

BILL: AB 1499 (Daly, D-Anaheim)
Introduced February 19, 2021

SUBJECT: AB 1499 would remove the sunset date on existing design-build authority for highway projects.

STATUS: Pending in the Assembly
Introduced February 19, 2021

SUMMARY AS OF MARCH 3, 2021:

In 2013, the Orange County Transportation Authority (OCTA) sponsored AB 401 (Chapter 586, Statutes of 2013) to expand the use of the design-build procurement method. Specifically, AB 401 authorized unlimited use of design-build authority for state highway projects done by regional transportation agencies, and authorized the California Department of Transportation (Caltrans) to utilize design-build for up to ten projects. The authority currently sunsets on January 1, 2024. AB 1499 (Daly, D-Anaheim) seeks to remove this sunset date.

EFFECTS ON ORANGE COUNTY:

Under the traditional design-bid-build approach, the owner or sponsor would first complete the design of the facility, and then offer it to qualified contractors for bid, awarding it to the lowest responsible and responsive bidder for construction. Design-build provides for the delivery of public works projects from a single entity, streamlining the traditional design-bid-build process by combining project design, permit, and construction schedules. Current law gives Caltrans the responsibilities associated with construction inspection services for the project, including those related to surveying and quality control, as well as public safety issues.

When OCTA sponsored AB 401, it was estimated that using the traditional design-bid-build method instead of the design-build method for the Interstate 405 (I-405) Improvement Project could have taken two or three additional years to complete and, consequently, potentially creating higher costs due to inflationary pressures. However, at that time, design-build was not broadly authorized in statute. Prior to the enactment of AB 401, OCTA had success using design-build to construct the State Route 22 Improvement Project using the limited authority from AB 958 (Chapter 541, Statutes of 2000). The provisions in AB 958 granting this authority were later amended by AB 372 (Chapter 262, Statutes of 2006) to limit the use of design-build to only transit projects, excluding future use for highway or local street and road projects.

In 2009, as part of the state budget process, the Legislature approved SBX2-4 (Chapter 2, Statutes of 2009) to create design-build and public-private partnership authority in the form of pilot programs aimed at transportation projects. More specifically, the design-build authority in SBX2-4 allowed for five local street, road, bridge, tunnel, or public transit projects, as well as ten state highway bridge or tunnel projects until

January 1, 2014. Because the request for proposals for the I-405 Improvement project was not anticipated to be released until mid-2014, the project did not qualify for existing design-build authority under SBX2-4 and, therefore, required additional legislative authority that was successfully secured by OCTA staff through AB 401 in 2013. Since the enactment of this legislation, several highway projects have been eligible to utilize the design-build authority, including the I-405 Improvement project, and projects undertaken by the Riverside County Transportation Commission and Caltrans.

Although OCTA does not have current projects lined up to utilize this procurement method, OCTA believes the design-build authority is imperative for the expedited and streamlined delivery of highway projects and provides a valuable option for future consideration. This will be especially important as the State looks toward post-pandemic recovery and begins discussions regarding economic stimulus, particularly around infrastructure and job creation.

Co-sponsors of this legislation include the Self-Help Counties Coalition and the Professional Engineers in California Government. A support position is consistent with OCTA's 2020-21 State Legislative Platform principle to "Support new and existing alternative project delivery methods, such as design-build, public-private partnership authority, and construction manager/general contractor authority, through expanding mode and funding eligibility while also allowing the appropriate balance of partnership between the State and local agencies."

OCTA POSITION:

Staff recommends: SUPPORT

ASSEMBLY BILL

No. 1499

Introduced by Assembly Member Daly

February 19, 2021

An act to amend Section 6829 of the Public Contract Code, and to amend Section 91.2 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1499, as introduced, Daly. Transportation: design-build: highways.

(1) Existing law authorizes the Department of Transportation to utilize design-build procurement for up to 10 projects on the state highway system, based on either best value or lowest responsible bid. Existing law authorizes regional transportation agencies, as defined, to utilize design-build procurement for projects on or adjacent to the state highway system. Existing law also authorizes those regional transportation agencies to utilize design-build procurement for projects on expressways that are not on the state highway system, as specified. Existing law repeals these provisions on January 1, 2024, or one year from the date that the Department of Transportation posts on its internet website that the provisions described below related to construction inspection services for these projects have been held by a court to be invalid.

This bill would delete the January 1, 2024, repeal date, thus extending the above provisions indefinitely.

(2) Existing law provides that these design-build authorizations do not include construction inspection services for projects on or interfacing with the state highway system. Existing law requires the Department

of Transportation to perform construction inspection services for projects on or interfacing with the state highway system, as specified. Existing law repeals these provisions on January 1, 2024.

This bill would delete the January 1, 2024, repeal date, thus extending the above provisions indefinitely.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

SECTION 1. Section 6829 of the Public Contract Code is amended to read:

~~6829. (a) This chapter shall remain in effect only until January 1, 2024, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2024, deletes or extends that date.~~

~~(b) Notwithstanding subdivision (a), if~~

6829. (a) If any provision or application of Section 91.2 of the Streets and Highways Code is held invalid by a court of competent jurisdiction, this chapter shall be repealed one year from the date in which the department posts on its ~~Internet Web site~~ *internet website* that Section 91.2 of the Streets and Highways Code has been held invalid.

~~(c)~~

(b) The repeal of this chapter shall not affect an executed design-build contract or cooperative agreement entered into pursuant to this chapter prior to the date of its repeal, regardless of the stage of the project at the time of repeal.

SEC. 2. Section 91.2 of the Streets and Highways Code is amended to read:

91.2. (a) The department shall perform construction inspection services for projects on or interfacing with the state highway system authorized pursuant to Chapter 6.5 (commencing with Section 6820) of Part 1 of Division 2 of the Public Contract Code. The department shall use department employees or consultants under contract with the department to perform the services described in this subdivision and subdivision (b), consistent with Article XXII of the California Constitution. Construction inspection services performed by the department for those projects include, but are not limited to, material source testing, certification testing,

1 surveying, monitoring of environmental compliance, independent
2 quality control testing and inspection, and quality assurance audits.
3 The construction inspection duties and responsibilities of the
4 department shall include a direct reporting relationship between
5 the inspectors and senior department engineers responsible for all
6 inspectors and construction inspection services. The senior
7 department engineer responsible for construction inspection
8 services shall be responsible for the acceptance or rejection of the
9 work.

10 (b) Notwithstanding any other law, the department shall retain
11 the authority to stop the contractor's operation wholly or in part
12 and take appropriate action when public safety is jeopardized on
13 a project on or interfacing with the state highway system authorized
14 pursuant to Chapter 6.5 (commencing with Section 6820) of Part
15 1 of Division 2 of the Public Contract Code. The department shall
16 ensure that public safety and convenience is maintained whenever
17 work is performed under an encroachment permit within the state
18 highway right-of-way, including, but not limited to, work
19 performed that includes lane closures, signing, work performed at
20 night, detours, dust control, temporary pavement quality, crash
21 cushions, temporary railings, pavement transitions, falsework,
22 shoring, and delineation. The department shall regularly inspect
23 the job sites for safety compliance and any possible deficiencies.
24 If any deficiency is observed, a written notice shall be sent by the
25 department to the regional transportation agency's designated
26 resident engineer to correct the deficiency. Once the deficiency is
27 corrected, a written notice describing the resolution of the
28 deficiency shall be sent to the department and documented.

29 (c) The department shall use department employees or
30 consultants under contract with the department to perform the
31 services described in subdivisions (a) and (b), consistent with
32 Article XXII of the California Constitution. Department employee
33 and consultant resources necessary for the performance of those
34 services, including personnel requirements, shall be included in
35 the department's capital outlay support program for workload
36 purposes in the annual Budget Act.

37 (d) "Construction inspection services" shall not include
38 surveying work performed as part of a design-build contract.

- 1 ~~(e) This section shall remain in effect only until January 1, 2024,~~
2 ~~and as of that date is repealed, unless a later enacted statute, that~~
3 ~~is enacted before January 1, 2024, deletes or extends that date.~~
4 ~~(f)~~
5 (e) If any provision or application of this section is held invalid
6 by a court of competent jurisdiction, the department shall post on
7 its ~~Internet Web site~~ *internet website* within 10 business days of
8 the decision of invalidity that this section has been held invalid.