

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 21, 2016

**SENATE BILL**

**No. 1397**

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**Introduced by Senator Huff**

February 19, 2016

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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 *competitive* procurement ~~and competitive~~ process for a project with ~~a contractor~~ *an entity* to construct, upgrade or reconstruct, and operate a network of changeable message signs within the rights-of-way of the state highway 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~~ *entity* 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~~ *entity* 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  
 6

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

25 (e)

26 (f) “Network” means the integrated network of enhanced  
27 changeable message signs. The network shall include upgraded  
28 changeable message signs at existing locations and new changeable  
29 message signs at additional locations as determined by the  
30 department.

31 ~~(f) “Person” means an individual, partnership, limited~~  
32 ~~partnership, trust, estate, association, corporation, limited liability~~  
33 ~~company, or other entity.~~

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

1 172.6. (a) (1) Notwithstanding any other law, and subject to  
2 federal approval authorizing the department to do so, the  
3 department may enter into an agreement with one ~~person~~ *entity* to  
4 conduct a single project, which shall include a demonstration phase,  
5 in a manner that best effectuates the purposes of this article. If the  
6 department is advised by the United States Department of  
7 Transportation, or any of its agencies, that a display of advertising  
8 authorized by this article would result in the reduction of federal  
9 aid highway funds to the state pursuant to Section 131 of Title 23  
10 of the United States Code, that display of advertising shall not be  
11 made. The department shall conduct a best value *competitive*  
12 procurement and negotiate an initial agreement to become effective  
13 upon obtaining any necessary federal authorization. The department  
14 may provide services for which it is reimbursed with respect to  
15 preliminary design, inspection, and oversight of the project.

16 (2) *A proposal submitted to the department in response to the*  
17 *best value competitive procurement shall be accompanied by a*  
18 *certified check in an amount determined by the department and*  
19 *specified in the request for proposals to cover the reasonable costs*  
20 *of preparation of the best value procurement materials, the review*  
21 *and evaluation of the proposal, and the negotiation of an*  
22 *agreement with the selected entity. The department shall promptly*  
23 *return the certified checks accompanying proposals not accepted*  
24 *for consideration by the department.*

25 (3) *The agreement shall provide that the entity with whom the*  
26 *agreement is entered will bear all reasonable costs of the project,*  
27 *including, but not limited to, costs of installation, maintenance,*  
28 *and operation of the project, and that reasonable costs incurred*  
29 *to procure the agreement and not covered by the certified check*  
30 *required under paragraph (2) shall be reimbursed to the*  
31 *department.*

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

34 (1) Provide for the construction, upgrade or reconstruction, and  
35 operation of changeable message signs selected for the project.  
36 The department shall be responsible for the maintenance of the  
37 selected changeable message signs.

38 (2) Provide for complete reversion of any ownership interest in  
39 any of the privately constructed, upgraded or reconstructed, and  
40 operated changeable message signs to the department at the

1 expiration of the agreement at no charge to the department and  
2 free and clear of any liens or encumbrances.

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

5 (4) Provide that the department, in consultation with the  
6 Department of the California Highway Patrol, shall retain the  
7 ability to make a determination on the safety of the changeable  
8 message signs, and may take those actions deemed necessary to  
9 protect public safety.

10 (5) Require the ~~person~~ *entity* with whom the agreement is made  
11 to indemnify, defend, and hold harmless the department for any  
12 damage, injury claim, or incident in connection with the  
13 construction, upgrade or reconstruction, or operation of changeable  
14 message signs performed by or under the control and supervision  
15 of that ~~person~~, *entity*, or the advertising on changeable message  
16 signs, excluding any advertising approved in advance or provided  
17 by the department, including, but not limited to, personal injury,  
18 wrongful death, defamation, and property damage.

19 (6) Provide that the department shall conduct a demonstration  
20 phase of the project as a condition precedent to the full  
21 implementation of the agreement described in this section. The  
22 demonstration phase shall involve the construction, upgrade or  
23 reconstruction, and operation of changeable message signs at  
24 current and planned locations at the initiation of the project and  
25 shall be conducted on routes and highway corridors at sign  
26 locations selected by the department. The department shall  
27 determine the number of changeable message signs needed to be  
28 included in the demonstration, which number shall be sufficiently  
29 substantive to evaluate the impacts and the return on investment  
30 of the demonstration. The demonstration phase shall begin  
31 immediately following federal approval as provided in subdivision  
32 (a), and shall last until full implementation is authorized, and if  
33 full implementation is not authorized, then for a period of time  
34 sufficient to allow the ~~person~~ *entity* contracting with the department  
35 to recover its capital and related costs for the project.

36 (7) (A) Provide that the department shall retain an independent  
37 consultant to perform an evaluation of the results of the  
38 demonstration phase.

39 (B) The department shall review the results of the demonstration  
40 phase and the evaluation from the independent consultant and

1 determine, in its discretion, whether the placement of commercial  
2 advertising with all department messaging creates an unsafe  
3 distraction to motorists, and shall consider any other issues of  
4 concern that are identified in the demonstration phase.

5 (C) The department may require changes to the agreement to  
6 address identified issues of concern and to allow for full  
7 implementation of the agreement. If, prior to full implementation,  
8 the agreement is amended or otherwise modified in a way that  
9 materially impacts a changeable message sign's ability to generate  
10 revenues, the ~~person~~ *entity* conducting the project shall be entitled  
11 to recover from the department any unreimbursed capital or  
12 operating expenses.

13 (8) Provide for the ~~person~~ *entity* with whom the agreement is  
14 made to contract and receive funds for the placement of commercial  
15 advertisements on changeable message signs, except during times  
16 and to the extent the signs are in use by the department, and to  
17 share revenues generated in connection with the use of those signs  
18 for commercial advertising in furtherance of the public interest.

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

24 (d) Revenues from changeable message signs shall be allocated  
25 between the ~~person~~ *entity* with whom the agreement is made and  
26 the department in accordance with the agreement as provided in  
27 paragraph (8) of subdivision (b). Revenues derived from the project  
28 and received by the department, and any other revenue generated  
29 from advertising on changeable message signs owned by the  
30 department and received by the department, shall be deposited in  
31 the State Highway Account in the State Transportation Fund. This  
32 revenue shall not be subject to the transfer under Section 183.1 or  
33 any successor to that section. Revenues deposited under this section  
34 shall be retained in the State Highway Account, subject to  
35 appropriation by the Legislature, consistent with the provisions of  
36 any federal authorization.

37 (e) The changeable message signs shall meet the design,  
38 construction, and operating requirements in the department's  
39 standards and guidelines, including, but not limited to, controls,  
40 such as state-of-the-art sensors that control the brightness of the

1 display based on the surrounding ambient light levels and other  
2 technologies muting adjacent glare, that focus the zone of vision  
3 toward motorists on the traveled way and prevent neighborhood  
4 impacts in the vicinity of the changeable message signs.

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

14 (g) Advertising on changeable message signs shall not be  
15 permitted on officially designated scenic highways.

16 172.8. Advertising on changeable message signs shall be in  
17 the form and under those conditions as may be determined by the  
18 department and as may be set forth in standards, guidelines, and  
19 procedures adopted by the department. The advertising shall not  
20 compromise safety or the department's safety communication  
21 functions. The upgraded network shall enhance public messaging,  
22 including, but not limited to, safety campaigns, emergency  
23 notifications, travel times, and traveler information and the function  
24 of the network of changeable message signs. All changeable  
25 message signs subject to this article shall be exempt from Section  
26 5408 of the Business and Professions Code and from any and all  
27 regulations promulgated in connection with Section 5408 of the  
28 Business and Professions Code.

29 173. The department shall not enter into an agreement with  
30 any ~~person~~ *entity* who would cause or permit any changeable  
31 message sign to display or advertise alcohol, tobacco, firearms,  
32 sexually explicit material, *political messages or advertisements*,  
33 or any illegal activity. The department shall adopt policies and  
34 guidelines in connection with the content and formatting of the  
35 advertising.

36 173.2. The department may use the changeable message signs  
37 for emergency messages, as needed, and shall have dedicated time  
38 to use the changeable message signs for traveler information and  
39 motorist safety and awareness campaigns and any other public  
40 service messaging desired by the state, without providing

1 compensation to the ~~person~~ *entity* with whom it enters into an  
2 agreement pursuant to this article.

3 173.4. (a) When choosing the ~~person~~ *entity* with whom to enter  
4 into an agreement pursuant to Section 172.6 to effectuate the  
5 purposes of this article, the department shall select, pursuant to a  
6 competitive process, the ~~person~~ *entity* that the department  
7 determines will provide the best value.

8 (b) The department may retain a consultant or adviser to assist  
9 in preparing the best value criteria, selection of the ~~person~~, *entity*,  
10 and oversight of the project. The consultant or adviser shall not  
11 bid on the project or, before one year following award of a contract,  
12 work as an officer or employee of, or consultant or adviser to, any  
13 ~~person or persons~~ *entity or entities* seeking to bid on the project.

14 173.6. ~~No later than two years after the~~ *Promptly following the*  
15 *department's review of the consultant's evaluation of the*  
16 *demonstration phase of the project, and before authorizing full*  
17 *implementation of the project, the department shall submit a report*  
18 *to the fiscal and policy committees of the Legislature with*  
19 *jurisdiction over transportation matters. The report shall include*  
20 *the consultant's report and any recommended department revisions*  
21 *to the project, and shall also include, but not be limited to, all of*  
22 *the following:*

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

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

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

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

34 173.8. The provisions of this article are severable. If any  
35 provision of this article or its application is held invalid, that  
36 invalidity shall not affect other provisions or applications that can  
37 be given effect without the invalid provision or application.

O