

**ASSEMBLY BILL**

**No. 2**

---

---

**Introduced by Assembly Members Perea, Alejo, and Olsen  
(Coauthors: Assembly Members Achadjian, Baker, Brough, Burke,  
Campos, Chang, Chávez, Cooper, Dababneh, Dahle, Daly,  
Frazier, Roger Hernández, Mayes, Obernolte, Patterson, Rendon,  
Salas, and Waldron)**

June 25, 2015

---

---

An act to amend Section 143 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2, as introduced, Perea. Transportation projects: comprehensive development lease agreements.

Existing law authorizes the Department of Transportation and regional transportation agencies, as defined, to enter into comprehensive development lease agreements with public and private entities, or consortia of those entities, for certain transportation projects that may charge certain users of those projects tolls and user fees, subject to various terms and requirements. These arrangements are commonly known as public-private partnerships. Existing law provides that a lease agreement may not be entered into under these provisions on or after January 1, 2017.

This bill would extend this authorization indefinitely and would include within the definition of “regional transportation agency” the Santa Clara Valley Transportation Authority, thereby authorizing the authority to enter into public-private partnerships under these provisions. The bill would also delete obsolete cross-references and make technical changes to these provisions.

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 143 of the Streets and Highways Code  
2 is amended to read:  
3 143. (a) (1) “Best value” means a value determined by  
4 objective criteria, including, but not limited to, price, features,  
5 functions, life-cycle costs, and other criteria deemed appropriate  
6 by the department or the regional transportation agency.  
7 (2) “Contracting entity or lessee” means a public or private  
8 entity, or consortia thereof, that has entered into a comprehensive  
9 development lease agreement with the department or a regional  
10 transportation agency for a transportation project pursuant to this  
11 section.  
12 (3) “Design-build” means a procurement process in which both  
13 the design and construction of a project are procured from a single  
14 entity.  
15 (4) “Regional transportation agency” means any of the  
16 following:  
17 (A) A transportation planning agency as defined in Section  
18 29532 or 29532.1 of the Government Code.  
19 (B) A county transportation commission as defined in Section  
20 130050, 130050.1, or 130050.2 of the Public Utilities Code.  
21 (C) Any other local or regional transportation entity that is  
22 designated by statute as a regional transportation agency.  
23 (D) A joint exercise of powers authority as defined in Chapter  
24 5 (commencing with Section 6500) of Division 7 of Title 1 of the  
25 Government Code, with the consent of a transportation planning  
26 agency or a county transportation commission for the jurisdiction  
27 in which the transportation project will be developed.  
28 (E) *The Santa Clara Valley Transportation Authority established*  
29 *pursuant to Part 12 (commencing with Section 100000) of Division*  
30 *10 of the Public Utilities Code.*  
31 (5) “Public Infrastructure Advisory Commission” means a unit  
32 or auxiliary organization established by the ~~Business,~~  
33 ~~Transportation and Housing~~ Agency that advises the department  
34 and regional transportation agencies in developing transportation  
35 projects through performance-based infrastructure partnerships.

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

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

10 (A) Identify transportation project opportunities throughout the  
11 state.

12 (B) Research and document similar transportation projects  
13 throughout the state, nationally, and internationally, and further  
14 identify and evaluate lessons learned from these projects.

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

19 (D) Advise the department and regional transportation agencies,  
20 upon request, regarding infrastructure partnership suitability and  
21 best practices.

22 (E) Provide, upon request, procurement-related services to the  
23 department and regional transportation agencies for infrastructure  
24 partnership.

25 (2) The Public Infrastructure Advisory Commission may charge  
26 a fee to the department and regional transportation agencies for  
27 the services described in subparagraphs (D) and (E) of paragraph  
28 (1), the details of which shall be articulated in an agreement entered  
29 into between the Public Infrastructure Advisory Commission and  
30 the department or the regional transportation agency.

31 (c) (1) Notwithstanding any other provision of law, only the  
32 department, in cooperation with regional transportation agencies,  
33 and regional transportation agencies, may solicit proposals, accept  
34 unsolicited proposals, negotiate, and enter into comprehensive  
35 development lease agreements with public or private entities, or  
36 consortia thereof, for transportation projects.

37 (2) Projects proposed pursuant to this section and associated  
38 lease agreements shall be submitted to the California Transportation  
39 Commission. The commission, at a regularly scheduled public  
40 hearing, shall select the candidate projects from projects nominated

1 by the department or a regional transportation agency after  
2 reviewing the nominations for consistency with paragraphs (3)  
3 and (4). Approved projects may proceed with the process described  
4 in paragraph (5).

5 (3) The projects authorized pursuant to this section shall be  
6 primarily designed to achieve the following performance  
7 objectives:

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

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

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

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

17 (5) At least 60 days prior to executing a final lease agreement  
18 authorized pursuant to this section, the department or regional  
19 transportation agency shall submit the agreement to the Legislature  
20 and the Public Infrastructure Advisory Commission for review.  
21 Prior to submitting a lease agreement to the Legislature and the  
22 Public Infrastructure Advisory Commission, the department or  
23 regional transportation agency shall conduct at least one public  
24 hearing at a location at or near the proposed facility for purposes  
25 of receiving public comment on the lease agreement. Public  
26 comments made during this hearing shall be submitted to the  
27 Legislature and the Public Infrastructure Advisory Commission  
28 with the lease agreement. The Secretary of ~~Business, Transportation~~  
29 ~~and Housing~~ or the chairperson of the Senate or Assembly fiscal  
30 committees or policy committees with jurisdiction over  
31 transportation matters may, by written notification to the  
32 department or regional transportation agency, provide any  
33 comments about the proposed agreement within the 60-day period  
34 prior to the execution of the final agreement. The department or  
35 regional transportation agency shall consider those comments prior  
36 to executing a final agreement and shall retain the discretion for  
37 executing the final lease agreement.

38 (d) For the purpose of facilitating those projects, the agreements  
39 between the parties may include provisions for the lease of  
40 rights-of-way in, and airspace over or under, highways, public

1 streets, rail, or related facilities for the granting of necessary  
2 easements, and for the issuance of permits or other authorizations  
3 to enable the construction of transportation projects. Facilities  
4 subject to an agreement under this section shall, at all times, be  
5 owned by the department or the regional transportation agency,  
6 as appropriate. For department projects, the commission shall  
7 certify the department's determination of the useful life of the  
8 project in establishing the lease agreement terms. In consideration  
9 thereof, the agreement shall provide for complete reversion of the  
10 leased facility, together with the right to collect tolls and user fees,  
11 to the department or regional transportation agency, at the  
12 expiration of the lease at no charge to the department or regional  
13 transportation agency. At the time of the reversion, the facility  
14 shall be delivered to the department or regional transportation  
15 agency, as applicable, in a condition that meets the performance  
16 and maintenance standards established by the department or  
17 regional transportation agency and that is free of any encumbrance,  
18 lien, or other claims.

19 (e) Agreements between the department or regional  
20 transportation agency and the contracting entity or lessee shall  
21 authorize the contracting entity or lessee to use a design-build  
22 method of procurement for transportation projects, subject to the  
23 requirements for utilizing such a method contained in Chapter 6.5  
24 (commencing with Section ~~6800~~ 6820) of Part 1 of Division 2 of  
25 the Public Contract Code, other than Sections ~~6802, 6803, 6821~~  
26 and ~~6813~~ 6822 of that code, if those provisions are enacted by the  
27 Legislature during the ~~2009-10 Regular Session, or a 2009-10~~  
28 ~~extraordinary session.~~ *code.*

29 (f) (1) (A) Notwithstanding any other provision of this chapter,  
30 for projects on the state highway system, the department is the  
31 responsible agency for the performance of project development  
32 services, including performance specifications, preliminary  
33 engineering, prebid services, the preparation of project reports and  
34 environmental documents, and construction inspection services.  
35 The department is also the responsible agency for the preparation  
36 of documents that may include, but need not be limited to, the size,  
37 type, and desired design character of the project, performance  
38 specifications covering the quality of materials, equipment, and  
39 workmanship, preliminary plans, and any other information deemed

1 necessary to describe adequately the needs of the department or  
2 regional transportation agency.

3 (B) The department may use department employees or  
4 consultants to perform the services described in subparagraph (A),  
5 consistent with Article XXII of the California Constitution.  
6 Department resources, including personnel requirements, necessary  
7 for the performance of those services shall be included in the  
8 department’s capital outlay support program for workload purposes  
9 in the annual Budget Act.

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

27 (g) (1) In selecting private entities with which to enter into  
28 these agreements, notwithstanding any other provision of law, the  
29 department and regional transportation agencies may utilize, but  
30 are not limited to utilizing, one or more of the following  
31 procurement approaches:

32 (A) Solicitations of proposals for defined projects and calls for  
33 project proposals within defined parameters.

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

36 (C) Final evaluation of proposals based on qualifications and  
37 best value. The California Transportation Commission shall  
38 develop and adopt criteria for making that evaluation prior to  
39 evaluation of a proposal.

40 (D) Negotiations with proposers prior to award.

1 (E) Acceptance of unsolicited proposals, with issuance of  
2 requests for competing proposals. Neither the department nor a  
3 regional transportation agency may award a contract to an  
4 unsolicited bidder without receiving at least one other responsible  
5 bid.

6 (2) When evaluating a proposal submitted by the contracting  
7 entity or lessee, the department or the regional transportation  
8 agency may award a contract on the basis of the lowest bid or best  
9 value.

10 (h) The contracting entity or lessee shall have the following  
11 qualifications:

12 (1) Evidence that the members of the contracting entity or lessee  
13 have completed, or have demonstrated the experience, competency,  
14 capability, and capacity to complete, a project of similar size,  
15 scope, or complexity, and that proposed key personnel have  
16 sufficient experience and training to competently manage and  
17 complete the design and construction of the project, and a financial  
18 statement that ensures that the contracting entity or lessee has the  
19 capacity to complete the project.

20 (2) The licenses, registration, and credentials required to design  
21 and construct the project, including, but not limited to, information  
22 on the revocation or suspension of any license, credential, or  
23 registration.

24 (3) Evidence that establishes that members of the contracting  
25 entity or lessee have the capacity to obtain all required payment  
26 and performance bonding, liability insurance, and errors and  
27 omissions insurance.

28 (4) Evidence that the contracting entity or lessee has workers'  
29 compensation experience, history, and a worker safety program  
30 of members of the contracting entity or lessee that is acceptable  
31 to the department or regional transportation agency.

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

35 (A) Any serious or willful violation of Part 1 (commencing with  
36 Section 6300) of Division 5 of the Labor Code or the federal  
37 Occupational Safety and Health Act of 1970 (~~P.L.~~ *Public Law*  
38 91-596).

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

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

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

11 (E) Any violations of the Contractors’ State License Law  
12 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
13 Business and Professions Code), including, but not limited to,  
14 alleged violations of federal or state law regarding the payment of  
15 wages, benefits, apprenticeship requirements, or personal income  
16 tax withholding, or Federal Insurance Contributions Act (FICA)  
17 withholding requirements.

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

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

28 (H) If the contracting entity or lessee is a partnership, joint  
29 venture, or an association that is not a legal entity, a copy of the  
30 agreement creating the partnership or association that specifies  
31 that all general partners, joint venturers, or association members  
32 agree to be fully liable for the performance under the agreement.

33 (i) No agreement entered into pursuant to this section shall  
34 infringe on the authority of the department or a regional  
35 transportation agency to develop, maintain, repair, rehabilitate,  
36 operate, or lease any transportation project. Lease agreements may  
37 provide for reasonable compensation to the contracting entity or  
38 lessee for the adverse effects on toll revenue or user fee revenue  
39 due to the development, operation, or lease of supplemental  
40 transportation projects with the exception of any of the following:



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

3 (2) Safety projects.

4 (3) Improvement projects that will result in incidental capacity  
5 increases.

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

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

10 However, compensation to a contracting entity or lessee shall  
11 only be made after a demonstrable reduction in use of the facility  
12 resulting in reduced toll or user fee revenues, and may not exceed  
13 the difference between the reduction in those revenues and the  
14 amount necessary to cover the costs of debt service, including  
15 principal and interest on any debt incurred for the development,  
16 operation, maintenance, or rehabilitation of the facility.

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

35 (2) Lease agreements shall establish specific toll or user fee  
36 rates. Any proposed increase in those rates not otherwise  
37 established or identified in the lease agreement during the term of  
38 the agreement shall first be approved by the department or regional  
39 transportation agency, as appropriate, after at least one public

1 hearing conducted at a location near the proposed or existing  
2 facility.

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

9 (k) Agreements entered into pursuant to this section shall include  
10 indemnity, defense, and hold harmless provisions agreed to by the  
11 department or regional transportation agency and the contracting  
12 entity or lessee, including provisions for indemnifying the State  
13 of California or the regional transportation agency against any  
14 claims or losses resulting or accruing from the performance of the  
15 contracting entity or lessee.

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

32 (m) Failure to comply with the lease agreement in any significant  
33 manner shall constitute a default under the agreement and the  
34 department or the regional transportation agency, as appropriate,  
35 shall have the option to initiate processes to revert the facility to  
36 the public agency.

37 (n) The assignment authorized by subdivision (c) of Section  
38 130240 of the Public Utilities Code is consistent with this section.

39 (o) A lease to a private entity pursuant to this section is deemed  
40 to be public property for a public purpose and exempt from

1 leasehold, real property, and ad valorem taxation, except for the  
2 use, if any, of that property for ancillary commercial purposes.

3 (p) Nothing in this section is intended to infringe on the authority  
4 to develop high-occupancy toll lanes pursuant to Section 149.4,  
5 149.5, or 149.6.

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

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

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

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

O