

AMENDED IN SENATE MAY 7, 2014  
AMENDED IN SENATE APRIL 22, 2014

**SENATE BILL**

**No. 918**

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**Introduced by Senator Gaines**  
*(Principal coauthor: Senator DeSaulnier)*

January 27, 2014

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An act to add Sections 14104.1 and 14106 to the Government Code, to amend Section 10120 of the Public Contract Code, and to add Section 172 to the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 918, as amended, Gaines. Department of Transportation.

(1) Existing law provides that the Department of Transportation has full possession and control of the state highway system and associated property. Existing law authorizes the department to purchase or rent any necessary supplies, instruments, tools, equipment, and conveniences as may be necessary for the proper discharge of its duties.

This bill would require the department, *on or before February 1, 2015*, to develop and implement an asset management program that will efficiently and effectively catalog the department's assets to ensure the most efficient usage and maintenance of those ~~assets~~. *assets, and would require the department to update the program at least once every 5 years.*

(2) Existing law, the State Records Management Act, imposes certain requirements on state agencies with respect to retention of records that have administrative, legal, or fiscal value.

This bill would impose additional record retention requirements on the Department of Transportation with respect to documents that are associated with construction projects. The bill would provide that the

department shall be liable for any loss or damage to any party resulting from failure to retain these documents, and would provide for a civil penalty of up to \$500 for each occurrence of a missing document.

(3) Existing law, the State Contract Act, generally provides for a contracting process by state agencies for public works of improvement via a competitive bidding process, under which bids are awarded to the lowest responsible bidder, with certain alternative bidding procedures authorized in certain cases. Existing law requires a department, as defined for purposes of the State Contract Act, including the Department of Transportation, to prepare full, complete, and accurate plans and specifications and estimates of cost before entering into any competitively bid contract for a public works project.

This bill would, with respect to competitively bid projects, require the department, before it commences the design of a project's plans, to first obtain full, complete, and accurate survey information of the field conditions existing in the location where construction of the project is to be performed. The bill would also require the department, when preparing the project's plans, to use state-of-the-art design software that allows for the preparation of full, complete, and accurate plans and that does not automatically fix errors in the design but rather requires the project designer to correct errors on an individualized, contemplative basis.

(4) Existing law requires the department to annually prepare and submit to the Governor a proposed budget, and to inform the California Transportation Commission of all pertinent assumptions and policy directions it intends to use in preparing the budget. Existing law also requires the department to develop budgeting, accounting, fiscal control, and management information systems in order to support its proposed budgets and to improve its program management, as specified.

This bill would require the department, in preparing the proposed budget, to include detailed information about outstanding contractor claims, as defined, relating to construction projects, and to reserve sufficient moneys in each budget to pay accumulated outstanding claims, as specified, and to report on those claims and reserves in budget-related reports.

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

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

1 SECTION 1. Section 14104.1 is added to the Government  
2 Code, to read:

3 14104.1. ~~The~~ *(a) On or before February 1, 2015, the*  
4 *department shall develop and implement an asset management*  
5 *program that will efficiently and effectively catalog the*  
6 *department’s assets to ensure the most efficient usage and*  
7 *maintenance of those assets.*

8 *(b) The department shall update the asset management program*  
9 *at least once every five years.*

10 SEC. 2. Section 14106 is added to the Government Code, to  
11 read:

12 14106. (a) The requirements of this section shall be in addition  
13 to the requirements for document retention applicable to all state  
14 agencies pursuant to the State Records Management Act (Chapter  
15 5 (commencing with Section 14740) of Part 5.5).

16 (b) (1) For purposes of this subdivision, “document” includes,  
17 but is not limited to, a document subject to subdivision (a), email  
18 messages and associated attachments, text messages, and  
19 handwritten notes of any kind, including, but not limited to, diaries,  
20 measurement notes, inspection notes, calculations, and meeting  
21 minutes. “Document” also includes any other writing that would  
22 normally be retained as part of a construction project file.

23 (2) The department shall retain, as part of a construction  
24 project’s file, all documents that are in any way related to the  
25 design, construction, or administration, at every stage, of a  
26 construction project. The documents shall be retained by the  
27 department until final closeout and payment in full for each element  
28 of the project is complete, and all outstanding claims relating to  
29 the project have been resolved, including any available appeal.

30 (c) If the department fails to retain a document required to be  
31 retained pursuant to subdivision (b) or as required by any other  
32 applicable law, it shall be liable for any loss or damage to any  
33 party resulting from that failure and shall also be subject to a civil  
34 penalty of up to five hundred dollars (\$500) for each occurrence  
35 of a missing document. An action under this subdivision for  
36 recovery of a civil penalty may be brought by the Attorney General  
37 or a district attorney.

1 SEC. 3. Section 10120 of the Public Contract Code is amended  
2 to read:

3 10120. (a) Before entering into any contract for a project, the  
4 department shall prepare full, complete, and accurate plans and  
5 specifications and estimates of cost, giving such directions as will  
6 enable any competent mechanic or other builder to carry them out.

7 (b) (1) Before the Department of Transportation commences  
8 the design of a project’s plans, it shall first obtain full, complete,  
9 and accurate survey information of the field conditions existing  
10 in the location where construction of the project is to be performed.

11 The Department of Transportation, when preparing a project’s  
12 plans, shall ensure that the plans match existing conditions and  
13 shall use state-of-the-art design software that allows for the  
14 preparation of full, complete, and accurate plans and that does not  
15 automatically fix errors in the design but rather requires the project  
16 designer to correct errors on an individualized, contemplative basis.

17 (2) Upon award of a contract, the Department of Transportation  
18 and the contractor shall engage in a joint postbid constructability  
19 review to identify any remaining issues and seek to resolve them

20 SEC. 4. Section 172 is added to the Streets and Highways Code,  
21 to read:

22 172. (a) As used in this section, “claim” includes, but is not  
23 limited to, a claim with respect to a construction project that is  
24 submitted through the notice of potential claims procedures, an  
25 after contract acceptance claim, or a lien. This section applies to  
26 a construction project regardless of the contracting method used  
27 for the project.

28 (b) Each proposed budget prepared by the department shall  
29 include detailed financial information about all outstanding claims  
30 submitted by contractors, including passthrough claims submitted  
31 by contractors on behalf of subcontractors. Each budget shall  
32 contain a reserve of moneys sufficient to pay outstanding  
33 accumulated claims for all construction projects, as determined  
34 pursuant this section.

35 (c) For each construction project for which the department  
36 receives a claim through the notice of potential claims procedures  
37 or an after contract acceptance claim, stating a monetary value,  
38 moneys shall be reserved that are sufficient to pay, at a minimum,  
39 60 percent of the claim’s value as stated by the contractor, except  
40 that if a claim is heard by the project’s dispute resolution board

1 and a majority of the board finds in favor of the claimant, or if a  
2 board of review, or the department's district director in the district  
3 having jurisdiction of the project, finds in favor of the claimant,  
4 moneys shall be reserved that are sufficient to pay 100 percent of  
5 the claim's value as determined by the applicable board or district  
6 director.

7 (d) The department shall continue to report, in its budget  
8 documents and otherwise, the value of each outstanding claim as  
9 determined pursuant to this section, and to reserve funding to pay  
10 each claim as required by this section, until the claim is finally  
11 resolved.

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