

Date of Hearing: June 8, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1354 (Jones) – As Introduced February 18, 2022

SENATE VOTE: 38-0

SUBJECT: Design-build contracting: cities, counties, and cities and counties: compliance with the federal Americans with Disabilities Act of 1990.

SUMMARY: Allows counties and cities to use design-build contracting for projects that are necessary to comply with the Americans with Disabilities Act. Specifically, **this bill:**

- 1) Allows, upon approval of its governing body, a city, county, or city and county to use the design-build contracting process described in existing law authorizing the use of design-build for local agencies to award contracts for construction of projects that are necessary in order to comply with the requirements of the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.).
- 2) 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 bill creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, 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) Allow 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.
 - 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, and limited transportation projects, as specified].

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

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill allows counties and cities to use the design-build process, as outlined in existing law for local agencies' use of design-build generally, for projects that are necessary to comply with the Americans with Disabilities Act.

According to the author, "California needs a more efficient pathway to provide infrastructure that will make government buildings more accessible to all members of the public. Creating accessibility to more structures is a practical use of taxpayer dollars, and using the design-build process will help those taxpayer dollars go farther. The current process for building ADA compliant infrastructure is difficult for contractors, cities, and counties because they are limited to traditional government procurement procedures that can be tedious and cause unnecessary delays in project completion times. The design-build process is a more cost effective and faster way for projects to be completed. Existing law exclusively allows cities and counties to use the design-build process for a limited list of specific construction projects."

- 2) **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.

- 3) **Design-Build for Local Agencies.** The LAPC Act generally requires local officials to invite bids for construction projects and then award contracts to the lowest responsible bidder. This design-bid-build method is the traditional approach to public works construction. However, California law also allows local agencies to use the design-build method, in which a single contract covers the design and construction of a project with a single company or consortium that acts as both the project designer and builder.

Existing law generally limits the use of design-build by counties and cities 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.
- 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 some limited exceptions).

- 4) **Related Legislation.** AB 1845 (Calderon) authorizes the Metropolitan Water District of Southern California to use design-build, progressive design-build and construction manager/general contractor project delivery methods for a regional water recycling project or a drought response project. AB 1845 is pending in the Senate Governance and Finance Committee.

AB 2789 (Mullin) repeals the January 1, 2023, sunset date authorizing the Midpeninsula Regional Open Space District and the Santa Clara Valley Open-Space Authority to use the design-build process for the construction of facilities or other buildings, and authorizes the East Bay Regional Park District to use the design-build process for the construction of facilities or other buildings. AB 2789 is pending in Senate Governance and Finance Committee.

- 5) **Previous Legislation.** AB 2932 (O'Donnell), Chapter 54, Statutes of 2020, allowed the City of Long Beach to use the design-build contracting process to award contracts for curb ramps that are compliant with the Americans with Disabilities Act.

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 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.

- 6) **Arguments in Support.** The Association of Regional Center Agencies, in support, writes, “Improving accessibility is critical to creating inclusive cities. It is the proper role of government to ensure that all citizens have equal physical access to public spaces. Design-build processes, compared to design-bid-build, provide increased efficiency in contracting without sacrificing oversight or fiscal responsibility. Such options are already available in various public contracting processes. By extending this option to local governments in their efforts to comply with the Americans with Disabilities Act, this bill will help to hasten the day when California’s public spaces are accessible to all.”
- 7) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Regional Center Agencies
California Builders Alliance
California Special Districts Association (if amended)
Sacramento Regional Builders Exchange

Opposition

None on file

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