

CALIFORNIA (USA) TOLL ROAD LAW

Assembly Bill No. 680

CHAPTER 107

An act to add Section 143 to the Streets and Highways Code, relating to transportation facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 10, 1989. Filed with Secretary of State July 10, 1989.]

Warning

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Particular care should be taken in the use of these clauses: the specificities of each PPP project may render these examples inappropriate or irrelevant in a particular situation.

Coherence with other documents of the legal framework should also be carefully checked.

LEGISLATIVE COUNSEL'S DIGEST

AB 680, Baker. State transportation facilities: private construction: leases.

Under existing law, the Department of Transportation is generally responsible for the design, construction, and operation of state-owned transportation facilities.

This bill would authorize the department to enter into agreements with private entities for the construction by, and lease to, private entities of 4 transportation demonstration projects, including at least one in northern California and one in southern California. The bill would authorize the department to lease rights-of-way in, and airspace over or under, state highways, to grant necessary easements, and to issue permits or other authorizations to enable private entities to construct transportation facilities supplemental to existing state-owned transportation facilities, and to lease those facilities to the private entities for up to 35 years. The privately constructed facilities would at all times be state owned. The bill would authorize those agreements to contain provisions authorizing the private entity to charge tolls for the use of the privately constructed facilities, and would require the agreements to provide for reversion of the facilities to the state at the expiration of the lease.

The bill would authorize the department to exercise any power possessed by it with respect to the development and construction of state transportation projects to facilitate the development and construction of the privately constructed projects, and would require the agreements to provide for reimbursement for maintenance and police services.

The bill would require the plans and specifications for a project to comply with the department's standards for state projects, and would deem a facility constructed by and leased to a private entity to be a part of the state highway system during the term of the lease.

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. The Legislature hereby finds and declares all the following:

- (a) It is essential for the economic well-being of the state and the maintenance of a high quality of life that the people of the State of California have an efficient transportation system.
- (b) Public sources of revenues to provide an efficient transportation system have not kept pace with California's growing transportation needs, and alternative funding sources should be developed to augment or supplement available public sources of revenue.
- (c) One important alternative is privately funded Build-Operate-Transfer (BOT) projects whereby private entities obtain exclusive development agreements to build, with private funds, all or a portion of public transportation projects for the citizens of California.
- (d) During the term of the development agreement the private entity will have the right to lease the facility from the state and charge tolls sufficient to retire the private investment in the projects (including a reasonable profit), operate and police the facility, maintain the facility, retire any outstanding bonds issued in support of the facility, and to make lease payments to the state.
- (e) Privately financed projects allow for joint ventures of private and public entities that do all of the following:
 - (1) Take advantage of private sector efficiencies in designing and building transportation projects.
 - (2) Allow for the rapid formation of capital necessary for funding transportation projects.
 - (3) More quickly bring reductions in congestion in existing transportation corridors.
 - (4) Require continued compliance with environmental requirements and applicable state and federal laws that all publicly financed projects must address.

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- (5) Offer the traveling public alternate route selections in project areas.
 - (f) The Department of Transportation should be permitted and encouraged to test the feasibility of building privately funded transportation facilities by developing four demonstration projects.

SEC. 2 Section 143 is added to the Streets and Highways Code, to read:

143. (a) The department may solicit proposals and enter into agreements with private entities, or consortia thereof, for the construction by, and lease to, private entities of four public transportation demonstration projects, at least of which shall be in northern California and one southern California.
- (b) For the purpose of facilitating those projects, the agreements may include provisions for the lease of rights-of-way in, and airspace over or under, state highways, for the granting of necessary easements and for the issuance of permits or other authorizations to enable the private entity to construct transportation facilities supplemental to existing state-owned transportation facilities. Facilities constructed by a private entity pursuant to this section shall at all times, be owned by the state. The agreement shall provide for the lease of those facilities to the private entity for up to 35 years. In consideration therefor, the agreement shall provide for complete reversion of the privately constructed facility to the state at the expiration of the lease at no charge to the state.
- (c) The department may exercise any power possessed by it with respect to the development and construction of state transportation projects to facilitate the development and construction of transportation projects pursuant to this section. Agreements for maintenance and police services entered into pursuant to this section shall provide for full reimbursement for services rendered by the department or other state agencies. The department may provide services for which they are reimbursed with respect to preliminary planning, environmental certification, and preliminary design of the demonstration projects.
- (d) Agreements entered into pursuant to this section shall authorize the private entity to impose tolls for use of a facility constructed by it and shall require that over the term of the lease the toll revenues be applied to payment of the private entity's capital outlay costs for the project, the costs associated with operations, toll collection, and administration of the facility, reimbursement to the state for the costs of maintenance and police services, and a reasonable return on investment to the private entity. The agreement shall require that any excess toll revenue be applied to any indebtedness incurred by the private entity with respect to the project or be paid into the State Highway Account. Subsequent to expiration of the lease of a facility to a private entity, the department may continue to charge tolls for use of the facility.
- (e) The plans and specifications for each project constructed pursuant to this section shall comply with the department's standards for state projects. A facility constructed by and leased to a private entity shall during the term of the lease, be deemed to be a part of the state highway system for purposes of identification, maintenance, enforcement of traffic laws, and for the purposes of Division 3.6 (commencing with Section 810) of title 1 of the Government Code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the benefits, which will result from the implementation of this act, to accrue to the state's transportation program as quickly as possible, it is necessary that this act take effect immediately.