

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2789 (Mullin) – As Amended April 18, 2022

SUBJECT: Design-build projects: local agencies.

SUMMARY: Alters the authority to use design-build contracting for the Midpeninsula Regional Open Space District (Midpen), the Santa Clara Valley Open-Space Authority (Open Space Authority), and the East Bay Regional Park District (East Bay Parks). Specifically, **this bill:**

- 1) Eliminates a January 1, 2023, sunset date on the authority for Midpen and the Open Space Authority to use design-build contracting for the construction of facilities or other buildings in those entities.
- 2) Clarifies that Midpen and the Open Space Authority may use design-build contracting for the construction, restoration, and improvement of buildings and facilities, the construction, restoration, and improvement of public access and recreation facilities, and nature-based infrastructure projects including, but not limited to, habitat restoration projects, enhancement and remediation projects, and watershed, stream corridor, and pond improvement projects in those entities.
- 3) Creates for East Bay Parks an identical authorization to use design-build contracting as outlined above for Midpen and the Open Space Authority.
- 4) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances relating to Midpen, East Bay Parks, and the Open Space Authority.
- 5) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, as specified, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

EXISTING LAW:

- 1) Requires, pursuant to the Local Agency Public Construction Act (LAPC Act), local officials to invite bids for construction projects and then award contracts to the lowest responsible bidder under the traditional design-bid-build project delivery system.
- 2) Authorizes, until January 1, 2025, cities, counties, and specified special districts and transit agencies to use design-build for specified public works contracts in excess of \$1 million using either a low bid or best value process.
- 3) Authorizes, until January 1, 2023, Midpen and the Open Space Authority to use the design-build process for the construction of facilities or other buildings in those entities, as specified.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Bill Summary.** This bill eliminates a January 1, 2023, sunset date on the authority for Midpen and the Open Space Authority to use design-build contracting for the construction of facilities or other buildings in those entities. It also clarifies that Midpen and the Open Space Authority may use design-build contracting for the construction, restoration, and improvement of buildings and facilities, the construction, restoration, and improvement of public access and recreation facilities, and nature-based infrastructure projects including, but not limited to, habitat restoration projects, enhancement and remediation projects, and watershed, stream corridor, and pond improvement projects in those entities.

This bill also creates for East Bay Parks an identical authorization to use design-build contracting as outlined above for Midpen and the Open Space Authority.

This bill is sponsored by Midpen, the Open Space Authority, and East Bay Parks.

- 2) **Author's Statement.** According to the author, "The mission of a Park District is stewardship of natural resources and is a factor in every aspect of their actions. This has become increasingly critical given the need to address the growing effects of climate change. In order to fulfill their mission, Park Districts may take up any number of projects, including construction of infrastructure, expanding access to recreational facilities, protecting, restoring, and improving the district's parks and wildlife, and preserving natural resources. However, a challenge unique to Park District projects is that they are often located in remote areas with sensitive ecological systems and minimal access. These unique conditions make for unexpected hurdles not anticipated by most contractors who are accustomed to urban environments.

"SB 793 (Hill, 2017) was a local bill that authorized the Midpeninsula Regional Open Space District (Midpen) and Santa Clara Valley Open Space Authority (Open Space Authority) to utilize design-build contracting. Use of the design-build contracting model can allow Park Districts to select firms that are most qualified and equipped to work in these remote, rugged, and ecologically sensitive areas.

"AB 2783 eliminates the 2023 sunset on design-build contracting for Midpen and the Open Space Authority as well as authorizes the East Bay Regional Park District for the use of design-build contracting. This continued ability to utilize design-build on appropriate projects can save time, reduce costs, and ensure the most robust solutions are implemented to meet the mission of these three Park Districts."

- 3) **Midpen.** Created by voters in 1972, Midpen has acquired and protected over 63,000 acres of open space on the San Francisco peninsula. It is one of the largest regional open space districts in California. Its mission is to acquire and preserve a regional greenbelt of open space land in perpetuity, protect and restore the natural environment, and provide opportunities for ecologically sensitive public enjoyment and education.

- 4) **Open Space Authority.** The Open Space Authority was formed in 1993, serves over 1.4 million people in eastern and southern Santa Clara County, and has protected more than 22,000 acres.
- 5) **East Bay Parks.** East Bay Parks is a system of parklands in Alameda and Contra Costa counties. The system comprises 73 parks spanning across 125,000 acres. It contains 1,250 miles of trails and 55 miles of shoreline.
- 6) **Design-Build in California Law.** California's Legislature began granting design-build authority in the early 1990's, and has typically done so with specified parameters, such as the duration of the authority, the types of agencies allowed to use it, the types of projects for which it can be used, cost thresholds, and specified procedures that must be followed in preparing and awarding contracts. Over the years, this resulted in a number of statutes in a variety of code sections, which created confusion for public agencies and contractors alike.

In an effort to consolidate these statutes, SB 785 (Wolk), Chapter 931, Statutes of 2014, repealed existing law authorizing the Department of General Services (DGS), the Department of Corrections and Rehabilitation (CDCR), and local agencies to use the design-build procurement process, and enacted uniform provisions authorizing DGS, CDCR, and specified local agencies to utilize the design-build procurement process for specified public works projects (with some exceptions, notably design-build authority for CalTrans). SB 785 created one set of codes for DGS and CDCR, and a separate set for specified local agencies, but with similar parameters.

Since SB 785 was enacted, the Legislature has authorized numerous additional local agencies or types of local agencies to use SB 785 design-build authority for additional projects or types of projects.

- 7) **SB 793.** SB 793 (Hill), Chapter 627, Statutes of 2017, allowed (among other things) Midpen and the Open Space Authority, upon approval by their boards of directors, to use the design-build procurement process that existing law authorizes for local agencies to assign contracts for the construction of facilities or other buildings in those districts. SB 793 exempted projects built by Midpen and the Open Space Authority from the existing \$1 million minimum project cost limitation that applies to the existing authority of local agencies to use design-build, which meant these two districts could utilize design-build for any project regardless of its cost. SB 793 contained a sunset date of January 1, 2023.
- 8) **Related Legislation.** AB 1932 (Daly) eliminates the sunset date of January 1, 2023, from existing law authorizing counties to enter into construction manager at-risk contracts. AB 1932 is pending in the Senate.

AB 1845 (Calderon) authorizes specified water projects undertaken by the Metropolitan Water District of Southern California to use the design-build, progressive design-build, and construction manager/general contractor methods of project delivery. AB 1845 is pending in the Water, Parks and Wildlife Committee.

SB 991 (Newman) authorizes, until January 1, 2033, specified local agencies that provide for the production, storage, supply, treatment, or distribution of any water from any source, to

use the progressive design-build process for public works projects in excess of \$5 million. SB 991 is pending in the Senate.

SB 1354 (Jones) allows cities and counties to use design-build for contracts that are necessary to comply with Americans with Disabilities Act requirements. SB 1354 is pending in the Senate.

- 9) **Previous Legislation.** AB 851 (Caballero and Gloria), Chapter 821, Statutes of 2017, allowed the Santa Clara Valley Water District to use the design-build procurement method for specified types of projects.

AB 994 (Muratsuchi), Chapter 321, Statutes of 2017, allowed the Beach Cities Health District to use the design-build procurement method to assign contracts for the construction of facilities or other buildings in the district.

AB 1523 (Oberholte and Reyes), Chapter 154, Statutes of 2017, authorized the San Bernardino County Transportation Authority to use design-build for the construction of the Mt. Vernon Avenue Viaduct project.

SB 373 (Cannella), Chapter 391, Statutes of 2017, allowed the Stanislaus Regional Water Authority to use design-build for its Regional Surface Water Supply Project.

SB 793 (Hill), Chapter 627, Statutes of 2017, allowed the Peninsula Health Care District, the Midpeninsula Regional Open Space District, and the Santa Clara Valley Open-Space Authority to use the design-build procurement method to assign contracts for the construction of facilities or other buildings in those districts.

SB 957 (Hueso), Chapter 212, Statutes of 2016, allowed health care districts that own or operate a hospital or clinic to use the design-build procedure to construct a building or improvements directly related to the construction of a hospital or health facility building.

AB 1290 (Dahle), Chapter 34, Statutes of 2015, allowed the Mayers Memorial Hospital District to use the design-build procedure to construct a building or improvements directly related to the construction of a hospital or health facility building in the district.

SB 374 (Hueso), Chapter 715, Statutes of 2015, allowed San Diego Association of Governments (SANDAG) to use the design-build procurement process for specified development projects related to transit facilities developed or jointly developed by SANDAG.

AB 155 (Alejo), Chapter 865, Statutes of 2014, allowed the Monterey County Water Resources Agency to use design-build contracting to construct a pipeline or tunnel that will connect two reservoirs that the agency owns and operates.

SB 268 (Gaines), Chapter 18, Statutes of 2014, allowed the Last Frontier Health Care District to use the design-build process when contracting for the construction of a building and improvements directly related to a hospital or health facility building at the Modoc Medical Center.

SB 785 (Wolk), Chapter 931, Statutes of 2014, repealed existing law authorizing DGS, CDCR, and local agencies to use the design-build procurement process, and enacted uniform provisions authorizing DGS, CDCR, and specified local agencies to utilize the design-build procurement process for specified public works projects.

- 10) **Arguments in Support.** Midpen, co-sponsor of this bill, writes, “The 5-year pilot has afforded Midpen with the ability to develop the administrative infrastructure to handle design-build contracting and apply it to existing and planned projects. Currently, the largest benefit is the ability to select contractors that are best qualified to perform sensitive habitat restoration work.

“Design-build was successfully employed in the Mindego Ranch Ponds Enhancement Project which included the removal of sediment buildup and vegetation from within the ponds to provide open water habitat, recontouring of the ponds banks to provide basking and reproductive habitat and installing berm and overflow outlet reinforcements which help to reduce erosion and turbidity within the watershed. The project was critical to enhancing the habitat for the San Francisco Garter Snake, Red-Legged Frog, and Western Pond Turtle. Upcoming projects that could benefit from the design-build method include new visitor centers, trail and vehicle bridges, rehabilitation of historical resources and sensitive habitat restoration.

“AB 2789 will maintain and extend the ability for these districts to participate in design-build which would ensure the selection of firms that are well qualified and equipped to work in often remote and rugged site conditions. Additionally, the design-build method would also protect the public’s natural resources by ensuring that contractors who work on these projects are experienced and possess strong resource and conservation practices and understand and value the importance of nesting seasons, species protection and preserving water quality.”

- 11) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

East Bay Regional Park District [CO-SPONSOR]
 Midpeninsula Regional Open Space District [CO-SPONSOR]
 Santa Clara Valley Open Space Authority [CO-SPONSOR]
 Bay Area Ridge Trail Council
 California Special Districts Association
 County of San Mateo
 County of Santa Clara
 Green Foothills
 Santa Clara Valley Water District

Opposition

None on file

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