

BILL: SB 474 (Ducheny, D – San Diego)
Introduced February 26, 2009
Amended April 27, 2009
Amended May 21, 2009
Amended June 3, 2009

SUBJECT: Requires specific findings to be met before a lead agency could utilize existing design-build or public-private partnership authority

STATUS: Pending in Senate Transportation and Housing Committee

SUMMARY AS OF JUNE 8, 2009:

SB 474 requires a lead agency, before awarding a contract or entering into an agreement related to a pilot program involving design-build or public-private partnership (PPP) authority, to make specific findings. Under existing law, as authorized in trailer bill language from the fiscal year 2009-2010 state budget, local transportation entities are authorized to use design-build for up to five projects statewide related to local streets and roads, bridges, tunnels, or public transit; and the California Department of Transportation (Caltrans) is authorized to utilize the same authority for up to 10 state highway, bridge, or tunnel projects. In addition, the budget language authorized unlimited use of PPP for transportation projects until 2017.

Under SB 474, before utilizing the above authority, the lead agency would be required to make any of the below findings related to the chosen alternative method of delivery and its comparison to traditional methods of project delivery:

- Accelerates project completion
- Produces savings in personnel or financial resources
- Results in lower costs for the users of the facility
- Brings financial resources to the project that were otherwise unavailable

For projects where there is joint control by Caltrans and a regional transportation agency, both parties must concur in finding that the chosen project delivery method results in one of the above benefits. The California Transportation Commission (CTC) is to work with Caltrans and regional transportation agencies to develop methodologies for defining the above factors. There is no timeline provided in SB 474 for when these guidelines must be completed.

Furthermore, the CTC is to create a consolidated report to the legislature on the benefits provided by the pilot design-build and PPP projects, including any savings in time or resources by the lead agency of the project or the users of the facility. In order to create this consolidated report, a transportation agency involved in implementing either type of program is to provide any information requested by the CTC deemed necessary for the completion of the report. Already under existing law, the CTC is to create a peer review committee to conduct an evaluation of the 15 projects selected for

design-build authority. From the findings of this commission, the CTC is to submit a report to the Legislature by June 30, 2012 and again by June 30, 2015.

EFFECTS ON ORANGE COUNTY:

As sponsored by the Professional Engineers in California Government (PECG), SB 474 would delay projects that transportation agencies, such as the Orange County Transportation Authority (OCTA), hope to implement using the design-build and PPP authority granted in the budget trailer bill language. The intent behind the adoption of such authority by the state legislature was to help streamline transportation projects, thereby creating more immediate economic benefits for the state through job creation and by project cost savings. By requiring transportation agencies wishing to exercise such authority to make additional specified findings, this will further delay the achievement of these economic benefits. In addition, because the required findings are vague, this could lead to disputes over the sufficiency of any findings made by a transportation agency. Furthermore, because there is no set timeline for when the CTC must adopt guidelines to define such findings, it is unknown when transportation agencies will actually be able to implement projects using the PPP and design-build authority.

SB 474 may also create further delays in situations involving projects on a state highway where Caltrans and a transportation planning agency both have control over the project. In these cases, both entities would have to concur in making the specified findings. However, often times Caltrans and transportation planning agencies have competing interests in the use of design-build and PPP authority. Any conflict that occurs would only serve to further delay these projects, and may lead to a deterrence on using design-build or PPP authority because transportation agencies would not want to further extend the project development timeline.

Many of these provisions are also duplicative of existing law, creating unnecessary, additional delays. The consolidated report the CTC is to submit to the Legislature is similar to the report the CTC is already required to submit regarding the design-build authority granted by the budget trailer bill language. Although there is a clear need for the legislature to be fully informed of the benefits these alternative methods of project delivery provide, it is unnecessary to submit duplicative reports by the same agency.

There are many projects the OCTA is currently considering for potential eligibility to use the design-build and PPP authority granted under the budget trailer bill language, including the San Diego Freeway (Interstate 405) Improvement Project. The provisions included under SB 474 would only serve to further lengthen the already extensive timelines involved with implementing these projects.

Because SB 474 was recently amended, many agencies are still in the process of evaluating the bill. The Self-Help Counties Coalition has adopted an oppose position.

OCTA POSITION:

Staff recommends: OPPOSE