

AMENDED IN SENATE MARCH 26, 2015

SENATE BILL

No. 158

Introduced by Senator Huff

February 3, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 158, as amended, 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 authorize the department or a regional transportation agency to enter into a comprehensive development lease on or after January 1, 2017, for a proposed transportation project on the state highway system if a draft environmental impact statement or draft environmental impact report for the project was released by the department in March 2015 for public comment.

~~This~~

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

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

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

SECTION 1. Section 143 of the Streets and Highways Code is amended to read:

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

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

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

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

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

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

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

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

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

(6) “Transportation project” means one or more of the following: planning, design, development, finance, construction, reconstruction, rehabilitation, improvement, acquisition, lease, operation, or maintenance of highway, public street, rail, or related facilities supplemental to existing facilities currently owned and

1 operated by the department or regional transportation agencies
2 that is consistent with the requirements of subdivision (c).

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

5 (A) Identify transportation project opportunities throughout the
6 state.

7 (B) Research and document similar transportation projects
8 throughout the state, nationally, and internationally, and further
9 identify and evaluate lessons learned from these projects.

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

14 (D) Advise the department and regional transportation agencies,
15 upon request, regarding infrastructure partnership suitability and
16 best practices.

17 (E) Provide, upon request, procurement-related services to the
18 department and regional transportation agencies for infrastructure
19 partnership.

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

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

32 (2) Projects proposed pursuant to this section and associated
33 lease agreements shall be submitted to the California Transportation
34 Commission. The commission, at a regularly scheduled public
35 hearing, shall select the candidate projects from projects nominated
36 by the department or a regional transportation agency after
37 reviewing the nominations for consistency with paragraphs (3)
38 and (4). Approved projects may proceed with the process described
39 in paragraph (5).

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

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

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

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

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

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

33 (d) For the purpose of facilitating those projects, the agreements
34 between the parties may include provisions for the lease of
35 rights-of-way in, and airspace over or under, highways, public
36 streets, rail, or related facilities for the granting of necessary
37 easements, and for the issuance of permits or other authorizations
38 to enable the construction of transportation projects. Facilities
39 subject to an agreement under this section shall, at all times, be
40 owned by the department or the regional transportation agency,

1 as appropriate. For department projects, the commission shall
 2 certify the department's determination of the useful life of the
 3 project in establishing the lease agreement terms. In consideration
 4 therefor, the agreement shall provide for complete reversion of the
 5 leased facility, together with the right to collect tolls and user fees,
 6 to the department or regional transportation agency, at the
 7 expiration of the lease at no charge to the department or regional
 8 transportation agency. At the time of the reversion, the facility
 9 shall be delivered to the department or regional transportation
 10 agency, as applicable, in a condition that meets the performance
 11 and maintenance standards established by the department or
 12 regional transportation agency and that is free of any encumbrance,
 13 lien, or other claims.

14 (e) Agreements between the department or regional
 15 transportation agency and the contracting entity or lessee shall
 16 authorize the contracting entity or lessee to use a design-build
 17 method of procurement for transportation projects, subject to the
 18 requirements for utilizing such a method contained in Chapter 6.5
 19 (commencing with Section 6820) of Part 1 of Division 2 of the
 20 Public Contract Code, other than Sections 6821 and 6822 of that
 21 code.

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

35 (B) The department may use department employees or
 36 consultants to perform the services described in subparagraph (A),
 37 consistent with Article XXII of the California Constitution.
 38 Department resources, including personnel requirements, necessary
 39 for the performance of those services shall be included in the

1 department's capital outlay support program for workload purposes
2 in the annual Budget Act.

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

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

25 (A) Solicitations of proposals for defined projects and calls for
26 project proposals within defined parameters.

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

29 (C) Final evaluation of proposals based on qualifications and
30 best value. The California Transportation Commission shall
31 develop and adopt criteria for making that evaluation prior to
32 evaluation of a proposal.

33 (D) Negotiations with proposers prior to award.

34 (E) Acceptance of unsolicited proposals, with issuance of
35 requests for competing proposals. Neither the department nor a
36 regional transportation agency may award a contract to an
37 unsolicited bidder without receiving at least one other responsible
38 bid.

39 (2) When evaluating a proposal submitted by the contracting
40 entity or lessee, the department or the regional transportation

1 agency may award a contract on the basis of the lowest bid or best
2 value.

3 (h) The contracting entity or lessee shall have the following
4 qualifications:

5 (1) Evidence that the members of the contracting entity or lessee
6 have completed, or have demonstrated the experience, competency,
7 capability, and capacity to complete, a project of similar size,
8 scope, or complexity, and that proposed key personnel have
9 sufficient experience and training to competently manage and
10 complete the design and construction of the project, and a financial
11 statement that ensures that the contracting entity or lessee has the
12 capacity to complete the project.

13 (2) The licenses, registration, and credentials required to design
14 and construct the project, including, but not limited to, information
15 on the revocation or suspension of any license, credential, or
16 registration.

17 (3) Evidence that establishes that members of the contracting
18 entity or lessee have the capacity to obtain all required payment
19 and performance bonding, liability insurance, and errors and
20 omissions insurance.

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

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

28 (A) Any serious or willful violation of Part 1 (commencing with
29 Section 6300) of Division 5 of the Labor Code or the federal
30 Occupational Safety and Health Act of 1970-~~(P.L.~~ (*Public Law*
31 91-596).

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

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

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

4 (E) Any violations of the Contractors' State License Law
5 (Chapter 9 (commencing with Section 7000) of Division 3 of the
6 Business and Professions Code), including, but not limited to,
7 alleged violations of federal or state law regarding the payment of
8 wages, benefits, apprenticeship requirements, or personal income
9 tax withholding, or Federal Insurance Contributions Act-(FICA)
10 (FICA; 26 U.S.C. Sec. 3101 et seq.) withholding requirements.

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

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

21 (H) If the contracting entity or lessee is a partnership, joint
22 venture, or an association that is not a legal entity, a copy of the
23 agreement creating the partnership or association that specifies
24 that all general partners, joint venturers, or association members
25 agree to be fully liable for the performance under the agreement.

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

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

36 (2) Safety projects.

37 (3) Improvement projects that will result in incidental capacity
38 increases.

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

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

3 However, compensation to a contracting entity or lessee shall
4 only be made after a demonstrable reduction in use of the facility
5 resulting in reduced toll or user fee revenues, and may not exceed
6 the difference between the reduction in those revenues and the
7 amount necessary to cover the costs of debt service, including
8 principal and interest on any debt incurred for the development,
9 operation, maintenance, or rehabilitation of the facility.

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

28 (2) Lease agreements shall establish specific toll or user fee
29 rates. Any proposed increase in those rates not otherwise
30 established or identified in the lease agreement during the term of
31 the agreement shall first be approved by the department or regional
32 transportation agency, as appropriate, after at least one public
33 hearing conducted at a location near the proposed or existing
34 facility.

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

1 (k) Agreements entered into pursuant to this section shall include
2 indemnity, defense, and hold harmless provisions agreed to by the
3 department or regional transportation agency and the contracting
4 entity or lessee, including provisions for indemnifying the State
5 of California or the regional transportation agency against any
6 claims or losses resulting or accruing from the performance of the
7 contracting entity or lessee.

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

24 (m) Failure to comply with the lease agreement in any significant
25 manner shall constitute a default under the agreement and the
26 department or the regional transportation agency, as appropriate,
27 shall have the option to initiate processes to revert the facility to
28 the public agency.

29 (n) The assignment authorized by subdivision (c) of Section
30 130240 of the Public Utilities Code is consistent with this section.

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

35 (p) Nothing in this section is intended to infringe on the authority
36 to develop high-occupancy toll lanes pursuant to Section 149.4,
37 149.5, or 149.6.

38 (q) Nothing in this section shall be construed to allow the
39 conversion of any existing nontoll or nonuser-fee lanes into tolled
40 or user fee lanes with the exception of a high-occupancy vehicle

1 lane that may be operated as a high-occupancy toll lane for vehicles
2 not otherwise meeting the requirements for use of that lane.

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

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

22 ~~(t) No~~

23 ~~(t) (1) Except as provided in paragraph (2), a lease agreement~~
24 ~~agreement may not be entered into under this section on or after~~
25 ~~January 1, 2017.~~

26 *(2) A lease agreement may be entered into on or after January*
27 *1, 2017, for a proposed transportation project on the state highway*
28 *system if a draft environmental impact statement or draft*
29 *environmental impact report for that proposed project was released*
30 *by the department in March 2015 for public comment.*