using design-build procurement.*

21 *(b) Reserve for the Department of Transportation the authority*
22 *to perform construction inspection services.*

23 *(c) Require the Department of Transportation to be responsible*
24 *for ensuring that uniform safety standards are met on public works*
25 *of improvement on the state highway system.*

26 ~~SECTION 1.~~

27 *SEC. 3. Chapter 6.5 (commencing with Section 6820) is added*
28 *to Part 1 of Division 2 of the Public Contract Code, to read:*

29

30 CHAPTER 6.5. ~~ORANGE COUNTY~~ TRANSPORTATION AUTHORITY
31 DESIGN-BUILD PROGRAM

32

33 6820. For purposes of this chapter, the following definitions
34 apply:

35 (a) “Best value” means a value determined by objective criteria,
36 including, but not limited to, price, features, functions, life-cycle
37 costs, and other criteria deemed appropriate by the transportation
38 entity.

1 (b) “Commission” means the California Transportation
2 Commission.

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

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

10 (e) “Design-build team” means the design-build entity itself
11 and the individuals and other entities identified by the design-build
12 entity as members of its team.

13 (f) “Department” means the Department of Transportation as
14 established under Part 5 (commencing with Section 14000) of
15 Division 3 of Title 2 of the Government Code.

16 (g) “*Interfacing with the state highway system*” means work
17 performed within the state highway right-of-way, including
18 airspace over or under that property, or work performed upon
19 property acquired by the department for construction of a state
20 highway, including airspace over or under that property.

21 (h) “Regional transportation agency” means a regional
22 transportation agency as defined in paragraph (4) of subdivision
23 (a) of Section 143 of the Streets and Highways Code.

24 ~~(g)~~
25 (i) “Transportation entity” means the ~~Orange County~~
26 ~~Transportation Authority~~ department or a regional transportation
27 agency.

28 6821. (a) The ~~Orange County Transportation Authority~~
29 ~~department~~ may utilize the design-build method of procurement
30 for the ~~Interstate 405 Improvement Project up to 10 projects~~ on
31 the state highway system, based on either best value or lowest
32 responsible bid.

33 ~~(b) Notwithstanding any other provision of this chapter, the~~
34 ~~department shall perform construction inspection services for the~~
35 ~~project authorized pursuant to this section. Department construction~~
36 ~~inspection services for the project authorized pursuant to this~~
37 ~~section include, but are not limited to, surveying, material source~~
38 ~~testing, certification testing, monitoring of environmental~~
39 ~~compliance, independent quality control testing and inspection,~~
40 ~~and quality assurance audits. The department construction~~

1 inspection duties and responsibilities shall include a direct reporting
2 relationship between the inspectors and senior department
3 engineers responsible for all inspectors and construction inspection
4 services. The senior department engineer responsible for
5 construction inspection services shall be responsible for the
6 acceptance or rejection of the work.

7 (e) Notwithstanding any other law, the department shall retain
8 the authority to stop the contractor's operation wholly or in part
9 and take appropriate action when public safety is jeopardized. The
10 department shall ensure that public safety and convenience is
11 maintained whenever work is performed under an encroachment
12 permit within the state highway right-of-way, including, but not
13 limited to, work performed that includes lane closures, signing,
14 work performed at night, detours, dust control, temporary pavement
15 quality, crash cushions, temporary railings, pavement transitions,
16 falsework, shoring, and delineation. The department shall regularly
17 inspect the job sites for safety compliance and any possible
18 deficiencies. If any deficiency is observed, a written notice shall
19 be sent by the department to the Orange County Transportation
20 Authority's designated resident engineer to correct the deficiency.
21 Once the deficiency is corrected, a written notice describing the
22 resolution of the deficiency shall be sent to the department and
23 documented.

24 (d) The department shall use department employees or
25 consultants under contract with the department to perform the
26 services described in subdivisions (b) and (c), consistent with
27 Article XXII of the California Constitution. Department employee
28 and consultant resources necessary for the performance of those
29 services, including personnel requirements, shall be included in
30 the department's capital outlay support program for workload
31 purposes in the annual Budget Act.

32 (e)
33 (b) *A regional transportation agency may utilize the design-build*
34 *method of procurement to design and construct projects on streets,*
35 *roads, or the state highway system, based on either best value or*
36 *lowest responsible bid. A regional transportation agency and the*
37 *department shall enter into a cooperative agreement reflecting the*
38 *roles and responsibilities assigned by law for a project on or*
39 *interfacing with the state highway system authorized under this*
40 *subdivision. The cooperative agreement shall also include the*

1 *requirement to develop a mutually agreed upon issue resolution*
2 *process with a primary objective to ensure the project stays on*
3 *schedule and issues between the parties are resolved in a timely*
4 *manner.*

5 *(c) The design-build authorization in subdivisions (a) and (b)*
6 *shall not include the authority to perform construction inspection*
7 *services for projects on or interfacing with the state highway*
8 *system, which shall be performed by the department consistent*
9 *with Section 91.2 of the Streets and Highway Code.*

10 *(d) (1) Not later than the first day of July that occurs two years*
11 *after a design-build contract is awarded, and each July 1 thereafter*
12 *until the a project is completed, the Orange County Transportation*
13 *Authority department or the regional transportation agency shall*
14 *submit a report on the progress of the project and compliance with*
15 *this section to the legislative policy committees having jurisdiction*
16 *over transportation matters.*

17 *(2) The requirement of submitting a report imposed under*
18 *paragraph (1) is inoperative on the first day of July four years after*
19 *the first report was submitted, pursuant to Section 10231.5 of the*
20 *Government Code.*

21 *(3) A report to be submitted pursuant to paragraph (1) shall be*
22 *submitted in compliance with Section 9795 of the Government*
23 *Code.*

24 6822. The commission shall use the guidelines developed
25 pursuant to subdivision (e) of Section 6803, as it read on December
26 31, 2013, to provide a standard organizational conflict-of-interest
27 policy, consistent with applicable law, regarding the ability of a
28 person or entity, that performs services for the transportation entity
29 relating to the solicitation of a design-build project, to submit a
30 proposal as a design-build entity, or to join a design-build team.
31 This conflict-of-interest policy shall apply to the transportation
32 entity entering into design-build contracts authorized under this
33 chapter.

34 6823. (a) For contracts for public works projects awarded prior
35 to the effective date of the regulations adopted by the Department
36 of Industrial Relations pursuant to subdivision (g) of Section 1771.5
37 of the Labor Code, a transportation entity authorized to use the
38 design-build method of procurement shall establish and enforce a
39 labor compliance program containing the requirements outlined
40 in Section 1771.5 of the Labor Code or shall contract with a third

1 party to operate a labor compliance program containing the
2 requirements outlined in Section 1771.5 of the Labor Code. This
3 requirement shall not apply to projects where the transportation
4 entity or design-build entity has entered into any collective
5 bargaining agreement that binds all of the contractors performing
6 work on the projects.

7 (b) For contracts for public works projects awarded on or after
8 the effective date of the regulations adopted by the Department of
9 Industrial Relations pursuant to subdivision (g) of Section 1771.5
10 of the Labor Code, the transportation entity shall reimburse the
11 Department of Industrial Relations for its reasonable and directly
12 related costs of performing prevailing wage monitoring and
13 enforcement on public works projects pursuant to rates established
14 by the Department of Industrial Relations as set forth in subdivision
15 (h) of Section 1771.5 of the Labor Code. All moneys collected
16 pursuant to this subdivision shall be deposited in the State Public
17 Works Enforcement Fund, created by Section 1771.3 of the Labor
18 Code, and shall be used only for enforcement of prevailing wage
19 requirements on those projects.

20 (c) In lieu of reimbursing the Department of Industrial Relations
21 for its reasonable and directly related costs of performing
22 monitoring and enforcement on public works projects, the
23 transportation entity may *either (1)* elect to continue operating an
24 existing previously approved labor compliance program to monitor
25 and enforce prevailing wage requirements on the project if it has
26 ~~either~~ not contracted with a third party to conduct its labor
27 compliance program and requests and receives approval from the
28 department to continue its existing program ~~or it enters (2) enter~~
29 into a collective bargaining agreement that binds all of the
30 contractors performing work on the project and that includes a
31 mechanism for resolving disputes about the payment of wages.

32 6824. The procurement process for the design-build project
33 shall progress as follows:

34 (a) ~~The~~A transportation entity shall prepare a set of documents
35 setting forth the scope and estimated price of ~~the~~ a project. The
36 documents may include, but need not be limited to, the size, type,
37 and desired design character of the project, performance
38 specifications covering the quality of materials, equipment,
39 workmanship, preliminary plans, and any other information deemed
40 necessary to describe adequately the transportation entity's needs.

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

4 (b) Based on the documents prepared as described in subdivision
5 (a), the transportation entity shall prepare a request for proposals
6 that invites interested parties to submit competitive sealed proposals
7 in the manner prescribed by the transportation entity. The request
8 for proposals shall include, but need not be limited to, the following
9 elements:

10 (1) Identification of the basic scope and needs of the project or
11 contract, the estimated cost of the project, the methodology that
12 will be used by the transportation entity to evaluate proposals,
13 whether the contract will be awarded on the basis of the lowest
14 responsible bid or on best value, and any other information deemed
15 necessary by the transportation entity to inform interested parties
16 of the contracting opportunity.

17 (2) Significant factors that the transportation entity reasonably
18 expects to consider in evaluating proposals, including, but not
19 limited to, cost or price and all nonprice-related factors.

20 (3) The relative importance or the weight assigned to each of
21 the factors identified in the request for proposals.

22 (4) For transportation entities authorized to utilize best value
23 as a selection method, the transportation entity reserves the right
24 to request proposal revisions and hold discussions and negotiations
25 with responsive bidders and shall so specify in the request for
26 proposals and shall publish separately or incorporate into the
27 request for proposals applicable rules and procedures to be
28 observed by the transportation entity to ensure that any discussions
29 or negotiations are conducted in good faith.

30 (c) Based on the documents prepared under subdivision (a), the
31 transportation entity shall prepare and issue a request for
32 qualifications in order to prequalify the design-build entities whose
33 proposals shall be evaluated for final selection. The request for
34 qualifications shall include, but need not be limited to, the
35 following elements:

36 (1) Identification of the basic scope and needs of the project or
37 contract, the expected cost range, the methodology that will be
38 used by the transportation entity to evaluate proposals, the
39 procedure for final selection of the design-build entity, and any

1 other information deemed necessary by the transportation entity
2 to inform interested parties of the contracting opportunity.

3 (2) (A) Significant factors that the transportation entity
4 reasonably expects to consider in evaluating qualifications,
5 including technical design and construction expertise, skilled labor
6 force availability, and all other nonprice-related factors.

7 (B) For purposes of subparagraph (A), skilled labor force
8 availability shall be determined by the existence of an agreement
9 with a registered apprenticeship program, approved by the
10 California Apprenticeship Council, that has graduated at least one
11 apprentice in each of the preceding five years. This graduation
12 requirement shall not apply to programs providing apprenticeship
13 training for any craft that was first deemed by the Department of
14 Labor and the Department of Industrial Relations to be an
15 apprenticeable craft within the five years prior to the effective date
16 of this article.

17 (3) A standard form request for statements of qualifications
18 prepared by the transportation entity. In preparing the standard
19 form, the transportation entity may consult with the construction
20 industry, the building trades and surety industry, and other public
21 agencies interested in using the authorization provided by this
22 chapter. The standard form shall require information including,
23 but not limited to, all of the following:

24 (A) If the design-build entity is a partnership, limited
25 partnership, joint venture, or other association, a listing of all of
26 the partners, general partners, or association members known at
27 the time of statement of qualification submission who will
28 participate in the design-build contract.

29 (B) Evidence that the members of the design-build entity have
30 completed, or demonstrated the experience, competency, capability,
31 and capacity to complete projects of similar size, scope, or
32 complexity, and that proposed key personnel have sufficient
33 experience and training to competently manage and complete the
34 design and construction of the project, and a financial statement
35 that assures the transportation entity that the design-build entity
36 has the capacity to complete the project.

37 (C) The licenses, registration, and credentials required to design
38 and construct the project, including, but not limited to, information
39 on the revocation or suspension of any license, credential, or
40 registration.

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

4 (E) Information concerning workers' compensation experience
5 history and a worker safety program.

6 (F) A full disclosure regarding all of the following that are
7 applicable:

8 (i) Any serious or willful violation of Part 1 (commencing with
9 Section 6300) of Division 5 of the Labor Code or the federal
10 Occupational Safety and Health Act of 1970 (Public Law 91-596),
11 settled against any member of the design-build entity.

12 (ii) Any debarment, disqualification, or removal from a federal,
13 state, or local government public works project.

14 (iii) Any instance where the design-build entity, or its owners,
15 officers, or managing employees submitted a bid on a public works
16 project and were found to be nonresponsive or were found by an
17 awarding body not to be a responsible bidder.

18 (iv) Any instance where the design-build entity, or its owners,
19 officers, or managing employees defaulted on a construction
20 contract.

21 (v) Any violations of the Contractors' State License Law, as
22 described in Chapter 9 (commencing with Section 7000) of
23 Division 3 of the Business and Professions Code, including alleged
24 violations of federal or state law regarding the payment of wages,
25 benefits, apprenticeship requirements, or personal income tax
26 withholding, or Federal Insurance Contribution Act (FICA)
27 withholding requirements settled against any member of the
28 design-build entity.

29 (vi) Any bankruptcy or receivership of any member of the
30 design-build entity, including, but not limited to, information
31 concerning any work completed by a surety.

32 (vii) Any settled adverse claims, disputes, or lawsuits between
33 the owner of a public works project and any member of the
34 design-build entity during the five years preceding submission of
35 a bid under this article, in which the claim, settlement, or judgment
36 exceeds fifty thousand dollars (\$50,000). Information shall also
37 be provided concerning any work completed by a surety during
38 this five-year period.

39 (G) If the proposed design-build entity is a partnership, limited
40 partnership, joint-venture, or other association, a copy of the

1 organizational documents or agreement committing to form the
2 organization, and a statement that all general partners, joint venture
3 members, or other association members agree to be fully liable for
4 the performance under the design-build contract.

5 (H) An acceptable safety record. A bidder's safety record shall
6 be deemed acceptable if its experience modification rate for the
7 most recent three-year period is an average of 1.00 or less, and its
8 average total recordable injury/illness rate and average lost work
9 rate for the most recent three-year period does not exceed the
10 applicable statistical standards for its business category or if the
11 bidder is a party to an alternative dispute resolution system as
12 provided for in Section 3201.5 of the Labor Code.

13 (4) The information required under this subdivision shall be
14 verified under oath by the design-build entity and its members in
15 the manner in which civil pleadings in civil actions are verified.
16 Information required under this subdivision that is not a public
17 record under the California Public Records Act, as described in
18 Chapter 3.5 (commencing with Section 6250) of Division 7 of
19 Title 1 of the Government Code, shall not be open to public
20 inspection.

21 (d) For those projects utilizing low bid as the final selection
22 method, the competitive bidding process shall result in lump-sum
23 bids by the prequalified design-build entities. Awards shall be
24 made to the lowest responsible bidder.

25 (e) For those projects utilizing best value as a selection method,
26 the design-build competition shall progress as follows:

27 (1) Competitive proposals shall be evaluated by using only the
28 criteria and selection procedures specifically identified in the
29 request for proposals. However, the following minimum factors
30 shall be weighted as deemed appropriate by the contracting
31 transportation entity:

32 (A) Price.

33 (B) Technical design and construction expertise.

34 (C) Life-cycle costs over 15 years or more.

35 (2) Pursuant to subdivision (b), the transportation entity may
36 hold discussions or negotiations with responsive bidders using the
37 process articulated in the transportation entity's request for
38 proposals.

1 (3) When the evaluation is complete, the top three responsive
2 bidders shall be ranked sequentially based on a determination of
3 value provided.

4 (4) The award of the contract shall be made to the responsible
5 bidder whose proposal is determined by the transportation entity
6 to have offered the best value to the public.

7 (5) Notwithstanding any other provision of this code, upon
8 issuance of a contract award, the transportation entity shall publicly
9 announce its award, identifying the contractor to whom the award
10 is made, along with a written decision supporting its contract award
11 and stating the basis of the award. The notice of award shall also
12 include the transportation entity's second- and third-ranked
13 design-build entities.

14 (6) The written decision supporting the transportation entity's
15 contract award, described in paragraph (5), and the contract file
16 shall provide sufficient information to satisfy an external audit.

17 6825. (a) The design-build entity shall provide payment and
18 performance bonds for the project in the form and in the amount
19 required by the transportation entity, and issued by a California
20 admitted surety. In no case shall the amount of the payment bond
21 be less than the amount of the performance bond.

22 (b) The design-build contract shall require errors and omissions
23 insurance coverage for the design elements of the project.

24 6826. (a) The transportation entity, in each design-build request
25 for proposals, may identify specific types of subcontractors that
26 must be included in the design-build entity statement of
27 qualifications and proposal. All construction subcontractors that
28 are identified in the proposal shall be afforded all the protections
29 of Chapter 4 (commencing with Section 4100) of Part 1 of Division
30 2.

31 (b) In awarding subcontracts not listed in the request for
32 proposals, the design-build entity shall do all of the following:

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

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

39 (3) Establish reasonable qualification criteria and standards.

1 (4) Provide that the subcontracted construction work shall be
2 awarded either on a best value basis or to the lowest responsible
3 bidder. For construction work awarded on a best value basis, the
4 design-build entity shall evaluate all bids utilizing the factors
5 described in paragraph (1) of subdivision (e) of Section 6824, and
6 shall award the contract to the bidder determined by the
7 design-build entity to have offered the best value.

8 (c) Subcontractors awarded subcontracts under this chapter shall
9 be afforded all the protections of Chapter 4 (commencing with
10 Section 4100) of Part 1 of Division 2.

11 6827. Nothing in this chapter affects, expands, alters, or limits
12 any rights or remedies otherwise available at law.

13 6828. 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 6829. (a) This chapter shall remain in effect only until January
18 1, ~~2018~~ 2024, and as of that date is repealed, unless a later enacted
19 statute, that is enacted before January 1, ~~2018~~ 2024, deletes or
20 extends that date.

21 (b) *Notwithstanding subdivision (a), if any provision or*
22 *application of Section 91.2 of the Streets and Highways Code is*
23 *held invalid by a court of competent jurisdiction, this chapter shall*
24 *be repealed one year from the date in which the department posts*
25 *on its Internet Web site that Section 91.2 of the Streets and*
26 *Highways Code has been held invalid.*

27 (c) *The repeal of this chapter shall not affect an executed*
28 *design-build contract or cooperative agreement entered into*
29 *pursuant to this chapter prior to the date of its repeal, regardless*
30 *of the stage of the project at the time of repeal.*

31 *SEC. 4. Section 91.2 is added to the Streets and Highways*
32 *Code, to read:*

33 91.2. (a) *The department shall perform construction inspection*
34 *services for projects on or interfacing with the state highway system*
35 *authorized pursuant to Chapter 6.5 (commencing with Section*
36 *6820) of Part 1 of Division 2 of the Public Contract Code. The*
37 *department shall use department employees or consultants under*
38 *contract with the department to perform the services described in*
39 *this subdivision and subdivision (b), consistent with Article XXII*
40 *of the California Constitution. Construction inspection services*

1 performed by the department for those projects, include, but are
2 not limited to, material source testing, certification testing,
3 surveying, monitoring of environmental compliance, independent
4 quality control testing and inspection, and quality assurance audits.
5 The construction inspection duties and responsibilities of the
6 department shall include a direct reporting relationship between
7 the inspectors and senior department engineers responsible for
8 all inspectors and construction inspection services. The senior
9 department engineer responsible for construction inspection
10 services shall be responsible for the acceptance or rejection of the
11 work.

12 (b) Notwithstanding any other law, the department shall retain
13 the authority to stop the contractor's operation wholly or in part
14 and take appropriate action when public safety is jeopardized on
15 a project on or interfacing with the state highway system authorized
16 pursuant to Chapter 6.5 (commencing with Section 6820) of Part
17 1 of Division of the Public Contract Code. The department shall
18 ensure that public safety and convenience is maintained whenever
19 work is performed under an encroachment permit within the state
20 highway right-of-way, including, but not limited to, work performed
21 that includes lane closures, signing, work performed at night,
22 detours, dust control, temporary pavement quality, crash cushions,
23 temporary railings, pavement transitions, falsework, shoring, and
24 delineation. The department shall regularly inspect the job sites
25 for safety compliance and any possible deficiencies. If any
26 deficiency is observed, a written notice shall be sent by the
27 department to the regional transportation agency's designated
28 resident engineer to correct the deficiency. Once the deficiency is
29 corrected, a written notice describing the resolution of the
30 deficiency shall be sent to the department and documented.

31 (c) The department shall use department employees or
32 consultants under contract with the department to perform the
33 services described in subdivisions (a) and (b), consistent with
34 Article XXII of the California Constitution. Department employee
35 and consultant resources necessary for the performance of those
36 services, including personnel requirements, shall be included in
37 the department's capital outlay support program for workload
38 purposes in the annual Budget Act.

1 (d) *This section shall remain in effect only until January 1, 2024,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2024, deletes or extends that date.*

4 (e) *If any provision or application of this section is held invalid*
5 *by a court of competent jurisdiction, the department shall post on*
6 *its Internet Web site within 10 business days of the decision of*
7 *invalidity that this section has been held invalid.*

8 ~~SEC. 2. The Legislature finds and declares that a special law~~
9 ~~is necessary and that a general law cannot be made applicable~~
10 ~~within the meaning of Section 16 of Article IV of the California~~
11 ~~Constitution because of the unique need to build and improve~~
12 ~~highways located in the County of Orange in a cost-effective~~
13 ~~manner.~~

14 *SEC. 5. Section 143 of the Streets and Highways Code is*
15 *amended to read:*

16 143. (a) (1) “Best value” means a value determined by
17 objective criteria, including, but not limited to, price, features,
18 functions, life-cycle costs, and other criteria deemed appropriate
19 by the department or the regional transportation agency.

20 (2) “Contracting entity or lessee” means a public or private
21 entity, or consortia thereof, that has entered into a comprehensive
22 development lease agreement with the department or a regional
23 transportation agency for a transportation project pursuant to this
24 section.

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

28 (4) “Regional transportation agency” means any of the
29 following:

30 (A) A transportation planning agency as defined in Section
31 29532 or 29532.1 of the Government Code.

32 (B) A county transportation commission as defined in Section
33 130050, 130050.1, or 130050.2 of the Public Utilities Code.

34 (C) Any other local or regional transportation entity that is
35 designated by statute as a regional transportation agency.

36 (D) A joint exercise of powers authority as defined in Chapter
37 5 (commencing with Section 6500) of Division 7 of Title 1 of the
38 Government Code, with the consent of a transportation planning
39 agency or a county transportation commission for the jurisdiction
40 in which the transportation project will be developed.

1 (E) A local transportation authority designated pursuant to
 2 Division 19 (commencing with Section 180000) of the Public
 3 Utilities Code.

4 (F) The Santa Clara Valley Transportation Authority established
 5 pursuant to Part 12 (commencing with Section 100000) of Division
 6 10 of the Public Utilities Code.

7 (5) “Public Infrastructure Advisory Commission” means a unit
 8 or auxiliary organization established by the Business,
 9 Transportation and Housing Agency that advises the department
 10 and regional transportation agencies in developing transportation
 11 projects through performance-based infrastructure partnerships.

12 (6) “Transportation project” means one or more of the following:
 13 planning, design, development, finance, construction,
 14 reconstruction, rehabilitation, improvement, acquisition, lease,
 15 operation, or maintenance of highway, public street, rail, or related
 16 facilities supplemental to existing facilities currently owned and
 17 operated by the department or regional transportation agencies
 18 that is consistent with the requirements of subdivision (c).

19 (b) (1) The Public Infrastructure Advisory Commission shall
 20 do all of the following:

21 (A) Identify transportation project opportunities throughout the
 22 state.

23 (B) Research and document similar transportation projects
 24 throughout the state, nationally, and internationally, and further
 25 identify and evaluate lessons learned from these projects.

26 (C) Assemble and make available to the department or regional
 27 transportation agencies a library of information, precedent,
 28 research, and analysis concerning infrastructure partnerships and
 29 related types of public-private transactions for public infrastructure.

30 (D) Advise the department and regional transportation agencies,
 31 upon request, regarding infrastructure partnership suitability and
 32 best practices.

33 (E) Provide, upon request, procurement-related services to the
 34 department and regional transportation agencies for infrastructure
 35 partnership.

36 (2) The Public Infrastructure Advisory Commission may charge
 37 a fee to the department and regional transportation agencies for
 38 the services described in subparagraphs (D) and (E) of paragraph
 39 (1), the details of which shall be articulated in an agreement entered

1 into between the Public Infrastructure Advisory Commission and
2 the department or the regional transportation agency.

3 (c) (1) Notwithstanding any other provision of law, only the
4 department, in cooperation with regional transportation agencies,
5 and regional transportation agencies, may solicit proposals, accept
6 unsolicited proposals, negotiate, and enter into comprehensive
7 development lease agreements with public or private entities, or
8 consortia thereof, for transportation projects.

9 (2) Projects proposed pursuant to this section and associated
10 lease agreements shall be submitted to the California Transportation
11 Commission. The commission, at a regularly scheduled public
12 hearing, shall select the candidate projects from projects nominated
13 by the department or a regional transportation agency after
14 reviewing the nominations for consistency with paragraphs (3)
15 and (4). Approved projects may proceed with the process described
16 in paragraph (5).

17 (3) The projects authorized pursuant to this section shall be
18 primarily designed to achieve the following performance
19 objectives:

20 (A) Improve mobility by improving travel times or reducing
21 the number of vehicle hours of delay in the affected corridor.

22 (B) Improve the operation or safety of the affected corridor.

23 (C) Provide quantifiable air quality benefits for the region in
24 which the project is located.

25 (4) In addition to meeting the requirements of paragraph (3),
26 the projects authorized pursuant to this section shall address a
27 known forecast demand, as determined by the department or
28 regional transportation agency.

29 (5) At least 60 days prior to executing a final lease agreement
30 authorized pursuant to this section, the department or regional
31 transportation agency shall submit the agreement to the Legislature
32 and the Public Infrastructure Advisory Commission for review.
33 Prior to submitting a lease agreement to the Legislature and the
34 Public Infrastructure Advisory Commission, the department or
35 regional transportation agency shall conduct at least one public
36 hearing at a location at or near the proposed facility for purposes
37 of receiving public comment on the lease agreement. Public
38 comments made during this hearing shall be submitted to the
39 Legislature and the Public Infrastructure Advisory Commission
40 with the lease agreement. The Secretary of Business, Transportation

1 and Housing or the chairperson of the Senate or Assembly fiscal
2 committees or policy committees with jurisdiction over
3 transportation matters may, by written notification to the
4 department or regional transportation agency, provide any
5 comments about the proposed agreement within the 60-day period
6 prior to the execution of the final agreement. The department or
7 regional transportation agency shall consider those comments prior
8 to executing a final agreement and shall retain the discretion for
9 executing the final lease agreement.

10 (d) For the purpose of facilitating those projects, the agreements
11 between the parties may include provisions for the lease of
12 rights-of-way in, and airspace over or under, highways, public
13 streets, rail, or related facilities for the granting of necessary
14 easements, and for the issuance of permits or other authorizations
15 to enable the construction of transportation projects. Facilities
16 subject to an agreement under this section shall, at all times, be
17 owned by the department or the regional transportation agency,
18 as appropriate. For department projects, the commission shall
19 certify the department's determination of the useful life of the
20 project in establishing the lease agreement terms. In consideration
21 therefor, the agreement shall provide for complete reversion of the
22 leased facility, together with the right to collect tolls and user fees,
23 to the department or regional transportation agency, at the
24 expiration of the lease at no charge to the department or regional
25 transportation agency. At the time of the reversion, the facility
26 shall be delivered to the department or regional transportation
27 agency, as applicable, in a condition that meets the performance
28 and maintenance standards established by the department or
29 regional transportation agency and that is free of any encumbrance,
30 lien, or other claims.

31 (e) Agreements between the department or regional
32 transportation agency and the contracting entity or lessee shall
33 authorize the contracting entity or lessee to use a design-build
34 method of procurement for transportation projects, subject to the
35 requirements for utilizing such a method contained in Chapter 6.5
36 (commencing with Section 6800) of Part 1 of Division 2 of the
37 Public Contract Code, other than Sections 6802, 6803, and 6813
38 of that code, if those provisions are enacted by the Legislature
39 during the 2009–10 Regular Session, or a 2009–10 extraordinary
40 session.

1 (f) (1) (A) Notwithstanding any other provision of this chapter,
2 for projects on the state highway system, the department is the
3 responsible agency for the performance of project development
4 services, including performance specifications, preliminary
5 engineering, prebid services, the preparation of project reports and
6 environmental documents, and construction inspection services.
7 The department is also the responsible agency for the preparation
8 of documents that may include, but need not be limited to, the size,
9 type, and desired design character of the project, performance
10 specifications covering the quality of materials, equipment, and
11 workmanship, preliminary plans, and any other information deemed
12 necessary to describe adequately the needs of the department or
13 regional transportation agency.

14 (B) The department may use department employees or
15 consultants to perform the services described in subparagraph (A),
16 consistent with Article XXII of the California Constitution.
17 Department resources, including personnel requirements, necessary
18 for the performance of those services shall be included in the
19 department's capital outlay support program for workload purposes
20 in the annual Budget Act.

21 (2) The department or a regional transportation agency may
22 exercise any power possessed by it with respect to transportation
23 projects to facilitate the transportation projects pursuant to this
24 section. The department, regional transportation agency, and other
25 state or local agencies may provide services to the contracting
26 entity or lessee for which the public entity is reimbursed, including,
27 but not limited to, planning, environmental planning, environmental
28 certification, environmental review, preliminary design, design,
29 right-of-way acquisition, construction, maintenance, and policing
30 of these transportation projects. The department or regional
31 transportation agency, as applicable, shall regularly inspect the
32 facility and require the contracting entity or lessee to maintain and
33 operate the facility according to adopted standards. Except as may
34 otherwise be set forth in the lease agreement, the contracting entity
35 or lessee shall be responsible for all costs due to development,
36 maintenance, repair, rehabilitation, and reconstruction, and
37 operating costs.

38 (g) (1) In selecting private entities with which to enter into
39 these agreements, notwithstanding any other provision of law, the
40 department and regional transportation agencies may utilize, but

1 are not limited to utilizing, one or more of the following
2 procurement approaches:

3 (A) Solicitations of proposals for defined projects and calls for
4 project proposals within defined parameters.

5 (B) Prequalification and short-listing of proposers prior to final
6 evaluation of proposals.

7 (C) Final evaluation of proposals based on qualifications and
8 best value. The California Transportation Commission shall
9 develop and adopt criteria for making that evaluation prior to
10 evaluation of a proposal.

11 (D) Negotiations with proposers prior to award.

12 (E) Acceptance of unsolicited proposals, with issuance of
13 requests for competing proposals. Neither the department nor a
14 regional transportation agency may award a contract to an
15 unsolicited bidder without receiving at least one other responsible
16 bid.

17 (2) When evaluating a proposal submitted by the contracting
18 entity or lessee, the department or the regional transportation
19 agency may award a contract on the basis of the lowest bid or best
20 value.

21 (h) The contracting entity or lessee shall have the following
22 qualifications:

23 (1) Evidence that the members of the contracting entity or lessee
24 have completed, or have demonstrated the experience, competency,
25 capability, and capacity to complete, a project of similar size,
26 scope, or complexity, and that proposed key personnel have
27 sufficient experience and training to competently manage and
28 complete the design and construction of the project, and a financial
29 statement that ensures that the contracting entity or lessee has the
30 capacity to complete the project.

31 (2) The licenses, registration, and credentials required to design
32 and construct the project, including, but not limited to, information
33 on the revocation or suspension of any license, credential, or
34 registration.

35 (3) Evidence that establishes that members of the contracting
36 entity or lessee have the capacity to obtain all required payment
37 and performance bonding, liability insurance, and errors and
38 omissions insurance.

39 (4) Evidence that the contracting entity or lessee has workers'
40 compensation experience, history, and a worker safety program

1 of members of the contracting entity or lessee that is acceptable
2 to the department or regional transportation agency.

3 (5) A full disclosure regarding all of the following with respect
4 to each member of the contracting entity or lessee during the past
5 five years:

6 (A) Any serious or willful violation of Part 1 (commencing with
7 Section 6300) of Division 5 of the Labor Code or the federal
8 Occupational Safety and Health Act of 1970 (P.L. 91-596).

9 (B) Any instance where members of the contracting entity or
10 lessee were debarred, disqualified, or removed from a federal,
11 state, or local government public works project.

12 (C) Any instance where members of the contracting entity or
13 lessee, or its owners, officers, or managing employees submitted
14 a bid on a public works project and were found to be nonresponsive
15 or were found by an awarding body not to be a responsible bidder.

16 (D) Any instance where members of the contracting entity or
17 lessee, or its owners, officers, or managing employees defaulted
18 on a construction contract.

19 (E) Any violations of the Contractors' State License Law
20 (Chapter 9 (commencing with Section 7000) of Division 3 of the
21 Business and Professions Code), including, but not limited to,
22 alleged violations of federal or state law regarding the payment of
23 wages, benefits, apprenticeship requirements, or personal income
24 tax withholding, or Federal Insurance Contributions Act (FICA)
25 withholding requirements.

26 (F) Any bankruptcy or receivership of any member of the
27 contracting entity or lessee, including, but not limited to,
28 information concerning any work completed by a surety.

29 (G) Any settled adverse claims, disputes, or lawsuits between
30 the owner of a public works project and any member of the
31 contracting entity or lessee during the five years preceding
32 submission of a bid under this article, in which the claim,
33 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
34 Information shall also be provided concerning any work completed
35 by a surety during this five-year period.

36 (H) If the contracting entity or lessee is a partnership, joint
37 venture, or an association that is not a legal entity, a copy of the
38 agreement creating the partnership or association that specifies
39 that all general partners, joint venturers, or association members
40 agree to be fully liable for the performance under the agreement.

1 (i) No agreement entered into pursuant to this section shall
 2 infringe on the authority of the department or a regional
 3 transportation agency to develop, maintain, repair, rehabilitate,
 4 operate, or lease any transportation project. Lease agreements may
 5 provide for reasonable compensation to the contracting entity or
 6 lessee for the adverse effects on toll revenue or user fee revenue
 7 due to the development, operation, or lease of supplemental
 8 transportation projects with the exception of any of the following:

9 (1) Projects identified in regional transportation plans prepared
 10 pursuant to Section 65080 of the Government Code.

11 (2) Safety projects.

12 (3) Improvement projects that will result in incidental capacity
 13 increases.

14 (4) Additional high-occupancy vehicle lanes or the conversion
 15 of existing lanes to high-occupancy vehicle lanes.

16 (5) Projects located outside the boundaries of a public-private
 17 partnership project, to be defined by the lease agreement.

18 However, compensation to a contracting entity or lessee shall
 19 only be made after a demonstrable reduction in use of the facility
 20 resulting in reduced toll or user fee revenues, and may not exceed
 21 the difference between the reduction in those revenues and the
 22 amount necessary to cover the costs of debt service, including
 23 principal and interest on any debt incurred for the development,
 24 operation, maintenance, or rehabilitation of the facility.

25 (j) (1) Agreements entered into pursuant to this section shall
 26 authorize the contracting entity or lessee to impose tolls and user
 27 fees for use of a facility constructed by it, and shall require that
 28 over the term of the lease the toll revenues and user fees be applied
 29 to payment of the capital outlay costs for the project, the costs
 30 associated with operations, toll and user fee collection,
 31 administration of the facility, reimbursement to the department or
 32 other governmental entity for the costs of services to develop and
 33 maintain the project, police services, and a reasonable return on
 34 investment. The agreement shall require that, notwithstanding
 35 Sections 164, 188, and 188.1, any excess toll or user fee revenue
 36 either be applied to any indebtedness incurred by the contracting
 37 entity or lessee with respect to the project, improvements to the
 38 project, or be paid into the State Highway Account, or for all three
 39 purposes, except that any excess toll revenue under a lease
 40 agreement with a regional transportation agency may be paid to

1 the regional transportation agency for use in improving public
2 transportation in and near the project boundaries.

3 (2) Lease agreements shall establish specific toll or user fee
4 rates. Any proposed increase in those rates not otherwise
5 established or identified in the lease agreement during the term of
6 the agreement shall first be approved by the department or regional
7 transportation agency, as appropriate, after at least one public
8 hearing conducted at a location near the proposed or existing
9 facility.

10 (3) The collection of tolls and user fees for the use of these
11 facilities may be extended by the commission or regional
12 transportation agency at the expiration of the lease agreement.
13 However, those tolls or user fees shall not be used for any purpose
14 other than for the improvement, continued operation, or
15 maintenance of the facility.

16 (k) Agreements entered into pursuant to this section shall include
17 indemnity, defense, and hold harmless provisions agreed to by the
18 department or regional transportation agency and the contracting
19 entity or lessee, including provisions for indemnifying the State
20 of California or the regional transportation agency against any
21 claims or losses resulting or accruing from the performance of the
22 contracting entity or lessee.

23 (l) The plans and specifications for each transportation project
24 on the state highway system developed, maintained, repaired,
25 rehabilitated, reconstructed, or operated pursuant to this section
26 shall comply with the department's standards for state
27 transportation projects. The lease agreement shall include
28 performance standards, including, but not limited to, levels of
29 service. The agreement shall require facilities on the state highway
30 system to meet all requirements for noise mitigation, landscaping,
31 pollution control, and safety that otherwise would apply if the
32 department were designing, building, and operating the facility.
33 If a facility is on the state highway system, the facility leased
34 pursuant to this section shall, during the term of the lease, be
35 deemed to be a part of the state highway system for purposes of
36 identification, maintenance, enforcement of traffic laws, and for
37 the purposes of Division 3.6 (commencing with Section 810) of
38 Title 1 of the Government Code.

39 (m) Failure to comply with the lease agreement in any significant
40 manner shall constitute a default under the agreement and the

1 department or the regional transportation agency, as appropriate,
2 shall have the option to initiate processes to revert the facility to
3 the public agency.

4 (n) The assignment authorized by subdivision (c) of Section
5 130240 of the Public Utilities Code is consistent with this section.

6 (o) A lease to a private entity pursuant to this section is deemed
7 to be public property for a public purpose and exempt from
8 leasehold, real property, and ad valorem taxation, except for the
9 use, if any, of that property for ancillary commercial purposes.

10 (p) Nothing in this section is intended to infringe on the authority
11 to develop high-occupancy toll lanes pursuant to Section 149.4,
12 149.5, or 149.6.

13 (q) Nothing in this section shall be construed to allow the
14 conversion of any existing nontoll or nonuser-fee lanes into tolled
15 or user fee lanes with the exception of a high-occupancy vehicle
16 lane that may be operated as a high-occupancy toll lane for vehicles
17 not otherwise meeting the requirements for use of that lane.

18 (r) The lease agreement shall require the contracting entity or
19 lessee to provide any information or data requested by the
20 California Transportation Commission or the Legislative Analyst.
21 The commission, in cooperation with the Legislative Analyst, shall
22 annually prepare a report on the progress of each project and
23 ultimately on the operation of the resulting facility. The report
24 shall include, but not be limited to, a review of the performance
25 standards, a financial analysis, and any concerns or
26 recommendations for changes in the program authorized by this
27 section.

28 (s) Notwithstanding any other provision of this section, no lease
29 agreement may be entered into pursuant to the section that affects,
30 alters, or supersedes the Memorandum of Understanding (MOU),
31 dated November 26, 2008, entered into by the Golden Gate Bridge
32 Highway and Transportation District, the Metropolitan
33 Transportation Commission, and the San Francisco County
34 Transportation Authority, relating to the financing of the U.S.
35 Highway 101/Doyle Drive reconstruction project located in the
36 City and County of San Francisco.

37 (t) No lease agreements may be entered into under this section
38 on or after January 1, 2017.

1 ~~SEC. 3.~~

2 *SEC. 6.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

O