

AMENDED IN ASSEMBLY AUGUST 27, 2009

AMENDED IN ASSEMBLY JULY 14, 2009

AMENDED IN ASSEMBLY JUNE 30, 2009

AMENDED IN SENATE MAY 19, 2009

AMENDED IN SENATE APRIL 20, 2009

SENATE BILL

No. 43

Introduced by Senator Alquist

(Principal coauthor: Assembly Member Torrico)

(Coauthors: Assembly Members Beall and Coto)

January 6, 2009

An act to add Section 6532 to the Government Code, relating to joint powers agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 43, as amended, Alquist. Joint powers agencies: City of Santa Clara.

Under existing law, 2 or more public agencies may enter into an agreement to jointly exercise any power common to the contracting parties, as specified.

~~This bill would authorize a joint powers agency, that includes the City of Santa Clara and the Redevelopment Agency of the City of Santa Clara formed to construct, operate, or maintain a stadium for use by a professional football team, to let a design-build contract without utilizing the competitive bid process for the stadium construction project, as specified.~~

This bill would provide that the Santa Clara Stadium Authority, a joint powers agency formed by the City of Santa Clara and the

Redevelopment Agency of the City of Santa Clara, has the authority to acquire, finance, construct, manage, maintain, and operate a stadium and related facilities suitable for use by a professional football team, in addition to the powers common to the city and the redevelopment agency. The bill prohibits the redevelopment agency from expending property tax increment revenues to operate or maintain the stadium.

This bill would authorize the Santa Clara Stadium Authority to let a design-build contract without utilizing a competitive bid process for the stadium construction project, if, among other requirements, a ballot measure endorsing the development of a stadium suitable for use by a professional football team is approved by voters in a citywide election, the design-build contract does not require expenditures from the general fund of the City of Santa Clara, and the design-build contract is not funded by contributions from the Redevelopment Agency of the City of Santa Clara or a community facilities district except as provided in the bill. The bill would provide that redevelopment agency funds and community facilities district funds may be used to fund subcontracts awarded pursuant to a competitive bidding process established by the joint powers agency.

This bill would provide that for state highway improvement projects deemed necessary by the Department of Transportation based on the construction and maintenance of the stadium, the department is the responsible agency for project development services, as specified.

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

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

1 SECTION 1. Section 6532 is added to the Government Code,
2 to read:
3 6532. (a) The Legislature finds and declares that it is in the
4 best interest of the communities located ~~within~~ *in and around* the
5 City of Santa Clara that a joint powers agency that includes the
6 City of Santa Clara and the Redevelopment Agency of the City of
7 Santa Clara formed to construct, operate, ~~or~~ *and* maintain a stadium
8 for use by a professional football team be authorized to let a sole
9 source contract for the stadium construction project to a qualified
10 design-build contractor. This authorization may enable that joint
11 powers agency to ~~prevent cost overruns~~ *contain costs*, improve
12 efficiency, and benefit from specialized expertise. *Nothing in this*

1 *section shall be construed to affect any contract relating to the*
2 *development of the stadium between the joint powers agency and*
3 *any private party other than a design-build contract awarded*
4 *pursuant to this section.*

5 *(b) (1) Consistent with existing law, the City of Santa Clara and*
6 *the Redevelopment Agency of the City of Santa Clara may enter*
7 *into a joint powers agreement to create and operate a joint powers*
8 *agency for the construction, operation, and maintenance of a*
9 *stadium and related facilities located within the North Bayshore*
10 *Redevelopment Project Area that are suitable for use by a*
11 *professional football team. The joint powers agency created*
12 *pursuant to this section shall be known as the Santa Clara Stadium*
13 *Authority. In addition to, and without limitation on, any powers*
14 *common to the City of Santa Clara and the Redevelopment Agency*
15 *of the City of Santa Clara, the Santa Clara Stadium Authority shall*
16 *have the power to acquire, finance, construct, manage, maintain,*
17 *and operate a stadium and related facilities suitable for use by a*
18 *professional football team.*

19 *(2) Notwithstanding paragraph (1), the Santa Clara Stadium*
20 *Authority and the Redevelopment Agency of the City of Santa Clara*
21 *shall not expend any property tax increment revenues allocated*
22 *to the redevelopment agency pursuant to Section 33670 of the*
23 *Health and Safety Code to operate or maintain a stadium within*
24 *the North Bayshore Redevelopment Project Area.*

25 ~~(b)~~

26 *(c) (1) Notwithstanding any other provision of law, and subject*
27 *to ~~subdivision (c), a joint powers agency including the City of~~*
28 *~~Santa Clara and the Redevelopment Agency of the City of Santa~~*
29 *~~Clara formed to construct, operate, or maintain a stadium for use~~*
30 *~~by a professional football team may award a design-build contract~~*
31 *~~related to that stadium to a qualified design-build contractor~~*
32 *~~subdivision (d), the Santa Clara Stadium Authority may award a~~*
33 *~~design-build contract to a qualified design-build contractor to~~*
34 *~~construct the stadium without utilizing an otherwise applicable~~*
35 *~~competitive bid process, provided that the governing body of the~~*
36 *~~joint powers agency determines that the cost of the contract is~~*
37 *~~reasonable and that award of the contract without utilizing the~~*
38 *~~competitive bid process is in the best interest of the joint powers~~*
39 *~~agency; provided that all of the following have occurred:~~*

1 (A) A ballot measure endorsing the development of a stadium
2 suitable for use by a professional football team is approved by
3 voters in the City of Santa Clara in a citywide election.

4 (B) The governing body of the Santa Clara Stadium Authority
5 determines that the cost of the contract is reasonable.

6 (C) The governing body of the Santa Clara Stadium Authority
7 determines that the award of the contract is in its best interest.

8 (2) The contract awarded to the qualified design-build
9 contractor pursuant to paragraph (1) shall not be funded, either
10 through direct payment or reimbursement, using funds contributed
11 by the Redevelopment Agency of the City of Santa Clara or by a
12 community facilities district established under the Mello-Roos
13 Community Facilities Act of 1982 (Chapter 2.5 (commencing with
14 Section 53311) of Part 1 of Division 2 of Title 5), except that these
15 funds may be used to pay for or reimburse for subcontract work
16 pursuant to subcontracts awarded by the design-build contractor
17 to the lowest responsible bidder as provided in subdivision (e).

18 ~~(e) A joint powers agency that includes the City of Santa Clara
19 and the Redevelopment Agency of the City of Santa Clara shall~~

20 (d) The Santa Clara Stadium Authority shall not award a
21 design-build contract pursuant to subdivision ~~(b)~~ (c) unless all of
22 the following conditions are met:

23 (1) The design-build contract does not require expenditure of
24 money from the general fund or enterprise funds of the City of
25 Santa Clara.

26 (2) The obligation of the Redevelopment Agency of the City of
27 ~~Santa Clara to contribute funding toward amounts due under the~~
28 ~~design-build contract is limited to a specified maximum amount,~~
29 ~~provided that the specified maximum amount need not apply to~~
30 ~~debt service and other financing costs.~~ Santa Clara to contribute
31 funding is limited to a specified maximum amount, exclusive of
32 debt service and other related financing costs, and these funds are
33 used only to pay for or reimburse for subcontract work pursuant
34 to subcontracts awarded by the design-build contractor to the
35 lowest responsible bidder as provided in subdivision (e). Nothing
36 in this subdivision modifies the requirements and limitations set
37 forth in the Community Redevelopment Law (Part 1 (commencing
38 with Section 33000) of Division 24 of the Health and Safety Code)
39 with respect to the financial obligations of the Redevelopment
40 Agency of the City of Santa Clara to the joint powers agency.

1 (3) A private party will be responsible for any construction cost
2 overruns.

3 ~~(d) A joint powers agency awarding a design-build contract~~
4 ~~pursuant to this section shall require that subcontract work be~~
5 ~~awarded through a competitive process established by the joint~~
6 ~~powers agency.~~

7 *(e) If the Santa Clara Stadium Authority awards a design-build*
8 *contract pursuant to this section, it shall establish a competitive*
9 *bid process for awarding subcontracts, and it shall require the*
10 *design-build contractor to award subcontracts using this process.*
11 *This competitive bid process shall provide that subcontracts be*
12 *awarded using either the lowest responsible bidder or by best*
13 *value, as defined in Section 20133 of the Public Contract Code.*
14 *Subcontracts awarded on the basis of best value shall not be*
15 *funded, either through direct payment or reimbursement, using*
16 *funds contributed by the Redevelopment Agency of the City of*
17 *Santa Clara or by a community facilities district established under*
18 *the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5*
19 *(commencing with Section 53311) of Part 1 of Division 2 of Title*
20 *5). Funds contributed by the Redevelopment Agency of the City of*
21 *Santa Clara or a community facilities district may be used only to*
22 *fund subcontracts awarded to the lowest responsible bidder in a*
23 *manner consistent with the process applicable to the City of Santa*
24 *Clara under its charter.*

25 (e)

26 (f) Notwithstanding Section 3248 of the Civil Code, for
27 design-build contracts awarded pursuant to this section, the ~~joint~~
28 ~~powers agency~~ Santa Clara Stadium Authority may specify that
29 the payment bond shall be in a sum not less than one-half of the
30 contract price or three hundred million dollars (\$300,000,000),
31 whichever is less.

32 ~~(f) Each joint powers agency that elects to proceed under this~~
33 ~~section and uses the design-build method to construct, operate, or~~
34 ~~maintain a stadium for use by a professional football team shall~~
35 ~~submit to the Legislative Analyst's Office, before December 1,~~
36 ~~2014, a report containing a description of each project procured~~
37 ~~through the design-build process after January 1, 2010, and before~~
38 ~~November 1, 2014. The report shall include, but shall not be limited~~

39 (g) *If the Santa Clara Stadium Authority elects to proceed under*
40 *this section and uses the design-build method to construct a*

1 stadium suitable for use by a professional football team, it shall
 2 submit to the Legislative Analyst's Office, within six months
 3 following the completion of construction of the stadium, a report
 4 regarding the project that shall include, but shall not be limited
 5 to, all of the following information:

- 6 (1) ~~The type of~~ A brief description of the project.
- 7 (2) The gross square footage of the project.
- 8 (3) The design-build entity that was awarded the project.
- 9 (4) Where appropriate, the estimated and actual length of time
 10 to complete the project.
- 11 (5) The estimated and actual project costs.
- 12 (6) A description of any written protests concerning any aspect
 13 of the solicitation, bid, proposal, or award of the design-build
 14 project, including the resolution of the protests.
- 15 (7) An assessment of the prequalification process and criteria.
- 16 (8) ~~An assessment of the effect of retaining 5-percent retention~~
 17 ~~on the project.~~
- 18 (9) ~~A description of the labor force compliance program, as~~
 19 ~~defined in Section 20133 of the Public Contract Code, and an~~
 20 ~~assessment of the project impact, where required.~~
- 21 (10)
- 22 (8) A description of the method used to award the contract. If
 23 best value, as defined in Section 20133 of the Public Contract
 24 Code, was the method, the report shall describe the factors used
 25 to evaluate the bid, including the weighting of each factor and an
 26 assessment of the effectiveness of the methodology.
- 27 (11) ~~An assessment of the project impact of skilled labor force~~
 28 ~~availability, as defined in Section 20133 of the Public Contract~~
 29 ~~Code.~~
- 30 (12) ~~An assessment of the design-build dollar limits on the joint~~
 31 ~~powers agency's projects. This assessment shall include projects~~
 32 ~~where the agency wanted to use the design-build method but was~~
 33 ~~precluded by the dollar limitation. This assessment shall also~~
 34 ~~include projects where the best value method was not used due to~~
 35 ~~dollar limitations.~~
- 36 (13) ~~An assessment of the most appropriate uses for the~~
 37 ~~design-build method.~~
- 38 (h) *It is not the intent of the Legislature, under the provisions*
 39 *of this section, to authorize design-build for other infrastructure,*
 40 *including, but not limited to, streets and highways, public rail*

1 transit, or water resource facilities and infrastructure not located
2 on the stadium site or adjacent city streets and property.

3 (i) If the construction and operation or maintenance of a stadium
4 as contemplated by this section is deemed by the Department of
5 Transportation under otherwise applicable law to require
6 improvements on the state highway system, all of the following
7 provisions shall apply:

8 (1) Notwithstanding any other provision of this section, for any
9 project on the state highway system deemed necessary by the
10 department due to the construction, operation, or maintenance of
11 the stadium as contemplated by this section, the department is the
12 responsible agency for the performance of project development
13 services, including performance specifications, preliminary
14 engineering, prebid services, the preparation of project reports
15 and environmental documents, project design, and construction
16 inspection services. The department is also the responsible agency
17 for the preparation of documents that may include, but need not
18 be limited to, the size, type, and desired design character of the
19 project, performance specifications covering quality of materials,
20 equipment, and workmanship, preliminary and final plans and
21 specifications, and any other information deemed necessary to
22 design and construct a project that meets the needs of the
23 department.

24 (2) The department may use department employees or
25 consultants to perform these services, consistent with Article XXII
26 of the California Constitution. Department resources, including
27 personnel requirements necessary for the performance of those
28 services, shall be included in the department's capital outlay
29 support program for workload purposes in the annual Budget Act.

30 (j) The provisions of this section are severable. If any provision
31 of this section or its application is held invalid, that invalidity shall
32 not affect other provisions or applications that can be given effect
33 without the invalid provision or application. Except as provided
34 in this section, nothing in this section shall be construed to affect
35 the application of any other law.

36 SEC. 2. The Legislature finds and declares that Section 1 of
37 this act, that adds Section 6532 to the Government Code, is a
38 special law which is necessary because a general law cannot be
39 made applicable within the meaning of Section 16 of Article IV
40 of the California Constitution because of the unique circumstances

1 of the City of Santa Clara. In that respect, the ~~City of Santa Clara~~
2 ~~needs to address the unemployment rate in and~~ *construction,*
3 *operation, and maintenance of a stadium for use by a professional*
4 *football team may enhance employment opportunities in and* around
5 the City of Santa Clara and the ~~San Francisco Bay~~ *south bay* area.

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