

AMENDED IN SENATE AUGUST 30, 2011
AMENDED IN ASSEMBLY MAY 27, 2011
AMENDED IN ASSEMBLY FEBRUARY 28, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 436

Introduced by Assembly Member Solorio
(Coauthor: Senator Padilla)

February 14, 2011

~~An act to add Section 1720.5 to the Labor Code, relating to public works.~~ *An act to amend Sections 17250.30 and 81704 of the Education Code, to amend Section 6531 of the Government Code, to amend Section 1771.7 of, to repeal Sections 1771.55, 1771.75, 1771.8, 1771.85, and 1771.9 of, and to repeal and add Sections 1771.3 and 1771.5 of, the Labor Code, and to amend Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3 of the Public Contract Code, relating to public works, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 436, as amended, Solorio. Public works: ~~prevailing wages:~~ *labor compliance.*

Existing law authorizes the awarding body for a public works project to not require the payment of the general prevailing rate of per diem wages on public works projects of specified sizes and types of work, if the awarding body elects to initiate and enforce a labor compliance program containing specified requirements for every public works project under the authority of the awarding body or the awarding body elects to meet certain requirements with regard to any public works project under its authority, including payment of a fee to the Department

of Industrial Relations for the enforcement of prevailing wage obligations, as specified, which may be waived under specified circumstances, determined by the department and deposited in the State Public Works Enforcement Fund.

Existing law also requires the Director of Industrial Relations, with the approval of the Director of Finance, to assess a fee on any awarding body using funds derived from any bonds issued by the state to fund public works projects, as specified, which are deposited in the State Public Works Enforcement Fund, a continuously appropriated fund. Existing law also requires an awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004, or the body awarding any contract for a public works project financed in any part with funds made available by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 or the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, to pay a fee to the department sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project and labor compliance enforcement, as specified, to be deposited in the State Public Works Enforcement Fund. Existing law authorizes the department to waive the fee where specified criteria are met.

Existing law gives specified authority for certain school district governing boards, governing boards of community college districts and community college facility construction projects, cities, counties, qualified entities that operate a wastewater facility, solid waste management facility, or water recycling facility, transit operators, and unified school districts to enter into design-build contracts for specified projects if certain requirements are met, including the establishment and enforcement of a labor compliance program or the contracting with a 3rd party to operate a labor compliance program. Existing law gives specified authority for the San Diego Model School Development Agency to award construction contracts, as specified, and requires it to establish and enforce a labor compliance program or to contract with a 3rd party to operate a labor compliance program.

Existing law requires entities contracting under the above provisions to pay a fee to the department, established by the department as specified, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project and labor compliance. Existing law requires all fees collected

pursuant to these provisions to be deposited in the State Public Works Enforcement Fund and to be used only for enforcement of prevailing wage requirements on those projects and authorizes the department to waive the fee if specified criteria are met.

This bill would make revisions regarding the method by which the Department of Industrial Relations sets reimbursement rates for its costs of performing prevailing wage monitoring and enforcement on the specified public works projects described above, when the reimbursement to the department may be waived, and would exempt from the above-described requirements those public works projects financed in any part by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. This bill would also provide that, upon an order of the Director of Finance, a loan in an amount not to exceed \$4,300,000 shall be made from the Uninsured Employers Benefit Trust Fund to the State Public Works Enforcement Fund, thereby depositing additional moneys into a continuously appropriated fund.

~~Existing law defines “public works,” for purposes of regulating public works contracts, as, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds. Existing law further requires that, except as specified, not less than the general prevailing rate of per diem wages be paid to workers employed on public works and imposes misdemeanor penalties for a violation of this requirement. Existing law provides that for the purposes of provisions of law relating to the payment of prevailing wages, “public works” includes specified types of construction, alteration, demolition, installation, and repair work.~~

~~This bill would revise the definition of “public works” for these purposes to include the construction, alteration, demolition, installation, and repair work done under private contract when the work is performed in connection with the construction or maintenance of renewable energy generation capacity, located on property wholly or partially owned by a school district or community college district, or on public property, specifically to serve a school district or community college district.~~

~~Because the violation of prevailing wage requirements by local public entities when engaged in these public works projects would result in the imposition of misdemeanor penalties, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

This bill would provide that no reimbursement is required by this act for a specified reason:

Vote: majority. Appropriation: ~~no~~yes. Fiscal committee: yes. State-mandated local program: ~~yes~~no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *Existing law requires that workers employed on public works*
- 4 *projects in California be paid the applicable prevailing wage, as*
- 5 *determined by the Department of Industrial Relations, and that*
- 6 *the body awarding a contract for a public works project assure*
- 7 *compliance with the requirement to pay prevailing wage on the*
- 8 *public works project.*
- 9 (b) *Prior to 2009, existing law encouraged awarding bodies to*
- 10 *adopt and enforce a labor compliance program approved by the*
- 11 *Department of Industrial Relations as a method of meeting their*
- 12 *obligation of assuring compliance with payment of the prevailing*
- 13 *wage on all of their public works projects, and required the*
- 14 *awarding bodies to use approved labor compliance programs as*
- 15 *the means to assure such compliance for certain public works*
- 16 *projects.*
- 17 (c) *In 2009, the Legislature determined that it would be more*
- 18 *cost effective to utilize the expertise of the Department of Industrial*
- 19 *Relations to monitor and enforce compliance with the prevailing*
- 20 *wage requirements on public works projects than to use labor*
- 21 *compliance programs as the method of assuring compliance with*
- 22 *payment of prevailing wages.*
- 23 (d) *The Legislature therefore required that, upon adoption of*
- 24 *fees and regulations, the department would monitor and enforce*
- 25 *compliance with the prevailing wage requirements on all future*
- 26 *awarded contracts for public works projects for which the use of*
- 27 *a labor compliance program previously had been required, or that*
- 28 *were paid in whole or part out of public funds that are derived*
- 29 *from bonds issued by the state, with certain exceptions allowed*
- 30 *for awarding bodies to continue existing labor compliance*
- 31 *programs in lieu of the department monitoring their public works*
- 32 *projects. The Legislature further authorized that the cost of the*
- 33 *department’s monitoring and enforcement activities on state*

1 *bond-funded public works projects be paid from state bond*
2 *proceeds.*

3 *(e) This measure is intended to clarify the method by which the*
4 *Department of Industrial Relations may charge and be reimbursed*
5 *for monitoring and enforcing compliance with the prevailing wage*
6 *requirements for contracts for construction of public works projects*
7 *paid for out of public funds derived from state-issued bonds. It*
8 *does not intend to alter the scope of public works on which*
9 *prevailing wages must be paid.*

10 *(f) The Legislature further finds and declares that monitoring*
11 *and enforcing compliance with the applicable prevailing wage*
12 *requirements on a public works project paid for out of public funds*
13 *that are derived from state-issued bonds, whether by use of an*
14 *approved labor compliance program or other method, is and*
15 *historically has been a necessary and prudent oversight activity,*
16 *and under existing law, the authority to use bond proceeds for*
17 *construction of a public works project inherently includes authority*
18 *to pay reasonable costs of such oversight activities that are directly*
19 *related to such construction from state bond proceeds allocated*
20 *to such construction.*

21 *(g) The Legislature additionally finds and declares that the*
22 *reasonable and directly related costs incurred by the department*
23 *in monitoring and enforcing compliance with the prevailing wage*
24 *requirements for an awarding body on any public works project*
25 *paid for out of public funds that are derived from state-issued*
26 *bonds is a necessary and prudent oversight activity and constitutes*
27 *an inherent cost of construction of the authorized public works*
28 *project, payable from state bond proceeds allocated to such*
29 *construction.*

30 *SEC. 2. Section 17250.30 of the Education Code is amended*
31 *to read:*

32 17250.30. (a) Any design-build entity that is selected to design
33 and build a project pursuant to this chapter shall possess or obtain
34 sufficient bonding to cover the contract amount for nondesign
35 services, and errors and omissions insurance coverage sufficient
36 to cover all design and architectural services provided in the
37 contract. This chapter does not prohibit a general or engineering
38 contractor from being designated the lead entity on a design-build
39 entity for the purposes of purchasing necessary bonding to cover
40 the activities of the design-build entity.

1 (b) Any payment or performance bond written for the purposes
2 of this chapter shall use a bond form developed by the Department
3 of General Services pursuant to subdivision (g) of Section 14661
4 of the Government Code. The purpose of this subdivision is to
5 promote uniformity of bond forms to be used on school district
6 design-build projects throughout the state.

7 (c) (1) All subcontracts that were not listed by the design-build
8 entity in accordance with Section 17250.25 shall be awarded by
9 the design-build entity.

10 (2) The design-build entity shall do all of the following:

11 (A) Provide public notice of the availability of work to be
12 subcontracted.

13 (B) Provide a fixed date and time on which the subcontracted
14 work will be awarded.

15 (3) Subcontractors bidding on contracts pursuant to this
16 subdivision shall be afforded the protections contained in Chapter
17 4 (commencing with Section 4100) of Part 1 of Division 2 of the
18 Public Contract Code.

19 (4) (A) If the school district elects to award a project pursuant
20 to this section, retention proceeds withheld by the school district
21 from the design-build entity shall not exceed 5 percent if a
22 performance and payment bond, issued by an admitted surety
23 insurer, is required in the solicitation of bids.

24 (B) In a contract between the design-build entity and a
25 subcontractor, and in a contract between a subcontractor and any
26 subcontractor thereunder, the percentage of the retention proceeds
27 withheld shall not exceed the percentage specified in the contract
28 between the school district and the design-build entity. If the
29 design-build entity provides written notice to any subcontractor
30 who is not a member of the design-build entity, prior to or at the
31 time the bid is requested, that a bond may be required and the
32 subcontractor subsequently is unable or refuses to furnish a bond
33 to the design-build entity, then the design-build entity may withhold
34 retention proceeds in excess of the percentage specified in the
35 contract between the school district and the design-build entity
36 from any payment made by the design-build entity to the
37 subcontractor.

38 (5) In accordance with the provisions of applicable state law,
39 the design-build entity may be permitted to substitute securities
40 in lieu of the withholding from progress payments. Substitutions

1 shall be made in accordance with Section 22300 of the Public
2 Contract Code.

3 (d) (1) For contracts *for public works projects* awarded prior
4 to the effective date of ~~either~~ the regulations adopted by the
5 Department of Industrial Relations pursuant to subdivision ~~(b)~~ (g)
6 of Section ~~1771.55~~ 1771.5 of the Labor Code ~~or the fees established~~
7 ~~by the department pursuant paragraph (2)~~, the school district shall
8 establish and enforce a labor compliance program containing the
9 requirements outlined in Section 1771.5 of the Labor Code or shall
10 contract with a third party to operate a labor compliance program
11 containing the requirements outlined in Section 1771.5 of the Labor
12 Code. This requirement shall not apply to projects where the school
13 district or the design-build entity has entered into a collective
14 bargaining agreement that binds all of the contractors performing
15 work on the project.

16 (2) For contracts *for public works projects* awarded on or after
17 the effective date of ~~both~~ the regulations adopted by the Department
18 of Industrial Relations pursuant to subdivision ~~(b)~~ (g) of Section
19 ~~1771.55~~ 1771.5 of the Labor Code ~~and the fees established by the~~
20 ~~department pursuant to this paragraph~~, the school district shall pay
21 a fee to the department, in an amount that the department shall
22 establish, and as it may from time to time amend, sufficient to
23 support the department's costs in ensuring compliance with and
24 enforcing prevailing wage requirements on the project, and labor
25 compliance enforcement as set forth in subdivision ~~(b)~~ *reimburse*
26 *the department for its reasonable and directly related costs of*
27 *performing prevailing wage monitoring and enforcement on public*
28 *works projects pursuant to rates established by the department as*
29 *set forth in subdivision (h) of Section 1771.55* 1771.5 of the Labor
30 Code. All fees moneys collected pursuant to this subdivision shall
31 be deposited in the State Public Works Enforcement Fund created
32 by Section 1771.3 of the Labor Code, and shall be used only for
33 enforcement of prevailing wage requirements on those projects.

34 (3) ~~The Department of Industrial Relations may waive the fee~~
35 ~~set forth in paragraph (2) for a school district that has previously~~
36 ~~been granted approval by the director to initiate and operate a labor~~
37 ~~compliance program on the district's projects, and that requests to~~
38 ~~continue to operate that labor compliance program on its projects~~
39 ~~in lieu of labor compliance by the department pursuant to~~
40 ~~subdivision (b) of Section 1771.55. The fee shall not be waived~~

1 for a district that contracts with a third party to initiate and enforce
2 labor compliance programs on the district's projects.

3 (3) *In lieu of reimbursing the Department of Industrial Relations*
4 *for its reasonable and directly related costs of performing,*
5 *monitoring, and enforcement on public works projects, the school*
6 *district may elect to continue operating an existing previously*
7 *approved labor compliance program to monitor and enforce*
8 *prevailing wage requirements on the project if it has either not*
9 *contracted with a third party to conduct its labor compliance*
10 *program and requests and receives approval from the department*
11 *to continue its existing program or it enters into a collective*
12 *bargaining agreement that binds all of the contractors performing*
13 *work on the project and that includes a mechanism for resolving*
14 *disputes about the payment of wages.*

15 SEC. 3. Section 81704 of the Education Code is amended to
16 read:

17 81704. (a) Any design-build entity that is selected to design
18 and build a project pursuant to this chapter shall possess or obtain
19 sufficient bonding to cover the contract amount for nondesign
20 services, and errors and omission insurance coverage sufficient to
21 cover all design and architectural services provided in the contract.
22 This chapter does not prohibit a general or engineering contractor
23 from being designated the lead entity on a design-build entity for
24 the purposes of purchasing necessary bonding to cover the activities
25 of the design-build entity.

26 (b) Any payment or performance bond written for the purposes
27 of this chapter shall use a bond form developed by the Department
28 of General Services pursuant to subdivision (i) of Section 14661
29 of the Government Code. The purpose of this subdivision is to
30 promote uniformity of bond forms to be used on community college
31 district design-build projects throughout the state.

32 (c) (1) All subcontracts that were not listed by the design-build
33 entity in accordance with Section 81703 shall be awarded by the
34 design-build entity in accordance with the design-build process
35 set forth by the community college district in the design-build
36 package.

37 (2) The design-build entity shall do all of the following:

38 (A) Provide public notice of the availability of work to be
39 subcontracted.

1 (B) Provide a fixed date and time on which the subcontracted
2 work will be awarded.

3 (3) Subcontractors bidding on contracts pursuant to this
4 subdivision shall be afforded the protections contained in Chapter
5 4 (commencing with Section 4100) of Part 1 of Division 2 of the
6 Public Contract Code.

7 (4) (A) If the community college district elects to award a
8 project pursuant to this section, retention proceeds withheld by the
9 community college district from the design-build entity shall not
10 exceed 5 percent if a performance and payment bond, issued by
11 an admitted surety insurer, is required in the solicitation of bids.

12 (B) In a contract between the design-build entity and a
13 subcontractor, and in a contract between a subcontractor and any
14 subcontractor thereunder, the percentage of the retention proceeds
15 withheld shall not exceed the percentage specified in the contract
16 between the community college district and the design-build entity.
17 If the design-build entity provides written notice to any
18 subcontractor who is not a member of the design-build entity, prior
19 to or at the time the bid is requested, that a bond may be required
20 and the subcontractor subsequently is unable or refuses to furnish
21 a bond to the design-build entity, then the design-build entity may
22 withhold retention proceeds in excess of the percentage specified
23 in the contract between the community college district and the
24 design-build entity from any payment made by the design-build
25 entity to the subcontractor.

26 (5) In accordance with the provisions of applicable state law,
27 the design-build entity may be permitted to substitute securities
28 in lieu of the withholding from progress payments. Substitutions
29 shall be made in accordance with Section 22300 of the Public
30 Contract Code.

31 (d) (1) For contracts *for public works projects* awarded prior
32 to the effective date of ~~either~~ the regulations adopted by the
33 Department of Industrial Relations pursuant to subdivision ~~(b)~~ (g)
34 of Section ~~1771.55~~ 1771.5 of the Labor Code ~~or the fees established~~
35 ~~by the department pursuant to paragraph (2)~~, the community college
36 district shall establish and enforce a labor compliance program
37 containing the requirements outlined in Section 1771.5 of the Labor
38 Code or shall contract with a third party to operate a labor
39 compliance program containing the requirements outlined in
40 Section 1771.5 of the Labor Code. This requirement shall not apply

1 to projects where the community college district or the design-build
2 entity has entered into a collective bargaining agreement that binds
3 all of the contractors performing work on the project.

4 (2) For contracts *for public works projects* awarded on or after
5 the effective date of both the regulations adopted by the Department
6 of Industrial Relations pursuant to subdivision ~~(b)~~ (g) of Section
7 ~~1771.55~~ 1771.5 of the Labor Code ~~and the fees established by the~~
8 ~~department pursuant to this paragraph~~, the community college
9 district shall pay a fee to the department, in an amount that the
10 department shall establish, and as it may from time to time amend,
11 sufficient to support the department's costs in ensuring compliance
12 ~~with and enforcing prevailing wage requirements on the project,~~
13 ~~and labor compliance enforcement as set forth in subdivision (b)~~
14 ~~reimburse the department for its reasonable and directly related~~
15 ~~costs of performing prevailing wage monitoring and enforcement~~
16 ~~on public works projects, pursuant to rates established by the~~
17 ~~department as set forth in subdivision (h) of Section 1771.55~~
18 ~~1771.5 of the Labor Code.~~ All fees moneys collected pursuant to
19 this subdivision shall be deposited in the State Public Works
20 Enforcement Fund created by Section 1771.3 of the Labor Code,
21 and shall be used only for enforcement of prevailing wage
22 requirements on those projects.

23 ~~(3) The Department of Industrial Relations may waive the fee~~
24 ~~set forth in paragraph (2) for a community college district that has~~
25 ~~previously been granted approval by the director to initiate and~~
26 ~~operate a labor compliance program on the district's projects, and~~
27 ~~that requests to continue to operate that labor compliance program~~
28 ~~on its projects in lieu of labor compliance by the department~~
29 ~~pursuant to subdivision (b) of Section 1771.55. The fee shall not~~
30 ~~be waived for a district that contracts with a third party to initiate~~
31 ~~and enforce labor compliance programs on the district's projects.~~

32 (3) *In lieu of reimbursing the Department of Industrial Relations*
33 *for its reasonable and directly related costs of performing*
34 *monitoring and enforcement on public works projects, the*
35 *community college district may elect to continue operating an*
36 *existing previously approved labor compliance program to monitor*
37 *and enforce prevailing wage requirements on the project if it has*
38 *either not contracted with a third party to conduct its labor*
39 *compliance program and requests and receives approval from the*
40 *department to continue its existing program or it enters into a*

1 *collective bargaining agreement that binds all of the contractors*
2 *performing work on the project and that includes a mechanism*
3 *for resolving disputes about the payment of wages.*

4 SEC. 4. Section 6531 of the Government Code is amended to
5 read:

6 6531. (a) The Legislature finds and declares all of the
7 following:

8 (1) It is in the best interests of communities located within the
9 City of San Diego for the local public agencies that have
10 jurisdiction within the city to form a joint powers agency to provide
11 for the orderly and coordinated acquisition, construction, and
12 development of model school projects. These projects may include
13 the acquisition of land by negotiation or eminent domain, the
14 construction of schools, the construction of recreational facilities
15 or park sites or both, and the construction of replacement and other
16 housing, including market rate, moderate-income, and low-income
17 housing.

18 (2) The coordinated construction of these projects by
19 redevelopment agencies, school districts, housing authorities,
20 housing commissions, and the city is of great public benefit and
21 will save public money and time in supplying much needed
22 replacement housing lost when schools are constructed within
23 existing communities.

24 (3) Legislation is needed to allow redevelopment agencies,
25 school districts, housing authorities, housing commissions, and
26 the city to use their powers to the greatest extent possible to
27 expedite, coordinate, and streamline the construction and eventual
28 operation of such projects.

29 (b) (1) Notwithstanding any other provision of law, the
30 Redevelopment Agency of the City of San Diego, the Housing
31 Authority of the City of San Diego, the San Diego Housing
32 Commission, the San Diego Unified School District, and the City
33 of San Diego may enter into a joint powers agreement to create
34 and operate a joint powers agency for the development and
35 construction of a model school project located within the City
36 Heights Project Area. The agency created pursuant to this section
37 shall be known as the San Diego Model School Development
38 Agency. The San Diego Model School Development Agency shall
39 have all the powers of a redevelopment agency pursuant to Part 1
40 (commencing with Section 33000) of Division 24 of the Health

1 and Safety Code, all of the powers of a housing authority pursuant
2 to Part 2 (commencing with Section 34200) of Division 24 of the
3 Health and Safety Code, and all of the powers of the San Diego
4 Unified School District, as well as all the powers of a joint powers
5 agency granted pursuant to this chapter, to acquire property and
6 to construct and improve and finance one or more schools, housing
7 projects, parks, recreational facilities, and any other facilities
8 reasonably necessary for their proper operation. Further, the San
9 Diego Model School Development Agency shall have all of the
10 powers of the City of San Diego pursuant to its charter and state
11 law to acquire property and to finance and operate parks and
12 recreational facilities and any other facilities reasonably necessary
13 for their proper operation.

14 (2) Notwithstanding paragraph (1), neither the San Diego Model
15 School Development Agency nor the Redevelopment Agency of
16 the City of San Diego shall expend any property tax increment
17 revenues to acquire property, and to construct, improve, and finance
18 a school within the City Heights Project Area.

19 (3) Nothing in this section shall relieve the San Diego Model
20 School Development Agency or the Redevelopment Agency of
21 the City of San Diego from its obligations to increase, improve,
22 and preserve the community's supply of low- and moderate-income
23 housing, including, but not limited to, the obligation to provide
24 relocation assistance, the obligation to provide replacement
25 housing, the obligation to meet housing production quotas, and
26 the obligation to set aside property tax increment funds for those
27 purposes.

28 (4) The San Diego Model School Development Agency shall
29 perform any construction activities in accordance with the
30 applicable provisions of the Public Contract Code, the Education
31 Code, and the Labor Code that apply, respectively, to the
32 redevelopment agency, housing authority, housing commission,
33 school district, or city creating the San Diego Model School
34 Development Agency. Funding pursuant to Proposition MM, a
35 local San Diego County bond measure enacted by the voters for
36 the purpose of school construction, shall be used only for the
37 design, development, construction, and financing of school-related
38 facilities and improvements, including schools, as authorized and
39 to the extent authorized under Proposition MM.

1 (c) Any member of the joint powers agency, including the school
2 district, may, to the extent permitted by law, transfer and contribute
3 funds to the agency, including bond funds, to be deposited into
4 and to be held in a facility fund to be expended for purposes of the
5 acquisition of property for, and the development and construction
6 of, any school, housing project, or other facility described in this
7 section.

8 (d) Nothing contained in this section shall preclude the joint
9 powers agency from distributing funds, upon completion of
10 construction, the school, housing project, park, recreational facility,
11 or other facility to a member of the agency to operate the school,
12 housing project, park, or other facility that the member is otherwise
13 authorized to operate. These distribution provisions shall be set
14 forth in the joint powers agreement, if applicable.

15 (e) The San Diego Model School Development Agency may
16 construct a school in the City Heights Project Area pursuant to
17 Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of
18 the Education Code.

19 (f) (1) For contracts *for public works projects* awarded prior to
20 the effective date of ~~either~~ the regulations adopted by the
21 Department of Industrial Relations pursuant to subdivision ~~(b)~~ (g)
22 of Section ~~1771.55~~ 1771.5 of the Labor Code ~~or the fees established~~
23 ~~by the department pursuant to paragraph (2),~~ the San Diego Model
24 School Development Agency shall establish and enforce, with
25 respect to construction contracts awarded by the joint powers
26 agency, a labor compliance program containing the requirements
27 outlined in Section 1771.5 of the Labor Code or shall contract with
28 a third party to operate a labor compliance program containing
29 those requirements. This requirement shall not apply to projects
30 ~~that are subject to~~ *where the agency has entered into* a collective
31 bargaining agreement that binds all of the contractors and
32 subcontractors performing work on the project, but nothing shall
33 prevent the joint powers agency from operating a labor compliance
34 program with respect to those projects.

35 (2) For contracts *for public works projects* awarded on or after
36 the effective date of ~~both~~ the regulations adopted by the Department
37 of Industrial Relations pursuant to subdivision ~~(b)~~ (g) of Section
38 ~~1771.55~~ 1771.5 of the Labor Code ~~and the fees established by the~~
39 ~~department pursuant to this paragraph,~~ the agency shall pay a fee
40 to the department, in an amount that the department shall establish,

1 and as it may from time to time amend, sufficient to support the
2 department's costs in ensuring compliance with and enforcing
3 prevailing wage requirements on the project, and labor compliance
4 enforcement as set forth in subdivision (b) reimburse the
5 department for its reasonable and directly related costs of
6 performing prevailing wage monitoring and enforcement on public
7 works projects pursuant to rates established by the department as
8 set forth in subdivision (h) of Section ~~1771.55~~ 1771.5 of the Labor
9 Code. All fees moneys collected pursuant to this subdivision shall
10 be deposited in the State Public Works Enforcement Fund created
11 by Section 1771.3 of the Labor Code, and shall be used only for
12 enforcement of prevailing wage requirements on those projects.

13 ~~(3) The Department of Industrial Relations may waive the fee
14 set forth in paragraph (2) if the agency has previously been granted
15 approval by the director to initiate and operate a labor compliance
16 program on its projects and requests to continue to operate that
17 labor compliance program on its projects in lieu of labor
18 compliance by the department pursuant to subdivision (b) of
19 Section 1771.55. The fee shall not be waived for the agency if it
20 contracts with a third party to initiate and enforce labor compliance
21 programs on its projects.~~

22 *(3) In lieu of reimbursing the Department of Industrial Relations
23 for its reasonable and directly related costs of performing
24 monitoring and enforcement on public works projects, the San
25 Diego Model School Development Agency may elect to continue
26 operating an existing previously approved labor compliance
27 program to monitor and enforce prevailing wage requirements on
28 the project if it has either not contracted with a third party to
29 conduct its labor compliance program and requests and receives
30 approval from the department to continue its existing program or
31 it enters into a collective bargaining agreement that binds all of
32 the contractors performing work on the project and that includes
33 a mechanism for resolving disputes about the payment of wages.*

34 (g) Construction workers employed as apprentices by contractors
35 and subcontractors on contracts awarded by the San Diego Model
36 School Development Agency shall be enrolled in a registered
37 apprenticeship program, approved by the California Apprenticeship
38 Council, that has graduated apprentices in the same craft in each
39 of the preceding five years. This graduation requirement shall be
40 applicable for any craft that was first deemed by the Department

1 of Labor and the Department of Industrial Relations to be an
2 apprenticeable craft prior to January 1, 1998. A contractor or
3 subcontractor need not submit contract award information to an
4 apprenticeship program that does not meet the graduation
5 requirements of this subdivision. If no apprenticeship program
6 meets the graduation requirements of this subdivision for a
7 particular craft, the graduation requirements shall not apply for
8 that craft.

9 *SEC. 5. Section 1771.3 of the Labor Code is repealed.*

10 ~~1771.3. (a) (1) The State Public Works Enforcement Fund is~~
11 ~~hereby created as a special fund in the State Treasury.~~
12 ~~Notwithstanding Section 13340 of the Government Code, moneys~~
13 ~~in the fund shall be continuously appropriated for the purposes the~~
14 ~~Department of Industrial Relations' enforcement of prevailing~~
15 ~~wage requirements applicable to public works pursuant to this~~
16 ~~chapter, and labor compliance enforcement as set forth in~~
17 ~~subdivision (b) of Section 1771.55, and shall not be used or~~
18 ~~borrowed for any other purpose.~~

19 ~~(2) The Director of Industrial Relations, with the approval of~~
20 ~~the Director of Finance, shall determine and assess a fee on any~~
21 ~~awarding body using funds derived from any bond issued by the~~
22 ~~state to fund public works projects, in an amount not to exceed~~
23 ~~one-fourth of 1 percent of the bond proceeds. The fee shall be set~~
24 ~~to cover the expenses of the Department of Industrial Relations~~
25 ~~for administering the prevailing wage requirements on public works~~
26 ~~projects using those bond funds. The fee shall be payable by the~~
27 ~~board, commission, department, agency, or official responsible~~
28 ~~for the allocation of bond proceeds from the bond funds awarded~~
29 ~~to each project at the time the funds are released to the project or~~
30 ~~other such time the Department of Industrial Relations and the~~
31 ~~entity responsible for allocation of the bond proceeds may agree.~~
32 ~~All fees collected pursuant to this section shall be deposited in the~~
33 ~~State Public Works Enforcement Fund, and shall be used only for~~
34 ~~enforcement of prevailing wage requirements on projects using~~
35 ~~bond funds and other projects for which awarding bodies pay into~~
36 ~~the fund. The administration and enforcement of prevailing wage~~
37 ~~requirements is an administrative expense associated with public~~
38 ~~works construction.~~

39 ~~(b) The fee imposed by this section shall not apply to any~~
40 ~~contract awarded prior to the effective date of regulations adopted~~

1 by the department pursuant to paragraph (2) of subdivision (b) of
 2 Section 1771.55:

3 ~~(e) The department shall report to the Legislature, not later than~~
 4 ~~March 1, 2011, on its administration of the State Public Works~~
 5 ~~Enforcement Fund, and the prevailing wage enforcement activities~~
 6 ~~undertaken by the department utilizing that funding.~~

7 SEC. 6. Section 1771.3 is added to the Labor Code, to read:

8 1771.3. (a) (1) *The Department of Industrial Relations shall*
 9 *monitor and enforce compliance with applicable prevailing wage*
 10 *requirements for any public works project paid for in whole or*
 11 *part out of public funds, within the meaning of subdivision (b) of*
 12 *Section 1720, that are derived from bonds issued by the state, and*
 13 *shall charge each awarding body for the reasonable and directly*
 14 *related costs of monitoring and enforcing compliance with the*
 15 *prevailing wage requirements on each project.*

16 (2) (A) *The State Public Works Enforcement Fund is hereby*
 17 *created as a special fund in the State Treasury. All moneys received*
 18 *by the department pursuant to this section shall be deposited in*
 19 *the fund. Notwithstanding Section 13340 of the Government Code,*
 20 *all moneys in the fund shall be continuously appropriated to the*
 21 *Department of Industrial Relations, to monitor and enforce*
 22 *compliance with the applicable prevailing wage requirements on*
 23 *public works projects paid for in whole or part out of public funds,*
 24 *within the meaning of subdivision (b) of Section 1720, that are*
 25 *derived from bonds issued by the state and other projects for which*
 26 *the department provides prevailing wage monitoring and*
 27 *enforcement activities and for which it is to be reimbursed by the*
 28 *awarding body, and shall not be used or borrowed for any other*
 29 *purpose.*

30 (B) *Notwithstanding any other law, upon order of the Director*
 31 *of Finance, a loan in the amount of four million three hundred*
 32 *thousand dollars (\$4,300,000) shall be provided from the*
 33 *Uninsured Employers Benefit Trust Fund to the State Public Works*
 34 *Enforcement Fund to meet the startup needs of the Labor*
 35 *Compliance Monitoring Unit.*

36 (3) *The Director of Industrial Relations shall adopt regulations*
 37 *implementing this section, specifying the activities, including, but*
 38 *not limited to, monthly review, and audit if appropriate, of payroll*
 39 *records, which the department will undertake to monitor and*
 40 *enforce compliance with applicable prevailing wage requirements*

1 on public works projects paid for in whole or part out of public
2 funds, within the meaning of subdivision (b) of Section 1720, that
3 are derived from bonds issued by the state. The department, with
4 the approval of the Director of Finance, shall determine the rate
5 or rates, which the department may from time to time amend, that
6 the department will charge to recover the reasonable and directly
7 related costs of performing the monitoring and enforcement
8 services for public works projects; provided, however, that the
9 amount charged by the department shall not exceed one-fourth of
10 1 percent of the state bond proceeds used for the public works
11 projects.

12 (4) The reasonable and directly related costs of monitoring and
13 enforcing compliance with the prevailing wage requirements on
14 a public works project incurred by the department in accordance
15 with this section are payable by the awarding body of the public
16 works project as a cost of construction. Notwithstanding any other
17 provision of law, but subject to any limitations or restrictions of
18 the bond act, the board, commission, department, agency, or
19 official responsible for the allocation of bond proceeds from the
20 bond funds shall consider and provide for amounts in support of
21 the costs when allocating or approving expenditures of bond
22 proceeds for the construction of the authorized project. The
23 awarding body may elect not to receive or expend amounts from
24 bond proceeds to pay the costs of the project; however, such
25 election does not relieve the awarding body from reimbursing the
26 Department of Industrial Relations for monitoring and enforcing
27 prevailing wage requirements on the project pursuant to Section
28 1771.3 or any other applicable provision of law.

29 (b) Paragraph (1) of subdivision (a) shall not apply to any
30 contract for a public works project paid for in whole or part out
31 of public funds, within the meaning of subdivision (b) of Section
32 1720, that are derived from bonds issued by the state if the contract
33 was awarded under any of the following conditions:

34 (1) The contract was awarded prior to the effective date of
35 implementing regulations adopted by the department pursuant to
36 paragraph (3) of subdivision (a).

37 (2) The contract was awarded on or after the effective date of
38 the regulations described in paragraph (1), if the awarding body
39 had previously initiated a labor compliance program approved
40 by the department for some or all of its public works projects and

1 had not contracted with a third party to conduct such program,
2 and requests and receives approval from the department to
3 continue to operate its existing labor compliance program for its
4 public works projects paid for in whole or part out of public funds,
5 within the meaning of subdivision (b) of Section 1720, that are
6 derived from bonds issued by the state, in place of the department
7 monitoring and enforcing compliance on projects pursuant to
8 subdivision (a).

9 (3) The contract is awarded on or after the effective date of the
10 regulations described in paragraph (1), if the awarding body has
11 entered into a collective bargaining agreement that binds all of
12 the contractors performing work on the project and that includes
13 a mechanism for resolving disputes about the payment of wages.

14 (c) This section shall not apply to public works projects subject
15 to Section 75075 of the Public Resources Code.

16 SEC. 7. Section 1771.5 of the Labor Code is repealed.

17 ~~1771.5. (a) Notwithstanding Section 1771, an awarding body~~
18 ~~may not require the payment of the general prevailing rate of per~~
19 ~~diem wages or the general prevailing rate of per diem wages for~~
20 ~~holiday and overtime work for any public works project of~~
21 ~~twenty-five thousand dollars (\$25,000) or less when the project is~~
22 ~~for construction work, or for any public works project of fifteen~~
23 ~~thousand dollars (\$15,000) or less when the project is for alteration,~~
24 ~~demolition, repair, or maintenance work, if the awarding body~~
25 ~~elects to initiate and enforce a labor compliance program pursuant~~
26 ~~to subdivision (b) for every public works project under the authority~~
27 ~~of the awarding body.~~

28 (b) For purposes of this section, a labor compliance program
29 shall include, but not be limited to, the following requirements:

30 (1) ~~All bid invitations and public works contracts shall contain~~
31 ~~appropriate language concerning the requirements of this chapter.~~

32 (2) ~~A prejob conference shall be conducted with the contractor~~
33 ~~and subcontractors to discuss federal and state labor law~~
34 ~~requirements applicable to the contract.~~

35 (3) ~~Project contractors and subcontractors shall maintain and~~
36 ~~furnish, at a designated time, a certified copy of each weekly~~
37 ~~payroll containing a statement of compliance signed under penalty~~
38 ~~of perjury.~~

39 (4) ~~The awarding body shall review, and, if appropriate, audit~~
40 ~~payroll records to verify compliance with this chapter.~~

1 ~~(5) The awarding body shall withhold contract payments when~~
2 ~~payroll records are delinquent or inadequate.~~

3 ~~(6) The awarding body shall withhold contract payments equal~~
4 ~~to the amount of underpayment and applicable penalties when,~~
5 ~~after investigation, it is established that underpayment has occurred.~~

6 ~~(e) For purposes of this chapter, "labor compliance program"~~
7 ~~means a labor compliance program that is approved, as specified~~
8 ~~in state regulations, by the Director of the Department of Industrial~~
9 ~~Relations.~~

10 ~~(d) For purposes of this chapter, the Director of the Department~~
11 ~~of Industrial Relations may revoke the approval of a labor~~
12 ~~compliance program in the manner specified in state regulations.~~

13 *SEC. 8. Section 1771.5 is added to the Labor Code, to read:*

14 *1771.5. (a) Notwithstanding Section 1771, an awarding body*
15 *may choose not to require the payment of the general prevailing*
16 *rate of per diem wages or the general prevailing rate of per diem*
17 *wages for holiday and overtime work for any public works project*
18 *of twenty-five thousand dollars (\$25,000) or less when the project*
19 *is for construction work, or for any public works project of fifteen*
20 *thousand dollars (\$15,000) or less when the project is for*
21 *alteration, demolition, repair, or maintenance work, if the*
22 *awarding body elects to either:*

23 *(1) Initiate and enforce a labor compliance program pursuant*
24 *to subdivision (b) for every public works project under the authority*
25 *of the awarding body as described in subdivision (e).*

26 *(2) Reimburse the Department of Industrial Relations for the*
27 *cost of monitoring and enforcing compliance with prevailing wage*
28 *requirements for every public works project of the awarding body*
29 *as described in subdivision (f).*

30 *(b) For purposes of this section, a labor compliance program*
31 *shall include, but not be limited to, the following requirements:*

32 *(1) All bid invitations and public works contracts shall contain*
33 *appropriate language concerning the requirements of this chapter.*

34 *(2) A prejob conference shall be conducted with the contractor*
35 *and subcontractors to discuss federal and state labor law*
36 *requirements applicable to the contract.*

37 *(3) Project contractors and subcontractors shall maintain and*
38 *furnish, at a designated time, a certified copy of each weekly*
39 *payroll containing a statement of compliance signed under penalty*
40 *of perjury.*

1 (4) The awarding body shall review, and, if appropriate, audit
2 payroll records to verify compliance with this chapter.

3 (5) The awarding body shall withhold contract payments when
4 payroll records are delinquent or inadequate.

5 (6) The awarding body shall withhold contract payments equal
6 to the amount of underpayment and applicable penalties when,
7 after investigation, it is established that underpayment has
8 occurred.

9 (7) The awarding body shall comply with any other prevailing
10 wage monitoring and enforcement activities that are required to
11 be conducted by labor compliance programs by the Department
12 of Industrial Relations.

13 (c) For purposes of this chapter, “labor compliance program”
14 means a labor compliance program that is approved, as specified
15 in state regulations, by the Director of Industrial Relations.

16 (d) For purposes of this chapter, the Director of Industrial
17 Relations may revoke the approval of a labor compliance program
18 in the manner specified in state regulations.

19 (e) An awarding body that elects to use a labor compliance
20 program pursuant to subdivision (a) must use the labor compliance
21 program for all contracts for public works projects awarded prior
22 to the effective date of the regulations adopted by the department
23 as specified in subdivision (g). For contracts for public works
24 projects awarded on or after the effective date of regulations
25 adopted by the department as specified in subdivision (g), the
26 awarding body may also elect to continue operating an existing
27 previously approved labor compliance program in lieu of
28 reimbursing the Department of Industrial Relations for the cost
29 of monitoring and enforcing compliance with prevailing wage
30 requirements on the awarding body’s public works projects if it
31 has not contracted with a third party to conduct its labor
32 compliance program and if it requests and receives approval from
33 the department to continue its existing program.

34 (f) An awarding body that elects to reimburse the department
35 for the cost of monitoring and enforcing compliance with prevailing
36 wage requirements for public works projects of the awarding body,
37 pursuant to subdivision (a), must, for all of its contracts for public
38 works projects awarded on or after the effective date of the
39 regulations adopted by the department as specified in subdivision
40 (g):

1 (1) Ensure that all bid invitations and public works contracts
2 contain appropriate language concerning the requirements of this
3 chapter.

4 (2) Conduct a prejob conference with the contractor and
5 subcontractor to discuss federal and state labor law requirements
6 applicable to the contract.

7 (3) Enter into an agreement with the department to reimburse
8 the department for its costs of performing the service of monitoring
9 and enforcing compliance with applicable prevailing wage
10 requirements on the awarding bodies' projects.

11 (g) The Department of Industrial Relations shall adopt
12 regulations implementing this section specifying the activities
13 which the department shall undertake to monitor and enforce
14 compliance with the prevailing wage requirements on the public
15 works projects, including, but not limited to, monthly review, and
16 audit if appropriate, of payroll records.

17 (h) (1) The Department of Industrial Relations shall determine
18 the rate or rates, which the department may from time to time
19 amend, that the department will charge in obtaining reimbursement
20 from awarding bodies for the reasonable and directly related costs
21 of performing the specified monitoring and enforcement services,
22 provided the amount charged by the department shall not exceed
23 one-fourth of 1 percent of the total public works project costs.

24 (2) Notwithstanding paragraph (1), for public works projects
25 paid for in whole or part out of public funds, within the meaning
26 of subdivision (b) of Section 1720, that are derived from bonds
27 issued by the state, the amount charged by the department shall
28 not exceed one-fourth of 1 percent of the state bond proceeds used
29 for the public works project.

30 (i) All amounts collected by the Department of Industrial
31 Relations for its services pursuant to this section shall be deposited
32 in the State Public Works Enforcement Fund.

33 *SEC. 9. Section 1771.55 of the Labor Code is repealed.*

34 ~~1771.55. (a) Notwithstanding Section 1771, an awarding body~~
35 ~~may not require the payment of the general prevailing rate of per~~
36 ~~diem wages or the general prevailing rate of per diem wages for~~
37 ~~holiday and overtime work for any public works project of~~
38 ~~twenty-five thousand dollars (\$25,000) or less when the project is~~
39 ~~for construction work, or for any public works project of fifteen~~
40 ~~thousand dollars (\$15,000) or less when the project is for alteration,~~

1 demolition, repair, or maintenance work, if the awarding body
2 elects to undertake all of the following for every public works
3 project under the authority of the awarding body:

4 (1) Ensure that all bid invitations and public works contracts
5 contain appropriate language concerning the requirements of this
6 chapter.

7 (2) Conduct a prejob conference with the contractor and
8 subcontractor to discuss federal and state labor law requirements
9 applicable to contract.

10 (3) Pay a fee to the Department of Industrial Relations for the
11 enforcement of prevailing wage obligations in an amount that the
12 department shall establish, and as it may from time to time amend,
13 in an amount not to exceed one-fourth of 1 percent of the total
14 public works project costs, sufficient to support the department's
15 costs in ensuring compliance with and enforcing prevailing wage
16 requirements on the project. All fees collected pursuant to this
17 subdivision shall be deposited in the State Public Works
18 Enforcement Fund created by Section 1771.3, and shall be used
19 only for enforcement of prevailing wage requirements on those
20 projects.

21 (b) For all projects required to pay a fee into the State Public
22 Works Enforcement Fund, the Department of Industrial Relations
23 shall do the following:

24 (1) Review on a monthly basis, and if appropriate, audit payroll
25 records to verify compliance with this chapter.

26 (2) Adopt reasonable regulations setting forth the manner in
27 which the department will ensure compliance with and enforce
28 prevailing wage requirements on the project. In adopting these
29 regulations, the department shall give consideration to the duties
30 of labor compliance programs as set forth in Sections 16421 to
31 16439, inclusive, of Title 8 of the California Code of Regulations.

32 (c) The department may waive the fee set forth in this section
33 for an awarding body that has previously been granted approval
34 by the director to initiate and operate a labor compliance program
35 on the awarding body's projects, and that requests to continue to
36 operate that labor compliance program on its projects in lieu of
37 labor compliance by the department pursuant to subdivision (b).
38 This fee shall not be waived for an awarding body that contracts
39 with a third party to initiate and enforce labor compliance programs
40 on the awarding body's projects.

1 ~~(d) Subdivisions (a) and (c) of this section shall only apply to~~
2 ~~a contract awarded on or after both the effective date of the~~
3 ~~department's adoption of the fee set forth in subdivision (a) and~~
4 ~~of regulations pursuant to paragraph (2) of subdivision (b).~~

5 *SEC. 10. Section 1771.7 of the Labor Code is amended to read:*

6 1771.7. (a) (1) ~~An~~ *For contracts specified in subdivision (f),*
7 *an* awarding body that chooses to use funds derived from either
8 the Kindergarten-University Public Education Facilities Bond Act
9 of 2002 or the Kindergarten-University Public Education Facilities
10 Bond Act of 2004 for a public works project, shall initiate and
11 enforce, or contract with a third party to initiate and enforce, a
12 labor compliance program, as described in subdivision (b) of
13 Section 1771.5, with respect to that public works project.

14 (2) If an awarding body described in paragraph (1) chooses to
15 contract with a third party to initiate and enforce a labor compliance
16 program for a project described in paragraph (1), that third party
17 shall not review the payroll records of its own employees or the
18 employees of its subcontractors, and the awarding body or an
19 independent third party shall review these payroll records for
20 purposes of the labor compliance program.

21 (b) This section applies to public works that commence on or
22 after April 1, 2003. For purposes of this subdivision, work
23 performed during the design and preconstruction phases of
24 construction, including, but not limited to, inspection and land
25 surveying work, does not constitute the commencement of a public
26 work.

27 (c) (1) For purposes of this section, if any campus of the
28 California State University chooses to use the funds described in
29 subdivision (a), then the "awarding body" is the Chancellor of the
30 California State University. For purposes of this subdivision, if
31 the chancellor is required by subdivision (a) to initiate and enforce,
32 or to contract with a third party to initiate and enforce, ~~the a~~ labor
33 compliance program ~~described in that subdivision~~, then in addition
34 to the requirements ~~imposed upon an awarding body by~~ *described*
35 *in* subdivision (b) of Section 1771.5, the Chancellor of the
36 California State University shall review the payroll records
37 ~~described in paragraphs (3) and (4) of subdivision (b) of Section~~
38 ~~1771.5~~ on at least a monthly basis to ensure the awarding body's
39 compliance with the labor compliance program.

1 (2) For purposes of this subdivision, if an awarding body
2 described in subdivision (a) is the University of California or any
3 campus of that university, and that awarding body is required by
4 subdivision (a) to initiate and enforce, or to contract with a third
5 party to initiate and enforce, ~~the a~~ labor compliance program
6 ~~described in that subdivision~~, then in addition to the requirements
7 ~~imposed upon an awarding body by~~ *described in* subdivision (b)
8 of Section 1771.5, the payroll records ~~described in paragraphs (3)~~
9 ~~and (4) of subdivision (b) of Section 1771.5~~ shall be reviewed on
10 at least a monthly basis to ensure the awarding body's compliance
11 with the labor compliance program.

12 (d) (1) An awarding body described in subdivision (a) shall
13 make a written finding that the awarding body has initiated and
14 enforced, or has contracted with a third party to initiate and enforce,
15 the labor compliance program described in subdivision (a).

16 (2) (A) If an awarding body described in subdivision (a) is a
17 school district, the governing body of that district shall transmit
18 to the State Allocation Board, in the manner determined by that
19 board, a copy of the finding described in paragraph (1).

20 (B) The State Allocation Board shall not release the funds
21 described in subdivision (a) to an awarding body that is a school
22 district until the State Allocation Board has received the written
23 finding described in paragraph (1).

24 (C) If the State Allocation Board conducts a postaward audit
25 procedure with respect to an award of the funds described in
26 subdivision (a) to an awarding body that is a school district, the
27 State Allocation Board shall verify, in the manner determined by
28 that board, that the school district has complied with the
29 requirements of this subdivision.

30 (3) If an awarding body described in subdivision (a) is a
31 community college district, the Chancellor of the California State
32 University, or the office of the President of the University of
33 California or any campus of the University of California, that
34 awarding body shall transmit, in the manner determined by the
35 ~~Director of the Department~~ of Industrial Relations, a copy of the
36 finding described in paragraph (1) to the director of that
37 department, or the director of any successor agency that is
38 responsible for the oversight of employee wage and employee
39 work hours laws.

1 (e) ~~Notwithstanding Section 17070.63 of the Education Code,~~
2 ~~for purposes of this act, the State Allocation Board shall increase~~
3 ~~the grant amounts as described in Chapter 12.5 (commencing with~~
4 ~~Section 17070.10) of Part 10 of Division 1 of Title 1 of the~~
5 ~~Education Code to accommodate the state's share of the increased~~
6 ~~costs of a new construction or modernization project due to the~~
7 ~~initiation and enforcement of the labor compliance program.~~

8 (f) ~~This section shall not apply to a contract awarded on or after~~
9 ~~the latter of the effective date of regulations adopted by the~~
10 ~~Department of Industrial Relations pursuant to paragraph (2) of~~
11 ~~subdivision (b) of Section 1771.55 or the effective date of the fees~~
12 ~~adopted by the department pursuant to Section 1771.75.~~

13 *(e) Because the reasonable costs directly related to monitoring*
14 *and enforcing compliance with the prevailing wage requirements*
15 *are necessary oversight activities, integral to the cost of*
16 *construction of the public works projects, notwithstanding Section*
17 *17070.63 of the Education Code, the grant amounts as described*
18 *in Chapter 12.5 (commencing with Section 17070.10) of Part 10*
19 *of Division 1 of Title 1 of the Education Code for the costs of a*
20 *new construction or modernization project shall include the state's*
21 *share of the reasonable and directly related costs of the labor*
22 *compliance program used to monitor and enforce compliance with*
23 *prevailing wage requirements.*

24 *(f) This section shall only apply to contracts awarded prior to*
25 *the effective date of regulations adopted by the Department of*
26 *Industrial Relations pursuant to paragraph (3) of subdivision (a)*
27 *of Section 1771.3.*

28 *SEC. 11. Section 1771.75 of the Labor Code is repealed.*

29 ~~1771.75.—(a) An awarding body that chooses to use funds~~
30 ~~derived from either the Kindergarten-University Public Education~~
31 ~~Facilities Bond Act of 2002 or the Kindergarten-University Public~~
32 ~~Education Facilities Bond Act of 2004 for a public works project,~~
33 ~~shall pay a fee to the Department of Industrial Relations, in an~~
34 ~~amount that the department shall establish, and as it may from time~~
35 ~~to time amend, in an amount not to exceed one-fourth of 1 percent~~
36 ~~of the bond proceeds, sufficient to support the department's costs~~
37 ~~in ensuring compliance with and enforcing prevailing wage~~
38 ~~requirements on the project, and labor compliance enforcement as~~
39 ~~set forth in subdivision (b) of Section 1771.55. All fees collected~~
40 ~~pursuant to this subdivision shall be deposited in the State Public~~

1 Works Enforcement Fund created by Section 1771.3, and shall be
2 used only for enforcement of prevailing wage requirements on
3 those projects. The department may waive the fee set forth in this
4 section for an awarding body that has previously been granted
5 approval by the director to initiate and operate a labor compliance
6 program on the awarding body's projects, and requests to continue
7 to operate that labor compliance program on its projects in lieu of
8 labor compliance by the department pursuant to subdivision (b)
9 of Section 1771.55. This fee shall not be waived for an awarding
10 body that contracts with a third party to initiate and enforce labor
11 compliance programs on the awarding body's projects.

12 ~~(b) This section applies to public works that commence on or
13 after April 1, 2003. For purposes of this subdivision, work
14 performed during the design and preconstruction phases of
15 construction, including, but not limited to, inspection and land
16 surveying work, does not constitute the commencement of a public
17 work.~~

18 ~~(e) (1) For purposes of this section, if any campus of the
19 California State University chooses to use the funds described in
20 subdivision (a), then the awarding body is the Chancellor of the
21 California State University and the chancellor is required by
22 subdivision (a) to pay a fee to the Department of Industrial
23 Relations.~~

24 ~~(2) For purposes of this subdivision, if an awarding body
25 described in subdivision (a) is the University of California or any
26 campus of that university, and that awarding body is required by
27 subdivision (a) to pay a fee to the Department of Industrial
28 Relations, then the university shall review the payroll records on
29 at least a monthly basis to ensure the university's compliance with
30 prevailing wage obligations.~~

31 ~~(d) The State Allocation Board shall notify the Department of
32 Industrial Relations of awarding bodies that are awarded funds
33 subject to the fee required by subdivision (a).~~

34 ~~(e) Notwithstanding Section 17070.63 of the Education Code,
35 for purposes of this section, the State Allocation Board shall
36 increase the grant amounts as described in Chapter 12.5
37 (commencing with Section 17070.10) of Part 10 of Division 1 of
38 Title 1 of the Education Code to accommodate the state's share of
39 the increased costs of a new construction or modernization project
40 due to the fee required to be paid to the Department of Industrial~~

1 Relations to ensure compliance with and enforcement of prevailing
2 wage laws on the project. The State Allocation Board shall pay
3 the fee to the Department of Industrial Relations at the time bond
4 funds are released to the awarding body. All fees collected pursuant
5 to this subdivision shall be deposited in the State Public Works
6 Enforcement Fund created by Section 1771.3.

7 (f) This section shall only apply to a contract awarded on or
8 after both the effective date of the department's adoption of the
9 fee set forth in subdivision (a) and of regulations pursuant to
10 paragraph (2) of subdivision (b) of Section 1771.55.

11 *SEC. 12. Section 1771.8 of the Labor Code is repealed.*

12 ~~1771.8.—(a) The body awarding any contract for a public works~~
13 ~~project financed in any part with funds made available by the Water~~
14 ~~Security, Clean Drinking Water, Coastal and Beach Protection Act~~
15 ~~of 2002 (Division 26.5 (commencing with Section 79500) of the~~
16 ~~Water Code) shall adopt and enforce, or contract with a third party~~
17 ~~to adopt and enforce, a labor compliance program pursuant to~~
18 ~~subdivision (b) of Section 1771.5 for application to that public~~
19 ~~works project.~~

20 (b) This section shall become operative only if the Water
21 Security, Clean Drinking Water, Coastal and Beach Protection Act
22 of 2002 (Division 26.5 (commencing with Section 79500) of the
23 Water Code) is approved by the voters at the November 5, 2002,
24 statewide general election.

25 (e) This section shall not apply to a contract awarded on or after
26 the latter of the effective date of the regulations adopted by the
27 Department of Industrial Relations pursuant to paragraph (2) of
28 subdivision (b) of Section 1771.55 or the effective date of the fees
29 adopted by the department pursuant to Section 1771.85.

30 *SEC. 13. Section 1771.85 of the Labor Code is repealed.*

31 ~~1771.85.—(a) The body awarding any contract for a public~~
32 ~~works project financed in any part with funds made available by~~
33 ~~the Water Security, Clean Drinking Water, Coastal and Beach~~
34 ~~Protection Act of 2002 (Division 26.5 (commencing with Section~~
35 ~~79500) of the Water Code) shall pay a fee to the Department of~~
36 ~~Industrial Relations, in an amount that the department shall~~
37 ~~establish, and as it may from time to time amend, in an amount~~
38 ~~not to exceed one-fourth of 1 percent of the bond proceeds,~~
39 ~~sufficient to support the department's costs in ensuring compliance~~
40 ~~with and enforcing prevailing wage requirements on the project,~~

1 and labor compliance enforcement as set forth in subdivision (b)
2 of Section 1771.55. All fees collected pursuant to this subdivision
3 shall be deposited in the State Public Works Enforcement Fund
4 created by Section 1771.3, and shall be used only for enforcement
5 of prevailing wage requirements on those projects. The department
6 may waive the fee set forth in this section for an awarding body
7 that has previously been granted approval by the director to initiate
8 and operate a labor compliance program on the awarding body's
9 projects, and requests to continue to operate that labor compliance
10 program on its projects in lieu of labor compliance by the
11 department pursuant to subdivision (b) of Section 1771.55. This
12 fee shall not be waived for an awarding body that contracts with
13 a third party to initiate and enforce labor compliance programs on
14 the awarding body's projects.

15 (b) This section shall only apply to a contract awarded on or
16 after both the effective date of the department's adoption of the
17 fee set forth in subdivision (a) and of regulations pursuant to
18 paragraph (2) of subdivision (b) of Section 1771.55.

19 *SEC. 14. Section 1771.9 of the Labor Code is repealed.*

20 1771.9. (a) The body awarding any contract for a public works
21 project financed in any part with funds made available by the Safe,
22 Reliable High-Speed Passenger Train Bond Act for the 21st
23 Century (Chapter 20 (commencing with Section 2704) of Division
24 3 of the Streets and Highways Code) shall pay a fee to the
25 Department of Industrial Relations, in an amount that the
26 department shall establish, and as it may from time to time amend,
27 in an amount not to exceed one-fourth of 1 percent of the bond
28 proceeds, sufficient to support the department's costs in ensuring
29 compliance with and enforcing prevailing wage requirements on
30 the project, and labor compliance enforcement as set forth in
31 subdivision (b) of Section 1771.55. All fees collected pursuant to
32 this subdivision shall be deposited in the State Public Works
33 Enforcement Fund created by Section 1771.3, and shall be used
34 only for enforcement of prevailing wage requirements on those
35 projects. The department may waive the fee set forth in this section
36 for an awarding body that has previously been granted approval
37 by the director to initiate and operate a labor compliance program
38 on the awarding body's projects, and requests to continue to operate
39 that labor compliance program on its projects in lieu of labor
40 compliance by the department pursuant to subdivision (b) of

1 ~~Section 1771.55. This fee shall not be waived for an awarding~~
2 ~~body that contracts with a third party to initiate and enforce labor~~
3 ~~compliance programs on the awarding body's projects.~~

4 ~~(b) This section shall apply only to a contract awarded on or~~
5 ~~after both the effective date of the department's adoption of the~~
6 ~~fee set forth in subdivision (a) and of regulations pursuant to~~
7 ~~paragraph (2) of subdivision (b) of Section 1771.55.~~

8 *SEC. 15. Section 6804 of the Public Contract Code is amended*
9 *to read:*

10 6804. (a) For contracts *for public works projects* awarded prior
11 to the effective date of ~~either the regulations adopted by the~~
12 ~~Department of Industrial Relations pursuant to subdivision (b) (g)~~
13 ~~of Section 1771.55 1771.5 of the Labor Code or the fees established~~
14 ~~by the department pursuant to subdivision (b), a transportation~~
15 ~~entity authorized to use the design-build method of procurement~~
16 ~~shall implement a labor compliance program, as described~~ *establish*
17 *and enforce a labor compliance program containing the*
18 *requirements outlined in Section 1771.5 of the Labor Code,* ~~or it~~
19 ~~shall contract with a third party to implement, on the transportation~~
20 ~~entity's behalf, a labor compliance program subject to that statute~~
21 *or shall contract with a third party to operate a labor compliance*
22 *program containing the requirements outlined in Section 1771.5*
23 *of the Labor Code.* This requirement ~~does~~ *shall* not apply to a
24 ~~project projects~~ where the transportation entity or design-build
25 entity has entered into any collective bargaining agreement ~~or~~
26 ~~agreements that bind binds~~ all of the contractors performing work
27 on the projects.

28 (b) For contracts *for public works projects* awarded on or after
29 the effective date of ~~both the regulations adopted by the Department~~
30 ~~of Industrial Relations pursuant to subdivision (b) (g) of Section~~
31 ~~1771.55 1771.5 of the Labor Code and the fees established by the~~
32 ~~department pursuant to this subdivision, the transportation entity~~
33 ~~shall pay a fee to the department, in an amount that the department~~
34 ~~shall establish, and as it may from time to time amend, sufficient~~
35 ~~to support the department's costs in ensuring compliance with and~~
36 ~~enforcing prevailing wage requirements on the project, and labor~~
37 ~~compliance enforcement as set forth in subdivision (b) shall~~
38 *reimburse the department for its reasonable and directly related*
39 *costs of performing prevailing wage monitoring and enforcement*
40 *on public works projects pursuant to rates established by the*

1 *department as set forth in subdivision (h) of Section 1771.55*
 2 *1771.5 of the Labor Code. All fees moneys collected pursuant to*
 3 *this subdivision shall be deposited in the State Public Works*
 4 *Enforcement Fund, created by Section 1771.3 of the Labor Code,*
 5 *and shall be used only for enforcement of prevailing wage*
 6 *requirements on those projects.*

7 ~~(e) The Department of Industrial Relations may waive the fee~~
 8 ~~set forth in subdivision (b) for a transportation entity that has~~
 9 ~~previously been granted approval by the director to initiate and~~
 10 ~~operate a labor compliance program on its projects, and that~~
 11 ~~requests to continue to operate the labor compliance program on~~
 12 ~~its projects in lieu of labor compliance by the department pursuant~~
 13 ~~to subdivision (b) of Section 1771.55 of the Labor Code. This fee~~
 14 ~~shall not be waived for a transportation entity that contracts with~~
 15 ~~a third party to initiate and enforce labor compliance programs on~~
 16 ~~the transportation entity's projects.~~

17 *(c) In lieu of reimbursing the Department of Industrial Relations*
 18 *for its reasonable and directly related costs of performing*
 19 *monitoring and enforcement on public works projects, the*
 20 *transportation entity may elect to continue operating an existing*
 21 *previously approved labor compliance program to monitor and*
 22 *enforce prevailing wage requirements on the project if it has either*
 23 *not contracted with a third party to conduct its labor compliance*
 24 *program and requests and receives approval from the department*
 25 *to continue its existing program or it enters into a collective*
 26 *bargaining agreement that binds all of the contractors performing*
 27 *work on the project and that includes a mechanism for resolving*
 28 *disputes about the payment of wages.*

29 *SEC. 16. Section 20133 of the Public Contract Code is amended*
 30 *to read:*

31 20133. (a) A county, with approval of the board of
 32 supervisors, may utilize an alternative procedure for bidding on
 33 construction projects in the county in excess of two million five
 34 hundred thousand dollars (\$2,500,000) and may award the project
 35 using either the lowest responsible bidder or by best value.

36 (b) (1) It is the intent of the Legislature to enable counties to
 37 utilize design-build for buildings and county sanitation wastewater
 38 treatment facilities. It is not the intent of the Legislature to
 39 authorize this procedure for other infrastructure, including, but not

1 limited to, streets and highways, public rail transit, or water
2 resources facilities and infrastructures.

3 (2) The Legislature also finds and declares that utilizing a
4 design-build contract requires a clear understanding of the roles
5 and responsibilities of each participant in the design-build process.

6 (3) (A) For contracts *for public works projects* awarded prior
7 to—either the effective date of regulations adopted by the
8 Department of Industrial Relations pursuant to subdivision—(b) (g)
9 of Section—~~1771.55~~ 1771.5 of the Labor Code—~~or the fees established~~
10 ~~by the department pursuant to subparagraph (B)~~, if the board of
11 supervisors elects to proceed under this section, the board of
12 supervisors shall establish and enforce ~~for design-build projects~~ a
13 labor compliance program containing the requirements outlined
14 in Section 1771.5 of the Labor Code, or it shall contract with a
15 third party to operate a labor compliance program containing the
16 requirements outlined in Section 1771.5 of the Labor Code. This
17 requirement shall not apply to any—~~project~~ *projects* where the
18 county or the design-build entity has entered into—~~any~~ a collective
19 bargaining agreement—~~or agreements that bind~~ *that binds* all of the
20 contractors performing work on the projects.

21 (B) For contracts *for public works projects* awarded on or after
22 ~~both~~ the effective date of regulations adopted by the Department
23 of Industrial Relations pursuant to subdivision—(b) (g) of Section
24 ~~1771.55~~ 1771.5 of the Labor Code—~~and the fees established by the~~
25 ~~department pursuant to this subparagraph~~, the board of supervisors
26 shall ~~pay a fee to the department, in an amount that the department~~
27 ~~shall establish, and as it may from time to time amend, sufficient~~
28 ~~to support the department's costs in ensuring compliance with and~~
29 ~~enforcing prevailing wage requirements on the project, and labor~~
30 ~~compliance enforcement as set forth in subdivision (b)~~ *reimburse*
31 *the department for its reasonable and directly related costs of*
32 *performing prevailing wage monitoring and enforcement on public*
33 *works projects pursuant to rates established by the department as*
34 *set forth in subdivision (h) of Section—~~1771.55~~ 1771.5 of the Labor*
35 *Code. All fees moneys* collected pursuant to this paragraph shall
36 be deposited in the State Public Works Enforcement Fund created
37 by Section 1771.3 of the Labor Code, and shall be used only for
38 enforcement of prevailing—~~wages~~ *wage* requirements on those
39 projects.

1 ~~(C) The Department of Industrial Relations may waive the fee~~
 2 ~~set forth in subparagraph (B) if the board of supervisors has~~
 3 ~~previously been granted approval by the director to initiate and~~
 4 ~~operate a labor compliance program on its projects and requests~~
 5 ~~to continue to operate that labor compliance program on its projects~~
 6 ~~in lieu of labor compliance by the department pursuant to~~
 7 ~~subdivision (b) of Section 1771.55. The fee shall not be waived~~
 8 ~~for the board of supervisors if it contracts with a third party to~~
 9 ~~initiate and enforce labor compliance programs on its projects.~~

10 *(C) In lieu of reimbursing the Department of Industrial Relations*
 11 *for its reasonable and directly related costs of performing*
 12 *monitoring and enforcement on public works projects, the board*
 13 *of supervisors may elect to continue operating an existing*
 14 *previously approved labor compliance program to monitor and*
 15 *enforce prevailing wage requirements on the project if it has either*
 16 *not contracted with a third party to conduct its labor compliance*
 17 *program and requests and receives approval from the department*
 18 *to continue its existing program or it enters into a collective*
 19 *bargaining agreement that binds all of the contractors performing*
 20 *work on the project and that includes a mechanism for resolving*
 21 *disputes about the payment of wages.*

- 22 (c) As used in this section:
- 23 (1) “Best value” means a value determined by objective criteria
 24 related to price, features, functions, and life-cycle costs.
 - 25 (2) “Design-build” means a procurement process in which both
 26 the design and construction of a project are procured from a single
 27 entity.
 - 28 (3) “Design-build entity” means a partnership, corporation, or
 29 other legal entity that is able to provide appropriately licensed
 30 contracting, architectural, and engineering services as needed
 31 pursuant to a design-build contract.
 - 32 (4) “Project” means the construction of a building and
 33 improvements directly related to the construction of a building,
 34 and county sanitation wastewater treatment facilities, but does not
 35 include the construction of other infrastructure, including, but not
 36 limited to, streets and highways, public rail transit, or water
 37 resources facilities and infrastructure.
 - 38 (d) Design-build projects shall progress in a four-step process,
 39 as follows:

1 (1) (A) The county shall prepare a set of documents setting
2 forth the scope of the project. The documents may include, but are
3 not limited to, the size, type, and desired design character of the
4 public improvement, performance specifications covering the
5 quality of materials, equipment, and workmanship, preliminary
6 plans or building layouts, or any other information deemed
7 necessary to describe adequately the county's needs. The
8 performance specifications and any plans shall be prepared by a
9 design professional who is duly licensed and registered in
10 California.

11 (B) Any architect or engineer retained by the county to assist
12 in the development of the project specific documents shall not be
13 eligible to participate in the preparation of a bid with any
14 design-build entity for that project.

15 (2) (A) Based on the documents prepared in paragraph (1), the
16 county shall prepare a request for proposals that invites interested
17 parties to submit competitive sealed proposals in the manner
18 prescribed by the county. The request for proposals shall include,
19 but is not limited to, the following elements:

20 (i) Identification of the basic scope and needs of the project or
21 contract, the expected cost range, and other information deemed
22 necessary by the county to inform interested parties of the
23 contracting opportunity, to include the methodology that will be
24 used by the county to evaluate proposals and specifically if the
25 contract will be awarded to the lowest responsible bidder.

26 (ii) Significant objective factors that the county reasonably
27 expects to consider in evaluating proposals, including cost or price
28 and all nonprice related factors.

29 (iii) The relative importance of weight assigned to each of the
30 factors identified in the request for proposals.

31 (B) With respect to clause (iii) of subparagraph (A), if a
32 nonweighted system is used, the agency shall specifically disclose
33 whether all evaluation factors other than cost or price when
34 combined are:

35 (i) Significantly more important than cost or price.

36 (ii) Approximately equal in importance to cost or price.

37 (iii) Significantly less important than cost or price.

38 (C) If the county chooses to reserve the right to hold discussions
39 or negotiations with responsive bidders, it shall so specify in the
40 request for proposal and shall publish separately or incorporate

1 into the request for proposal applicable rules and procedures to be
2 observed by the county to ensure that any discussions or
3 negotiations are conducted in good faith.

4 (3) (A) The county shall establish a procedure to prequalify
5 design-build entities using a standard questionnaire developed by
6 the county. In preparing the questionnaire, the county shall consult
7 with the construction industry, including representatives of the
8 building trades and surety industry. This questionnaire shall require
9 information including, but not limited to, all of the following:

10 (i) If the design-build entity is a partnership, limited partnership,
11 or other association, a listing of all of the partners, general partners,
12 or association members known at the time of bid submission who
13 will participate in the design-build contract, including, but not
14 limited to, mechanical subcontractors.

15 (ii) Evidence that the members of the design-build entity have
16 completed, or demonstrated the experience, competency, capability,
17 and capacity to complete, projects of similar size, scope, or
18 complexity, and that proposed key personnel have sufficient
19 experience and training to competently manage and complete the
20 design and construction of the project, as well as a financial
21 statement that assures the county that the design-build entity has
22 the capacity to complete the project.

23 (iii) The licenses, registration, and credentials required to design
24 and construct the project, including information on the revocation
25 or suspension of any license, credential, or registration.

26 (iv) Evidence that establishes that the design-build entity has
27 the capacity to obtain all required payment and performance
28 bonding, liability insurance, and errors and omissions insurance.

29 (v) Any prior serious or willful violation of the California
30 Occupational Safety and Health Act of 1973, contained in Part 1
31 (commencing with Section 6300) of Division 5 of the Labor Code,
32 or the federal Occupational Safety and Health Act of 1970 (~~P.L.~~
33 *Public Law* 91-596), settled against any member of the
34 design-build entity, and information concerning workers'
35 compensation experience history and worker safety program.

36 (vi) Information concerning any debarment, disqualification,
37 or removal from a federal, state, or local government public works
38 project. Any instance in which an entity, its owners, officers, or
39 managing employees submitted a bid on a public works project

1 and were found to be nonresponsive, or were found by an awarding
2 body not to be a responsible bidder.

3 (vii) Any instance in which the entity, or its owners, officers,
4 or managing employees, defaulted on a construction contract.

5 (viii) Any violations of the Contractors' State License Law
6 (Chapter 9 (commencing with Section 7000) of Division 3 of the
7 Business and Professions Code), excluding alleged violations of
8 federal or state law including the payment of wages, benefits,
9 apprenticeship requirements, or personal income tax withholding,
10 or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec.
11 3101 et seq.) withholding requirements settled against any member
12 of the design-build entity.

13 (ix) Information concerning the bankruptcy or receivership of
14 any member of the design-build entity, including information
15 concerning any work completed by a surety.

16 (x) Information concerning all settled adverse claims, disputes,
17 or lawsuits between the owner of a public works project and any
18 member of the design-build entity during the five years preceding
19 submission of a bid pursuant to this section, in which the claim,
20 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
21 Information shall also be provided concerning any work completed
22 by a surety during this period.

23 (xi) In the case of a partnership or an association that is not a
24 legal entity, a copy of the agreement creating the partnership or
25 association and specifying that all partners or association members
26 agree to be fully liable for the performance under the design-build
27 contract.

28 (xii) (I) Any instance in which the entity, or any of its members,
29 owners, officers, or managing employees was, during the five years
30 preceding submission of a bid pursuant to this section, determined
31 by a court of competent jurisdiction to have submitted, or legally
32 admitted for purposes of a criminal plea to have submitted either
33 of the following:

34 (ia) Any claim to any public agency or official in violation of
35 the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).

36 (ib) Any claim to any public official in violation of the
37 California False Claims Act (Article 9 (commencing with Section
38 12650) of Chapter 6 of Part 2 of Division 3 of the Government
39 Code).

1 (II) Information provided pursuant to this subdivision shall
2 include the name and number of any case filed, the court in which
3 it was filed, and the date on which it was filed. The entity may
4 also provide further information regarding any such instance,
5 including any mitigating or extenuating circumstances that the
6 entity wishes the county to consider.

7 (B) The information required pursuant to this subdivision shall
8 be verified under oath by the entity and its members in the manner
9 in which civil pleadings in civil actions are verified. Information
10 that is not a public record pursuant to the California Public Records
11 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
12 of Title 1 of the Government Code) shall not be open to public
13 inspection.

14 (4) The county shall establish a procedure for final selection of
15 the design-build entity. Selection shall be based on either of the
16 following criteria:

17 (A) A competitive bidding process resulting in lump-sum bids
18 by the prequalified design-build entities. Awards shall be made to
19 the lowest responsible bidder.

20 (B) A county may use a design-build competition based upon
21 best value and other criteria set forth in paragraph (2). The
22 design-build competition shall include the following elements:

23 (i) Competitive proposals shall be evaluated by using only the
24 criteria and selection procedures specifically identified in the
25 request for proposal. However, the following minimum factors
26 shall each represent at least 10 percent of the total weight of
27 consideration given to all criteria factors: price, technical design,
28 and construction expertise, life cycle costs over 15 years or more,
29 skilled labor force availability, and acceptable safety record.

30 (ii) Once the evaluation is complete, the top three responsive
31 bidders shall be ranked sequentially from the most advantageous
32 to the least.

33 (iii) The award of the contract shall be made to the responsible
34 bidder whose proposal is determined, in writing, to be the most
35 advantageous.

36 (iv) Notwithstanding any provision of this code, upon issuance
37 of a contract award, the county shall publicly announce its award,
38 identifying the contractor to whom the award is made, along with
39 a written decision supporting its contract award and stating the

1 basis of the award. The notice of award shall also include the
2 county's second and third ranked design-build entities.

3 (v) For purposes of this paragraph, "skilled labor force
4 availability" shall be determined by the existence of an agreement
5 with a registered apprenticeship program, approved by the
6 California Apprenticeship Council, which has graduated
7 apprentices in each of the preceding five years. This graduation
8 requirement shall not apply to programs providing apprenticeship
9 training for any craft that has been deemed by the Department of
10 Labor and the Department of Industrial Relations to be an
11 apprenticeable craft in the five years prior to enactment of this act.

12 (vi) For purposes of this paragraph, a bidder's "safety record"
13 shall be deemed "acceptable" if its experience modification rate
14 for the most recent three-year period is an average of 1.00 or less,
15 and its average total recordable injury/illness rate and average lost
16 work rate for the most recent three-year period does not exceed
17 the applicable statistical standards for its business category or if
18 the bidder is a party to an alternative dispute resolution system as
19 provided for in Section 3201.5 of the Labor Code.

20 (e) (1) Any design-build entity that is selected to design and
21 build a project pursuant to this section shall possess or obtain
22 sufficient bonding to cover the contract amount for nondesign
23 services, and errors and omission insurance coverage sufficient to
24 cover all design and architectural services provided in the contract.
25 This section does not prohibit a general or engineering contractor
26 from being designated the lead entity on a design-build entity for
27 the purposes of purchasing necessary bonding to cover the activities
28 of the design-build entity.

29 (2) Any payment or performance bond written for the purposes
30 of this section shall be written using a bond form developed by
31 the county.

32 (f) All subcontractors that were not listed by the design-build
33 entity in accordance with clause (i) of subparagraph (A) of
34 paragraph (3) of subdivision (d) shall be awarded by the
35 design-build entity in accordance with the design-build process
36 set forth by the county in the design-build package. All
37 subcontractors bidding on contracts pursuant to this section shall
38 be afforded the protections contained in Chapter 4 (commencing
39 with Section 4100) of Part 1. The design-build entity shall do both
40 of the following:

1 (1) Provide public notice of the availability of work to be
2 subcontracted in accordance with the publication requirements
3 applicable to the competitive bidding process of the county.

4 (2) Provide a fixed date and time on which the subcontracted
5 work will be awarded in accordance with the procedure established
6 pursuant to this section.

7 (g) Lists of subcontractors, bidders, and bid awards relating to
8 the project shall be submitted by the design-build entity to the
9 awarding body within 14 days of the award. These documents are
10 deemed to be public records and shall be available for public
11 inspection pursuant to this chapter and Article 1 (commencing
12 with Section 6250) of Chapter 3.5 of Division 7 of the Government
13 Code.

14 (h) The minimum performance criteria and design standards
15 established pursuant to paragraph (1) of subdivision (d) shall be
16 adhered to by the design-build entity. Any deviations from those
17 standards may only be allowed by written consent of the county.

18 (i) The county may retain the services of a design professional
19 or construction project manager, or both, throughout the course of
20 the project in order to ensure compliance with this section.

21 (j) Contracts awarded pursuant to this section shall be valid until
22 the project is completed.

23 (k) Nothing in this section is intended to affect, expand, alter,
24 or limit any rights or remedies otherwise available at law.

25 (l) (1) If the county elects to award a project pursuant to this
26 section, retention proceeds withheld by the county from the
27 design-build entity shall not exceed 5 percent if a performance and
28 payment bond, issued by an admitted surety insurer, is required in
29 the solicitation of bids.

30 (2) In a contract between the design-build entity and the
31 subcontractor, and in a contract between a subcontractor and any
32 subcontractor thereunder, the percentage of the retention proceeds
33 withheld may not exceed the percentage specified in the contract
34 between the county and the design-build entity. If the design-build
35 entity provides written notice to any subcontractor who is not a
36 member of the design-build entity, prior to or at the time the bid
37 is requested, that a bond may be required and the subcontractor
38 subsequently is unable or refuses to furnish a bond to the
39 design-build entity, then the design-build entity may withhold
40 retention proceeds in excess of the percentage specified in the

1 contract between the county and the design-build entity from any
2 payment made by the design-build entity to the subcontractor.

3 (m) Each county that elects to proceed under this section and
4 uses the design-build method on a public works project shall submit
5 to the Legislative Analyst’s Office before September 1, 2013, a
6 report containing a description of each public works project
7 procured through the design-build process and completed after
8 November 1, 2009, and before August 1, 2013. The report shall
9 include, but shall not be limited to, all of the following information:

- 10 (1) The type of project.
- 11 (2) The gross square footage of the project.
- 12 (3) The design-build entity that was awarded the project.
- 13 (4) The estimated and actual length of time to complete the
14 project.
- 15 (5) The estimated and actual project costs.
- 16 (6) Whether the project was met or altered.
- 17 (7) The number and amount of project change orders.
- 18 (8) A description of any written protests concerning any aspect
19 of the solicitation, bid, proposal, or award of the design-build
20 project, including the resolution of the protests.
- 21 (9) An assessment of the prequalification process and criteria.
- 22 (10) An assessment of the effect of retaining 5 percent retention
23 on the project.
- 24 (11) A description of the Labor Force Compliance Program and
25 an assessment of the project impact, where required.
- 26 (12) A description of the method used to award the contract. If
27 best value was the method, the report shall describe the factors
28 used to evaluate the bid, including the weighting of each factor
29 and an assessment of the effectiveness of the methodology.
- 30 (13) An assessment of the project impact of “skilled labor force
31 availability.”
- 32 (14) An assessment of the design-build dollar limits on county
33 projects. This assessment shall include projects where the county
34 wanted to use design-build and was precluded by the dollar
35 limitation. This assessment shall also include projects where the
36 best value method was not used due to dollar limitations.
- 37 (15) An assessment of the most appropriate uses for the
38 design-build approach.

39 (n) Any county that elects not to use the authority granted by
40 this section may submit a report to the Legislative Analyst’s Office

1 explaining why the county elected not to use the design-build
2 method.

3 (o) On or before January 1, 2014, the Legislative Analyst shall
4 report to the Legislature on the use of the design-build method by
5 counties pursuant to this section, including the information listed
6 in subdivision (m) and (p). The report may include
7 recommendations for modifying or extending this section.

8 (p) The Legislative Analyst shall complete a fact-based analysis
9 of the use of the design-build method by counties pursuant to this
10 section, utilizing the information provided pursuant to subdivision
11 (m) and any independent information provided by the public or
12 interested parties. The Legislative Analyst shall select a
13 representative sample of projects under this section and review
14 available public records and reports, media reports, and related
15 information in its analysis. The Legislative Analyst shall compile
16 the information required to be analyzed pursuant to this subdivision
17 into a report, which shall be provided to the Legislature. The report
18 shall include conclusions describing the actual cost of projects
19 procured pursuant to this section, whether the project schedule
20 was met or altered, and whether projects needed or used project
21 change orders.

22 (q) Except as provided in this section, this act shall not be
23 construed to affect the application of any other law.

24 (r) This section shall remain in effect only until July 1, 2014,
25 and as of that date is repealed, unless a later enacted statute, that
26 is enacted before July 1, 2014, deletes or extends that date.

27 *SEC. 17. Section 20175.2 of the Public Contract Code is*
28 *amended to read:*

29 20175.2. (a) (1) A city, with approval of the appropriate city
30 council, may utilize an alternative procedure for bidding on
31 building construction projects in the city in excess of one million
32 dollars (\$1,000,000), except as provided in subdivision (p).

33 (2) Cities may award the project using either the lowest
34 responsible bidder or by best value.

35 (b) (1) It is the intent of the Legislature to enable cities to utilize
36 cost-effective options for building and modernizing public
37 facilities. The Legislature also recognizes the national trend,
38 including authorization in California, to allow public entities to
39 utilize design-build contracts as a project delivery method. It is
40 not the intent of the Legislature to authorize this procedure for

1 transportation facilities, including, but not limited to, roads and
2 bridges.

3 (2) The Legislature also finds and declares that utilizing a
4 design-build contract requires a clear understanding of the roles
5 and responsibilities of each participant in the design-build process.
6 The Legislature also finds that the cost-effective benefits to cities
7 are achieved by shifting the liability and risk for cost containment
8 and project completion to the design-build entity.

9 (3) It is the intent of the Legislature to provide an alternative
10 and optional procedure for bidding and building construction
11 projects for cities.

12 (4) The design-build approach may be used, but is not limited
13 to use, when it is anticipated that it will: reduce project cost,
14 expedite project completion, or provide design features not
15 achievable through the design-bid-build method.

16 (5) (A) For contracts *for public works projects* awarded prior
17 to the effective date of ~~either~~ the regulations adopted by the
18 Department of Industrial Relations pursuant to subdivision ~~(b)~~ (g)
19 of Section ~~1771.55~~ 1771.5 of the Labor Code ~~or the fees established~~
20 ~~by the department pursuant to subparagraph (B)~~, if a city council
21 elects to proceed under this section, the city council shall establish
22 and enforce, ~~for design-build projects~~, a labor compliance program
23 containing the requirements outlined in Section 1771.5 of the Labor
24 Code, or it shall contract with a third party to operate a labor
25 compliance program containing the requirements outlined in
26 Section 1771.5 of the Labor Code. This requirement shall not apply
27 to any project where the city or the design-build entity has entered
28 into ~~any a~~ collective bargaining agreement or agreements that bind
29 all of the contractors performing work on the projects.

30 (B) For contracts *for public works projects* awarded on or after
31 the effective date of ~~both~~ the regulations adopted by the Department
32 of Industrial Relations pursuant to subdivision ~~(b)~~ (g) of Section
33 ~~1771.55~~ 1771.5 of the Labor Code ~~and the fees established by the~~
34 ~~department pursuant to this subparagraph~~, the city council shall
35 pay a fee to the department, in an amount that the department shall
36 establish, ~~and as it may from time to time amend~~, sufficient to
37 support the department's costs in ensuring compliance with and
38 enforcing prevailing wage requirements on the project, and labor
39 compliance enforcement as set forth in subdivision ~~(b)~~ *reimburse*
40 *the department for its reasonable and directly related costs of*

1 *performing prevailing wage monitoring and enforcement on public*
 2 *works projects pursuant to rates established by the department as*
 3 *set forth in subdivision (h) of Section 1771.55 1771.5 of the Labor*
 4 *Code. All fees moneys collected pursuant to this paragraph shall*
 5 *be deposited in the State Public Works Enforcement Fund created*
 6 *by Section 1771.3 of the Labor Code, and shall be used only for*
 7 *enforcement of prevailing wage requirements on those projects.*

8 ~~(C) The Department of Industrial Relations may waive the fee~~
 9 ~~set forth in subparagraph (2) if the city council has previously been~~
 10 ~~granted approval by the director to initiate and operate a labor~~
 11 ~~compliance program on its projects and requests to continue to~~
 12 ~~operate that labor compliance program on its projects in lieu of~~
 13 ~~labor compliance by the department pursuant to subdivision (b)~~
 14 ~~of Section 1771.55. The fee shall not be waived for the city council~~
 15 ~~if it contracts with a third party to initiate and enforce labor~~
 16 ~~compliance programs on its projects.~~

17 *(C) In lieu of reimbursing the Department of Industrial Relations*
 18 *for its reasonable and directly related costs of performing*
 19 *monitoring and enforcement on public works projects, the city*
 20 *council may elect to continue operating an existing previously*
 21 *approved labor compliance program to monitor and enforce*
 22 *prevailing wage requirements on the project if it has either not*
 23 *contracted with a third party to conduct its labor compliance*
 24 *program and requests and receives approval from the department*
 25 *to continue its existing program or it enters into a collective*
 26 *bargaining agreement that binds all of the contractors performing*
 27 *work on the project and that includes a mechanism for resolving*
 28 *disputes about the payment of wages.*

29 (c) As used in this section:

30 (1) “Best value” means a value determined by objectives relative
 31 to price, features, functions, and life-cycle costs.

32 (2) “Design-build” means a procurement process in which both
 33 the design and construction of a project are procured from a single
 34 entity.

35 (3) “Design-build entity” means a partnership, corporation, or
 36 other legal entity that is able to provide appropriately licensed
 37 contracting, architectural, and engineering services, as needed,
 38 pursuant to a design-build contract.

39 (4) “Project” means the construction of a building and
 40 improvements directly related to the construction of a building,

1 but does not include streets and highways, public rail transit, or
2 water resource facilities and infrastructure.

3 (d) Design-build projects shall progress in a four-step process,
4 as follows:

5 (1) (A) The city shall prepare a set of documents setting forth
6 the scope of the project. The documents may include, but are not
7 limited to, the size, type, and desired design character of the
8 buildings and site, performance specifications covering the quality
9 of materials, equipment, and workmanship, preliminary plans or
10 building layouts, or any other information deemed necessary to
11 describe adequately the city's needs. The performance
12 specifications and any plans shall be prepared by a design
13 professional who is duly licensed and registered in California.

14 (B) Any architect or engineer retained by the city to assist in
15 the development of the project-specific documents shall not be
16 eligible to participate in the preparation of a bid with any
17 design-build entity for that project.

18 (2) (A) Based on the documents prepared in paragraph (1), the
19 city shall prepare a request for proposals that invites interested
20 parties to submit competitive sealed proposals in the manner
21 prescribed by the city. The request for proposals shall include, but
22 is not limited to, the following elements:

23 (i) Identification of the basic scope and needs of the project or
24 contract, the expected cost range, and other information deemed
25 necessary by the city to inform interested parties of the contracting
26 opportunity, to include the methodology that will be used by the
27 city to evaluate proposals, and specifically if the contract will be
28 awarded to the lowest responsible bidder.

29 (ii) Significant objective factors which the city reasonably
30 expects to consider in evaluating proposals, including cost or price
31 and all nonprice related factors.

32 (iii) The relative importance or weight assigned to each of the
33 factors identified in the request for proposals.

34 (B) With respect to clause (iii) of subparagraph (A), if a
35 nonweighted system is used, the agency shall specifically disclose
36 whether all evaluation factors, other than cost or price, when
37 combined are:

38 (i) Significantly more important than cost or price.

39 (ii) Approximately equal in importance to cost or price.

40 (iii) Significantly less important than cost or price.

1 (C) If the city chooses to reserve the right to hold discussions
2 or negotiations with responsive bidders, it shall so specify in the
3 request for proposal and shall publish separately, or incorporate
4 into the request for proposal, applicable rules and procedures to
5 be observed by the city to ensure that any discussions or
6 negotiations are conducted in good faith.

7 (3) (A) The city shall establish a procedure to prequalify
8 design-build entities using a standard questionnaire developed by
9 the city. In preparing the questionnaire, the city shall consult with
10 the construction industry, including representatives of the building
11 trades and surety industry. This questionnaire shall require
12 information including, but not limited to, all of the following:

13 (i) If the design-build entity is a partnership, limited partnership,
14 or other association, a listing of all of the partners, general partners,
15 or association members known at the time of bid submission who
16 will participate in the design-build contract, including, but not
17 limited to, mechanical subcontractors.

18 (ii) Evidence that the members of the design-build entity have
19 completed, or demonstrated the experience, competency, capability,
20 and capacity to complete projects of similar size, scope, or
21 complexity, and that proposed key personnel have sufficient
22 experience and training to competently manage and complete the
23 design and construction of the project, as well as a financial
24 statement that assures the city that the design-build entity has the
25 capacity to complete the project.

26 (iii) The licenses, registration, and credentials required to design
27 and construct the project, including information on the revocation
28 or suspension of any license, credential, or registration.

29 (iv) Evidence that establishes that the design-build entity has
30 the capacity to obtain all required payment and performance
31 bonding, liability insurance, and errors and omissions insurance.

32 (v) Any prior serious or willful violation of the California
33 Occupational Safety and Health Act of 1973, contained in Part 1
34 (commencing with Section 6300) of Division 5 of the Labor Code
35 or the federal Occupational Safety and Health Act of 1970 (Public
36 Law 91-596) settled against any member of the design-build entity,
37 and information concerning workers' compensation experience
38 history and worker safety program.

39 (vi) Information concerning any debarment, disqualification,
40 or removal from a federal, state, or local government public works

1 project. Any instance where an entity, its owners, officers, or
2 managing employees submitted a bid on a public works project
3 and were found to be nonresponsive, or were found by an awarding
4 body not to be a responsible bidder.

5 (vii) Any instance where the entity, its owners, officers, or
6 managing employees defaulted on a construction contract.

7 (viii) Any violations of the Contractors State License Law
8 (Chapter 9 (commencing with Section 7000) of Division 3 of the
9 Business and Professions Code), excluding alleged violations of
10 federal or state law including the payment of wages, benefits,
11 apprenticeship requirements, or personal income tax withholding,
12 or of Federal Insurance Contribution Act (FICA) withholding
13 requirements settled against any member of the design-build entity.

14 (ix) Information concerning the bankruptcy or receivership of
15 any member of the design-build entity, including information
16 concerning any work completed by a surety.

17 (x) Information concerning all settled adverse claims, disputes,
18 or lawsuits between the owner of a public works project and any
19 member of the design-build entity during the five years preceding
20 submission of a bid pursuant to this section, in which the claim,
21 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
22 Information shall also be provided concerning any work completed
23 by a surety during this period.

24 (xi) In the case of a partnership or an association that is not a
25 legal entity, a copy of the agreement creating the partnership or
26 association and specifying that all partners or association members
27 agree to be fully liable for the performance under the design-build
28 contract.

29 (xii) (I) Any instance in which the entity, or any of its members,
30 owners, officers, or managing employees was, during the five years
31 preceding submission of a bid pursuant to this section, determined
32 by a court of competent jurisdiction to have submitted, or legally
33 admitted for purposes of a criminal plea to have submitted either
34 of the following:

35 (ia) Any claim to any public agency or official in violation of
36 the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).

37 (ib) Any claim to any public official in violation of the
38 California False Claims Act (Article 9 (commencing with Section
39 12650) of Chapter 6 of Part 2 of Division 3 of the Government
40 Code).

1 (II) Information provided pursuant to this subdivision shall
2 include the name and number of any case filed, the court in which
3 it was filed, and the date on which it was filed. The entity may
4 also provide further information regarding any such instance,
5 including any mitigating or extenuating circumstances that the
6 entity wishes the city to consider.

7 (B) The information required pursuant to this subdivision shall
8 be verified under oath by the entity and its members in the manner
9 in which civil pleadings in civil actions are verified. Information
10 that is not a public record pursuant to the California Public Records
11 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
12 of Title 1 of the Government Code) shall not be open to public
13 inspection.

14 (4) The city shall establish a procedure for final selection of the
15 design-build entity. Selection shall be based on either of the
16 following criteria:

17 (A) A competitive bidding process resulting in lump-sum bids
18 by the prequalified design-build entities. Awards shall be made to
19 the lowest responsible bidder.

20 (B) The city may use a design-build competition based upon
21 best value and other criteria set forth in paragraph (2) of
22 subdivision (d). The design-build competition shall include the
23 following elements:

24 (i) Competitive proposals shall be evaluated by using only the
25 criteria and selection procedures specifically identified in the
26 request for proposal. However, the following minimum factors
27 shall each represent at least 10 percent of the total weight of
28 consideration given to all criteria factors: price, technical design
29 and construction expertise, life-cycle costs over 15 years or more,
30 skilled labor force availability, and acceptable safety record.

31 (ii) Once the evaluation is complete, the top three responsive
32 bidders shall be ranked sequentially from the most advantageous
33 to the least.

34 (iii) The award of the contract shall be made to the responsible
35 bidder whose proposal is determined, in writing, to be the most
36 advantageous.

37 (iv) Notwithstanding any provision of this code, upon issuance
38 of a contract award, the city shall publicly announce its award,
39 identifying the contractor to whom the award is made, along with
40 a written decision supporting its contract award and stating the

1 basis of the award. The notice of award shall also include the city’s
2 second and third ranked design-build entities.

3 (v) For purposes of this paragraph, “skilled labor force
4 availability” shall be determined by the existence of an agreement
5 with a registered apprenticeship program, approved by the
6 California Apprenticeship Council, which has graduated
7 apprentices in each of the preceding five years. This graduation
8 requirement shall not apply to programs providing apprenticeship
9 training for any craft that has been deemed by the Department of
10 Labor and the Department of Industrial Relations to be an
11 apprenticeable craft in the five years prior to enactment of this act.

12 (vi) For purposes of this paragraph, a bidder’s “safety record”
13 shall be deemed “acceptable” if its experience modification rate
14 for the most recent three-year period is an average of 1.00 or less,
15 and its average total recordable injury/illness rate and average lost
16 work rate for the most recent three-year period does not exceed
17 the applicable statistical standards for its business category, or if
18 the bidder is a party to an alternative dispute resolution system, as
19 provided for in Section 3201.5 of the Labor Code.

20 (e) (1) Any design-build entity that is selected to design and
21 build a project pursuant to this section shall possess or obtain
22 sufficient bonding to cover the contract amount for nondesign
23 services and errors and omissions insurance coverage sufficient
24 to cover all design and architectural services provided in the
25 contract. This section does not prohibit a general or engineering
26 contractor from being designated the lead entity on a design-build
27 entity for the purposes of purchasing necessary bonding to cover
28 the activities of the design-build entity.

29 (2) Any payment or performance bond written for the purposes
30 of this section shall be written using a bond form developed by
31 the city.

32 (f) All subcontractors that were not listed by the design-build
33 entity in accordance with clause (i) of subparagraph (A) of
34 paragraph (3) of subdivision (d) shall be awarded by the
35 design-build entity in accordance with the design-build process
36 set forth by the city in the design-build package. All subcontractors
37 bidding on contracts pursuant to this section shall be afforded the
38 protections contained in Chapter 4 (commencing with Section
39 4100) of Part 1. The design-build entity shall do both of the
40 following:

1 (1) Provide public notice of the availability of work to be
2 subcontracted in accordance with the publication requirements
3 applicable to the competitive bidding process of the city.

4 (2) Provide a fixed date and time on which the subcontracted
5 work will be awarded in accordance with the procedure established
6 pursuant to this section.

7 (g) Lists of subcontractors, bidders, and bid awards relating to
8 the project shall be submitted by the design-build entity to the
9 awarding body within 14 days of the award. These documents are
10 deemed to be public records and shall be available for public
11 inspection pursuant to this chapter and Article 1 (commencing
12 with Section 6250) of Chapter 3.5 of Division 7 of the Government
13 Code.

14 (h) The minimum performance criteria and design standards
15 established pursuant to paragraph (1) of subdivision (d) shall be
16 adhered to by the design-build entity. Any deviations from those
17 standards may only be allowed by written consent of the city.

18 (i) The city may retain the services of a design professional or
19 construction project manager, or both, throughout the course of
20 the project in order to ensure compliance with this section.

21 (j) Contracts awarded pursuant to this section shall be valid until
22 the project is completed.

23 (k) Nothing in this section is intended to affect, expand, alter,
24 or limit any rights or remedies otherwise available at law.

25 (l) (1) If the city elects to award a project pursuant to this
26 section, retention proceeds withheld by the city from the
27 design-build entity shall not exceed 5 percent if a performance and
28 payment bond, issued by an admitted surety insurer, is required in
29 the solicitation of bids.

30 (2) In a contract between the design-build entity and the
31 subcontractor, and in a contract between a subcontractor and any
32 subcontractor thereunder, the percentage of the retention proceeds
33 withheld may not exceed the percentage specified in the contract
34 between the city and the design-build entity. If the design-build
35 entity provides written notice to any subcontractor who is not a
36 member of the design-build entity, prior to or at the time the bid
37 is requested, that a bond may be required and the subcontractor
38 subsequently is unable or refuses to furnish a bond to the
39 design-build entity, then the design-build entity may withhold
40 retention proceeds in excess of the percentage specified in the

1 contract between the city and the design-build entity from any
2 payment made by the design-build entity to the subcontractor.

3 (m) Each city that elects to proceed under this section and uses
4 the design-build method on a public works project shall submit to
5 the Legislative Analyst’s Office before December 1, 2014, a report
6 containing a description of each public works project procured
7 through the design-build process that is completed after January
8 1, 2011, and before November 1, 2014. The report shall include,
9 but shall not be limited to, all of the following information:

- 10 (1) The type of project.
- 11 (2) The gross square footage of the project.
- 12 (3) The design-build entity that was awarded the project.
- 13 (4) The estimated and actual project costs.
- 14 (5) The estimated and actual length of time to complete the
15 project.
- 16 (6) A description of any written protests concerning any aspect
17 of the solicitation, bid, proposal, or award of the design-build
18 project, including the resolution of the protests.
- 19 (7) An assessment of the prequalification process and criteria.
- 20 (8) An assessment of the effect of retaining 5 percent retention
21 on the project.
- 22 (9) A description of the Labor Force Compliance Program and
23 an assessment of the project impact, where required.
- 24 (10) A description of the method used to award the contract. If
25 the best value method was used, the report shall describe the factors
26 used to evaluate the bid, including the weighting of each factor
27 and an assessment of the effectiveness of the methodology.
- 28 (11) An assessment of the project impact of “skilled labor force
29 availability.”
- 30 (12) An assessment of the most appropriate uses for the
31 design-build approach.
- 32 (n) Any city that elects not to use the authority granted by this
33 section may submit a report to the Legislative Analyst’s Office
34 explaining why the city elected not to use the design-build method.
- 35 (o) On or before January 1, 2015, the Legislative Analyst’s
36 Office shall report to the Legislature on the use of the design-build
37 method by cities pursuant to this section, including the information
38 listed in subdivision (m). The report may include recommendations
39 for modifying or extending this section.

1 (p) Except as provided in this section, nothing in this act shall
 2 be construed to affect the application of any other law.

3 (q) Before January 1, 2011, the project limitation of one million
 4 dollars (\$1,000,000), as set forth in subdivision (a), shall not apply
 5 to any city in the Counties of Solano and Yolo, or to the Cities of
 6 Stanton and Victorville.

7 (r) This section shall remain in effect only until January 1, 2016,
 8 and as of that date is repealed, unless a later enacted statute, that
 9 is enacted before January 1, 2016, deletes or extends that date.

10 *SEC. 18. Section 20193 of the Public Contract Code is amended*
 11 *to read:*

12 20193. (a) (1) Notwithstanding any other law and subject to
 13 the limitations of this article, a qualified entity, with approval of
 14 its governing body, may utilize an alternative procedure on bidding
 15 on projects in excess of two million five hundred thousand dollars
 16 (\$2,500,000).

17 (2) Only 20 design-build projects shall be authorized under this
 18 article.

19 (3) A qualified entity may award a project using either the lowest
 20 responsible bidder or by best value.

21 (4) For purposes of this article, “qualified entity” means an
 22 entity that meets both of the following:

23 (A) The entity is any of the following:

- 24 (i) A city.
- 25 (ii) A county.
- 26 (iii) A city and county.
- 27 (iv) A special district.

28 (B) The entity operates wastewater facilities, solid waste
 29 management facilities, or water recycling facilities.

30 (b) (1) For contracts *for public works projects* awarded prior
 31 to the effective date of ~~either the regulations adopted by the~~
 32 ~~Department of Industrial Relations pursuant to subdivision (b) (g)~~
 33 ~~of Section 1771.55 1771.5 of the Labor Code or the fees established~~
 34 ~~by the department pursuant to paragraph (2),~~ if a qualified entity
 35 elects to proceed under this section, the qualified entity shall
 36 establish and enforce ~~for design-build projects~~ a labor compliance
 37 program containing the requirements outlined in Section 1771.5
 38 of the Labor Code, or it shall contract with a third party to operate
 39 a labor compliance program containing the requirements outlined
 40 in Section 1771.5 of the Labor Code. This requirement shall not

1 apply to ~~any project~~ *projects* where the qualified entity or the
2 design-build entity has entered into ~~any a~~ collective bargaining
3 agreement or agreements that bind all of the contractors performing
4 work on the projects.

5 (2) For contracts *for public works projects* awarded on or after
6 the effective date of ~~both~~ the regulations adopted by the Department
7 of Industrial Relations pursuant to subdivision ~~(b)~~ (g) of Section
8 ~~1771.55~~ 1771.5 of the Labor Code ~~and the fees established by the~~
9 ~~department pursuant to this paragraph~~, the qualified entity shall
10 pay a fee to the department, in an amount that the department shall
11 establish, and as it may from time to time amend, sufficient to
12 support the department's costs in ensuring compliance with and
13 enforcing prevailing wage requirements on the project, and labor
14 compliance enforcement as set forth in subdivision ~~(b)~~ *reimburse*
15 *the department for its reasonable and directly related costs of*
16 *performing prevailing wage monitoring and enforcement on public*
17 *works projects pursuant to rates established by the department as*
18 *set forth in subdivision (h) of Section 1771.55 1771.5 of the Labor*
19 *Code. All fees moneys* collected pursuant to this subdivision shall
20 be deposited in the State Public Works Enforcement Fund created
21 by Section 1771.3 of the Labor Code, and shall be used only for
22 enforcement of prevailing wage requirements on those projects.

23 ~~(3) The Department of Industrial Relations may waive the fee~~
24 ~~set forth in paragraph (2) if the qualified entity has previously been~~
25 ~~granted approval by the director to initiate and operate a labor~~
26 ~~compliance program on its projects and requests to continue to~~
27 ~~operate that labor compliance program on its projects in lieu of~~
28 ~~labor compliance by the department pursuant to subdivision (b)~~
29 ~~of Section 1771.55. The fee shall not be waived for the qualified~~
30 ~~entity if it contracts with a third party to initiate and enforce labor~~
31 ~~compliance programs on its projects.~~

32 (3) *In lieu of reimbursing the Department of Industrial Relations*
33 *for its reasonable and directly related costs of performing*
34 *monitoring and enforcement on public works projects, the qualified*
35 *entity may elect to continue operating an existing previously*
36 *approved labor compliance program to monitor and enforce*
37 *prevailing wage requirements on the project if it has either not*
38 *contracted with a third party to conduct its labor compliance*
39 *program and requests and receives approval from the department*
40 *to continue its existing program or it enters into a collective*

1 *bargaining agreement that binds all of the contractors performing*
2 *work on the project and that includes a mechanism for resolving*
3 *disputes about the payment of wages.*

4 (c) As used in this section:

5 (1) “Best value” means a value determined by objective criteria
6 related to price, features, functions, small business contracting
7 plans, past performance, and life-cycle costs.

8 (2) “Design-build” means a procurement process in which both
9 the design and construction of a project are procured from a single
10 entity.

11 (3) “Design-build entity” means a partnership, corporation, or
12 other legal entity that is able to provide appropriately licensed
13 contracting, architectural, and engineering services as needed
14 pursuant to a design-build contract.

15 (4) “Project” means the construction of regional and local
16 wastewater treatment facilities, regional and local solid waste
17 facilities, or regional and local water recycling facilities.

18 (d) Design-build projects shall progress in a four-step process,
19 as follows:

20 (1) (A) The qualified entity shall prepare a set of documents
21 setting forth the scope of the project. The documents may include,
22 but are not limited to, the size, type, and desired design character
23 of the project and site, performance specifications covering the
24 quality of materials, equipment, and workmanship, preliminary
25 plans or project layouts, or any other information deemed necessary
26 to describe adequately the qualified entity’s needs. The
27 performance specifications and any plans shall be prepared by a
28 design professional who is duly licensed and registered in
29 California.

30 (B) Any architect or engineer retained by the qualified entity
31 to assist in the development of the project specific documents shall
32 not be eligible to participate in the preparation of a bid with any
33 design-build entity for that project.

34 (2) (A) Based on the documents prepared in paragraph (1), the
35 qualified entity shall prepare a request for proposals that invites
36 interested parties to submit competitive sealed proposals in the
37 manner prescribed by the qualified entity. The request for proposals
38 shall include, but is not limited to, the following elements:

39 (i) Identification of the basic scope and needs of the project or
40 contract, the expected cost range, and other information deemed

1 necessary by the qualified entity to inform interested parties of the
2 contracting opportunity, to include the methodology that will be
3 used by the qualified entity to evaluate proposals and specifically
4 if the contract will be awarded to the lowest responsible bidder.

5 (ii) Significant factors that the qualified entity reasonably
6 expects to consider in evaluating proposals, including cost or price
7 and all nonprice related factors.

8 (iii) The relative importance of weight assigned to each of the
9 factors identified in the request for proposals.

10 (B) With respect to clause (iii) of subparagraph (A), if a
11 nonweighted system is used, the qualified entity shall specifically
12 disclose whether all evaluation factors other than cost or price
13 when combined are:

14 (i) Significantly more important than cost or price.

15 (ii) Approximately equal in importance to cost or price.

16 (iii) Significantly less important than cost or price.

17 (C) If the qualified entity chooses to reserve the right to hold
18 discussions or negotiations with responsive bidders, it shall so
19 specify in the request for proposal and shall publish separately or
20 incorporate into the request for proposal applicable rules and
21 procedures to be observed by the qualified entity to ensure that
22 any discussions or negotiations are conducted in good faith.

23 (3) (A) The qualified entity shall establish a procedure to
24 prequalify design-build entities using a standard questionnaire
25 developed by the qualified entity. In preparing the questionnaire,
26 the qualified entity shall consult with the construction industry,
27 including representatives of the building trades and surety industry.
28 This questionnaire shall require information including, but not
29 limited to, all of the following:

30 (i) If the design-build entity is a partnership, limited partnership,
31 or other association, a listing of all of the partners, general partners,
32 or association members known at the time of bid submission who
33 will participate in the design-build contract, including, but not
34 limited to, mechanical subcontractors.

35 (ii) Evidence that the members of the design-build entity have
36 completed, or demonstrated the experience, competency, capability,
37 and capacity to complete projects of similar size, scope, or
38 complexity, and that proposed key personnel have sufficient
39 experience and training to competently manage and complete the
40 design and construction of the project, as well as a financial

1 statement that assures the special district that the design-build
2 entity has the capacity to complete the project.

3 (iii) The licenses, registration, and credentials required to design
4 and construct the project, including information on the revocation
5 or suspension of any license, credential, or registration.

6 (iv) Evidence that establishes that the design-build entity has
7 the capacity to obtain all required payment and performance
8 bonding, liability insurance, and errors and omissions insurance.

9 (v) Any prior serious or willful violation of the California
10 Occupational Safety and Health Act of 1973, contained in Part 1
11 (commencing with Section 6300) of Division 5 of the Labor Code
12 or the federal Occupational Safety and Health Act of 1970 (Public
13 Law 91-596), settled against any member of the design-build entity,
14 and information concerning workers' compensation experience
15 history and worker safety program.

16 (vi) Information concerning any debarment, disqualification,
17 or removal from a federal, state, or local government public works
18 project. Any instance where an entity, its owners, officers, or
19 managing employees submitted a bid on a public works project
20 and were found to be nonresponsive, or were found by an awarding
21 body not to be a responsible bidder.

22 (vii) Any instance where the entity, its owner, officers, or
23 managing employees defaulted on a construction contract.

24 (viii) Any violations of the Contractors' State License Law
25 (Chapter 9 (commencing with Section 7000) of Division 3 of the
26 Business and Professions Code), excluding alleged violations of
27 federal or state law including the payment of wages, benefits,
28 apprenticeship requirements, or personal income tax withholding,
29 or of Federal Insurance Contribution Act (FICA) withholding
30 requirements settled against any member of the design-build entity.

31 (ix) Information concerning the bankruptcy or receivership of
32 any member of the design-build entity, including information
33 concerning any work completed by a surety.

34 (x) Information concerning all settled adverse claims, disputes,
35 or lawsuits between the owner of a public works project and any
36 member of the design-build entity during the five years preceding
37 submission of a bid pursuant to this section, in which the claim,
38 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
39 Information shall also be provided concerning any work completed
40 by a surety during this period.

1 (xi) In the case of a partnership or other association, that is not
2 a legal entity, a copy of the agreement creating the partnership or
3 association and specifying that all partners or association members
4 agree to be fully liable for the performance under the design-build
5 contract.

6 (B) The information required pursuant to this subdivision shall
7 be verified under oath by the entity and its members in the manner
8 in which civil pleadings in civil actions are verified. Information
9 that is not a public record pursuant to the California Public Records
10 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
11 of Title 1 of the Government Code) shall not be open to public
12 inspection.

13 (4) The qualified entity shall establish a procedure for final
14 selection of the design-build entity. Selection shall be based on
15 either of the following criteria:

16 (A) A competitive bidding process resulting in lump-sum bids
17 by the prequalified design-build entities. Awards shall be made to
18 the lowest responsible bidder.

19 (B) A qualified entity may use a design-build competition based
20 upon best value and other criteria set forth in paragraph (2) of
21 subdivision (d). The design-build competition shall include the
22 following elements:

23 (i) Competitive proposals shall be evaluated by using only the
24 criteria and selection procedures specifically identified in the
25 request for proposal. However, the following minimum factors
26 shall each represent at least 10 percent of the total weight of
27 consideration given to all criteria factors; price, technical design
28 and construction expertise, life-cycle costs over 15 years or more,
29 skilled labor force availability, and acceptable safety record.

30 (ii) Once the evaluation is complete, the top three responsive
31 bidders shall be ranked sequentially from the most advantageous
32 to the least.

33 (iii) The award of the contract shall be made to the responsible
34 bidder whose proposal is determined, in writing, to be the most
35 advantageous.

36 (iv) Notwithstanding any provision of this code, upon issuance
37 of a contract award, the qualified entity shall publicly announce
38 its award, identifying the contractor to which the award is made,
39 along with a written decision supporting its contract award and
40 stating the basis of the award. The notice of award shall also

1 include the qualified entity's second and third ranked design-build
2 entities.

3 (v) For purposes of this paragraph, "skilled labor force
4 availability" shall be determined by the existence of an agreement
5 with a registered apprenticeship program, approved by the
6 California Apprenticeship Council, which has graduated
7 apprentices in each of the preceding five years. This graduation
8 requirement shall not apply to programs providing apprenticeship
9 training for any craft that has been deemed by the Department of
10 Labor and the Department of Industrial Relations to be an
11 apprenticeable craft in the five years prior to enactment of this act.

12 (vi) For purposes of this paragraph, a bidder's "safety record"
13 shall be deemed "acceptable" if their experience modification rate
14 for the most recent three-year period is an average of 1.00 or less,
15 and their average total recordable injury/illness rate and average
16 lost work rate for the most recent three-year period does not exceed
17 the applicable statistical standards for its business category, or if
18 the bidder is a party to an alternative dispute resolution system as
19 provided for in Section 3201.5 of the Labor Code.

20 (e) (1) Any design-build entity that is selected to design and
21 build a project pursuant to this section shall possess or obtain
22 sufficient bonding to cover the contract amount for nondesign
23 services, and errors and omissions insurance coverage sufficient
24 to cover all design and architectural services provided in the
25 contract. This section does not prohibit a general or engineering
26 contractor from being designated the lead entity on a design-build
27 entity for the purposes of purchasing necessary bonding to cover
28 the activities of the design-build entity.

29 (2) Any payment or performance bond written for the purposes
30 of this section shall be written using a bond form developed by
31 the qualified entity.

32 (f) All subcontractors that were not listed by the design-build
33 entity in accordance with clause (i) of subparagraph (A) of
34 paragraph (3) of subdivision (d) shall be awarded by the
35 design-build entity in accordance with the design-build process
36 set forth by the qualified entity in the design-build package. All
37 subcontractors bidding on contracts pursuant to this section shall
38 be afforded the protections contained in Chapter 4 (commencing
39 with Section 4100) of Part 1. The design-build entity shall do both
40 of the following:

1 (1) Provide public notice of the availability of work to be
2 subcontracted in accordance with the publication requirements
3 applicable to the competitive bidding process of the qualified
4 entity.

5 (2) Provide a fixed date and time on which the subcontracted
6 work will be awarded in accordance with the procedure established
7 pursuant to this section.

8 (g) The minimum performance criteria and design standards
9 established pursuant to paragraph (1) of subdivision (d) shall be
10 adhered to by the design-build entity. Any deviations from those
11 standards may only be allowed by written consent of the qualified
12 entity.

13 (h) The qualified entity may retain the services of a design
14 professional or construction project manager, or both, throughout
15 the course of the project in order to ensure compliance with this
16 section.

17 (i) Contracts awarded pursuant to this section shall be valid until
18 the project is completed.

19 (j) Nothing in this section is intended to affect, expand, alter,
20 or limit any rights or remedies otherwise available at law.

21 (k) (1) If the qualified entity elects to award a project pursuant
22 to this section, retention proceeds withheld by the qualified entity
23 from the design-build entity shall not exceed 5 percent if a
24 performance and payment bond, issued by an admitted surety
25 insurer, is required in the solicitation of bids.

26 (2) In a contract between the design-build entity and the
27 subcontractor, and in a contract between a subcontractor and any
28 subcontractor thereunder, the percentage of the retention proceeds
29 withheld may not exceed the percentage specified in the contract
30 between the qualified entity and the design-build entity. If the
31 design-build entity provides written notice to any subcontractor
32 who is not a member of the design-build entity, prior to or at the
33 time the bid is requested, that a bond may be required and the
34 subcontractor subsequently is unable or refuses to furnish a bond
35 to the design-build entity, then the design-build entity may withhold
36 retention proceeds in excess of the percentage specified in the
37 contract between the qualified entity and the design-build entity
38 from any payment made by the design-build entity to the
39 subcontractor.

- 1 (l) Each qualified entity that elects to proceed under this section
2 and uses the design-build method on a public works project shall
3 do both of the following:
- 4 (1) Notify the Legislative Analyst's Office upon initiation of
5 the project and upon completion of the project.
- 6 (2) Submit to the Legislative Analyst's Office, upon completion
7 of the project, a report containing a description of the public works
8 project procured through the design-build process pursuant to this
9 section and completed after January 1, 2009. The report shall
10 include, but shall not be limited to, all of the following information:
- 11 (A) The type of project.
- 12 (B) The gross square footage of the project.
- 13 (C) The design-build entity that was awarded the project.
- 14 (D) The estimated and actual project costs.
- 15 (E) A description of any written protests concerning any aspect
16 of the solicitation, bid, proposal, or award of the design-build
17 project, including the resolution of the protests.
- 18 (F) An assessment of the prequalification process and criteria.
- 19 (G) An assessment of the effect of retaining 5-percent retention
20 on the project.
- 21 (H) A description of the Labor Force Compliance Program and
22 an assessment of the project impact, where required.
- 23 (I) A description of the method used to award the contract. If
24 best value was the method, the report shall describe the factors
25 used to evaluate the bid, including the weighting of each factor
26 and an assessment of the effectiveness of the methodology.
- 27 (J) An assessment of the project impact of "skilled labor force
28 availability."
- 29 (K) An assessment of the most appropriate uses for the
30 design-build approach.
- 31 (m) Any qualified entity that elects not to use the authority
32 granted by this section may submit a report to the Legislative
33 Analyst's Office explaining why the qualified entity elected to not
34 use the design-build method.
- 35 (n) (1) In order to comply with paragraph (2) of subdivision
36 (a), the Office of Planning and Research is required to maintain
37 the list of entities that have applied and are eligible to be qualified
38 for this authority.

1 (2) Each entity that is interested in proceeding under the
2 authority in this section must apply to the Office of Planning and
3 Research.

4 (A) The application to proceed must be in writing.

5 (B) An entity must have complied with the California
6 Environmental Quality Act review process pursuant to Division
7 13 (commencing with Section 21000) of the Public Resources
8 Code prior to its application, and must include its approved notice
9 of determination or notice of completion in its application.

10 (3) The Office of Planning and Research must approve or deny
11 an application, in writing, within 30 days. The authority to deny
12 an application shall only be exercised if the conditions set forth in
13 either or both paragraph (2) of subdivision (a) and subparagraph
14 (B) of paragraph (2) of this subdivision have not been satisfied.

15 (4) An entity utilizing this section must, after it determines it
16 no longer is interested in using this authority, notify the Office of
17 Planning and Research in writing within 30 days of its
18 determination. Upon notification, the Office of Planning and
19 Research may contact any previous applicants, denied pursuant to
20 paragraph (2) of subdivision (a), to inform them of the availability
21 to proceed under this section.

22 (o) The Legislative Analyst shall report to the Legislature on
23 the use of the design-build method by qualified entities pursuant
24 to this section, including the information listed in subdivision (l).
25 The report may include recommendations for modifying or
26 extending this section, and shall be submitted on either of the
27 following dates, whichever occurs first:

28 (1) Within one year of the completion of the 20 projects, if the
29 projects are completed prior to January 1, 2019.

30 (2) No later than January 1, 2020.

31 *SEC. 19. Section 20209.7 of the Public Contract Code is*
32 *amended to read:*

33 20209.7. Design-build projects shall progress in a three-step
34 process, as follows:

35 (a) The transit operator shall prepare a set of documents setting
36 forth the scope of the project. The documents shall include, but
37 are not limited to, the size, type, and desired design character of
38 the buildings, transit facilities, and site, performance specifications
39 covering the quality of materials, equipment, and workmanship,
40 preliminary plans or building layouts, or any other information

1 deemed necessary to describe adequately the transit operator's
2 needs. The performance specifications and any plans shall be
3 prepared by a design professional duly licensed or registered in
4 California.

5 (b) Any architectural or engineering firm or individual retained
6 by the transit operator to assist in the development criteria or
7 preparation of the request for proposal (RFP) is not eligible to
8 participate in the competition for the design-build entity.

9 (c) (1) For contracts *for public works projects* awarded prior
10 to the effective date of ~~either~~ the regulations adopted by the
11 Department of Industrial Relations pursuant to subdivision ~~(b)~~ (g)
12 of Section ~~1771.55~~ 1771.5 of the Labor Code ~~or the fee established~~
13 ~~by the department pursuant to paragraph (2)~~, if the transit operator
14 does not already have a labor compliance program, as defined in
15 Section ~~1771.5~~ of the Labor Code, the transit operator shall
16 establish and enforce a labor compliance program ~~for the~~
17 ~~design-build contract~~ containing the requirements outlined in
18 Section 1771.5 of the Labor Code or shall contract with a third
19 party to operate this labor compliance program containing the
20 requirements outlined in Section 1771.5 of the Labor Code. This
21 requirement ~~applies only to the design-build contract and does~~
22 ~~shall~~ not apply to projects where the transit operator or the
23 design-build entity has entered into a collective bargaining
24 agreement that binds all of the contractors performing work on the
25 project, or to any other project of the transit operator that is not
26 design-build.

27 (2) For contracts *for public works projects* awarded on or after
28 the effective date of ~~both~~ the regulations adopted by the Department
29 of Industrial Relations pursuant to subdivision ~~(b)~~ (g) of Section
30 ~~1771.55~~ 1771.5 of the Labor Code ~~and the fee established by the~~
31 ~~department pursuant to this paragraph~~, the transit operator shall
32 pay a fee to the department, in an amount that the department shall
33 establish, and as it may from time to time amend, sufficient to
34 support the department's costs in ensuring compliance with and
35 enforcing prevailing wage requirements on the project, and labor
36 compliance enforcement as set forth in subdivision ~~(b)~~ *reimburse*
37 *the department for its reasonable and directly related costs of*
38 *performing prevailing wage monitoring and enforcement on public*
39 *works projects pursuant to rates established by the department as*
40 *set forth in subdivision (h)* of Section ~~1771.55~~ 1771.5 of the Labor

1 Code. All fees *moneys* collected pursuant to this subdivision shall
2 be deposited in the State Public Works Enforcement Fund created
3 by Section 1771.3 of the Labor Code, and shall be used only for
4 enforcement of prevailing wage requirements on those projects.

5 ~~(3) The Department of Industrial Relations may waive the fee~~
6 ~~set forth in paragraph (2) if the transit operator has previously been~~
7 ~~granted approval by the director to initiate and operate a labor~~
8 ~~compliance program on its projects and requests to continue to~~
9 ~~operate that labor compliance program on its projects in lieu of~~
10 ~~labor compliance by the department pursuant to subdivision (b)~~
11 ~~of Section 1771.55 of the Labor Code. The fee shall not be waived~~
12 ~~for the transit operator if it contracts with a third party to initiate~~
13 ~~and enforce labor compliance programs on its projects.~~

14 *(3) In lieu of reimbursing the Department of Industrial Relations*
15 *for its reasonable and directly related costs of performing*
16 *monitoring and enforcement on public works projects, the transit*
17 *operator may elect to continue operating an existing previously*
18 *approved labor compliance program to monitor and enforce*
19 *prevailing wage requirements on the project if it has either not*
20 *contracted with a third party to conduct its labor compliance*
21 *program and requests and receives approval from the department*
22 *to continue its existing program or it enters into a collective*
23 *bargaining agreement that binds all of the contractors performing*
24 *work on the project and that includes a mechanism for resolving*
25 *disputes about the payment of wages.*

26 (d) (1) Each RFP shall identify the basic scope and needs of
27 the project or contract, the expected cost range, and other
28 information deemed necessary by the contracting agency to inform
29 interested parties of the contracting opportunity.

30 (2) Each RFP shall invite interested parties to submit competitive
31 sealed proposals in the manner prescribed by the contracting
32 agency.

33 (3) Each RFP shall include a section identifying and describing:
34 (A) All significant factors that the agency reasonably expects
35 to consider in evaluating proposals, including cost or price and all
36 nonprice-related factors.

37 (B) The methodology and rating or weighting process that will
38 be used by the agency in evaluating competitive proposals and
39 specifically whether proposals will be rated according to numeric
40 or qualitative values.

1 (C) The relative importance or weight assigned to each of the
2 factors identified in the RFP. If a nonweighted system is used, the
3 agency shall specifically disclose whether all evaluation factors
4 other than cost or price, when combined, are any of the following:

- 5 (i) Significantly more important than cost or price.
- 6 (ii) Approximately equal in importance to cost or price.
- 7 (iii) Significantly less important than cost or price.

8 (D) If the contracting agency wishes to reserve the right to hold
9 discussions or negotiations with offerors, it shall specify the same
10 in the RFP and shall publish separately or incorporate into the RFP
11 applicable rules and procedures to be observed by the agency to
12 ensure that any discussions or negotiations are conducted in a fair
13 and impartial manner.

14 (e) (1) The transit operator shall establish a procedure to
15 prequalify design-build entities using a standard questionnaire
16 developed by the Director of Industrial Relations. The standardized
17 questionnaire shall not require prospective bidders to disclose any
18 violations of Chapter 1 (commencing with Section 1720) of Part
19 7 of Division 2 of the Labor Code committed prior to January 1,
20 1998, if the violation was based on a subcontractor's failure to
21 comply with these provisions and the bidder had no knowledge of
22 the subcontractor's violations and the bidder complied with the
23 conditions set forth in subdivision (b) of Section 1775 of the Labor
24 Code. In preparing the questionnaire, the director shall consult
25 with the construction industry, building trades, transit operators,
26 and other affected parties. This questionnaire shall require
27 information relevant to the architecture or engineering firm that
28 will be the lead on the design-build project. The questionnaire
29 shall include, but is not limited to, all of the following:

30 (A) A listing of all the contractors that are part of the
31 design-build entity.

32 (B) Evidence that the members of the design-build entity have
33 completed, or demonstrated the experience, competency, capability,
34 and capacity to complete, projects of similar size, scope, or
35 complexity, and that proposed key personnel have sufficient
36 experience and training to competently manage and complete the
37 design and construction of the project.

38 (C) The licenses, registrations, and credentials required to design
39 and construct the project, including information on the revocation
40 or suspension of any license, credential, or registration.

1 (D) Evidence that establishes that the design-build entity has
2 the capacity to obtain all required payment and performance
3 bonding, liability insurance, and errors and omissions insurance,
4 as well as a financial statement that assures the transit operator
5 that the design-build entity has the capacity to complete the project.

6 (E) Any prior serious or willful violation of the California
7 Occupational Safety and Health Act of 1973, contained in Part 1
8 (commencing with Section 6300) of Division 5 of the Labor Code
9 or the federal Occupational Safety and Health Act of 1970 (~~PL~~
10 (*Public Law* 91-596), settled against any member of the
11 design-build entity, and information concerning a contractor
12 member's workers' compensation experience history and worker
13 safety program.

14 (F) Information concerning any debarment, disqualification, or
15 removal from a federal, state, or local government public works
16 project. Any instance where an entity, its owners, officers, or
17 managing employees submitted a bid on a public works project
18 and were found by an awarding body not to be a responsible bidder.

19 (G) Any instance where the entity, its owner, officers, or
20 managing employees defaulted on a construction contract.

21 (H) Any violations of the Contractors' State License Law
22 (Chapter 9 (commencing with Section 7000) of Division 3 of the
23 Business and Professions Code), excluding alleged violations of
24 federal or state law, including the payment of wages, benefits,
25 apprenticeship requirements, or personal income tax withholding,
26 or of Federal Insurance Contribution Act (FICA) withholding
27 requirements settled against any member of the design-build entity.

28 (I) Information concerning the bankruptcy or receivership of
29 any member of the entity, and information concerning all legal
30 claims, disputes, or lawsuits arising from any construction project
31 of any member of the entity during the past three years, including
32 information concerning any work completed by a surety.

33 (J) If the design-build entity is a partnership, limited partnership,
34 or other association, a listing of all of the partners, general partners,
35 or association members who will participate as subcontractors in
36 the design-build contract.

37 (K) Information concerning all settled adverse claims, disputes,
38 or lawsuits between the owner of a public works project and any
39 member of the design-build entity during the five-year period
40 immediately preceding submission of a bid pursuant to this section,

1 in which the claim, settlement, or judgment exceeds fifty thousand
2 dollars (\$50,000). Information shall also be provided concerning
3 any work completed by a surety during this period.

4 (L) In the case of a partnership or other association that is not
5 a legal entity, a copy of the agreement creating the partnership or
6 association and specifying that all partners or association members
7 agree to be liable for full performance under the design-build
8 contract.

9 (2) The information required pursuant to this subdivision shall
10 be verified under oath by the entity and its members in the manner
11 in which civil pleadings in civil actions are verified. Information
12 that is not a public record pursuant to the California Public Records
13 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
14 of Title 1 of the Government Code) shall not be open to public
15 inspection.

16 (f) The transit operator shall establish a procedure for final
17 selection of the design-build entity. Selection shall be subject to
18 the following conditions:

19 (1) In no case shall the transit operator award a contract to a
20 design-build entity pursuant to this article for a capital maintenance
21 or capacity-enhancing rail project unless that project exceeds
22 twenty-five million dollars (\$25,000,000) in cost.

23 (2) For nonrail transit projects that exceed two million five
24 hundred thousand dollars (\$2,500,000), the transit operator may
25 award the project to the lowest responsible bidder or by using the
26 best value method.

27 (3) For the acquisition and installation of technology applications
28 or surveillance equipment designed to enhance safety, disaster
29 preparedness, and homeland security efforts, there shall be no cost
30 threshold and the transit operator may award the contract to the
31 lowest responsible bidder or by using the best value method.

32 (g) Except as provided in this section, nothing in this act shall
33 be construed to affect the application of any other law.

34 *SEC. 20. Section 20688.6 of the Public Contract Code is*
35 *amended to read:*

36 20688.6. (a) (1) Notwithstanding any other law, an agency,
37 with approval of its duly constituted board in a public hearing,
38 may utilize an alternative procedure for bidding on projects in the
39 community in excess of one million dollars (\$1,000,000) and may

1 award the project using either the lowest responsible bidder or by
2 best value.

3 (2) Only 10 design-build projects shall be authorized under this
4 section.

5 (b) (1) It is the intent of the Legislature to enable entities as
6 provided in Part 1 (commencing with Section 33000) of Division
7 24 of the Health and Safety Code to utilize design-build for those
8 infrastructure improvements authorized in Sections 33421, 33445,
9 and 33445.1 of the Health and Safety Code and subject to the
10 limitations on that authority described in Section 33421.1 of the
11 Health and Safety Code.

12 (2) The Legislature also finds and declares that utilizing a
13 design-build contract requires a clear understanding of the roles
14 and responsibilities of each participant in the design-build process.

15 (3) (A) For contracts *for public works projects* awarded prior
16 to the effective date of ~~either~~ the regulations adopted by the
17 Department of Industrial Relations pursuant to subdivision ~~(b)~~ (g)
18 of Section ~~1771.55~~ 1771.5 of the Labor Code ~~or the fees established~~
19 ~~by the department pursuant to subparagraph (B)~~, if the board elects
20 to proceed under this section, the board shall establish and enforce
21 ~~for design-build projects~~ a labor compliance program containing
22 the requirements outlined in Section 1771.5 of the Labor Code, or
23 it shall contract with a third party to operate a labor compliance
24 program containing the requirements outlined in Section 1771.5
25 of the Labor Code. This requirement shall not apply to ~~any project~~
26 *projects* where the agency or the design-build entity has entered
27 into ~~any~~ a collective bargaining agreement or agreements that bind
28 all of the contractors performing work on the projects.

29 (B) For contracts *for public works projects* awarded on or after
30 the effective date of ~~both~~ the regulations adopted by the Department
31 of Industrial Relations pursuant to subdivision ~~(b)~~ (g) of Section
32 ~~1771.55~~ 1771.5 of the Labor Code ~~and the fees established by the~~
33 ~~department pursuant to this subparagraph~~, if the board elects to
34 proceed under this section it shall pay a fee to the department, in
35 an amount that the department shall establish, and as it may from
36 time to time amend, sufficient to support the department's costs
37 in ensuring compliance with and enforcing prevailing wage
38 requirements on the project, and labor compliance enforcement as
39 set forth in subdivision ~~(b)~~, *the board shall reimburse the*
40 *department for its reasonable and directly related costs of*

1 *performing prevailing wage monitoring and enforcement on public*
 2 *works projects pursuant to rates established by the department as*
 3 *set forth in subdivision (h) of Section ~~1771.55~~ 1771.5 of the Labor*
 4 *Code. All fees moneys collected pursuant to this subdivision shall*
 5 *be deposited in the State Public Works Enforcement Fund, created*
 6 *by Section 1771.3 of the Labor Code, and shall be used only for*
 7 *enforcement of prevailing wage requirements on those projects.*

8 ~~(C) The Department of Industrial Relations may waive the fee~~
 9 ~~set forth in subdivision (b) for a board that has previously been~~
 10 ~~granted approval by the director to initiate and operate a labor~~
 11 ~~compliance program on its projects, and that requests to continue~~
 12 ~~to operate the labor compliance program on its projects in lieu of~~
 13 ~~labor compliance by the department pursuant to subdivision (b)~~
 14 ~~of Section 1771.55. This fee shall not be waived for a board that~~
 15 ~~contracts with a third party to initiate and enforce labor compliance~~
 16 ~~programs on the board's projects.~~

17 *(C) In lieu of reimbursing the Department of Industrial Relations*
 18 *for its reasonable and directly related costs of performing*
 19 *monitoring and enforcement on public works projects, the board*
 20 *may elect to continue operating an existing previously approved*
 21 *labor compliance program to monitor and enforce prevailing wage*
 22 *requirements on the project if it has either not contracted with a*
 23 *third party to conduct its labor compliance program and requests*
 24 *and receives approval from the department to continue its existing*
 25 *program or it enters into a collective bargaining agreement that*
 26 *binds all of the contractors performing work on the project and*
 27 *that includes a mechanism for resolving disputes about the payment*
 28 *of wages.*

29 (c) As used in this section:

30 (1) “Best value” means a value determined by objective criteria
 31 related to price, features, functions, and life-cycle costs.

32 (2) “Design-build” means a procurement process in which both
 33 the design and construction of a project are procured from a single
 34 entity.

35 (3) “Design-build entity” means a partnership, corporation, or
 36 other legal entity that is able to provide appropriately licensed
 37 contracting, architectural, and engineering services as needed
 38 pursuant to a design-build contract.

39 (4) “Project” means those infrastructure improvements
 40 authorized in Sections 33421, 33445, and 33445.1 of the Health

1 and Safety Code and subject to the limitations and conditions on
2 that authority described in Article 10 (commencing with Section
3 33420) and Article 11 (commencing with Section 33430) of
4 Chapter 4 of Part 1 of Division 24 of the Health and Safety Code.

5 (d) Design-build projects shall progress in a four-step process,
6 as follows:

7 (1) (A) The agency shall prepare a set of documents setting
8 forth the scope of the project. The documents may include, but are
9 not limited to, the size, type, and desired design character of the
10 public improvement, performance specifications covering the
11 quality of materials, equipment, and workmanship, preliminary
12 plans or building layouts, or any other information deemed
13 necessary to describe adequately the agency's needs. The
14 performance specifications and any plans shall be prepared by a
15 design professional who is duly licensed and registered in
16 California.

17 (B) Any architect or engineer retained by the agency to assist
18 in the development of the project specific documents shall not be
19 eligible to participate in the preparation of a bid with any
20 design-build entity for that project.

21 (2) (A) Based on the documents prepared as described in
22 paragraph (1), the agency shall prepare a request for proposals that
23 invites interested parties to submit competitive sealed proposals
24 in the manner prescribed by the agency. The request for proposals
25 shall include, but is not limited to, the following elements:

26 (i) Identification of the basic scope and needs of the project or
27 contract, the expected cost range, and other information deemed
28 necessary by the agency to inform interested parties of the
29 contracting opportunity, to include the methodology that will be
30 used by the agency to evaluate proposals and specifically if the
31 contract will be awarded to the lowest responsible bidder.

32 (ii) Significant factors that the agency reasonably expects to
33 consider in evaluating proposals, including cost or price and all
34 nonprice-related factors.

35 (iii) The relative importance of the weight assigned to each of
36 the factors identified in the request for proposals.

37 (B) With respect to clause (iii) of subparagraph (A), if a
38 nonweighted system is used, the agency shall specifically disclose
39 whether all evaluation factors other than cost or price when
40 combined are:

- 1 (i) Significantly more important than cost or price.
2 (ii) Approximately equal in importance to cost or price.
3 (iii) Significantly less important than cost or price.
4 (C) If the agency chooses to reserve the right to hold discussions
5 or negotiations with responsive bidders, it shall so specify in the
6 request for proposal and shall publish separately or incorporate
7 into the request for proposal applicable rules and procedures to be
8 observed by the agency to ensure that any discussions or
9 negotiations are conducted in good faith.
- 10 (3) (A) The agency shall establish a procedure to prequalify
11 design-build entities using a standard questionnaire developed by
12 the agency. In preparing the questionnaire, the agency shall consult
13 with the construction industry, including representatives of the
14 building trades and surety industry. This questionnaire shall require
15 information including, but not limited to, all of the following:
- 16 (i) If the design-build entity is a partnership, limited partnership,
17 or other association, a listing of all of the partners, general partners,
18 or association members known at the time of bid submission who
19 will participate in the design-build contract, including, but not
20 limited to, mechanical subcontractors.
- 21 (ii) Evidence that the members of the design-build entity have
22 completed, or demonstrated the experience, competency, capability,
23 and capacity to complete, projects of similar size, scope, or
24 complexity, and that proposed key personnel have sufficient
25 experience and training to competently manage and complete the
26 design and construction of the project, as well as a financial
27 statement that assures the agency that the design-build entity has
28 the capacity to complete the project.
- 29 (iii) The licenses, registration, and credentials required to design
30 and construct the project, including information on the revocation
31 or suspension of any license, credential, or registration.
- 32 (iv) Evidence that establishes that the design-build entity has
33 the capacity to obtain all required payment and performance
34 bonding, liability insurance, and errors and omissions insurance.
- 35 (v) Any prior serious or willful violation of the California
36 Occupational Safety and Health Act of 1973, contained in Part 1
37 (commencing with Section 6300) of Division 5 of the Labor Code,
38 or the federal Occupational Safety and Health Act of 1970 (~~P.L.~~
39 *Public Law* 91-596), settled against any member of the

1 design-build entity, and information concerning workers'
2 compensation experience history and worker safety program.

3 (vi) Information concerning any debarment, disqualification,
4 or removal from a federal, state, or local government public works
5 project. Any instance in which an entity, its owners, officers, or
6 managing employees submitted a bid on a public works project
7 and were found to be nonresponsive, or were found by an awarding
8 body not to be a responsible bidder.

9 (vii) Any instance in which the entity, or its owners, officers,
10 or managing employees, defaulted on a construction contract.

11 (viii) Any violations of the Contractors' State License Law
12 (Chapter 9 (commencing with Section 7000) of Division 3 of the
13 Business and Professions Code), including alleged violations of
14 federal or state law including the payment of wages, benefits,
15 apprenticeship requirements, or personal income tax withholding,
16 or of Federal Insurance Contributions Act (FICA) withholding
17 requirements settled against any member of the design-build entity.

18 (ix) Information concerning the bankruptcy or receivership of
19 any member of the design-build entity, including information
20 concerning any work completed by a surety.

21 (x) Information concerning all settled adverse claims, disputes,
22 or lawsuits between the owner of a public works project and any
23 member of the design-build entity during the five years preceding
24 submission of a bid pursuant to this section, in which the claim,
25 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
26 Information shall also be provided concerning any work completed
27 by a surety during this period.

28 (xi) In the case of a partnership, joint venture, or an association
29 that is not a legal entity, a copy of the agreement creating the
30 partnership or association and specifying that all general partners,
31 joint venturers, or association members agree to be fully liable for
32 the performance under the design-build contract.

33 (B) The information required pursuant to this subdivision shall
34 be verified under oath by the entity and its members in the manner
35 in which civil pleadings in civil actions are verified. Information
36 that is not a public record pursuant to the California Public Records
37 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
38 of Title 1 of the Government Code) shall not be open to public
39 inspection.

1 (4) The agency shall establish a procedure for final selection of
2 the design-build entity. Selection shall be based on either of the
3 following criteria:

4 (A) A competitive bidding process resulting in lump-sum bids
5 by the prequalified design-build entities. Awards shall be made to
6 the lowest responsible bidder.

7 (B) An agency may use a design-build competition based upon
8 best value and other criteria set forth in paragraph (2). The
9 design-build competition shall include the following elements:

10 (i) Competitive proposals shall be evaluated by using only the
11 criteria and selection procedures specifically identified in the
12 request for proposal. However, the following minimum factors
13 shall each represent at least 10 percent of the total weight of
14 consideration given to all criteria factors: price, technical design
15 and construction expertise, life-cycle costs over 15 years or more,
16 skilled labor force availability, and acceptable safety record.

17 (ii) Once the evaluation is complete, the top three responsive
18 bidders shall be ranked sequentially from the most advantageous
19 to the least.

20 (iii) The award of the contract shall be made to the responsible
21 bidder whose proposal is determined, in writing, to be the most
22 advantageous.

23 (iv) Notwithstanding any provision of this code, upon issuance
24 of a contract award, the agency shall publicly announce its award,
25 identifying the contractor to whom the award is made, along with
26 a written decision supporting its contract award and stating the
27 basis of the award. The notice of award shall also include the
28 agency's second- and third-ranked design-build entities.

29 (v) For purposes of this paragraph, skilled labor force availability
30 shall be determined by the existence of an agreement with a
31 registered apprenticeship program, approved by the California
32 Apprenticeship Council, which has graduated apprentices in each
33 of the preceding five years. This graduation requirement shall not
34 apply to programs providing apprenticeship training for any craft
35 that has been deemed by the Department of Labor and the
36 Department of Industrial Relations to be an apprenticeable craft
37 in the five years prior to enactment of this act.

38 (vi) For purposes of this paragraph, a bidder's safety record
39 shall be deemed acceptable if its experience modification rate for
40 the most recent three-year period is an average of 1.00 or less, and

1 its average total recordable injury/illness rate and average lost
2 work rate for the most recent three-year period does not exceed
3 the applicable statistical standards for its business category or if
4 the bidder is a party to an alternative dispute resolution system as
5 provided for in Section 3201.5 of the Labor Code.

6 (e) (1) Any design-build entity that is selected to design and
7 build a project pursuant to this section shall possess or obtain
8 sufficient bonding to cover the contract amount for nondesign
9 services, and errors and omission insurance coverage sufficient to
10 cover all design and architectural services provided in the contract.
11 This section does not prohibit a general or engineering contractor
12 from being designated the lead entity on a design-build entity for
13 the purposes of purchasing necessary bonding to cover the activities
14 of the design-build entity.

15 (2) Any payment or performance bond written for the purposes
16 of this section shall be written using a bond form developed by
17 the agency.

18 (f) All subcontractors that were not listed by the design-build
19 entity in accordance with clause (i) of subparagraph (A) of
20 paragraph (3) of subdivision (d) shall be awarded by the
21 design-build entity in accordance with the design-build process
22 set forth by the agency in the design-build package. All
23 subcontractors bidding on contracts pursuant to this section shall
24 be afforded the protections contained in Chapter 4 (commencing
25 with Section 4100) of Part 1. The design-build entity shall do both
26 of the following:

27 (1) Provide public notice of the availability of work to be
28 subcontracted in accordance with the publication requirements
29 applicable to the competitive bidding process of the agency.

30 (2) Provide a fixed date and time on which the subcontracted
31 work will be awarded in accordance with the procedure established
32 pursuant to this section.

33 (g) The minimum performance criteria and design standards
34 established pursuant to paragraph (1) of subdivision (d) shall be
35 adhered to by the design-build entity. Any deviations from those
36 standards may only be allowed by written consent of the agency.

37 (h) The agency may retain the services of a design professional
38 or construction project manager, or both, throughout the course of
39 the project in order to ensure compliance with this section.

- 1 (i) Contracts awarded pursuant to this section shall be valid until
2 the project is completed.
- 3 (j) Nothing in this section is intended to affect, expand, alter,
4 or limit any rights or remedies otherwise available at law.
- 5 (k) (1) If the agency elects to award a project pursuant to this
6 section, retention proceeds withheld by the agency from the
7 design-build entity shall not exceed 5 percent if a performance and
8 payment bond, issued by an admitted surety insurer, is required in
9 the solicitation of bids.
- 10 (2) In a contract between the design-build entity and the
11 subcontractor, and in a contract between a subcontractor and any
12 subcontractor thereunder, the percentage of the retention proceeds
13 withheld shall not exceed the percentage specified in the contract
14 between the agency and the design-build entity. If the design-build
15 entity provides written notice to any subcontractor who is not a
16 member of the design-build entity, prior to or at the time the bid
17 is requested, that a bond may be required and the subcontractor
18 subsequently is unable or refuses to furnish a bond to the
19 design-build entity, then the design-build entity may withhold
20 retention proceeds in excess of the percentage specified in the
21 contract between the agency and the design-build entity from any
22 payment made by the design-build entity to the subcontractor.
- 23 (l) Each agency that elects to proceed under this section and
24 uses the design-build method on a public works project shall submit
25 to the Legislative Analyst's Office before December 1, 2014, a
26 report containing a description of each public works project
27 procured through the design-build process after January 1, 2010,
28 and before November 1, 2014. The report shall include, but shall
29 not be limited to, all of the following information:
- 30 (1) The type of project.
- 31 (2) The gross square footage of the project.
- 32 (3) The design-build entity that was awarded the project.
- 33 (4) Where appropriate, the estimated and actual length of time
34 to complete the project.
- 35 (5) The estimated and actual project costs.
- 36 (6) A description of any written protests concerning any aspect
37 of the solicitation, bid, proposal, or award of the design-build
38 project, including the resolution of the protests.
- 39 (7) An assessment of the prequalification process and criteria.

1 (8) An assessment of the effect of retaining 5-percent retention
2 on the project.

3 (9) A description of the labor force compliance program and an
4 assessment of the project impact, where required.

5 (10) A description of the method used to award the contract. If
6 best value was the method, the report shall describe the factors
7 used to evaluate the bid, including the weighting of each factor
8 and an assessment of the effectiveness of the methodology.

9 (11) An assessment of the project impact of skilled labor force
10 availability.

11 (12) An assessment of the design-build dollar limits on agency
12 projects. This assessment shall include projects where the agency
13 wanted to use design-build and was precluded by the dollar
14 limitation. This assessment shall also include projects where the
15 best value method was not used due to dollar limitations.

16 (13) An assessment of the most appropriate uses for the
17 design-build approach.

18 (m) (1) In order to comply with paragraph (2) of subdivision
19 (a), the State Public Works Board is required to maintain the list
20 of agencies that have applied and are eligible to be qualified for
21 this authority.

22 (2) Each agency that is interested in proceeding under the
23 authority in this section must apply to the State Public Works
24 Board. The application to proceed shall be in writing and contain
25 such information that the State Public Works Board may require.

26 (3) The State Public Works Board shall approve or deny an
27 application, in writing, within 90 days of the submission of a
28 complete application. The authority to deny an application shall
29 only be exercised if the condition set forth in paragraph (2) of
30 subdivision (a) has been satisfied.

31 (4) An agency that has applied for this authorization shall, after
32 it determines it no longer is interested in using this authority, notify
33 the State Public Works Board in writing within 30 days of its
34 determination. Upon notification, the State Public Works Board
35 may contact any previous applicants, denied pursuant to paragraph
36 (2) of subdivision (a), to inform them of the availability to proceed
37 under this section.

38 (5) The State Public Works Board may authorize no more than
39 10 projects. The board shall not authorize or approve more than

1 two projects for any one eligible redevelopment agency that
2 submits a completed application.

3 (6) The State Public Works Board shall notify the Legislative
4 Analyst's Office when 10 projects have been approved.

5 (n) On or before January 1, 2015, the Legislative Analyst shall
6 report to the Legislature on the use of the design-build method by
7 agencies pursuant to this section, including the information listed
8 in subdivision (l). The report may include recommendations for
9 modifying or extending this section.

10 (o) Except as provided in this section, nothing in this act shall
11 be construed to affect the application of any other law.

12 (p) This section shall remain in effect only until January 1, 2016,
13 and as of that date is repealed, unless a later enacted statute, that
14 is enacted before January 1, 2016, deletes or extends that date.

15 *SEC. 21. Section 20919.3 of the Public Contract Code is*
16 *amended to read:*

17 20919.3. (a) (1) For contracts *for public works projects*
18 awarded prior to the effective date of ~~either~~ the regulations adopted
19 by the Department of Industrial Relations pursuant to subdivision
20 ~~(b) (g)~~ of Section ~~1771.55~~ 1771.5 of the Labor Code ~~or the fees~~
21 ~~established by the department pursuant to paragraph (2)~~, the unified
22 school district shall establish and enforce for job order contracts
23 a labor compliance program containing the requirements outlined
24 in Section 1771.5 of the Labor Code, or it shall contract with a
25 third party to operate a labor compliance program containing the
26 requirements outlined in that provision. This requirement does not
27 apply to any project where the unified school district or the job
28 order contractor has entered into ~~any~~ a collective bargaining
29 agreement or agreements that bind all of the contractors performing
30 work on the projects.

31 (2) For contracts *for public works projects* awarded on or after
32 the effective date of ~~both~~ the regulations adopted by the Department
33 of Industrial Relations pursuant to subdivision ~~(b) (g)~~ of Section
34 ~~1771.55~~ 1771.5 of the Labor Code ~~and the fees established by the~~
35 ~~department pursuant to this paragraph~~, the unified school district
36 shall ~~pay a fee to the department, in an amount that the department~~
37 ~~shall establish, and as it may from time to time amend, sufficient~~
38 ~~to support the department's costs in ensuring compliance with and~~
39 ~~enforcing prevailing wage requirements on the project, and labor~~
40 ~~compliance enforcement as set forth in subdivision (b) reimburse~~

1 *the department for its reasonable and directly related costs of*
2 *performing prevailing wage monitoring and enforcement on public*
3 *works projects pursuant to rates established by the department as*
4 *set forth in subdivision (h) of Section 1771.55 1771.5 of the Labor*
5 *Code. All fees moneys collected pursuant to this subdivision shall*
6 *be deposited in the State Public Works Enforcement Fund created*
7 *by Section 1771.3 of the Labor Code, and shall be used only for*
8 *enforcement of prevailing wage requirements on those projects.*

9 ~~(3) The Department of Industrial Relations may waive the fee~~
10 ~~set forth in paragraph (2) if the unified school district has~~
11 ~~previously been granted approval by the director to initiate and~~
12 ~~operate a labor compliance program on its projects and requests~~
13 ~~to continue to operate that labor compliance program on its projects~~
14 ~~in lieu of labor compliance by the department pursuant to~~
15 ~~subdivision (b) of Section 1771.55 of the Labor Code. The fee~~
16 ~~shall not be waived for the unified school district if it contracts~~
17 ~~with a third party to initiate and enforce labor compliance programs~~
18 ~~on its projects.~~

19 *(3) In lieu of reimbursing the Department of Industrial Relations*
20 *for its reasonable and directly related costs of performing*
21 *monitoring and enforcement on public works projects, the unified*
22 *school district may elect to continue operating an existing*
23 *previously approved labor compliance program to monitor and*
24 *enforce prevailing wage requirements on the project if it has either*
25 *not contracted with a third party to conduct its labor compliance*
26 *program and requests and receives approval from the department*
27 *to continue its existing program or it enters into a collective*
28 *bargaining agreement that binds all of the contractors performing*
29 *work on the project and that includes a mechanism for resolving*
30 *disputes about the payment of wages.*

31 (b) The unified school district shall prepare an execution plan
32 for all modernization projects that may be eligible for job order
33 contracting pursuant to this article. The unified school district shall
34 select from that plan a sufficient number of projects to be initiated
35 as job order contracts during each calendar year and shall determine
36 for each selected project that job order contracting will reduce the
37 total cost of that project. Job order contracting shall not be used if
38 the unified school district finds that it will increase the total cost
39 of the project.

1 (c) No later than June 30, 2005, the unified school district shall
 2 submit an interim report on all job order contract projects
 3 completed by December 31, 2004, to the Office of Public School
 4 Construction in the Department of General Services and the Senate
 5 and the Assembly Committees on Business and Professions and
 6 the Senate and Assembly Committees on Education. The interim
 7 report shall be prepared by an independent third party and the
 8 unified school district shall pay for the cost of the report. The report
 9 shall include the information specified in subdivisions (a) through
 10 (h) of Section 20919.12.

11 ~~SECTION 1. Section 1720.5 is added to the Labor Code, to~~
 12 ~~read:~~

13 ~~1720.5. For the limited purposes of Article 2 (commencing~~
 14 ~~with Section 1770), "public works" also means the construction,~~
 15 ~~alteration, demolition, installation, and repair work done under~~
 16 ~~private contract when the work is performed in connection with~~
 17 ~~the construction or maintenance of renewable energy generation~~
 18 ~~capacity, located on property wholly or partially owned by a school~~
 19 ~~district or community college district, or on public property,~~
 20 ~~specifically to serve a school district or community college district.~~

21 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
 22 ~~Section 6 of Article XIII B of the California Constitution because~~
 23 ~~the only costs that may be incurred by a local agency or school~~
 24 ~~district will be incurred because this act creates a new crime or~~
 25 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
 26 ~~for a crime or infraction, within the meaning of Section 17556 of~~
 27 ~~the Government Code, or changes the definition of a crime within~~
 28 ~~the meaning of Section 6 of Article XIII B of the California~~
 29 ~~Constitution.~~