

AMENDED IN SENATE SEPTEMBER 3, 2013

AMENDED IN SENATE AUGUST 22, 2013

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 401

Introduced by Assembly Member Daly
(~~Coauthor: Assembly Member~~ *Coauthors: Assembly Members Cooley*
***and Linder*)**
(Coauthor: Senator Correa)

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 add and repeal Section 91.2 of the Streets and Highways Code, relating to transportation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 401, as amended, Daly. 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 would authorize the Department of Transportation to utilize design-build procurement for 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~~ *or adjacent* to the state highway system. *The bill would also authorize those regional transportation agencies to utilize design-build procurement for projects on expressways that are not on the state highway system, as specified.* 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 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 extend the use of design-build procurement to regional transportation agencies, as defined, and extend the period of time for which the Department of Transportation may use design-build procurement, subject to existing procedures. The bill would, by extension, impose the statement of qualifications requirement upon regional transportation agencies and the department, 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 to
11 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 *and expressways* 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 SEC. 3. Chapter 6.5 (commencing with Section 6820) is added
27 to Part 1 of Division 2 of the Public Contract Code, to read:

28

29 CHAPTER 6.5. TRANSPORTATION DESIGN-BUILD PROGRAM

30

31 6820. For purposes of this chapter, the following definitions
32 apply:

- 1 (a) “Best value” means a value determined by objective criteria,
 2 including, but not limited to, price, features, functions, life-cycle
 3 costs, and other criteria deemed appropriate by the transportation
 4 entity.
- 5 (b) “Commission” means the California Transportation
 6 Commission.
- 7 (c) “Design-build” means a procurement process in which both
 8 the design and construction of a project are procured from a single
 9 entity.
- 10 (d) “Design-build entity” means a partnership, corporation, or
 11 other legal entity that is able to provide appropriately licensed
 12 contracting, architectural, and engineering services as needed
 13 pursuant to a design-build contract.
- 14 (e) “Design-build team” means the design-build entity itself
 15 and the individuals and other entities identified by the design-build
 16 entity as members of its team.
- 17 (f) “Department” means the Department of Transportation as
 18 established under Part 5 (commencing with Section 14000) of
 19 Division 3 of Title 2 of the Government Code.
- 20 (g) “Expressway” means expressway as defined in Section 257
 21 of the Streets and Highways Code.
- 22 ~~(g)~~
- 23 (h) “Interfacing with the state highway system” means work
 24 performed within the state highway right-of-way, including
 25 airspace over or under that property, or work performed upon
 26 property acquired by the department for construction of a state
 27 highway, including airspace over or under that property.
- 28 ~~(h)~~
- 29 (i) “Regional transportation agency” means any of the following:
 30 (1) A transportation planning agency described in Section 29532
 31 or 29532.1 of the Government Code.
 32 (2) A county transportation commission established under
 33 Section 130050, 130050.1, or 130050.2 of the Public Utilities
 34 Code.
 35 (3) Any other local or regional transportation entity that is
 36 designated by statute as a regional transportation agency.
 37 (4) A joint exercise of powers authority established pursuant to
 38 Chapter 5 (commencing with Section 6500) of Division 7 of Title
 39 1 of the Government Code, with the consent of a transportation

1 planning agency or a county transportation commission for the
2 jurisdiction in which the transportation project will be developed.

3 (5) A local transportation authority designated pursuant to
4 Division 12.5 (commencing with Section 131000) or Division 19
5 (commencing with Section 180000) of the Public Utilities Code.

6 (6) The Santa Clara Valley Transportation Authority established
7 pursuant to Part 12 (commencing with Section 100000) of Division
8 10 of the Public Utilities Code.

9 (i)

10 (j) “Transportation entity” means the department or a regional
11 transportation agency.

12 6821. (a) The department may utilize the design-build method
13 of procurement for up to 10 projects on the state highway system,
14 based on either best value or lowest responsible bid.

15 (b) A regional transportation agency may utilize the design-build
16 method of procurement to design and construct projects on ~~streets,~~
17 ~~roads, or~~ *or adjacent to* the state highway system, *including related*
18 *nonhighway portions of the project*, based on either best value or
19 lowest responsible bid. A regional transportation agency and the
20 department shall enter into a cooperative agreement reflecting the
21 roles and responsibilities assigned by law for a project on or
22 interfacing with the state highway system authorized under this
23 subdivision. The cooperative agreement shall also include the
24 requirement to develop a mutually agreed upon issue resolution
25 process with a primary objective to ensure the project stays on
26 schedule and issues between the parties are resolved in a timely
27 manner.

28 (c) (1) *A regional transportation agency may utilize the*
29 *design-build method of procurement, based on either best value*
30 *or lowest responsible bid, to design and construct projects on*
31 *expressways that are not on the state highway system if the projects*
32 *are developed in accordance with an expenditure plan approved*
33 *by voters as of January 1, 2014.*

34 (2) *The entity responsible for the maintenance of the local streets*
35 *and roads within the jurisdiction of the expressway shall be*
36 *responsible for the maintenance of the expressway.*

37 (d) *A city, county, or city and county shall not utilize the*
38 *design-build method of procurement under this chapter. A regional*
39 *transportation agency shall not utilize the design-build method of*
40 *procurement on behalf of a city, county, or city and county.*

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

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

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

18 (3) A report to be submitted pursuant to paragraph (1) shall be
 19 submitted in compliance with Section 9795 of the Government
 20 Code.

21 6822. The commission shall use the guidelines developed
 22 pursuant to subdivision (e) of Section 6803, as it read on December
 23 31, 2013, to provide a standard organizational conflict-of-interest
 24 policy, consistent with applicable law, regarding the ability of a
 25 person or entity, that performs services for the transportation entity
 26 relating to the solicitation of a design-build project, to submit a
 27 proposal as a design-build entity, or to join a design-build team.
 28 This conflict-of-interest policy shall apply to the transportation
 29 entity entering into design-build contracts authorized under this
 30 chapter.

31 6823. (a) For contracts for public works projects awarded prior
 32 to the effective date of the regulations adopted by the Department
 33 of Industrial Relations pursuant to subdivision (g) of Section 1771.5
 34 of the Labor Code, a transportation entity authorized to use the
 35 design-build method of procurement shall establish and enforce a
 36 labor compliance program containing the requirements outlined
 37 in Section 1771.5 of the Labor Code or shall contract with a third
 38 party to operate a labor compliance program containing the
 39 requirements outlined in Section 1771.5 of the Labor Code. This
 40 requirement shall not apply to projects where the transportation

1 entity or design-build entity has entered into any collective
2 bargaining agreement that binds all of the contractors performing
3 work on the projects.

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

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

29 6824. The procurement process for the design-build project
30 shall progress as follows:

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

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

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

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

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

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

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

33 (1) Identification of the basic scope and needs of the project or
34 contract, the expected cost range, the methodology that will be
35 used by the transportation entity to evaluate proposals, the
36 procedure for final selection of the design-build entity, and any
37 other information deemed necessary by the transportation entity
38 to inform interested parties of the contracting opportunity.

39 (2) (A) Significant factors that the transportation entity
40 reasonably expects to consider in evaluating qualifications,

1 including technical design and construction expertise, skilled labor
2 force availability, and all other nonprice-related factors.

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

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

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

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

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

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

- 1 (E) Information concerning workers' compensation experience
- 2 history and a worker safety program.
- 3 (F) A full disclosure regarding all of the following that are
- 4 applicable:
 - 5 (i) Any serious or willful violation of Part 1 (commencing with
 - 6 Section 6300) of Division 5 of the Labor Code or the federal
 - 7 Occupational Safety and Health Act of 1970 (Public Law 91-596),
 - 8 settled against any member of the design-build entity.
 - 9 (ii) Any debarment, disqualification, or removal from a federal,
 - 10 state, or local government public works project.
 - 11 (iii) Any instance where the design-build entity, or its owners,
 - 12 officers, or managing employees submitted a bid on a public works
 - 13 project and were found to be nonresponsive or were found by an
 - 14 awarding body not to be a responsible bidder.
 - 15 (iv) Any instance where the design-build entity, or its owners,
 - 16 officers, or managing employees defaulted on a construction
 - 17 contract.
 - 18 (v) Any violations of the Contractors' State License Law, as
 - 19 described in Chapter 9 (commencing with Section 7000) of
 - 20 Division 3 of the Business and Professions Code, including alleged
 - 21 violations of federal or state law regarding the payment of wages,
 - 22 benefits, apprenticeship requirements, or personal income tax
 - 23 withholding, or Federal Insurance Contribution Act (FICA)
 - 24 withholding requirements settled against any member of the
 - 25 design-build entity.
 - 26 (vi) Any bankruptcy or receivership of any member of the
 - 27 design-build entity, including, but not limited to, information
 - 28 concerning any work completed by a surety.
 - 29 (vii) Any settled adverse claims, disputes, or lawsuits between
 - 30 the owner of a public works project and any member of the
 - 31 design-build entity during the five years preceding submission of
 - 32 a bid under this article, in which the claim, settlement, or judgment
 - 33 exceeds fifty thousand dollars (\$50,000). Information shall also
 - 34 be provided concerning any work completed by a surety during
 - 35 this five-year period.
 - 36 (G) If the proposed design-build entity is a partnership, limited
 - 37 partnership, joint-venture, or other association, a copy of the
 - 38 organizational documents or agreement committing to form the
 - 39 organization, and a statement that all general partners, joint venture

1 members, or other association members agree to be fully liable for
2 the performance under the design-build contract.

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

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

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

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

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

30 (A) Price.

31 (B) Technical design and construction expertise.

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

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

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

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

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

11 (6) The written decision supporting the transportation entity’s
 12 contract award, described in paragraph (5), and the contract file
 13 shall provide sufficient information to satisfy an external audit.

14 6825. (a) The design-build entity shall provide payment and
 15 performance bonds for the project in the form and in the amount
 16 required by the transportation entity, and issued by a California
 17 admitted surety. In no case shall the amount of the payment bond
 18 be less than the amount of the performance bond.

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

21 6826. (a) The transportation entity, in each design-build request
 22 for proposals, may identify specific types of subcontractors that
 23 must be included in the design-build entity statement of
 24 qualifications and proposal. All construction subcontractors that
 25 are identified in the proposal shall be afforded all the protections
 26 of Chapter 4 (commencing with Section 4100) of Part 1 of Division
 27 2.

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

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

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

36 (3) Establish reasonable qualification criteria and standards.

37 (4) Provide that the subcontracted construction work shall be
 38 awarded either on a best value basis or to the lowest responsible
 39 bidder. For construction work awarded on a best value basis, the
 40 design-build entity shall evaluate all bids utilizing the factors

1 described in paragraph (1) of subdivision (e) of Section 6824, and
2 shall award the contract to the bidder determined by the
3 design-build entity to have offered the best value.

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

7 6827. Nothing in this chapter affects, expands, alters, or limits
8 any rights or remedies otherwise available at law.

9 6828. The provisions of this chapter are severable. If any
10 provision of this chapter or its application is held invalid, that
11 invalidity shall not affect other provisions or applications that can
12 be given effect without the invalid provision or application.

13 6829. (a) This chapter shall remain in effect only until January
14 1, 2024, and as of that date is repealed, unless a later enacted
15 statute, that is enacted before January 1, 2024, deletes or extends
16 that date.

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

23 (c) The repeal of this chapter shall not affect an executed
24 design-build contract or cooperative agreement entered into
25 pursuant to this chapter prior to the date of its repeal, regardless
26 of the stage of the project at the time of repeal.

27 SEC. 4. Section 91.2 is added to the Streets and Highways
28 Code, to read:

29 91.2. (a) The department shall perform construction inspection
30 services for projects on or interfacing with the state highway system
31 authorized pursuant to Chapter 6.5 (commencing with Section
32 6820) of Part 1 of Division 2 of the Public Contract Code. The
33 department shall use department employees or consultants under
34 contract with the department to perform the services described in
35 this subdivision and subdivision (b), consistent with Article XXII
36 of the California Constitution. Construction inspection services
37 performed by the department for those projects include, but are
38 not limited to, material source testing, certification testing,
39 surveying, monitoring of environmental compliance, independent
40 quality control testing and inspection, and quality assurance audits.

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

8 (b) Notwithstanding any other law, the department shall retain
9 the authority to stop the contractor's operation wholly or in part
10 and take appropriate action when public safety is jeopardized on
11 a project on or interfacing with the state highway system authorized
12 pursuant to Chapter 6.5 (commencing with Section 6820) of Part
13 1 of Division 2 of the Public Contract Code. The department shall
14 ensure that public safety and convenience is maintained whenever
15 work is performed under an encroachment permit within the state
16 highway right-of-way, including, but not limited to, work
17 performed that includes lane closures, signing, work performed at
18 night, detours, dust control, temporary pavement quality, crash
19 cushions, temporary railings, pavement transitions, falsework,
20 shoring, and delineation. The department shall regularly inspect
21 the job sites for safety compliance and any possible deficiencies.
22 If any deficiency is observed, a written notice shall be sent by the
23 department to the regional transportation agency's designated
24 resident engineer to correct the deficiency. Once the deficiency is
25 corrected, a written notice describing the resolution of the
26 deficiency shall be sent to the department and documented.

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

35 (d) *"Construction inspection services" shall not include*
36 *surveying work performed as part of a design-build contract.*

37 ~~(d)~~

38 (e) This section shall remain in effect only until January 1, 2024,
39 and as of that date is repealed, unless a later enacted statute, that
40 is enacted before January 1, 2024, deletes or extends that date.

1 (e)

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

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

O