BILL: SB 768 (Allen, D-Santa Monica) and AB 1454 (Bloom, D-Santa Monica)
Introduced February 17, 2017
SB 768: Last Amended March 27, 2017
AB 1454: Last Amended May 1, 2017

SUBJECT: SB 768 and AB 1454 both seek to extend the authorization to engage in public-private partnerships for transportation projects on the state highway system.

STATUS: SB 768 is pending in the Senate Appropriations Committee. Passed Senate Transportation and Housing Committee 12-0

AB 1454 is pending in the Assembly Appropriations Committee. Passed Assembly Transportation Committee 10-1

SUMMARY AS OF MARCH 3, 2017:

SB 768 (Allen, D-Santa Monica) and AB 1454 (Bloom, D-Santa Monica) both seek to extend the authority for the California Department of Transportation (Caltrans) and regional transportation agencies to enter into public-private partnership (P3) agreements for projects on the state highway system. SB 768 would extend the authority indefinitely, while AB 1454 includes intent language to pursue a similar extension. It is expected that SB 768 will be amended to mirror AB 1454 to allow for additional time to negotiate P3 language among interested stakeholders.

P3s are contractual agreements between public agencies and private entities that allow for greater private participation in the delivery of transportation projects. Typically, this participation involves the private sector taking on additional project risks, including the design, construction, finance, and operations of a project or facility. In California, the authority to enter into these agreements was authorized under a special session bill in 2009, SBX2 4 (Chapter 2, Statutes of 2009), which authorized the use of an unlimited number of P3 projects by either Caltrans or regional transportation agencies for highway, street, rail, or related facilities supplemental to existing facilities currently owned and operated by the department or regional transportation agencies. Unfortunately, this authority expired January 1, 2017.

Under this authority, Caltrans and regional transportation agencies, with approval from the California Transportation Commission, may enter into P3 agreements with public and private entities, or consortia of these entities, to construct transportation projects that may charge users of the projects a toll or user fee. This authority also limits the types of projects that may utilize this authority to those that are primarily designed to achieve improved mobility, improved operations or safety, and quantifiable air quality benefits while also subjecting projects to various requirements. Requirements such the delegating project specific roles for Caltrans related to highway projects and mandatory public review and comment periods for lease projects would remain unchanged in the language included in SB 768.

EFFECTS ON ORANGE COUNTY:

P3s can be an effective projective delivery tool, as witnessed under AB 680 (Chapter 107, Statues of 1989), which authorized Caltrans to enter into P3 agreements for four projects, one of which was the ten miles of tolled express lanes in the median of the existing State Route (SR) 91 in Orange County. Currently, the 91 Express Lanes continues to provide revenue for OCTA, which also covers the maintenance and operational costs. In 2016, $24.4 million was used to repave the entire express lanes with no additional funds from taxpayers, and another $6 million was set aside for the construction of the Placentia Metrolink station.

By extending the authority to enter into P3 agreements, even after the sunset date of January 1, 2017, the Orange County Transportation Authority (OCTA) and other regional transportation agencies are provided with a critical tool to deliver transportation projects across the state that meet the mobility and air quality classifications that are prioritized under existing law. SB 768 also has the potential to provide greater private sector design innovation for Orange County's transportation infrastructure.

The provisions of SB 768 are nearly identical to P3 provisions included in AB 1265 (Perea), a bill which the OCTA Board of Directors adopted a support position on in March 2015. The only minor differences between the two bills are that the provisions of AB 1265 added the Santa Clara Valley Transportation Authority under the definition of "regional transportation agency," and set a sunset date for January 1, 2030, whereas SB 768 would extend this authority indefinitely. It is expected that as discussions occur related to AB 1454 and SB 768, some technical language issues with the P3 authority authorized under SBX2 4 may be fixed. A support position ensures that OCTA is at the table as these discussions occur.

A support position is consistent with the principles included in OCTA 2017-18 State Legislative Platform that states, "Support efforts to expand, extend, and preserve new and existing alternative project delivery methods such as public-private partnerships, while allowing the appropriate balance of partnership between the state and local agencies." Also in support of SB 768 and AB 1454 are the Los Angeles County Metropolitan Transportation Authority and the Self-Help Counties Coalition.

OCTA POSITION:

Staff recommends: SUPPORT

AMENDED IN SENATE MARCH 27, 2017

SENATE BILL No. 768

Introduced by ~~Senator~~ *Senators* Allen *and Wiener*
(Principal coauthors: Assembly Members Bloom, Eggman, and Quirk)

February 17, 2017

An act to amend Section ~~163~~ *143* of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 768, as amended, Allen. Transportation ~~funds.~~ *projects: comprehensive development lease agreements.*

Existing law authorizes the Department of Transportation and regional transportation agencies to enter into comprehensive development lease agreements with public and private entities, or consortia of those entities, for certain transportation projects that may charge certain users of those projects tolls and user fees, subject to various terms and requirements. These arrangements are commonly known as public-private partnerships. Existing law provides that a lease agreement may not be entered into under these provisions on or after January 1, 2017.

This bill would extend this authorization indefinitely. The bill would also make nonsubstantive changes to these provisions by correcting obsolete cross-references.

~~Existing law requires the Department of Transportation and the California Transportation Commission to develop estimates of available state and federal funds and provides that, after deducting expenditures for administration, operation, maintenance, local assistance, safety, rehabilitation, and certain environmental enhancement and mitigation expenditures, the remaining funds are to be available for capital~~

~~improvement projects to be programmed in the State Transportation Improvement Program.~~

~~This bill would make nonsubstantive 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 operated by the department or regional transportation agencies that is consistent with the requirements of subdivision (c).

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

(A) Identify transportation project opportunities throughout the state.

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

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

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

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

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

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

(2) Projects proposed pursuant to this section and associated lease agreements shall be submitted to the California Transportation Commission. The commission, at a regularly scheduled public hearing, shall select the candidate projects from projects nominated

by the department or a regional transportation agency after reviewing the nominations for consistency with paragraphs (3) and (4). Approved projects may proceed with the process described in paragraph (5).

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

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

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

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

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

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

(d) For the purpose of facilitating those projects, the agreements between the parties may include provisions for the lease of rights-of-way in, and airspace over or under, highways, public streets, rail, or related facilities for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the construction of transportation projects. Facilities subject to an agreement under this section shall, at all times, be owned by the department or the regional transportation agency, as appropriate. For department projects, the commission shall certify the department's determination of the useful life of the project in establishing the lease agreement terms. In consideration therefor, the agreement shall provide for complete reversion of the leased facility, together with the right to collect tolls and user fees, to the department or regional transportation agency, at the expiration of the lease at no charge to the department or regional transportation agency. At the time of the reversion, the facility shall be delivered to the department or regional transportation agency, as applicable, in a condition that meets the performance and maintenance standards established by the department or regional transportation agency and that is free of any encumbrance, lien, or other claims.

(e) Agreements between the department or regional transportation agency and the contracting entity or lessee shall authorize the contracting entity or lessee to use a design-build method of procurement for transportation projects, subject to the requirements for utilizing such a method contained in Chapter 6.5 (commencing with Section ~~6800)~~ *6820)* of Part 1 of Division 2 of the Public Contract Code, other than Sections ~~6802, 6803, and 6813 of that code, if those provisions are enacted by the Legislature during the 2009–10 Regular Session, or a 2009–10 extraordinary session.~~ *6821 and 6822 of that code.*

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

(B) The department may use department employees or consultants to perform the services described in subparagraph (A), consistent with Article XXII of the California Constitution. Department resources, including personnel requirements, necessary for the performance of those services shall be included in the department's capital outlay support program for workload purposes in the annual Budget Act.

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

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

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

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

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

(D) Negotiations with proposers prior to award.

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

(2) When evaluating a proposal submitted by the contracting entity or lessee, the department or the regional transportation agency may award a contract on the basis of the lowest bid or best value.

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

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

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

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

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

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

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

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

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

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

(E) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), including, but not limited to, alleged violations of federal or state law regarding the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or Federal Insurance Contributions Act (FICA) withholding requirements.

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

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

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

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

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

(2) Safety projects.

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

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

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

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

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

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

(3) The collection of tolls and user fees for the use of these facilities may be extended by the commission or regional transportation agency at the expiration of the lease agreement. However, those tolls or user fees shall not be used for any purpose

other than for the improvement, continued operation, or maintenance of the facility.

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

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

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

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

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

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

(q) Nothing in this section shall be construed to allow the conversion of any existing nontoll or nonuser-fee lanes into tolled or user fee lanes with the exception of a high-occupancy vehicle lane that may be operated as a high-occupancy toll lane for vehicles not otherwise meeting the requirements for use of that lane.

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

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

~~(t) No lease agreements may be entered into under this section on or after January 1, 2017.~~

~~SECTION 1. Section 163 of the Streets and Highways Code is amended to read:~~

~~163. The Legislature, through the enactment of this section, intends to establish a policy for the use of all transportation funds that are available to the state, including, but not limited to, the State Highway Account, the Public Transportation Account, and federal funds. For the purposes of this section, "federal funds" means any obligational authority to be provided under annual federal transportation appropriations acts. The department and the commission shall prepare fund estimates pursuant to Sections 14524 and 14525 of the Government Code based on the following:~~

~~(a) Annual expenditures for the administration of the department shall be the same as the most recent Budget Act, adjusted for inflation.~~

~~(b) Annual expenditures for the maintenance and operation of the state highway system shall be the same as the most recent Budget Act, adjusted for inflation and inventory, or, when a maintenance plan has been enacted pursuant to Section 164.6, maintenance expenditures shall be based on planned expenditures in that plan.~~

~~(c) Annual expenditures for the rehabilitation of the state highway system shall be the same as the most recent Budget Act, or, when a long-range rehabilitation plan has been enacted pursuant to Section 164.6, shall be based on planned expenditures in that long-range plan.~~

~~(d) Annual expenditures for local assistance shall be the amount required to fund local assistance programs required by state or federal law or regulations, including, but not limited to, railroad grade crossing maintenance, active transportation, congestion mitigation and air quality, regional surface transportation programs, local highway bridge replacement and rehabilitation, local seismic retrofit, local hazard elimination and safety, and local emergency relief.~~

~~(e) After deducting expenditures for administration, operation, maintenance, local assistance, safety, and rehabilitation pursuant to subdivisions (a), (b), (c), and (d), and for expenditures pursuant to Section 164.56, the remaining funds shall be available for capital improvement projects to be programmed in the State Transportation Improvement Program.~~

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AMENDED IN ASSEMBLY MAY 1, 2017

AMENDED IN ASSEMBLY MARCH 21, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 1454

Introduced by Assembly Members Bloom, Quirk, and Eggman
(Principal coauthors: Senators Allen and Wiener)
(Coauthor: Assembly Member Cristina Garcia)

February 17, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1454, as amended, Bloom. Transportation projects: lease agreements.

Existing law authorizes the Department of Transportation and regional transportation agencies, as defined, to enter into comprehensive development lease agreements with public and private entities, or consortia of those entities, for certain transportation projects that may charge certain users of those projects tolls and user fees, subject to various terms and requirements. Existing law prohibits lease agreements under these provisions on or after January 1, 2017.

This bill would ~~delete this prohibition, thereby authorizing these lease agreements beyond January 1, 2017.~~ *state the intent of the Legislature to reestablish the authority under state law to engage in public-private partnerships for projects on the state highway system with appropriate public interest and safety protections.*

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

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

SECTION 1. It is the intent of the Legislature to reestablish the authority under state law to engage in public-private partnerships for projects on the state highway system with appropriate public interest and safety protections.

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

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

~~(A) Identify transportation project opportunities throughout the state.~~

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

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

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

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

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

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

~~(2) Projects proposed pursuant to this section and associated lease agreements shall be submitted to the California Transportation Commission. The commission, at a regularly scheduled public hearing, shall select the candidate projects from projects nominated by the department or a regional transportation agency after reviewing the nominations for consistency with paragraphs (3)~~

~~and (4). Approved projects may proceed with the process described in paragraph (5).~~

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

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

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

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

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

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

~~(d) For the purpose of facilitating those projects, the agreements between the parties may include provisions for the lease of rights-of-way in, and airspace over or under, highways, public streets, rail, or related facilities for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the construction of transportation projects. Facilities~~

~~subject to an agreement under this section shall, at all times, be owned by the department or the regional transportation agency, as appropriate. For department projects, the commission shall certify the department's determination of the useful life of the project in establishing the lease agreement terms. In consideration therefor, the agreement shall provide for complete reversion of the leased facility, together with the right to collect tolls and user fees, to the department or regional transportation agency, at the expiration of the lease at no charge to the department or regional transportation agency. At the time of the reversion, the facility shall be delivered to the department or regional transportation agency, as applicable, in a condition that meets the performance and maintenance standards established by the department or regional transportation agency and that is free of any encumbrance, lien, or other claims.~~

~~(e) Agreements between the department or regional transportation agency and the contracting entity or lessee shall authorize the contracting entity or lessee to use a design-build method of procurement for transportation projects, subject to the requirements for utilizing such a method contained in Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of the Public Contract Code, other than Sections 6802, 6803, and 6813 of that code, if those provisions are enacted by the Legislature during the 2009–10 Regular Session, or a 2009–10 extraordinary session.~~

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

~~(B) The department may use department employees or consultants to perform the services described in subparagraph (A),~~

~~consistent with Article XXII of the California Constitution. Department resources, including personnel requirements, necessary for the performance of those services shall be included in the department's capital outlay support program for workload purposes in the annual Budget Act.~~

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

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

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

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

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

~~(D) Negotiations with proposers prior to award.~~

~~(E) Acceptance of unsolicited proposals, with issuance of requests for competing proposals. Neither the department nor a regional transportation agency may award a contract to an~~

~~unsolicited bidder without receiving at least one other responsible bid.~~

~~(2) When evaluating a proposal submitted by the contracting entity or lessee, the department or the regional transportation agency may award a contract on the basis of the lowest bid or best value.~~

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

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

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

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

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

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

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

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

~~(C) Any instance where members of the contracting entity or lessee, or its owners, officers, or managing employees submitted~~

~~a bid on a public works project and were found to be nonresponsive or were found by an awarding body not to be a responsible bidder.~~

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

~~(E) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), including, but not limited to, alleged violations of federal or state law regarding the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or Federal Insurance Contributions Act (FICA) withholding requirements.~~

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

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

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

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

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

~~(2) Safety projects.~~

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

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

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

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

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

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

~~(3) The collection of tolls and user fees for the use of these facilities may be extended by the commission or regional transportation agency at the expiration of the lease agreement. However, those tolls or user fees shall not be used for any purpose~~

~~other than for the improvement, continued operation, or maintenance of the facility.~~

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

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

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

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

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

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

~~(q) Nothing in this section shall be construed to allow the conversion of any existing nontoll or nonuser-fee lanes into tolled or user fee lanes with the exception of a high-occupancy vehicle lane that may be operated as a high-occupancy toll lane for vehicles not otherwise meeting the requirements for use of that lane.~~

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

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

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