

AMENDED IN SENATE APRIL 21, 2016

SENATE BILL

No. 1397

Introduced by Senator Huff

February 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 amended, 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~~, *system that would include a demonstration phase of the project as a condition precedent to the full implementation of the agreement*, 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:

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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.

1 (d) Communicating timely information regarding laws, services,
2 and events, public service and public health and safety messages,
3 and emergency notifications is an essential public purpose that
4 advances the general health, welfare, and safety of the citizens of
5 California and persons who visit and travel through the state.

6 (e) California makes available on its Internet Web site
7 information regarding laws, services, and events, communicates
8 public service and public health and safety messages, and transmits
9 emergency notifications to users of computers, smartphones, and
10 similar online and wireless devices.

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

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

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

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

39 172.4. For purposes of this article, the following terms mean
40 the following:

1 (a) “Agreement” means a legally enforceable agreement for the
2 project to install and operate changeable message signs or the
3 network of changeable message signs, including, but not limited
4 to, a license, lease, highway improvement agreement, easement,
5 encroachment permit, or operation and maintenance agreement.

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

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

17 (d) “Demonstration phase” means the initial phase of the project
18 whereby the safety and operational and fiscal viability of placement
19 of advertising on changeable message signs in exchange for
20 revenue to the state and an upgraded changeable message sign
21 network are demonstrated.

22 (e) “Network” means the integrated network of enhanced
23 changeable message signs. The network shall include upgraded
24 changeable message signs at existing locations and new changeable
25 message signs at additional locations as determined by the
26 department.

27 (f) “Person” means an individual, partnership, limited
28 partnership, trust, estate, association, corporation, limited liability
29 company, or other entity.

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

36 172.6. (a) Notwithstanding any other law, and subject to
37 federal approval authorizing the department to do so, the
38 department may enter into an agreement with one person to conduct
39 a single project, which shall include a demonstration phase, in a
40 manner that best effectuates the purposes of this article. *If the*

1 *department is advised by the United States Department of*
2 *Transportation, or any of its agencies, that a display of advertising*
3 *authorized by this article would result in the reduction of federal*
4 *aid highway funds to the state pursuant to Section 131 of Title 23*
5 *of the United States Code, that display of advertising shall not be*
6 *made.* The department shall conduct a best value procurement and
7 negotiate an initial agreement to become effective upon obtaining
8 any necessary federal authorization. The department may provide
9 services for which it is reimbursed with respect to preliminary
10 design, inspection, and oversight of the project.

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

13 (1) Provide for the construction, upgrade or reconstruction, and
14 operation of changeable message signs selected for the project.
15 The department shall be responsible for the maintenance of the
16 selected changeable message signs.

17 (2) Provide for complete reversion of any ownership interest in
18 any of the privately constructed, upgraded or reconstructed, and
19 operated changeable message signs to the department at the
20 expiration of the agreement at no charge to the department and
21 free and clear of any liens or encumbrances.

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

24 (4) Provide that the department, in consultation with the
25 Department of the California Highway Patrol, shall retain the
26 ability to make a determination on the safety of the changeable
27 message signs, and may take those actions deemed necessary to
28 protect public safety.

29 (5) Require the person with whom the agreement is made to
30 indemnify, defend, and hold harmless the department for any
31 damage, injury claim, or incident in connection with the
32 construction, upgrade or reconstruction, or operation of changeable
33 message signs performed by or under the control and supervision
34 of that person, or the advertising on changeable message signs,
35 excluding any advertising approved in advance or provided by the
36 department, including, but not limited to, personal injury, wrongful
37 death, defamation, and property damage.

38 (6) Provide that the department shall conduct a demonstration
39 phase of the project as a condition precedent to the full
40 implementation of the agreement described in this section. The

1 demonstration phase shall involve the construction, upgrade or
2 reconstruction, and operation of changeable message signs at
3 current and planned locations ~~equal to not less than 15 percent of~~
4 ~~the number of existing and planned changeable message signs at~~
5 *the* initiation of the project and shall be conducted on routes and
6 highway corridors at sign locations selected by the department.
7 *The department shall determine the number of changeable message*
8 *signs needed to be included in the demonstration, which number*
9 *shall be sufficiently substantive to evaluate the impacts and the*
10 *return on investment of the demonstration.* The demonstration
11 phase shall begin immediately following federal approval as
12 provided in subdivision (a), and shall last until full implementation
13 is authorized, and if full implementation is not authorized, then
14 for a period of time sufficient to allow the person contracting with
15 the department to recover its capital and related costs for the
16 project.

17 (7) (A) Provide that the department shall retain an independent
18 consultant to perform an evaluation of the results of the
19 demonstration phase.

20 (B) The department shall review the results of the demonstration
21 phase and the evaluation from the independent consultant and
22 determine, in its discretion, whether the placement of commercial
23 advertising with all department messaging creates an unsafe
24 distraction to motorists, and shall consider any other issues of
25 concern that are identified in the demonstration phase.

26 (C) The department may require changes to the agreement to
27 address identified issues of concern and to allow for full
28 implementation of the agreement. If, prior to full implementation,
29 the agreement is amended or otherwise modified in a way that
30 materially impacts a changeable message sign's ability to generate
31 revenues, the person conducting the project shall be entitled to
32 recover from the department any unreimbursed capital or operating
33 expenses.

34 (8) Provide for the person with whom the agreement is made
35 to contract and receive funds for the placement of commercial
36 advertisements on changeable message signs, except during times
37 and to the extent the signs are in use by the department, and to
38 share revenues generated in connection with the use of those signs
39 for commercial advertising in furtherance of the public interest.

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

6 (d) Revenues from changeable message signs shall be allocated
7 between the person with whom the agreement is made and the
8 department in accordance with the agreement as provided in
9 paragraph (8) of subdivision (b). Revenues derived from the project
10 and received by the department, and any other revenue generated
11 from advertising on changeable message signs owned by the
12 department and received by the department, shall be deposited in
13 the State Highway Account in the State Transportation Fund. This
14 revenue shall not be subject to the transfer under Section 183.1 or
15 any successor to that section. Revenues deposited under this section
16 shall be retained in the State Highway Account, subject to
17 appropriation by the Legislature, consistent with the provisions of
18 any federal authorization.

19 (e) The changeable message signs shall meet the design,
20 construction, and operating requirements in the department's
21 standards and guidelines, including, but not limited to, controls,
22 such as state-of-the-art sensors that control the brightness of the
23 display based on the surrounding ambient light levels and other
24 technologies muting adjacent glare, that focus the zone of vision
25 toward motorists on the traveled way and prevent neighborhood
26 impacts in the vicinity of the changeable message signs.

27 (f) The department shall retain the ultimate right to determine
28 whether the location of an existing changeable message sign or
29 proposed location for the placement of a new changeable message
30 sign has or will negatively impact a residential area or community.
31 If the department determines that the location of a changeable
32 message sign has or will have a negative impact on a residential
33 area or community, the department may, in its discretion, impose
34 additional requirements on its lighting or placement, require a
35 different placement, not allow its placement, or require its removal.

36 (g) *Advertising on changeable message signs shall not be*
37 *permitted on officially designated scenic highways.*

38 172.8. Advertising on changeable message signs shall be in
39 the form and under those conditions as may be determined by the
40 department and as may be set forth in standards, guidelines, and

1 procedures adopted by the department. The advertising shall not
2 compromise safety or the department's safety communication
3 functions. The upgraded network shall enhance public messaging,
4 including, but not limited to, safety campaigns, emergency
5 notifications, travel times, and traveler information and the function
6 of the network of changeable message signs. All changeable
7 message signs subject to this article shall be exempt from Section
8 5408 of the Business and Professions Code and from any and all
9 regulations promulgated in connection with Section 5408 of the
10 Business and Professions Code.

11 173. The department shall not enter into an agreement with
12 any person who would cause or permit any changeable message
13 sign to display or advertise alcohol, tobacco, firearms, sexually
14 explicit material, or any illegal activity. The department shall adopt
15 policies and guidelines in connection with the content and
16 formatting of the advertising.

17 173.2. The department may use the changeable message signs
18 for emergency messages, as needed, and shall have dedicated time
19 to use the changeable message signs for traveler information and
20 motorist safety and awareness campaigns and any other public
21 service messaging desired by the state, without providing
22 compensation to the person with whom it enters into an agreement
23 pursuant to this article.

24 173.4. (a) When choosing the person with whom to enter into
25 an agreement pursuant to Section 172.6 to effectuate the purposes
26 of this article, the department shall select, pursuant to a competitive
27 process, the person that the department determines will provide
28 the best value.

29 (b) The department may retain a consultant or adviser to assist
30 in preparing the best value criteria, selection of the person, and
31 oversight of the project. The consultant or adviser shall not bid on
32 the project or, before one year following award of a contract, work
33 as an officer or employee of, or consultant or adviser to, any person
34 or persons seeking to bid on the project.

35 173.6. No later than two years after the implementation of the
36 project, the department shall submit a report to the fiscal and policy
37 committees of the Legislature with jurisdiction over transportation
38 matters. The report shall include, but not be limited to, all of the
39 following:

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

3 (b) The amount of revenue received, cost savings to the
4 department, and the costs incurred by the department with respect
5 to the project, including costs incurred prior to the time the
6 department entered into an agreement.

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

10 (d) A description of the types of advertising content displayed
11 on the signs.

12 173.8. The provisions of this article are severable. If any
13 provision of this article or its application is held invalid, that
14 invalidity shall not affect other provisions or applications that can
15 be given effect without the invalid provision or application.

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