Date of Hearing: July 1, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
SB 562 (Lara) – As Amended June 16, 2015

SENATE VOTE: 36-0

SUBJECT: Infrastructure financing: City of Long Beach Civic Center.

SUMMARY: Allows the City of Long Beach to use a public-private partnership procurement (P3) method to develop a new civic center. Specifically, **this bill**:

1) Allows the City of Long Beach (City) to contract and procure the project (the revitalization and redevelopment of the Long Beach Civic Center), pursuant to the following:

   a) Requires the City to evaluate the project proposals it solicits and receives and choose the private entity or entities whose proposal is, or proposals are, judged as providing the best value in meeting the best interests of the City;

   b) Allows the City to enter into a P3 through a concession agreement, design-build agreement, design-build-finance agreement, project agreement, lease-leaseback, or other appropriate agreements combining one or more major elements of the foregoing agreements, with one or more private entities for delivery of the project;

   c) States that the City retains the rights to terminate the project prior to project award should the City determine that the project is not in the best interests of the City or should the negotiations with the private entity or entities otherwise fail;

   d) Requires the contract award for the project to be made to the private entity or entities whose proposal or proposals are determined by the City, in writing, to be the most advantageous by providing the best value in meeting the best interests of the City;

   e) Provides that the negotiation process shall specifically prohibit practices that may result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit city employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract pursuant to the bill's provisions that would subject those employees to the general prohibition for conflict of interest contained in the California Political Reform Act; and,

   f) Requires the documents related to the project to be subject to disclosure under the California Public Records Act (CPRA), except those exempted from disclosure under the CPRA.

2) Provides that the project is subject to compliance with the California Environmental Quality Act (CEQA), and that neither the act of selecting a private entity, nor the execution of an agreement with the private entity shall require prior compliance with CEQA. Provides that appropriate compliance with CEQA shall thereafter occur before project construction commences.

3) Requires the public portion of the project, at all times, to be owned by the City, unless the City, in its discretion, elects to provide for ownership of the project by the private entity through a separate lease agreement. Provides that the agreement shall provide for the lease of all or portion of the project to, or ownership by, the private entity or entities, for a term up to 50 years. Provides that the agreement shall provide for complete reversion of the public portion of the project to the City at the expiration of the lease or transfer term.

4) Prohibits the private portion of the project from being financed or developed by the public-private partnership or otherwise using public or tax-exempt financing.

5) Requires the plans and specifications for the project to comply with all applicable governmental design standards for that particular infrastructure project. Requires the private entity studying, planning, designing, constructing, developing, financing, operating, maintaining, or any combination thereof, the project, to utilize private sector firms for studying, planning, designing, constructing, developing, financing, operating, maintaining, or any combination thereof, the project.

6) Provides that a facility, subject to the bill's provisions and leased to a private entity during the term of the lease, shall be deemed to be public property for the purposes of identification, maintenance, enforcement of laws, and for purposes of claims and actions against public entities and public employees (the Government Claims Act).

7) Requires all public works constructed, pursuant to the bill's provisions, to comply with statute regarding public works related to public works and public agencies contained in the Labor Code.

8) Provides that the bill's provisions shall not be construed to authorize the City use tidelands trust revenues or any other applicable granting state for general municipal purposes or any other purpose unconnected with the public trust.

9) States that the provisions of the bill are severable, and provides, if any provision of the bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

10) Defines the following terms:

    a) "Best interests of the city" to mean a procurement process that is determined by the city to provide the best value and an expedited delivery schedule while maintaining a high level of quality of workmanship and materials.

    b) "Best value" to mean a value determined by objective criteria that shall include a combination of price, financing costs, features, functions, performance, life-cycle maintenance costs and abatement offsets, and development experience.

    c) "Business entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, engineering, financial, operations, management, facilities maintenance, and other services for development of a new Long Beach Civic Center.

d) "City" to mean the City of Long Beach and its departments, including the City of Long Beach Harbor Department.

e) "Long Beach Civic Center" to mean the area bounded by Broadway, Pacific Avenue, Ocean Boulevard, and Magnolia Avenue, containing approximately 14.98 acres, and the parcel on the south side of 3rd Street between Pacific Avenue and Cedar Avenue, containing approximately 0.89 acres.

f) "Private entity" means an individual, business entity, or combination of individuals and business entities.

g) "Private portion of the project" to mean those parcels of land within the Long Beach Civic Center to be conveyed to a private entity and developed as residential, retail, hospitality, institutional, or industrial facilities.

h) "Project" to mean the revitalization and redevelopment of the Long Beach Civic Center with a new city hall, port headquarters, public library, and public park, public library, or other governmental facilities.

i) "Public portion of the project" to mean those parcels of land within the Long Beach Civic Center to be developed as a city hall, port headquarters, public park, public library, or other government facilities.

j) "Public-private partnership" to mean a cooperative arrangement between the public and private sectors, built on the expertise of each partner, that best meets the city's needs through the appropriate allocation of resources, risks, and rewards for the purposes of, and, including, but not limited to, studying, planning, designing, constructing, developing, financing, operating, maintaining, or any combination thereof, the project.

11) Makes a number of findings and declarations regarding the necessity and benefits of using a public-private partnership to develop a new Long Beach Civic Center.

12) Finds and declares that a special law is necessary and that a general law cannot be made application within the meaning of Section 16 of Article IV of the California Constitution because of the unique and special circumstances surrounding the existing Long Beach Civic Center, and the need to immediately, quickly, and efficiently develop the project, and to resolve property issues potentially delaying the project.

EXISTING LAW:

1) Authorizes, pursuant to the California Infrastructure Finance Act, local government agencies to use P3s for specified types of infrastructure projects, and requires P3 agreements to contain a number of elements, including security for the construction of the facility to ensure its completion.

2) Requires, for P3s, the governmental agency soliciting proposals and entering into agreements with private entities for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, by private entities for fee-producing infrastructure projects to ensure that the contractor is selected, pursuant to a competitive negotiation process.

3) Defines "fee-producing infrastructure project" or "fee-producing infrastructure facility" to mean the operation of the infrastructure project or facility will be paid for by the persons or entities benefited by or utilizing the project or facility.

4) Allows projects to be proposed by the private entity and selected by the governmental agency at the discretion of the governmental agency, and allows a project to be proposed and selected individually or as part of a related or larger project.

5) Requires the competitive negotiation process to utilize, as the primary selection criteria, the demonstrated competence and qualifications for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, of the facility. Requires the selection criteria to also ensure that the facility be operated at fair and reasonable prices to the user of the infrastructure facility services.

6) Prohibits the competitive negotiation process from requiring competitive bidding, and prohibits the competitive negotiation process from including practices that may result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration. Prohibits governmental agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section that would subject those employees to the prohibition for conflict of interest contained in the California Political Reform Act.

7) Provides, other than the criteria mentioned above and applicable provisions related to providing security for the construction and completion of the facility, that the governmental agency soliciting proposals is not subject to any other provisions of the Public Contract Code, as specified, that relates to public procurements.

8) Provides that infrastructure constructed by a private entity shall, at all times, be owned by a governmental agency, unless the governmental agency, in its discretion, elects to provide for ownership of the facility by the private entity during the term of the agreement. Provides that the agreement shall provide for the lease of those facilities to, or ownership by, the private entity for up to 35 years, and in consideration therefor, the agreement shall provide for complete reversion of the privately constructed facility to the governmental agency at the expiration of the lease at no charge to the governmental agency.

9) Provides that the agreement between the governmental agency and the private entity shall include compliance with CEQA. Provides that neither the act of selecting a proposed project or a private entity, nor the execution of an agreement with a private entity, shall require prior compliance with CEQA. Requires appropriate compliance with CEQA to occur before project development commences.

10) Requires performance bonds as security to ensure completion of the construction of the facility and contractual provisions that are necessary to protect the revenue streams of the project.

11) Requires adequate financial resources of the private entity to design, build, and operate the facility, after the date of the agreement.

FISCAL EFFECT: None

COMMENTS:

1) **Background on P3s and Lease-Leaseback Financing .** P3s place a wide range of project responsibilities and risks onto private entities, some of which were traditionally borne by public agencies alone. A typical P3 agreement calls on the private entity to design and build a facility, and also to finance, operate and maintain it, and in exchange, the private entity may be entitled to tolls or user fees that the facility generates, or may receive direct payments from the government.

   California law authorizes the use of P3s for Caltrans, the Judicial Branch, the High-Speed Rail Authority, and local government agencies. AB 2660 (Aguiar), Chapter 1040, Statutes of 1996, known as the California Infrastructure Act, authorizes local governments to utilize private sector investment capital for carrying out "fee-producing infrastructure facilities." AB 2660 applies to cities, counties, school districts, community college districts, public districts, county boards of education, joint powers authorities, transportation authorities, and any public or municipal corporations.

   Long-term lease-leaseback financing is one method that local governments use as an alternative to issuing general obligation bonds to pay for public infrastructure. Under this approach, a local government leases public property to a third-party that undertakes improvements to the property and leases the improved property back to the local government. The rights to receive the lease payments from the local government are used to secure debt that was issued to pay for the costs of acquiring and improving the public property.

2) **P3 Requirements for Local Agencies.** Under AB 2660, a local agency can contract with private entities to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair or operate fee-producing infrastructure facilities. In order to use the P3 method, existing law requires the governmental agency soliciting proposals to use a "competitive negotiation process", which does not require competitive bidding. As part of the agreement, the local agency can also grant private parties with ownership or lease rights to such facilities for up to 35 years. Existing law for P3s requires compliance with CEQA, but provides that "neither the act of selecting a proposed project or a private entity, nor the execution of an agreement with a private entity, shall require prior compliance with CEQA" and requires "appropriate compliance with CEQA to occur before project development commences."

   Existing law for P3s requires the plans and specifications for the project to comply with all applicable governmental design standards for that particular infrastructure project, and requires the private entity studying, planning, designing, constructing, developing, financing, operating, maintaining, or any combination thereof, the project, to utilize private sector firms for studying, planning, designing, constructing, developing, financing, operating, maintaining, or any combination thereof, the project. A facility built using the P3 method and leased to a private entity during the term of the lease, according to existing law, shall be deemed to be public property for the purposes of identification, maintenance, enforcement of laws, and for purposes of claims and actions against public entities and public employees (the Government Claims Act). Existing law requires all public works constructed to comply with statute regarding public works and public agencies contained in the Labor Code.

These P3 provisions, with one exception, have been essentially unchanged since their enactment.

3) **Author's Statement.** According to the author, "The Long Beach City Hall and Main Library have been found to be seismically deficient. Under the hybrid public-private partnership model authorized by this bill, the City has the opportunity to use existing budgeted dollars that are currently spent on maintenance and offsite leases to fund the construction of a new Civic Center, potentially at no additional cost to the taxpayer over what is currently paid, adjusted for inflation. This financing mechanism will allow the City to address public health and safety concerns in the earliest possible timeframe, and without significantly impacting the City's General Fund or requiring a tax increase.

   "The public portions of the project include a new seismically safe Long Beach City Hall, Port of Long Beach Headquarters and Main Library. The private portions of the project include transit-oriented mixed-used developments, high-rise condominiums and retail. All new developments will be built on 15.87 acres of land in downtown Long Beach under a Project Labor Agreement and in accordance with the City's award winning Downtown Plan."

4) **Bill Summary.** This bill allows the City of Long Beach to use a hybrid public-private partnership procurement method to develop a new civic center, and specifies the requirements of the P3, by adding a new section of law right after the existing P3 statutes. Many of the provisions in the bill are modeled after P3 law for local agencies, with some exceptions:

   a) **Competitive Negotiation Process.** Current P3 law requires a "competitive negotiation process" that utilizes, "as the primary selection criteria, the demonstrated competence and qualifications for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, of the facility." The process does not require competitive bidding.

      This bill, however, allows the City of Long Beach to evaluate the project proposals it solicits and receives and to choose the private entity or entities whose proposal is, or proposals are, judged as providing the "best value" in meeting the "best interests" of the City. The bill defines "best interests" to mean a procurement process that is determined by the City to provide the best value and an expedited delivery schedule while maintaining a high level of quality workmanship and materials, and defines "best value" to mean a value determined by objective criteria that shall include a combination of price, financing costs, features, functions, performance, life-cycle maintenance costs and abatement offsets, and development experience.

   b) **Term.** Existing law allows the P3 agreement to provide for the lease of facilities to, or ownership by, the private entity for up to 35 years. This bill, however, allows a lease agreement to provide for the lease of all or a portion of the project to, or ownership by, the private entity or entities, for a term up to 50 years and requires the agreement to provide for complete reversion of the public portion of the project to the City at the expiration of the lease or transfer term.

   c) **Contents of the Agreement.** Current P3 law specifies that the contents of the agreement between the governmental agency and the private entity must include provisions to ensure a variety of issues – compliance with CEQA, that the private entity has adequate financial resources to design, build, and operate the facility, authority for the governmental agency to impose user fees (for 'fee-producing infrastructure'), and preparation of an annual audited report accounting for the income received and expenses to operate the facility, among other requirements. This bill contains similar CEQA requirements for the project, but does not require other items to be in the agreement between the City and the private entity. According to the sponsor, this is because a city hall (like the one being proposed as part of the project) is not "fee-producing" and therefore those provisions in P3 law are not applicable to this project.

This bill is sponsored by the City of Long Beach.

5) **Prior P3 Legislation.** Recent legislation to alter the P3 statutes for local agencies include:

   a) AB 1261 (Caballero, 2007) would have made a number of changes to local government P3 statutes, such as: extending the allowable lease period from 35 years to 50 years; altering the criteria local governments must use to select a contractor; and, allowing sanitary sewer systems, power transmission facilities, and power distribution facilities to be constructed under P3 agreements. AB 1261 passed this Committee on a 7-0 vote on April 18, 2007, but subsequently died on the Senate Floor.

   b) AB 878 (Caballero, 2009) was nearly identical to AB 1261. AB 878 was referred to this Committee, but was never heard.

   c) AB 164 (Wieckowski), Chapter 94, Statutes of 2013, requires the use of performance bonds and payment bonds in local government infrastructure projects that are financed through public-private partnerships.

6) **Arguments in Support.** Supporters argue that this bill will provide greater project stability for the City's groundbreaking public-private development and will create much needed jobs, revitalize downtown Long Beach and result in seismically safe government buildings that will be used to serve public needs.

7) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Long Beach [SPONSOR]
Downtown Long Beach Associates
Port of Long Beach

Opposition

None on file

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