



Memorandum

TO: Legislation Committee

DATE: May 5, 2017

FR: Deputy Executive Director, Policy

W. I. 1131

RE: SB 768 (Allen/Wiener): Renewal of Public-Private Partnership (P3) Authority

Background

Senate Bill 768 (Allen/Wiener) would extend indefinitely the public-private partnership (P3) statute pertaining to transportation that expired on January 1, 2017. California's first experience with P3s was authorized in 1989 under AB 680 (Baker), which authorized Caltrans to enter into up to four projects. The state built two projects under this authorization. The first project was ten miles of tolled express lanes in the median of the existing State Route (SR) 91 in Orange County and the subsequent project was SR 125 in San Diego County to connect the area near the Otay Mesa border crossing with the state highway system. In 2009, the Legislature enacted SBX2 4 (Cogdill), expanding P3 authority to allow the state and regional agencies to enter into an unlimited number of P3 agreements for a range of highway, road and transit projects until December 31, 2017. Under this statute:

- The California Transportation Commission (CTC) was charged with responsibility for reviewing projects proposed to enter into such an agreement and verifying that they are consistent with certain objectives, namely to improve mobility, improve the operations or safety of the affected corridor, or provide quantifiable air quality benefits.
- For projects on the state highway system, the law required Caltrans to be the responsible agency for performance of project development work, including the development of performance specifications, preliminary engineering, pre-bid services, environmental documents, and construction inspection services, but Caltrans could choose to do the work in-house or using contractors.

SB 768 would make no changes to these or other provisions in the current P3 statute, other than removing a sunset date.

Recommendation: Support

Discussion

MTC has long supported increased flexibility for transportation agencies to make use of a variety of financing and contracting methods for the delivery of transportation improvements, including supporting an identical bill to SB 768 – AB 1265 (Perea, 2015) which died in the Assembly Appropriations Committee. While only one project took advantage of the P3 statute that SB 768 would renew – the Presidio Parkway Project – staff believes the state should retain the option for Caltrans or regional agencies to enter into such agreements.

Under the Presidio Parkway P3 project, a private partner is required to complete the second phase of the design and reconstruction of the southern approach to the Golden Gate Bridge and to operate and maintain the roadway for 30 years. In exchange, the state will make payments estimated to total roughly \$1.1 billion to the private partner over the life of the contract. The project was delayed by a lawsuit brought by the Caltrans engineering union, Professional Engineers in California Government (PECG) related to whether the Presidio Parkway Project was an authorized P3 project and whether Caltrans employees were to be responsible to carry out various project delivery functions. The courts ruled in favor of the project. Because of this court finding, PECG is opposed to SB 768 unless it specifies that Caltrans must perform construction inspection services themselves.

While California has relatively few P3 experiences under its belt, staff believes P3s remain an important financing and project delivery option that ought to be restored. The Legislative Analyst's Office noted in a 2012 report, "Maximizing State Benefits From Public-Private Partnerships," that P3s offer a number of benefits, such as the ability to transfer risks associated with a project from a government entity to a private partner, free up public funds for other purposes, provide a higher level of maintenance, result in more innovative design and construction techniques and provide greater price and schedule certainty. There can also be limitations that must be taken into account on a project-by-project basis, such as limiting government's flexibility, increased financing costs, fewer bidders and litigation. On balance, however, staff supports this effort to renew P3 authority and recommends a support position on SB 768.

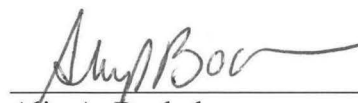
Known Positions

Support

Associated General Contractors (AGC), California and San Diego chapters
California Conference of Carpenters
California State Council of Laborers
Los Angeles County Metropolitan Transportation Authority
State Building and Construction Trades Council of California

Oppose

American Federation of State, County, Municipal Employees (AFSCME), AFL-CIO
Professional Engineers in California Government (PECG)


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