

**Introduced by Senator Huff**

February 3, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 158, as introduced, Huff. Transportation projects: comprehensive development lease agreements.

Existing law, until January 1, 2017, authorizes the Department of Transportation or a regional transportation agency to enter into a comprehensive development lease with a public or private entity for a transportation project.

This bill would delete obsolete cross-references and make technical changes to these provisions.

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

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

- 1 SECTION 1. Section 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

1 transportation agency for a transportation project pursuant to this  
2 section.

3 (3) “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 (4) “Regional transportation agency” means any of the  
7 following:

8 (A) A transportation planning agency as defined in Section  
9 29532 or 29532.1 of the Government Code.

10 (B) A county transportation commission as defined in Section  
11 130050, 130050.1, or 130050.2 of the Public Utilities Code.

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

14 (D) A joint exercise of powers authority as defined in Chapter  
15 5 (commencing with Section 6500) of Division 7 of Title 1 of the  
16 Government Code, with the consent of a transportation planning  
17 agency or a county transportation commission for the jurisdiction  
18 in which the transportation project will be developed.

19 (5) “Public Infrastructure Advisory Commission” means a unit  
20 or auxiliary organization established by the ~~Business,~~  
21 ~~Transportation and Housing~~ Agency that advises the department  
22 and regional transportation agencies in developing transportation  
23 projects through performance-based infrastructure partnerships.

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

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

33 (A) Identify transportation project opportunities throughout the  
34 state.

35 (B) Research and document similar transportation projects  
36 throughout the state, nationally, and internationally, and further  
37 identify and evaluate lessons learned from these projects.

38 (C) Assemble and make available to the department or regional  
39 transportation agencies a library of information, precedent,

1 research, and analysis concerning infrastructure partnerships and  
2 related types of public-private transactions for public infrastructure.

3 (D) Advise the department and regional transportation agencies,  
4 upon request, regarding infrastructure partnership suitability and  
5 best practices.

6 (E) Provide, upon request, procurement-related services to the  
7 department and regional transportation agencies for infrastructure  
8 partnership.

9 (2) The Public Infrastructure Advisory Commission may charge  
10 a fee to the department and regional transportation agencies for  
11 the services described in subparagraphs (D) and (E) of paragraph  
12 (1), the details of which shall be articulated in an agreement entered  
13 into between the Public Infrastructure Advisory Commission and  
14 the department or the regional transportation agency.

15 (c) (1) Notwithstanding any other provision of law, only the  
16 department, in cooperation with regional transportation agencies,  
17 and regional transportation agencies, may solicit proposals, accept  
18 unsolicited proposals, negotiate, and enter into comprehensive  
19 development lease agreements with public or private entities, or  
20 consortia thereof, for transportation projects.

21 (2) Projects proposed pursuant to this section and associated  
22 lease agreements shall be submitted to the California Transportation  
23 Commission. The commission, at a regularly scheduled public  
24 hearing, shall select the candidate projects from projects nominated  
25 by the department or a regional transportation agency after  
26 reviewing the nominations for consistency with paragraphs (3)  
27 and (4). Approved projects may proceed with the process described  
28 in paragraph (5).

29 (3) The projects authorized pursuant to this section shall be  
30 primarily designed to achieve the following performance  
31 objectives:

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

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

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

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

1 (5) At least 60 days prior to executing a final lease agreement  
2 authorized pursuant to this section, the department or regional  
3 transportation agency shall submit the agreement to the Legislature  
4 and the Public Infrastructure Advisory Commission for review.  
5 Prior to submitting a lease agreement to the Legislature and the  
6 Public Infrastructure Advisory Commission, the department or  
7 regional transportation agency shall conduct at least one public  
8 hearing at a location at or near the proposed facility for purposes  
9 of receiving public comment on the lease agreement. Public  
10 comments made during this hearing shall be submitted to the  
11 Legislature and the Public Infrastructure Advisory Commission  
12 with the lease agreement. The Secretary of ~~Business, Transportation~~  
13 ~~and Housing~~ or the chairperson of the Senate or Assembly fiscal  
14 committees or policy committees with jurisdiction over  
15 transportation matters may, by written notification to the  
16 department or regional transportation agency, provide any  
17 comments about the proposed agreement within the 60-day period  
18 prior to the execution of the final agreement. The department or  
19 regional transportation agency shall consider those comments prior  
20 to executing a final agreement and shall retain the discretion for  
21 executing the final lease agreement.

22 (d) For the purpose of facilitating those projects, the agreements  
23 between the parties may include provisions for the lease of  
24 rights-of-way in, and airspace over or under, highways, public  
25 streets, rail, or related facilities for the granting of necessary  
26 easements, and for the issuance of permits or other authorizations  
27 to enable the construction of transportation projects. Facilities  
28 subject to an agreement under this section shall, at all times, be  
29 owned by the department or the regional transportation agency,  
30 as appropriate. For department projects, the commission shall  
31 certify the department's determination of the useful life of the  
32 project in establishing the lease agreement terms. In consideration  
33 thereof, the agreement shall provide for complete reversion of the  
34 leased facility, together with the right to collect tolls and user fees,  
35 to the department or regional transportation agency, at the  
36 expiration of the lease at no charge to the department or regional  
37 transportation agency. At the time of the reversion, the facility  
38 shall be delivered to the department or regional transportation  
39 agency, as applicable, in a condition that meets the performance  
40 and maintenance standards established by the department or

1 regional transportation agency and that is free of any encumbrance,  
2 lien, or other claims.

3 (e) Agreements between the department or regional  
4 transportation agency and the contracting entity or lessee shall  
5 authorize the contracting entity or lessee to use a design-build  
6 method of procurement for transportation projects, subject to the  
7 requirements for utilizing such a method contained in Chapter 6.5  
8 (commencing with Section ~~6800~~ 6820) of Part 1 of Division 2 of  
9 the Public Contract Code, other than Sections ~~6802, 6803, 6821~~  
10 and ~~6813~~ 6822 of that code, if those provisions are enacted by the  
11 Legislature during the 2009–10 Regular Session, or a 2009–10  
12 extraordinary session. *code.*

13 (f) (1) (A) Notwithstanding any other provision of this chapter,  
14 for projects on the state highway system, the department is the  
15 responsible agency for the performance of project development  
16 services, including performance specifications, preliminary  
17 engineering, prebid services, the preparation of project reports and  
18 environmental documents, and construction inspection services.  
19 The department is also the responsible agency for the preparation  
20 of documents that may include, but need not be limited to, the size,  
21 type, and desired design character of the project, performance  
22 specifications covering the quality of materials, equipment, and  
23 workmanship, preliminary plans, and any other information deemed  
24 necessary to describe adequately the needs of the department or  
25 regional transportation agency.

26 (B) The department may use department employees or  
27 consultants to perform the services described in subparagraph (A),  
28 consistent with Article XXII of the California Constitution.  
29 Department resources, including personnel requirements, necessary  
30 for the performance of those services shall be included in the  
31 department’s capital outlay support program for workload purposes  
32 in the annual Budget Act.

33 (2) The department or a regional transportation agency may  
34 exercise any power possessed by it with respect to transportation  
35 projects to facilitate the transportation projects pursuant to this  
36 section. The department, regional transportation agency, and other  
37 state or local agencies may provide services to the contracting  
38 entity or lessee for which the public entity is reimbursed, including,  
39 but not limited to, planning, environmental planning, environmental  
40 certification, environmental review, preliminary design, design,

1 right-of-way acquisition, construction, maintenance, and policing  
2 of these transportation projects. The department or regional  
3 transportation agency, as applicable, shall regularly inspect the  
4 facility and require the contracting entity or lessee to maintain and  
5 operate the facility according to adopted standards. Except as may  
6 otherwise be set forth in the lease agreement, the contracting entity  
7 or lessee shall be responsible for all costs due to development,  
8 maintenance, repair, rehabilitation, and reconstruction, and  
9 operating costs.

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

15 (A) Solicitations of proposals for defined projects and calls for  
16 project proposals within defined parameters.

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

19 (C) Final evaluation of proposals based on qualifications and  
20 best value. The California Transportation Commission shall  
21 develop and adopt criteria for making that evaluation prior to  
22 evaluation of a proposal.

23 (D) Negotiations with proposers prior to award.

24 (E) Acceptance of unsolicited proposals, with issuance of  
25 requests for competing proposals. Neither the department nor a  
26 regional transportation agency may award a contract to an  
27 unsolicited bidder without receiving at least one other responsible  
28 bid.

29 (2) When evaluating a proposal submitted by the contracting  
30 entity or lessee, the department or the regional transportation  
31 agency may award a contract on the basis of the lowest bid or best  
32 value.

33 (h) The contracting entity or lessee shall have the following  
34 qualifications:

35 (1) Evidence that the members of the contracting entity or lessee  
36 have completed, or have demonstrated the experience, competency,  
37 capability, and capacity to complete, a project of similar size,  
38 scope, or complexity, and that proposed key personnel have  
39 sufficient experience and training to competently manage and  
40 complete the design and construction of the project, and a financial

1 statement that ensures that the contracting entity or lessee has the  
2 capacity to complete the project.

3 (2) The licenses, registration, and credentials required to design  
4 and construct the project, including, but not limited to, information  
5 on the revocation or suspension of any license, credential, or  
6 registration.

7 (3) Evidence that establishes that members of the contracting  
8 entity or lessee have the capacity to obtain all required payment  
9 and performance bonding, liability insurance, and errors and  
10 omissions insurance.

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

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

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

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

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

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

31 (E) Any violations of the Contractors' State License Law  
32 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
33 Business and Professions Code), including, but not limited to,  
34 alleged violations of federal or state law regarding the payment of  
35 wages, benefits, apprenticeship requirements, or personal income  
36 tax withholding, or Federal Insurance Contributions Act (FICA)  
37 withholding requirements.

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

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

8 (H) If the contracting entity or lessee is a partnership, joint  
9 venture, or an association that is not a legal entity, a copy of the  
10 agreement creating the partnership or association that specifies  
11 that all general partners, joint venturers, or association members  
12 agree to be fully liable for the performance under the agreement.

13 (i) No agreement entered into pursuant to this section shall  
14 infringe on the authority of the department or a regional  
15 transportation agency to develop, maintain, repair, rehabilitate,  
16 operate, or lease any transportation project. Lease agreements may  
17 provide for reasonable compensation to the contracting entity or  
18 lessee for the adverse effects on toll revenue or user fee revenue  
19 due to the development, operation, or lease of supplemental  
20 transportation projects with the exception of any of the following:

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

23 (2) Safety projects.

24 (3) Improvement projects that will result in incidental capacity  
25 increases.

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

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

30 However, compensation to a contracting entity or lessee shall  
31 only be made after a demonstrable reduction in use of the facility  
32 resulting in reduced toll or user fee revenues, and may not exceed  
33 the difference between the reduction in those revenues and the  
34 amount necessary to cover the costs of debt service, including  
35 principal and interest on any debt incurred for the development,  
36 operation, maintenance, or rehabilitation of the facility.

37 (j) (1) Agreements entered into pursuant to this section shall  
38 authorize the contracting entity or lessee to impose tolls and user  
39 fees for use of a facility constructed by it, and shall require that  
40 over the term of the lease the toll revenues and user fees be applied

1 to payment of the capital outlay costs for the project, the costs  
2 associated with operations, toll and user fee collection,  
3 administration of the facility, reimbursement to the department or  
4 other governmental entity for the costs of services to develop and  
5 maintain the project, police services, and a reasonable return on  
6 investment. The agreement shall require that, notwithstanding  
7 Sections 164, 188, and 188.1, any excess toll or user fee revenue  
8 either be applied to any indebtedness incurred by the contracting  
9 entity or lessee with respect to the project, improvements to the  
10 project, or be paid into the State Highway Account, or for all three  
11 purposes, except that any excess toll revenue under a lease  
12 agreement with a regional transportation agency may be paid to  
13 the regional transportation agency for use in improving public  
14 transportation in and near the project boundaries.

15 (2) Lease agreements shall establish specific toll or user fee  
16 rates. Any proposed increase in those rates not otherwise  
17 established or identified in the lease agreement during the term of  
18 the agreement shall first be approved by the department or regional  
19 transportation agency, as appropriate, after at least one public  
20 hearing conducted at a location near the proposed or existing  
21 facility.

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

28 (k) Agreements entered into pursuant to this section shall include  
29 indemnity, defense, and hold harmless provisions agreed to by the  
30 department or regional transportation agency and the contracting  
31 entity or lessee, including provisions for indemnifying the State  
32 of California or the regional transportation agency against any  
33 claims or losses resulting or accruing from the performance of the  
34 contracting entity or lessee.

35 (l) The plans and specifications for each transportation project  
36 on the state highway system developed, maintained, repaired,  
37 rehabilitated, reconstructed, or operated pursuant to this section  
38 shall comply with the department's standards for state  
39 transportation projects. The lease agreement shall include  
40 performance standards, including, but not limited to, levels of

1 service. The agreement shall require facilities on the state highway  
2 system to meet all requirements for noise mitigation, landscaping,  
3 pollution control, and safety that otherwise would apply if the  
4 department were designing, building, and operating the facility.  
5 If a facility is on the state highway system, the facility leased  
6 pursuant to this section shall, during the term of the lease, be  
7 deemed to be a part of the state highway system for purposes of  
8 identification, maintenance, enforcement of traffic laws, and for  
9 the purposes of Division 3.6 (commencing with Section 810) of  
10 Title 1 of the Government Code.

11 (m) Failure to comply with the lease agreement in any significant  
12 manner shall constitute a default under the agreement and the  
13 department or the regional transportation agency, as appropriate,  
14 shall have the option to initiate processes to revert the facility to  
15 the public agency.

16 (n) The assignment authorized by subdivision (c) of Section  
17 130240 of the Public Utilities Code is consistent with this section.

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

22 (p) Nothing in this section is intended to infringe on the authority  
23 to develop high-occupancy toll lanes pursuant to Section 149.4,  
24 149.5, or 149.6.

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

30 (r) The lease agreement shall require the contracting entity or  
31 lessee to provide any information or data requested by the  
32 California Transportation Commission or the Legislative Analyst.  
33 The commission, in cooperation with the Legislative Analyst, shall  
34 annually prepare a report on the progress of each project and  
35 ultimately on the operation of the resulting facility. The report  
36 shall include, but not be limited to, a review of the performance  
37 standards, a financial analysis, and any concerns or  
38 recommendations for changes in the program authorized by this  
39 section.

- 1 (s) Notwithstanding any other provision of this section, no lease  
2 agreement may be entered into pursuant to the section that affects,  
3 alters, or supersedes the Memorandum of Understanding (MOU),  
4 dated November 26, 2008, entered into by the Golden Gate Bridge  
5 Highway and Transportation District, the Metropolitan  
6 Transportation Commission, and the San Francisco County  
7 Transportation Authority, relating to the financing of the U.S.  
8 Highway 101/Doyle Drive reconstruction project located in the  
9 City and County of San Francisco.
- 10 (t) No lease agreements may be entered into under this section  
11 on or after January 1, 2017.

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