

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 36 (Gallagher) – As Introduced December 7, 2020

SUBJECT: Design-build contracting: Town of Paradise.

SUMMARY: Allows the use of design-build for a water conveyance pipeline from the Town of Paradise to the City of Chico, and for the provision of sewer treatment to the Town of Paradise. Specifically, **this bill:**

- 1) Allows, upon approval of its governing body, the Paradise Irrigation District (PID) to use the design-build contracting process allowed for local agencies generally to award a contract for a water conveyance pipeline from the Town of Paradise to the City of Chico.
- 2) Allows, upon approval of a majority of the Paradise Town Council, the Town of Paradise to use the design-build contracting process allowed for local agencies generally to provide for the provision of sewer treatment to the Town of Paradise, including for infrastructure connecting the Town of Paradise to an existing treatment facility.
- 3) 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 need to restore adequate public services to the Town of Paradise in the aftermath of the 2018 Camp Fire.
- 4) 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) Provides the following parameters for cities and counties that use design-build pursuant to 2), above:
 - a) Allows design-build for the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities;

- b) Allows cities and counties that operate wastewater facilities, solid waste management facilities, or water recycling facilities to use design-build for the construction of such facilities, both local and regional; and,
 - c) Prohibits cities and counties from using design-build for the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure [with the exception of b), above].
- 4) Limits, generally, the types of special districts that may use design-build pursuant to 2), above, to transit districts, and special districts that operate wastewater facilities, solid waste management facilities, water recycling facilities, or fire protection facilities.
- 5) Limits the types of projects that special districts can construct using design-build pursuant to 2), above, to the following:
- a) Transit capital projects that begin project solicitation on or after January 1, 2015, excluding state highway construction or local street and road projects (for transit districts); and,
 - b) Regional and local wastewater treatment facilities, regional and local solid waste facilities, regional and local water recycling facilities, or fire protection facilities (for special districts that operate those types of facilities).

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

COMMENTS:

- 1) **Bill Summary.** This bill allows PID to use design-build contracting for a water conveyance pipeline from the Town of Paradise to the City of Chico. It also allows the Town of Paradise to use design-build contracting for the provision of sewer treatment to the Town of Paradise, including for infrastructure connecting the Town of Paradise to an existing treatment facility.

This bill is sponsored by the City of Chico, PID, the State Building and Construction Trades Council, and the Town of Paradise.

- 2) **Author’s Statement.** According to the author, “The Camp Fire, which started in Butte County in November 2018, remains the most destructive and deadliest fire in state history. The fire displaced 50,000 people and destroyed almost 20,000 buildings. It will take years for impacted communities to rebuild, and critical public infrastructure projects must have tools that provide flexibility during this process.

“Alternative delivery methods, like design-build, can be more cost effective by creating efficiencies that are difficult to achieve with the traditional design-bid-build method. The Paradise sewer and water pipeline projects would benefit greatly from the additional flexibility provided by design-build project delivery. These are critical projects which help ensure that as the town rebuilds, it rebuilds better and more resilient to natural disasters than before.”

- 3) **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 nearly a dozen additional local agencies or types of local agencies to use SB 785 design-build authority for additional projects or types of projects.

- 4) **Limits on Design-Build for Cities and Counties.** Existing law generally limits the use of design-build by cities and counties to the following types of projects:
- a) The construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities; and,
 - b) Local and regional wastewater facilities, solid waste management facilities, or water recycling facilities (for cities and counties that operate such facilities).

Existing law expressly prohibits cities and counties from using design-build for the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure [with the exception of b), above].

- 5) **Limits on Design-Build for Special Districts and Other Specified Agencies.** Existing law also generally limits the use of design-build for special districts and a handful of other specified agencies by both type of district or agency and type of project. The agencies include: special districts that operate wastewater facilities, solid waste management facilities, water recycling facilities, or fire protection facilities; specified transit and transportation agencies; the San Diego Association of Governments (SANDAG); a few water agencies; and, healthcare districts.

For special districts that operate wastewater facilities, solid waste management facilities, water recycling facilities, or fire protection facilities, their use of design-build is limited to regional and local wastewater treatment facilities; regional and local solid waste facilities; regional and local water recycling facilities; and, fire protection facilities.

- 6) **PID Water Pipeline.** Formed in 1916, PID is a special district that provides domestic water to municipal, residential, and commercial customers in the Town of Paradise, and additional

surrounding areas immediately adjacent to the Town. Prior to the Camp Fire, PID served in excess of 10,000 customers and derived its funding almost entirely from fees for water service. PID lost nearly 90% of its customer base after the fire and is now serving approximately 3,000 customers. The loss of revenue totaled about \$7 million per year. PID's reservoirs and water treatment plant, however, were relatively undamaged by the fire.

PID received approval in 2019 for a state budget allocation of nearly \$15 million to help it stay solvent. The first year's disbursement was contingent on PID agreeing to participate in a feasibility study to examine the possibility of consolidating PID's operations with one or more neighboring water districts. The second year's disbursement was contingent upon PID's continued participation in the study, which was to be arranged by the State Water Resources Control Board and funded by the state. Sacramento State's Office of Water Programs (OWP) is conducting the study and expects to have a draft report by November of this year.

When PID accepted the state funds, it was preparing a feasibility study in partnership with Butte County and California Water Service (Cal Water) analyzing an intertie project that would allow PID to deliver treated water to the County for use in Cal Water's Chico service area. PID is still considering a water intertie, which is just one option that will be examined during OWP's study. Other options include PID merging with the Town of Paradise, reorganizing with another public or private water purveyor, expanding PID's customer base, temporary raw water transfers, new businesses (bottled water, hydro power, fisheries help), rate increases, and partnership with the Town of Paradise to operate the Town's Sewer Project.

- 7) **Town of Paradise Sewer Project.** At the time of the Camp Fire, the Town of Paradise was the largest unsewered community in California. The Town has sought a formal wastewater treatment solution since it was incorporated in 1979. Most recently, a feasibility study was accepted by the Paradise Town Council in 2017 and staff was directed to pursue funding for preliminary engineering and environmental review of a "Regional City of Chico" sewer extension option and a "Local Treatment Plant" option.

After the Camp Fire in 2019, the Paradise Town Council decided to release a request for proposal for preliminary engineering and environmental services of the Paradise Sewer Project. The Town contracted with HDR Engineering in early 2020 for the first two phases of the Project:

- a) Phase 1 – Final selection of a wastewater alternative, and;
- b) Phase 2 – Preparation of an Environmental Impact Report (EIR) covering the selected alternative. Coordination with LAFCO is identified as a Phase 2 implementation issue.

In December 2020, the Paradise Town Council considered the feasibility of both the regional and local options and selected the regional alternative because it requires fewer permits, represents the least environmental impacts and lowest community impacts, and is the least complicated to operate. Based on these considerations, Paradise Town Council directed staff to advance the regional alternative forward into the second phase of HDR's work; preparing a complete EIR for the sewer project, including a direct connection to the City of Chico's Water Pollution Control Plant. The proposed sewer service area would serve 1,469 parcels

through the Skyway, Clark Road, and Pearson Road corridors, including most businesses in the Town.

The Town of Paradise approached the City of Chico to partner in the exploration of the feasibility of such a regional project. The Town and City Councils have agreed to form a Sewer Regionalization Project Advisory Committee (Committee) as a mechanism for exploring this proposal. The Central Valley Water Board will facilitate the activities of the Committee. Membership on the Committee is limited to the Mayors and Vice Mayors from the Town and City because they serve as the two signatory parties to the Cooperative Work Agreement (CWA) and eventual signatories to a future inter-municipal agreement (IMA), if applicable. The desired role of the Committee will be to:

- a) Monitor progress of the Paradise Sewer Project, including the project's EIR (which has a projected completion date of August 2022) and efforts conducted under the Town and City's CWA;
- b) Develop Principles of Agreement for the IMA between the Town and City, and make a recommendation on those Principles to the two Councils, as applicable; and,
- c) Guide public participation in the EIR process, which will happen separately but in parallel with the Committee's work.

It is anticipated the Committee will meet for the duration of the EIR process and may continue to meet if Committee members feel it is valuable.

- 8) **LAFCO and Extension of Service.** The Cortese-Knox-Hertzberg Act of 2000 controls the manner in which local officials change the boundaries of cities and special districts, and designates a LAFCO in each county to oversee boundary changes. Besides the more common annexations to cities and special districts, LAFCOs also control district formations, consolidations, and dissolutions, as well as city incorporations, consolidations, and disincorporations. The statutory mission of LAFCOs is to discourage urban sprawl and encourage the orderly formation and development of local agencies.

The Cortese-Knox-Hertzberg Act requires cities and special districts to obtain a LAFCO's written approval before they can serve territory outside their boundaries, pursuant to AB 1335 (Gotch), Chapter 1307, Statutes of 1993. This requirement was established because of a concern that some cities and districts might circumvent LAFCO review by signing contracts to provide services outside their boundaries without annexing the territory. AB 1335, however, recognized the need to accommodate unexpected local conditions and purposely established several exemptions from the approval requirements. For example, LAFCO approval is not required for contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the exiting provider.

Both the water pipeline and the sewer project, to the extent they involve extensions of service, would have to undergo Butte County LAFCO's review and approval in order to proceed.

- 9) **Previous Legislation.** AB 1957 (Gallagher) of 2020 would have allowed PID to use the design-build contracting process to award a contract for a water conveyance pipeline from the Town of Paradise to the City of Chico. AB 1957 was held in this Committee.
- 10) **Arguments in Support.** The Town of Paradise, co-sponsor of this measure, writes, “AB 36 would authorize design-build for a water conveyance pipeline from Paradise to Chico. The Paradise Irrigation District (PID) is a special district which provides drinking water service to the town of Paradise. The district was severely impacted by the 2018 Camp Fire, losing most of its ratepayer base. While the State has provided some backfill funding, this funding is temporary and the district must diversify its revenue streams to remain viable. PID’s reservoirs and treatment plant were largely undamaged by the Camp Fire, and expanding distribution pipelines would allow treated water to be delivered to other areas within Butte County that are currently groundwater dependent.

“AB 36 would also authorize the Town of Paradise to utilize design-build for the construction of a sewer treatment works system. Prior to the fire, the Town was the largest unsewered city in California, contributing to the continual degradation of groundwater quality and exceedance of soil capacities to absorb and treat high volumes of wastewater. The sewer project, which would serve core Paradise areas and connect to the City of Chico’s treatment plant is instrumental to modernizing Paradise’s infrastructure. Having a sewer rather than individual septic tanks will increase fire resiliency, improve environmental conditions, and aid in the Town’s economic recovery.

“As the community of Paradise recovers from the devastating impacts of the Camp Fire, it is essential that critical infrastructure and services (be) restored and modernized as soon as possible. AB 36 will aid this process by helping ensure high quality work, cost certainty, and greater flexibility in contracting.”

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

REGISTERED SUPPORT / OPPOSITION:

Support

City of Chico [CO-SPONSOR]
Paradise Irrigation District [CO-SPONSOR]
State Building and Construction Trades Council [CO-SPONSOR]
Town of Paradise [CO-SPONSOR]
California Teamsters Public Affairs Council
County of Butte
Design Build Institute of America Western Pacific Chapter
District Council 16 Painters and Allied Trades
International Brotherhood of Boilermakers, Western States Section
International Union of Operating Engineers, Cal-Nevada Conference

Opposition

None on file

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