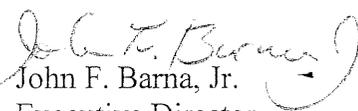


Memorandum

To: Chair and Commissioners

Date: June 3, 2007

From: 
John F. Barna, Jr.
Executive Director

File No: Ref. Agenda 4.1.
ACTION

Ref: STATE AND FEDERAL LEGISLATIVE MATTERS

Issue: Should the Commission:

- Identify conceptually the most desirable features that should be included in a bill dealing with public-private partnerships?
- Take a position on bills regarding various types of public-private partnerships?

Recommendation: Staff recommends that the Commission take:

- A support position on SB 61 (G. Runner).
- AB 899 (Parra), AB 1295 (Spitzer), and AB 1566 (Niello) are unlikely to either move out of Committee or the Assembly. AB 899 must pass out of the Assembly by June 8. AB 1295 and AB 1566 remain in the Appropriations Committee; those bills had to pass that Committee by June 1.

Prior to this point in the legislative process, the Commission has supported AB 1295 (toll lanes in Orange and Riverside Counties) and has expressed interest in developing public-private partnerships for rest areas, as proposed in AB 1566. If bills similar to AB 1295 and AB 1566 are proposed next year, the Commission should take a support position on them.

- No action on SB 56 (G. Runner) since the bill failed to pass out of Senate Appropriations Committee.
- No action on SB 416 (Ashburn) since the bill deals with counties, not Caltrans.

Background: California is considering updating its statutes for public-private partnerships (PPP). Other states have passed California in their use of PPP to develop and implement major transportation projects. The California Legislature considered last year and this year a number of bills dealing with PPP.

In other states, public agencies and a private company or companies can form a public-private partnership to provide a government service or fund and operate a private business venture. The public agency may also use tax revenue or bonds to provide capital for investment, with operations run jointly with the private sector or under contract. A public agency can also participate in a PPP by offering an existing asset to a private company in exchange for cash and permitting the private company to operate and maintain the asset for a fee. In other cases, the private sector invests capital based upon a contract with the public agency to provide agreed upon services over a set period.

The bills fall into two general categories, those that are aimed at

- Public-private partnerships (high occupancy toll lanes and toll roads), and
- Design-build.

Public Private Partnership – High Occupancy Toll Lanes / Toll Roads*Current Statutes:*

AB 1467, Nunez, was chaptered in 2006 and amended the statutes regarding public-private partnerships. Originally, the statutes authorized Caltrans to solicit proposals and enter into agreements with private entities or consortia for the construction and lease of no more than two toll road projects, and specified the terms and requirements applicable to those projects. The statutes authorized Caltrans to construct high-occupancy vehicle and other preferential lanes. The construction of transportation projects would be primarily designed to improve goods movement.

AB 1467 amended the statutes to authorize Caltrans and regional transportation agencies to enter into comprehensive development lease agreements, until January 1, 2012, with public and private entities for transportation projects that may charge certain users of those projects tolls and user fees. (Tolls or user fees may not be assessed against non-commercial vehicles with three or fewer axles.) The number of projects authorized increased from two to four, with two in northern California and two in southern California, as selected by the Commission.

AB 1467 also amended statutes to authorize regional transportation agencies, in cooperation with Caltrans, to apply to the Commission to develop and operate high-occupancy toll (HOT) lanes, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit. After holding public hearings, the Commission could select up to four projects, two in the north and two in the south. The Commission is required to submit eligible applications to the Legislature for approval or rejection. Approval is by enactment of a statute.

AB 245, S. Runner, chaptered later in 2006 than AB 1467 revised the process and the Legislature's role in approving or rejecting negotiated lease agreements.

In AB 245, all negotiated lease agreements shall be submitted to the Legislature for approval or rejection. Prior to submitting a lease agreement to the Legislature, Caltrans or the regional transportation agency shall conduct at least one public hearing at a location at or near the proposed facility for purposes of receiving public comment on the lease agreement. Public comments made during this hearing shall be submitted to the Legislature with the lease agreement. Unless the Legislature passes a resolution, with both houses concurring, rejecting a negotiated lease agreement within 60 legislative days of the agreement being submitted to it, the agreement shall be deemed approved. A lease agreement may not be amended by the Legislature.

Proposed Bills:

SB 61 (Runner): ~~Transportation: public-private partnerships.~~ High-occupancy toll lanes and toll roads.
(Passed Senate to Assembly)

SB 61 amends current statute to:

- Remove the four-project limitation
- Extend current statute to cover toll road projects

AB 899 (Parra): Transportation Facilities: Public-Private Partnerships (In Assembly Committee for Transportation)

AB 899 amends current statutes to:

- Extend the sunset date from January 1, 2012 to January 1, 2014 that Caltrans and regional transportation agencies may enter into comprehensive development lease agreements with public and private entities, or consortia of those entities, for certain transportation projects that may charge certain users of those projects tolls and user fees,

AB 1295 (Spitzer): Tolls: Orange and Riverside Counties (In Assembly Committee on Appropriations: Heard, remains in Committee)

AB 1295, a project specific bill, amends existing law regarding the Orange County Transportation Authority's assumption of responsibility for a toll lane on State Highway Route 91 in Orange and Riverside Counties under an assignment of a franchise agreement between Caltrans and a private toll road operator. Originally, AB 1295 impacted existing statutes put in place by AB 1467, but the language was amended and deleted.

AB 1295 amends current statutes to:

- Authorize the Orange County Transportation Authority (OCTA) to eliminate its right, interests and obligations in the Riverside County portion of State Highway Route 90 toll lane and assign those rights to the Riverside County Transportation Commission.
- Authorize the Riverside County Transportation Commission to impose tolls for 50 years on its portion of State Highway Route 91 for operating expenses of the toll lane.
- Delete the 2030 limitation on issuance of bonds and collection of tolls, and would provide for the reversion of the portion of the toll lane under OCTA's control from OCTA to Caltrans at the expiration of the franchise agreement
- Authorize the issuance of bonds for transportation facilities within a specified corridor.
- Authorize similar provisions, applicable to Route 90, to the construction of a toll lane on State Highway Route 15.

AB 1566 (Niello): Rest Areas - Joint Economic Development (In Assembly Committee on Appropriations: Heard, remains in Committee)

This bill does not deal with HOT lanes or toll roads, instead the bill deals with a different aspect of public-private partnership. Existing law requires the Commission and Caltrans to plan, design, and construct a system of safety roadside rests on the state highway system. Existing law authorizes Caltrans to construct, maintain, and operate a maximum of 6 new rest areas as joint economic development demonstration projects with commercial operations, unless prohibited by federal law or regulation. Existing law establishes a process for programming capital projects on the state highway system either through the state transportation improvement program (STIP) or the state highway operation and protection program (SHOPP).

AB 1566 amends current statutes to:

- Require the Commission and Caltrans to identify and prioritize one or more candidate projects for a rest area planned as a joint economic development demonstration project through the process for developing the STIP and the SHOPP.

- Set forth certain desirable characteristics for a rest area planned as a joint economic development demonstration project. The private sector partner shall be responsible for the design and engineering work for the commercial areas of the joint economic development demonstration project.

Design-Build

Design-build is a procurement process in which both the design and construction of a project are procured from a single entity. It is possible for construction and materials to be obtained before the designs are complete.

Design-bid-build is the traditional approach used by Caltrans. The design-bid-build process is one in which engineers/architects design a project, ask for bids on the projects, and then award a construction contract to a private bidder.

Most of the bills this year are aimed at providing local jurisdictions, school districts, regional agencies and transit agencies the authorization to use design-build as an alternative to design-bid-build. SB 56 is aimed at state agencies, such as Caltrans.

SB 56, Runner, G. Highway Construction Contracts (In Senate Appropriations, not heard)

Existing law:

- Establishes requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement.
- Authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design-build basis.
- Authorizes transit operators to enter into a design-build contract, as defined, according to specified procedures, until January 1, 2011.

SB 56 proposes a design-build process for contracting on transportation projects. It would:

- Authorize a demonstration program that would allow a careful examination of the benefits and challenges of using a design-build method of procurement for transportation projects.
- Authorize certain state and local transportation entities to use a design-build process for contracting on transportation projects, as specified until January 1, 2016.
- Authorize that 10 transportation projects be selected by the Commission. The Commission shall determine whether a transportation entity may award a design-build contract based on lowest responsible bid or best value. The Commission will balance the projects between the two methodologies of low-bid and best-value so that the design-build contracts awarded reflect the cost and benefit of using each method. To be eligible, projects are subject to the existing process for the State Transportation Improvement Program, the Traffic Congestion Relief Program, or the State Highway Operations and Protection Program.
- Require the Commission to establish a peer review committee to conduct an evaluation of the 10 projects selected to utilize the design-build method of procurement.
- Require a transportation entity to implement a labor compliance program for design-build projects.
- Require these transportation entities to report to the Legislature and the Commission regarding implementation of the design-build process.

- Establish a procedure for submitting bids that includes a requirement that design-build entities provide a statement of qualifications submitted to the transportation entity that is verified under oath.

SB 56 proposes that two methods be used, low bid and best value:

For those projects utilizing **low bid** as the final selection method, the competitive bidding process shall result in lump-sum bids by the pre-qualified design-build entities. Awards shall be made to the lowest responsible bidder.

For those projects utilizing **best value** as a selection method, the design-build competition shall progress as follows: Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposals. However, the following minimum factors shall be weighted as deemed appropriate by the contracting transportation entity: price, technical design and construction expertise, and life cycle costs over 15 years or more. The transportation entity may hold discussions or negotiations with responsive bidders using the process articulated in the transportation entity's request for proposals. When the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least advantageous. The award of the contract shall be made to the responsible bidder whose proposal is determined to be the most advantageous.

SB 416, Ashburn Design-Build: Counties (Passed Senate, to Assembly.)

SB 416, similar to SB 56, is to enable counties to use cost-effective options such as design build for building and modernizing public facilities. SB 416 also provides two selection methods: low bid and best value, along with other criteria.

SB 416 specifically declares, like a number of other local bills, that it is not the intent of the Legislature to authorize this procedure for transportation facilities, including, but not limited to, roads and bridges.

The county shall establish a procedure for final selection of the design-build entity. Selection shall be based on either:

- A competitive bidding process resulting in lump-sum bids by the pre-qualified design-build entities. Awards shall be made to the lowest responsible bidder, or
- A design-build competition based upon best value and other criteria. The design-build competition shall include the following elements: the criteria and selection procedures specifically identified in the request for proposal and the following minimum factors, which each shall represent at least 10 percent of the total weight given to all criteria: price; technical design and construction expertise; life cycle costs over 15 years or more; skilled labor force availability; and acceptable safety record.

The top three responsive bidders shall be ranked sequentially from the most advantageous to the least. The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous. Upon awarding a contract, the county shall publicly announce its award and identify the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.