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CONSENT

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Bill No: AB 400  
Author: Blanca Rubio (D)  
Amended: 6/13/23 in Senate  
Vote: 21

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SENATE GOVERNANCE & FIN. COMMITTEE: 8-0, 6/21/23  
AYES: Caballero, Seyarto, Blakespear, Dahle, Durazo, Glazer, Skinner, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 74-0, 5/18/23 (Consent) - See last page for vote

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**SUBJECT:** Local agency design-build projects: authorization

**SOURCE:** California State Association of Counties

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**DIGEST:** This bill extends the sunset date for specified local agencies to use design-build, from January 1, 2025, to January 1, 2031.

**ANALYSIS:**

Existing law:

- 1) Requires, pursuant to the Local Agency Public Construction 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, transit and transportation agencies, including joint powers authorities (JPAs) formed to provide transit service, and specified additional local 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:

- 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; 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.
- 4) Provides that transit districts and special districts that operate wastewater facilities, solid waste management facilities, water recycling facilities, or fire protection facilities may also use design-build for specified projects.
- 5) Requires design-build projects to use skilled labor, the issuance of performance bonds, insurance coverage, and identification of subcontractors that will complete at least one-half of 1% of the value of a design-build contract.

This bill:

- 1) Extends the sunset date for specified local agencies to use design-build, from January 1, 2025, to January 1, 2031.
- 2) Allows any JPA to use design-build, not just those formed to provide transit service.

## **Background**

Local agencies typically use the traditional design-bid-build method for constructing public works. This approach splits construction projects into two distinct phases: design and construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers. Once project designs are complete, local agencies invite bids from the construction community and award the contract to the lowest responsible bidder.

Over the last couple of decades, legislators have gradually expanded local agencies' authority to procure construction projects using various alternatives to the design-bid-build project delivery method.

State law allows state and local officials, until January 1, 2025, to use the design-build method for contracts in excess of \$1 million to procure both design and construction services from a single company before developing complete plans and specifications. Under design-build, the public agency contracts with a single entity—which can be a single firm, a consortium, or a joint venture—to design and construct a project. Before inviting bids, the owner prepares documents that describe the basic concept of the project, as opposed to a complete set of drawings and specifications of the final product. In the bidding phase, the owner typically evaluates bids on a best-value basis, incorporating technical factors, such as qualifications and design quality, in addition to price. The Department of General Services, the California Department of Corrections and Rehabilitation, cities, counties, transit districts, including joint powers authorities (JPAs) formed to provide transit service, special districts operating wastewater, water recycling, or solid waste management facilities, and certain health care districts may use design-build.

Originally, the authorizations for state agencies and local governments to use design-build were dispersed throughout state law in separate code sections. In 2014, the Legislature consolidated these provisions into consistent, generally-applicable statutes (SB 785, Wolk, Chapter 931, Statutes of 2014).

## Comments

- 1) *Purpose of the bill.* According to the author, “The Design Build method streamlines public project delivery by allowing local governments to enter into a single contract with a design and construction team that is responsible for designing and building the project. The Design Build method allows counties and local governments to complete and deliver complex public works projects more efficiently and cost effectively versus the more traditional process. Extending the existing design-build authority will provide more certainty for counties and local governments to plan, fund and complete pending and future projects.”
- 2) *Premature?* Local agencies’ design-build authority sunsets on January 1, 2025. Even though local agencies still have over a year to use design-build authority, AB 400 extends the sunset until 2031. Supporters argue extending the sunset now is necessary to ensure the projects underway or planned to begin prior to the sunset have the legal certainty to finish using design-build. On the other hand, the time remaining under the existing sunset could provide an opportunity to further evaluate whether existing design-build statutes function effectively.

The Legislature may wish to consider whether extending the design-build sunset is premature.

**FISCAL EFFECT:** Appropriation: No   Fiscal Com.: Yes   Local: Yes

**SUPPORT:** (Verified 7/4/23)

California State Association of Counties (source)  
American Council of Engineering Companies of California  
Association of California Cities – Orange County  
California Builders Alliance  
California Special Districts Association  
City of San Marcos  
City of Whittier  
County of Contra Costa  
County of Fresno  
County of Los Angeles  
County of Mariposa  
County of Monterey  
County of Orange  
County of Placer  
County of Sacramento  
County of San Bernardino  
County of San Diego  
County of San Luis Obispo  
County of San Mateo  
County of Santa Barbara  
County of Santa Clara  
County of Santa Cruz  
County of Solano  
Design Build Institute of America Western Pacific Chapter  
League of California Cities  
Los Angeles County Sanitation Districts  
Metropolitan Water District of Southern California  
Midpeninsula Regional Open Space District  
Rural County Representatives of California  
Sacramento Regional Builders Exchange  
Santa Clara Valley Water District  
Sierra County Department of Public Works and Transportation  
Streets for All  
Urban Counties of California

Water Replenishment District of Southern California

**OPPOSITION:** (Verified 7/4/23)

None received

**ASSEMBLY FLOOR:** 74-0, 5/18/23

**AYES:** Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Chen, Connolly, Megan Dahle, Davies, Dixon, Essayli, Flora, Mike Fong, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lackey, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Wallis, Ward, Weber, Wicks, Wood, Zbur, Rendon

**NO VOTE RECORDED:** Cervantes, Vince Fong, Friedman, Villapudua, Waldron, Wilson

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7/5/23 14:55:47

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