

Introduced by Senator HuffFebruary 19, 2016

An act to add Article 4.6 (commencing with Section 172) to Chapter 1 of Division 1 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1397, as introduced, Huff. Highway safety and information program.

Existing law, the Outdoor Advertising Act, provides for the regulation by the Department of Transportation of advertising displays, as defined, within view of public highways.

This bill would enact the Highway Safety and Information Act. The bill would authorize the department, subject to federal approval, to enter into an agreement pursuant to a best value procurement and competitive process for a project with a contractor to construct, upgrade or reconstruct, and operate a network of changeable message signs within the rights-of-way of the state highway system, as specified. The bill would require the person with whom the department has entered into the agreement to contract and receive funds for the placement of advertisements, meeting certain standards established by the department, on the changeable message signs when they are not being used by the department. The bill would require revenues derived from the project to be allocated between the department and the person with whom the department has entered into the agreement and would require those revenues received by the department to be deposited in the State Highway Account, subject to appropriation by the Legislature. The bill would authorize the department to adopt guidelines and procedures relative to advertising on changeable message signs. The bill would

require the department to submit a specified report to the fiscal and policy committees of the Legislature having jurisdiction over transportation matters.

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. Article 4.6 (commencing with Section 172) is
2 added to Chapter 1 of Division 1 of the Streets and Highways
3 Code, to read:

4
5 Article 4.6. Highway Safety and Information Act

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7 172. This article shall be known, and may be cited, as the
8 Highway Safety and Information Act.

9 172.2. The Legislature finds and declares all of the following:

10 (a) Pursuant to Chapter 27 of the Statutes of 2014, the
11 department has conducted a feasibility study and revenue analysis
12 on the use of advertising on changeable message signs on the state
13 highway system and determined the feasibility of implementing a
14 project and potential revenue benefits.

15 (b) The department’s current network of changeable message
16 signs has proven to be an effective way to inform road users of
17 critical safety and transportation-related conditions and of other
18 important information and to protect the safe and efficient
19 utilization of the highways.

20 (c) Changeable message signs have played a critical role in the
21 success of California’s Emergency Alert System, initiated by
22 Chapter 517 of the Statutes of 2002. The current network of
23 changeable message signs operated by the department, in
24 coordination with the Department of the California Highway Patrol
25 (CHP) and the Office of Traffic Safety, has helped keep our
26 children and families safer by bringing public resources and private
27 citizens together to help save lives during emergencies.

28 (d) Communicating timely information regarding laws, services,
29 and events, public service and public health and safety messages,
30 and emergency notifications is an essential public purpose that
31 advances the general health, welfare, and safety of the citizens of
32 California and persons who visit and travel through the state.

1 (e) California makes available on its Internet Web site
2 information regarding laws, services, and events, communicates
3 public service and public health and safety messages, and transmits
4 emergency notifications to users of computers, smartphones, and
5 similar online and wireless devices.

6 (f) Recent advances in technology have made it possible to
7 create a more reliable, effective, and comprehensive network of
8 changeable message signs that combine text with graphics in order
9 to rapidly and clearly communicate important information to the
10 users of California’s highways more safely and effectively than
11 the current network of changeable message signs. This advanced
12 technology would increase the efficacy and reliability of the
13 network of changeable message signs, thereby enhancing the safety
14 and travel experience of the people of California and would
15 function as an extension and improvement of the existing California
16 public information and emergency messaging communication
17 efforts.

18 (g) Revenues to the state generated by an upgraded changeable
19 message sign network would provide additional funding for
20 transportation and safety initiatives, such as additional highway
21 maintenance and repair, in return for the right to place
22 advertisements on the changeable message signs in a manner that
23 is consistent with, and supports, the network’s safety and public
24 communication functions.

25 (h) The network of upgraded changeable message signs shall
26 be located and upgraded in accordance with department guidelines
27 for orientation toward motorists on the traveled way and shall have
28 minimal impact outside of those rights-of-way.

29 (i) The authority to use changeable message signs for
30 commercial advertising shall require that the advertising and
31 department messaging, when displayed in combination, are
32 determined to be safe and do not create an unsafe distraction to
33 motorists, and is subject to prior authorization under federal law.

34 172.4. For purposes of this article, the following terms mean
35 the following:

36 (a) “Agreement” means a legally enforceable agreement for the
37 project to install and operate changeable message signs or the
38 network of changeable message signs, including, but not limited
39 to, a license, lease, highway improvement agreement, easement,
40 encroachment permit, or operation and maintenance agreement.

1 (b) “Best value” means a value determined by objective criteria
2 that may include, but are not limited to, revenues to the state,
3 features, experience, functions, life cycle costs, price, the capability
4 to develop and incorporate advanced sign technologies, and other
5 criteria deemed appropriate by the department.

6 (c) “Changeable message sign” means a department-owned or
7 controlled sign or official sign that is designed to display various
8 messages that provide information to the public, such as traffic
9 information or advertising, by mechanical or electronic means
10 centrally controlled through a network, including, but not limited
11 to, digital and light emitting diode (LED) technologies.

12 (d) “Demonstration phase” means the initial phase of the project
13 whereby the safety and operational and fiscal viability of placement
14 of advertising on changeable message signs in exchange for
15 revenue to the state and an upgraded changeable message sign
16 network are demonstrated.

17 (e) “Network” means the integrated network of enhanced
18 changeable message signs. The network shall include upgraded
19 changeable message signs at existing locations and new changeable
20 message signs at additional locations as determined by the
21 department.

22 (f) “Person” means an individual, partnership, limited
23 partnership, trust, estate, association, corporation, limited liability
24 company, or other entity.

25 (g) “Project” means to study, plan, design, construct, reconstruct,
26 develop, finance, maintain, rebuild, improve, repair, lease, operate,
27 or any combination of these, a state-of-the-art, full-color network
28 of changeable message signs within the rights-of-way of the state
29 highway system, or within the right-of-way of a major arterial that
30 is included within an integrated corridor management system.

31 172.6. (a) Notwithstanding any other law, and subject to
32 federal approval authorizing the department to do so, the
33 department may enter into an agreement with one person to conduct
34 a single project, which shall include a demonstration phase, in a
35 manner that best effectuates the purposes of this article. The
36 department shall conduct a best value procurement and negotiate
37 an initial agreement to become effective upon obtaining any
38 necessary federal authorization. The department may provide
39 services for which it is reimbursed with respect to preliminary
40 design, inspection, and oversight of the project.

1 (b) The agreement described in subdivision (a) shall do all of
2 the following:

3 (1) Provide for the construction, upgrade or reconstruction, and
4 operation of changeable message signs selected for the project.
5 The department shall be responsible for the maintenance of the
6 selected changeable message signs.

7 (2) Provide for complete reversion of any ownership interest in
8 any of the privately constructed, upgraded or reconstructed, and
9 operated changeable message signs to the department at the
10 expiration of the agreement at no charge to the department and
11 free and clear of any liens or encumbrances.

12 (3) Provide that all department emergency notifications shall
13 have priority over other messaging, including advertising.

14 (4) Provide that the department, in consultation with the
15 Department of the California Highway Patrol, shall retain the
16 ability to make a determination on the safety of the changeable
17 message signs, and may take those actions deemed necessary to
18 protect public safety.

19 (5) Require the person with whom the agreement is made to
20 indemnify, defend, and hold harmless the department for any
21 damage, injury claim, or incident in connection with the
22 construction, upgrade or reconstruction, or operation of changeable
23 message signs performed by or under the control and supervision
24 of that person, or the advertising on changeable message signs,
25 excluding any advertising approved in advance or provided by the
26 department, including, but not limited to, personal injury, wrongful
27 death, defamation, and property damage.

28 (6) Provide that the department shall conduct a demonstration
29 phase of the project as a condition precedent to the full
30 implementation of the agreement described in this section. The
31 demonstration phase shall involve the construction, upgrade or
32 reconstruction, and operation of changeable message signs at
33 current and planned locations equal to not less than 15 percent of
34 the number of existing and planned changeable message signs at
35 initiation of the project and shall be conducted on routes and
36 highway corridors at sign locations selected by the department.
37 The demonstration phase shall begin immediately following federal
38 approval as provided in subdivision (a), and shall last until full
39 implementation is authorized, and if full implementation is not
40 authorized, then for a period of time sufficient to allow the person

1 contracting with the department to recover its capital and related
2 costs for the project.

3 (7) (A) Provide that the department shall retain an independent
4 consultant to perform an evaluation of the results of the
5 demonstration phase.

6 (B) The department shall review the results of the demonstration
7 phase and the evaluation from the independent consultant and
8 determine, in its discretion, whether the placement of commercial
9 advertising with all department messaging creates an unsafe
10 distraction to motorists, and shall consider any other issues of
11 concern that are identified in the demonstration phase.

12 (C) The department may require changes to the agreement to
13 address identified issues of concern and to allow for full
14 implementation of the agreement. If, prior to full implementation,
15 the agreement is amended or otherwise modified in a way that
16 materially impacts a changeable message sign's ability to generate
17 revenues, the person conducting the project shall be entitled to
18 recover from the department any unreimbursed capital or operating
19 expenses.

20 (8) Provide for the person with whom the agreement is made
21 to contract and receive funds for the placement of commercial
22 advertisements on changeable message signs, except during times
23 and to the extent the signs are in use by the department, and to
24 share revenues generated in connection with the use of those signs
25 for commercial advertising in furtherance of the public interest.

26 (c) The network of changeable message signs shall be deemed
27 to be part of the state highway system for purposes of identification
28 and enforcement of traffic laws or for other official purposes, and
29 the purposes of Division 3.6 (commencing with Section 810) of
30 Title 1 of the Government Code.

31 (d) Revenues from changeable message signs shall be allocated
32 between the person with whom the agreement is made and the
33 department in accordance with the agreement as provided in
34 paragraph (8) of subdivision (b). Revenues derived from the project
35 and received by the department, and any other revenue generated
36 from advertising on changeable message signs owned by the
37 department and received by the department, shall be deposited in
38 the State Highway Account in the State Transportation Fund. This
39 revenue shall not be subject to the transfer under Section 183.1 or
40 any successor to that section. Revenues deposited under this section

1 shall be retained in the State Highway Account, subject to
2 appropriation by the Legislature, consistent with the provisions of
3 any federal authorization.

4 (e) The changeable message signs shall meet the design,
5 construction, and operating requirements in the department's
6 standards and guidelines, including, but not limited to, controls,
7 such as state-of-the-art sensors that control the brightness of the
8 display based on the surrounding ambient light levels and other
9 technologies muting adjacent glare, that focus the zone of vision
10 toward motorists on the traveled way and prevent neighborhood
11 impacts in the vicinity of the changeable message signs.

12 (f) The department shall retain the ultimate right to determine
13 whether the location of an existing changeable message sign or
14 proposed location for the placement of a new changeable message
15 sign has or will negatively impact a residential area or community.
16 If the department determines that the location of a changeable
17 message sign has or will have a negative impact on a residential
18 area or community, the department may, in its discretion, impose
19 additional requirements on its lighting or placement, require a
20 different placement, not allow its placement, or require its removal.

21 172.8. Advertising on changeable message signs shall be in
22 the form and under those conditions as may be determined by the
23 department and as may be set forth in standards, guidelines, and
24 procedures adopted by the department. The advertising shall not
25 compromise safety or the department's safety communication
26 functions. The upgraded network shall enhance public messaging,
27 including, but not limited to, safety campaigns, emergency
28 notifications, travel times, and traveler information and the function
29 of the network of changeable message signs. All changeable
30 message signs subject to this article shall be exempt from Section
31 5408 of the Business and Professions Code and from any and all
32 regulations promulgated in connection with Section 5408 of the
33 Business and Professions Code.

34 173. The department shall not enter into an agreement with
35 any person who would cause or permit any changeable message
36 sign to display or advertise alcohol, tobacco, firearms, sexually
37 explicit material, or any illegal activity. The department shall adopt
38 policies and guidelines in connection with the content and
39 formatting of the advertising.

1 173.2. The department may use the changeable message signs
2 for emergency messages, as needed, and shall have dedicated time
3 to use the changeable message signs for traveler information and
4 motorist safety and awareness campaigns and any other public
5 service messaging desired by the state, without providing
6 compensation to the person with whom it enters into an agreement
7 pursuant to this article.

8 173.4. (a) When choosing the person with whom to enter into
9 an agreement pursuant to Section 172.6 to effectuate the purposes
10 of this article, the department shall select, pursuant to a competitive
11 process, the person that the department determines will provide
12 the best value.

13 (b) The department may retain a consultant or adviser to assist
14 in preparing the best value criteria, selection of the person, and
15 oversight of the project. The consultant or adviser shall not bid on
16 the project or, before one year following award of a contract, work
17 as an officer or employee of, or consultant or adviser to, any person
18 or persons seeking to bid on the project.

19 173.6. No later than two years after the implementation of the
20 project, the department shall submit a report to the fiscal and policy
21 committees of the Legislature with jurisdiction over transportation
22 matters. The report shall include, but not be limited to, all of the
23 following:

24 (a) The status of implementation of the agreement, including
25 the number of signs placed and the locations of the signs placed.

26 (b) The amount of revenue received, cost savings to the
27 department, and the costs incurred by the department with respect
28 to the project, including costs incurred prior to the time the
29 department entered into an agreement.

30 (c) An assessment of the effect the project has had on public
31 safety, emergency notification, traveler information, and motorist
32 safety and awareness campaigns.

33 (d) A description of the types of advertising content displayed
34 on the signs.

35 173.8. The provisions of this article are severable. If any
36 provision of this article or its application is held invalid, that
37 invalidity shall not affect other provisions or applications that can
38 be given effect without the invalid provision or application.

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