

## Senate Bill No. 981

### CHAPTER 521

An act to amend Section 4420.5 of, and to repeal and add Section 4420 of, the Government Code, relating to public construction, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1999. Filed  
with Secretary of State September 27, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 981, Polanco. Public construction projects.

(1) Existing law prohibits agency officials, in the case of a public building or construction contract, from obtaining a surety bond or insurance contract that may be obtained by a bidder, contractor, or subcontractor on the project. Certain agencies and projects are exempt from this prohibition and existing law permits a public agency to utilize owner-controlled or wrap-up insurance programs if specified conditions are met. Existing law also exempts a school district from this prohibition for a construction or renovation project and authorizes the district to use owner-controlled or wrap-up insurance if the district determines that the prospective bidders meet minimum occupational safety and health qualifications and the use of this insurance will maximize the expenditure of public funds in conjunction with the exercise of appropriate risk management.

This bill would repeal the existing prohibition regarding a public agency obtaining a surety bond or insurance contract in connection with a public building or construction contract, reenact a prohibition against a state or local governmental agency requiring the bidder to obtain a surety bond or insurance in connection with the project from a particular surety or insurance company, agent, or broker, and authorize the use of owner-controlled or wrap-up insurance on a project for which the total cost exceeds \$50,000,000 if the agency meets certain conditions and certifies that it has made certain determinations.

(2) Under the Local Agency Public Construction Act, school districts must comply with specified procedures in bidding and awarding contracts.

This bill would provide that a contract for the addition of air-conditioning to 150 schools in the Los Angeles Unified School District shall be deemed to have complied with the procedures required by the act.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 4420 of the Government Code is repealed.

SEC. 2. Section 4420 is added to the Government Code, to read:

4420. (a) No state or local governmental agency and no person acting on behalf of any state or local governmental agency, except a governmental agency created pursuant to agreement or compact with another state, shall, with respect to any public building or construction contract that is about to be or that has been competitively bid, require the bidder to make application to, furnish financial data to, or obtain or procure any surety bond or contract of insurance specified in connection with the contract or specified by any law, ordinance, or regulation from, a particular surety or insurance company, agent, or broker.

(b) Notwithstanding subdivision (a), a state or local governmental agency may use owner-controlled or wrap-up insurance with regard to a construction or renovation project for which the total cost exceeds fifty million dollars (\$50,000,000) if the agency meets all of the following conditions and certifies that it has made the following determinations:

(1) Prospective bidders, including contractors and subcontractors, meet minimum occupational safety and health qualifications established to bid on the project. The evaluation of prospective bidders shall be based on consideration of the following factors:

(A) Serious and willful violations of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, by a contractor or subcontractor during the past five-year period.

(B) The contractor's or subcontractor's workers' compensation experience modification factor.

(C) A contractor's or subcontractor's injury prevention program instituted pursuant to Section 3201.5 or 6401.7 of the Labor Code.

(2) The use of owner-controlled or wrap-up insurance will minimize the expenditure of public funds on the project in conjunction with the exercise of appropriate risk management.

(3) The program maintains completed operation coverage for a term for which the Insurance Commissioner has determined that coverage is reasonably commercially available, but in no event less than three years.

(4) Bid specifications clearly specify for all bidders the insurance coverage provided under the program and minimum safety requirements that must be met.

(5) The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor or subcontractor believes is necessary to protect from any liability arising out of the contract.

(6) The program does not include surety insurance.



(c) Safety requirements for a project subject to this section may be developed jointly between the agency and the prime contractor. If the agency requires a safety program different than the prime contractor's usual and customary program, the program shall be mutually agreed upon, taking into account the prime contractor's experience, expertise, existing labor agreements relating to safety issues, and any unique safety issues relating to the project.

(d) This section shall not affect any provision in a collective bargaining agreement specified in Section 3201.5 of the Labor Code that is submitted by the prime contractor with its construction bid.

(e) The use of owner-controlled or wrap-up insurance under this chapter does not abrogate, limit, or otherwise affect any potential liability that is otherwise available at law.

(f) For purposes of this section, the following terms have the following meanings:

(1) "Owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover all of the contractors and subcontractors on a given project for purposes of general liability and workers' compensation.

(2) "State governmental agency" means any state office, officer, department, division, bureau, board, commission, the University of California, or the California State University.

(3) "Local governmental agency" means any city, county, city and county, special district, authority, or other political subdivision of or within the state.

SEC. 3. Section 4420.5 of the Government Code is amended to read:

4420.5. (a) Section 4420 does not apply to any construction or renovation project undertaken by a school district.

(b) The district may use owner-controlled or wrap-up insurance with regard to a construction or renovation project if the district makes the following determinations:

(1) Prospective bidders, including contractors and subcontractors, meet minimum occupational safety and health qualifications established to bid on the project. The evaluation of prospective bidders shall be based on consideration of the following factors:

(A) Serious and willful violations of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, by a contractor or subcontractor during the past five-year period.

(B) The contractor's or subcontractor's workers' compensation experience modification factor.

(C) A contractor's or subcontractor's injury prevention program instituted pursuant to Section 3201.5 or 6401.7 of the Labor Code.

(2) The use of owner-controlled or wrap-up insurance will minimize the expenditure of public funds on the project in conjunction with the exercise of appropriate risk management.



(c) For purposes of this section, “owner-controlled or wrap-up insurance” means a series of insurance policies issued to cover all of the contractors and subcontractors on a given project for purposes of general liability and workers’ compensation.

(d) Any use of owner-controlled or wrap-up insurance pursuant to this section shall be subject to paragraphs (3) to (6), inclusive, of subdivision (b) of Section 4420 and subdivisions (c) and (d) of that section.

SEC. 4. Notwithstanding any other provision of law, the contract approved by the governing board of the Los Angeles Unified School District in July 1998 to provide air-conditioning to 150 schools within the district is deemed to have met the requirements of Article 3 (commencing with Section 20110) of Chapter 1 of Part 3 of the Public Contract Code. This section shall be operative as of the date of approval of the contract by the governing board of the Los Angeles Unified School District.

SEC. 5. The Legislature finds and declares that for Section 4 of this act a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Los Angeles Unified School District.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that substantial cost savings may be realized by agencies of local government, potentially in the tens of millions of dollars, due to the wrap-up insurance made available under this act, on projects that may be initiated in the next few months, and that the health of school children may be enhanced due to physical plant improvements covered by this act, it is necessary that this act take effect immediately.

