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AB-2789 Design-build projects: local agencies. (2021-2022)

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Assembly Bill No. 2789

CHAPTER 214

An act to amend Sections 5580 and 35160 of, and to add Section 5581 to, the Public Resources Code, relating to public contracts.

[Approved by Governor August 29, 2022. Filed with Secretary of State August 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2789, Mullin. Design-build projects: local agencies.

Existing law establishes procedures for the formation of regional park districts and regional open-space districts or authorities and prescribes the powers, functions, and duties of those districts or authorities, including competitive bidding requirements relating to the construction of facilities or other buildings.

Existing law authorizes certain types of local agencies and other entities to use the design-build process when contracting for the construction of a building or improvements directly related to construction of certain facilities or buildings in those entities' jurisdictions, as specified. Existing law sets forth the procurement process for design-build projects, as specified, and requires specified information submitted by design-build entities to be certified under penalty of perjury.

Existing law, until January 1, 2023, authorizes the Midpeninsula Regional Open Space District and the Santa Clara Valley Open-Space Authority to use the design-build process for the construction of facilities or other buildings in those entities, as specified.

This bill would repeal the January 1, 2023, sunset date, thereby indefinitely extending the authority of the Midpeninsula Regional Open Space District and the Santa Clara Valley Open-Space Authority to use the design-build process. The bill would modify and expand the purposes for which the process is authorized to include construction, restoration, and improvement of buildings and facilities, the construction, restoration, and improvement of public access and recreation facilities, and prescribed nature-based infrastructure projects within the entity. The bill would similarly authorize the East Bay Regional Park District to use the design-build process.

Existing law, except as specified, authorizes a local agency, with approval of its governing body, to procure design-build contracts for public works projects in excess of \$1,000,000, awarding the contract either to the low bid or the best value. Existing law, until January 1, 2023, exempts the Midpeninsula Regional Open Space District and the Santa Clara Valley Open-Space Authority from the \$1,000,000 minimum project threshold.

This bill would repeal the January 1, 2023, sunset date, thereby indefinitely extending the exemption of the Midpeninsula Regional Open Space District and the Santa Clara Valley Open-Space Authority. The bill would also exempt the East Bay Regional Park District from the \$1,000,000 minimum project threshold.

Because this bill would expand the authority to use the design-build procurement process to an additional entity and would extend that authority indefinitely for other entities, the bill would expand the crime of perjury, thereby imposing a state-mandated local

program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Midpeninsula Regional Open Space District, the East Bay Regional Park District, and the Santa Clara Valley Open-Space Authority.

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 Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5580 of the Public Resources Code is amended to read:

5580. (a) Notwithstanding Section 5594 or any other law, upon approval by the board of directors of the Midpeninsula Regional Open Space District, the design-build process described in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code may be used to award contracts for the construction, restoration, and improvement of buildings and facilities, the construction, restoration, and improvement of public access and recreation facilities, and nature-based infrastructure projects including, but not limited to, habitat restoration projects, enhancement and remediation projects, and watershed, stream corridor, and pond improvement projects in that district.

(b) The minimum project limitation of one million dollars (\$1,000,000), as described in subdivision (a) of Section 22162 of the Public Contract Code, shall not apply to the Midpeninsula Regional Open Space District.

(c) For purposes of this section, all references in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code to "local agency" shall mean the Midpeninsula Regional Open Space District and its board of directors.

SEC. 2. Section 5581 is added to the Public Resources Code, to read:

5581. (a) Notwithstanding Section 5594 or any other law, upon approval by the board of directors of the East Bay Regional Park District, the design-build process described in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code may be used to award contracts for the construction, restoration, and improvement of buildings and facilities, the construction, restoration, and improvement of public access and recreation facilities, and nature-based infrastructure projects including, but not limited to, habitat restoration projects, enhancement and remediation projects, and watershed, stream corridor, and pond improvement projects in that district.

(b) The minimum project limitation of one million dollars (\$1,000,000), as described in subdivision (a) of Section 22162 of the Public Contract Code, shall not apply to the East Bay Regional Park District.

(c) For purposes of this section, all references in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code to "local agency" shall mean the East Bay Regional Park District and its board of directors.

SEC. 3. Section 35160 of the Public Resources Code is amended to read:

35160. (a) Notwithstanding Section 35159 or any other law, upon approval by the board of directors of the Santa Clara Valley Open-Space Authority, the design-build process described in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code may be used to award contracts for the construction, restoration, and improvement of buildings and facilities, the construction, restoration, and improvement of public access and recreation facilities, and nature-based infrastructure projects including, but not limited to, habitat restoration projects, enhancement and remediation projects, and watershed, stream corridor, and pond improvement projects in that authority.

(b) The minimum project limitation of one million dollars (\$1,000,000), as described in subdivision (a) of Section 22162 of the Public Contract Code, shall not apply to the Santa Clara Valley Open-Space Authority.

(c) For purposes of this section, all references in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code to "local agency" shall mean the Santa Clara Valley Open-Space Authority and its board of directors.

SEC. 4. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances relating to the Midpeninsula Regional Open Space District, the East Bay Regional Park District, and the Santa Clara Valley Open-Space Authority.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.