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California Dispute Resolution Programs Act - Statutes

The Dispute Resolution Programs Act of 1986 (Stats 1986, ch. 1313, SB 2064-Garamendi and Stats 1987, ch. 28, SB 123-Garamendi) provides for the local establishment and funding of informal dispute resolution programs. The goal of the Act is the creation of a state-wide system of locally-funded programs which will provide dispute resolution services (primarily conciliation and mediation) to county residents. These services assist in resolving problems informally and function as alternatives to more formal court proceedings.

Counties which choose to offer these services to their residents are authorized to allocate up to up to \$8 from filing fees in superior, municipal, and justice court actions to generate new revenues for these local programs.

The Act provides the framework for the statewide system. In addition, it specified that a limited-term Dispute Resolution Advisory Council adopt temporary guidelines and propose regulations which would supplement the provisions of the Act. The Council completed its responsibilities and terminated, as required, on January 1, 1989. Its proposed regulations were subsequently approved by the California Office of Administrative Law, effective October 1, 1989. The Regulations supersede the "Temporary Funding and Operating Guidelines" which were adopted by the Council in 1988.

The state oversight agency designated by the Act is the California Department of Consumer Affairs. The department's responsibilities include reviewing and modifying the rules and regulations, providing technical assistance to counties and programs, monitoring local government and program compliance with the Act and the Regulations, and evaluating the services of the programs and their impact on the state justice system.

The Act's statutory provisions (codified at California Business and Professions Code " 465-471.5), and its Regulations (contained at California Code of Regulations, Title 16, Chapter 36) now operate in tandem to govern the implementation activities by counties and the services provided by local dispute resolution programs.

Inquiries about the Act and its implementation should be directed to:

Dispute Resolution Office
Department of Consumer Affairs
1625 North Market Blvd., Suite S 309
Sacramento, CA 95834
(916) 574-8220

II. Dispute Resolution Programs Act

Business and Professions Code Sections 465-471.5
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DISPUTE RESOLUTION PROGRAMS ACT
Business and Professions Code "465-471.5."

Article 1. Legislative Purpose**465. Legislative finding and declaration**

The Legislature hereby finds and declares all of the following:

- (a) The resolution of many disputes can be unnecessarily costly, time-consuming, and complex when achieved through formal court proceedings where the parties are adversaries and are subjected to formalized procedures.
- (b) To achieve more effective and efficient dispute resolution in a complex society, greater use of alternatives to the courts, such as mediation, conciliation, and arbitration should be encouraged. Community dispute resolution programs and increased use of other alternatives to the formal judicial system may offer less threatening and more flexible forums for persons of all ethnic, racial, and socioeconomic backgrounds. These alternatives, among other things, can assist in the resolution of disputes between neighbors, some domestic disputes, consumer-merchant disputes, and other kinds of disputes in which the parties have continuing relationships. A noncoercive dispute resolution forum in the community may also provide a valuable prevention and early intervention problem-solving resource to the community.
- (c) Local resources, including volunteers reflective of the diversity of the community and available public buildings should be utilized to achieve more accessible, cost-effective resolutions of disputes. Additional financial resources are needed to expand, stabilize, and improve existing programs and entities which sponsor alternative dispute resolution.
- (d) Courts, prosecuting authorities, law enforcement agencies, and administrative agencies should encourage greater use of alternative dispute resolution techniques whenever the administration of justice will be improved.
- (e) Counties should consider increasing the use of alternative dispute resolution in their operations as plans for court reform are developed and implemented.
- (f) The Judicial Council should consider, in redrafting or updating any of the official pleading forms used in the trial courts of this state, the inclusion of information on options for alternative dispute resolution.

465.5. Legislative intent

It is the intent of the Legislature to permit counties to accomplish all of the following:

- (a) Encouragement and support of the development and use of alternative dispute resolution techniques.
- (b) Encouragement and support of community participation in the development, administration, and oversight of local programs designed to facilitate the informal resolution of disputes among members of the community.
- (c) Development of structures for dispute resolution that may serve as models for resolution programs in other communities.
- (d) Education of communities with regard to the availability and benefits of alternative dispute resolution techniques.
- (e) Encouragement of courts, prosecuting authorities, public defenders, law enforcement agencies, and administrative agencies to work in cooperation with, and to make referrals to, dispute resolution programs.

At the time that the state assumes the responsibility for the funding of California trial courts, consideration shall be given to the Dispute Resolution Advisory Council's evaluation of the effectiveness of alternative dispute resolution programs and the feasibility of the operation of a statewide program of grants, with the intention of funding alternative dispute resolution programs on a statewide basis.

Article 2. Definitions**466. Dispute resolution; program; advisory council**

As used in this chapter:

- (a) "Dispute resolution" includes, but is not limited to, mediation, conciliation, and arbitration.
- (b) "Program" means an entity that provides dispute resolution.
- (c) "Advisory Council" means the Dispute Resolution Advisory Council.

Article 3. Establishment and Administration of Programs

467. Dispute resolution advisory council; membership; compensation

- (a) There is in the Division of Consumer Services of the Department of Consumer Affairs a Dispute Resolution Advisory Council. The advisory council shall complete the duties required by the chapter no later than January 1, 1989.
- (b) The advisory council shall consist of seven persons, five of whom shall be appointed by the Governor. One member shall be appointed by the Senate Rules Committee, and one member shall be appointed by the Speaker of the Assembly. At least four of the persons appointed to the advisory council shall be active members of the State Bar of California, and at least four persons appointed to the advisory council shall have a minimum of two years of direct experience in utilizing dispute resolution techniques. The members of the advisory council shall reflect the racial, ethnic, sexual, and geographical diversity of the State of California.
- (c) The members of the advisory council shall not receive a salary for their services but shall be reimbursed for their actual and necessary travel and other expenses incurred in the performance of their duties.

467.1. Funded programs; county grants to establish and continue programs; intercounty regional programs

- (A) A program funded pursuant to this chapter shall be operated pursuant to contract with the county and shall comply with all of the requirements of this chapter and the rules and regulations of the advisory council.
- (b) Counties may establish a program of grants to public entities and nonpartisan, nonprofit corporations for the establishment and continuance of programs to be operated under the requirements of this chapter and the standards developed by the advisory council. The board of supervisors of a county in which, because of the county's size, the fee increase authorized by Section 470.3 is insufficient to establish a county program may enter into an agreement with the board of supervisors of one or more other such counties to establish a program authorized by this chapter on a regional basis.

467.2. Funded program; eligibility requirements

A program shall not be eligible for funding under this chapter unless it meets all of the following requirements:

- (a) Compliance with this chapter and the applicable rules and regulations of the advisory council.
- (b) Provision of neutral persons adequately trained in conflict resolution techniques as required by the rules and regulations promulgated by the advisory council pursuant to Section 471.
- (c) Provision of dispute resolution, on a sliding scale basis, and without cost to indigent.
- (d) Provision that, upon consent of the parties, a written agreement or an award resolving a dispute will be issued setting out a settlement of the issues involved in the dispute and the future responsibilities of each party.
- (e) Provision of neutral procedures applicable equally to all participants without any special benefit or consideration given to persons or entities providing funding for the programs.
- (f) Provision that participation in the program is voluntary and that the parties are not coerced to enter dispute resolution.
- (g) Provision of alternative dispute resolution is the primary purpose of the program.
- (h) Programs operated by counties that receive funding under this chapter shall be operated primarily for the purposes of dispute resolution, consistent with the purposes of this chapter.

467.3. Funded program; written statement relating to proceeding; contents

Programs funded pursuant to this chapter shall provide persons indicating an intention to utilize the dispute resolution process with a written statement prior to the dispute resolution proceeding, in language easy to read and understand, stating all of the following:

- (a) The nature of the dispute.
- (b) The nature of the dispute resolution process.
- (c) The rights and obligations of the parties, including, but not limited to, all of the following:
- (1) The right to call and examine witnesses.
 - (2) The right of the parties to be accompanied by counsel, who may participate as permitted under the rules and procedures of the program.
- (d) The procedures under which the dispute resolution will be conducted.
- (e) If the parties enter into arbitration, whether the dispute resolution process will be binding.

467.4. Agreement resolving dispute; enforceability and admissibility as evidence; statute of limitations

- (a) An agreement resolving a dispute entered into with the assistance of a program shall not be enforceable in a court nor shall it be admissible as evidence in any judicial or administrative proceeding, unless the consent of the parties or the agreement includes a provision that clearly states the intention of the parties that the agreement or any resulting award shall be so enforceable or admissible as evidence.
- (b) The parties may agree in writing to toll the applicable statute of limitations during the pendency of the dispute resolution process.

467.5. Proceedings subject to Chapter 2 (commencing with section 1115) of Division 9 of the Evidence Code

Notwithstanding the express application of Chapter 2 (commencing with section 1115) of Division 9 of the Evidence Code to mediations, all proceedings conducted by a program funded pursuant to this chapter, including, but not limited to, arbitrations and conciliations, are subject to Chapter 2 (commencing with section 1115) of Division 9 of the Evidence Code.

Note: Evidence Code section 1152.5 was repealed and replaced by Chapter 2 (commencing with section 1115) of Division 9 of the Evidence Code.

467.6. Statistical records; maintenance; confidentiality and anonymity of parties

Each program shall maintain those statistical records required by Section 471.5, and as may be required by the county. The records shall maintain the confidentiality and anonymity of the parties.

467.7. Revocation of consent, withdrawal from dispute resolution, and judicial redress; criminal complaint, advice of counsel, waiver of right to counsel

- (a) Unless the parties have agreed to a binding award, nothing in this chapter shall be construed to prohibit any person who voluntarily enters the dispute resolution process from revoking his or her consent, withdrawing from dispute resolution, and seeking judicial or administrative redress.
- (b) In cases in which a criminal complaint has been filed by a prosecutor, other than for an infraction, the advice of counsel shall be obtained before any dispute resolution process is initiated. Nothing in this subdivision shall be construed to preclude a defendant from knowingly and voluntarily waiving the right to counsel. A defendant who indicates a desire to waive the right to counsel shall be encouraged to consult with the public defender or private counsel before waiving that right.

Article 4. Application Procedures

468. Funds to be utilized for projects proposed by eligible programs

All funds available to a county for the purposes of this chapter shall be utilized for projects proposed by eligible programs.

468.1. Selection of programs

Programs shall be selected for funding by a county from the applications submitted therefore.

468.2. Applications for funding; contents

Applications submitted for funding shall include, but need not be limited to, all of the following information:

- (a) Evidence of compliance with Sections 467.2, 467.3, and 467.4.

- (b) A description of the proposed community area of service, cost of the principal components of operation, and any other characteristics, as determined by rules of the advisory council.
- (c) A description of available dispute resolution services and facilities within the defined geographical area.
- (d) A description of the applicant's proposed program, by type and purpose, including evidence of community support, the present availability of resources, and the applicant's administrative capability.
- (e) A description of existing or planned cooperation between the applicant and local human service and justice system agencies.
- (f) A demonstrated effort on the part of the applicant to show the manner in which funds that may be awarded under this program may be coordinated or consolidated with other local, state, or federal funds available for the activities described in Sections 467.2, 467.3, and 467.4.
- (g) An explanation of the methods to be used for selecting and training mediators and other facilitators used in the dispute resolution process.
- (h) Such additional information as may be required by the county.

468.3. Relative funding priority; basis of criteria

Data supplied by each applicant shall be used to assign relative funding priority on the basis of criteria developed by the advisory council. The criteria may include, but shall not be limited to, all of the following, in addition to the criteria set forth in Section 468.2

- (a) Unit cost, according to the type and scope of the proposed program.
- (b) Quality and validity of the program.
- (c) Number of participants who may be served.
- (d) Administrative capability.
- (e) Community support factors.

Article 5. Payment Procedures

469. Allocation of funds; considerations; methods of payment or reimbursement

Upon the approval of the county, funds available for the purposes of this chapter shall be used for the costs of operation of approved programs. Not more than 10 percent of funds available for the purposes of this chapter shall be used to finance the administration of the program by a county with a population of 500,000 or more persons, and no more than 20 percent may be so used if its population is less than that amount. All moneys allocated for the purposes of this chapter shall be apportioned and distributed to programs in the county, taking into account the relative population and needs of a community as well as the availability of existing dispute resolution facilities offering alternatives to the formal judicial system. The methods of payment or reimbursement for dispute resolution costs shall be specified by the county and may vary among programs. All such arrangements shall conform to the regulations of the advisory council.

Article 6. Funding

470. Acceptance and disbursement of funds from any public or private source

A county may accept and disburse funds from any public or private source for the purposes of this chapter.

470.1. Grant recipient may accept funds from public or private source; inspection, examination and audit of fiscal affairs; use of public facilities

- (a) A grant recipient may accept funds from any public or private source for the purposes of this chapter.
- (b) A county and its representatives may inspect, examine, and audit the fiscal affairs of the programs and the projects funded under this chapter.
- (c) Programs shall, whenever reasonably possible, make use of public facilities at free or nominal costs.

470.2. County's share of funding

A county's share of the funding pursuant to this chapter shall not exceed 50 percent of the approved estimated cost of the program. A county's share of the funding pursuant to this chapter shall not exceed 50 percent of the approved estimated cost of the program.

470.3. Fee for filing first paper in civil action; utilization of fee; special fund; inspection of records

- (a) Except as provided in subdivision (b), a fee of not less than one dollar (\$1) and not more than eight dollars (\$8) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior, municipal, or justice court, other than a small claims action.
- (b) A fee of not less than one dollar (\$1) and not more than three dollars (\$3) may be added to the total fees¹ collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior, municipal, or justice court, for those cases where the monetary damages do not exceed the sum of two thousand five hundred dollars (\$2500). To facilitate the computation of the correct fee pursuant to this section, the complaint shall contain a declaration under penalty of perjury executed by a party requesting a reduction in fees that the case filed qualifies for the lower fee because claim for money damages will not exceed the sum of two thousand five hundred dollars (\$2,500).²
- (c) The fees described in subdivision (a) shall only be utilized for the support of the dispute resolution programs authorized by this chapter.
- (d) A county may carry over moneys received from the additional fees authorized pursuant to subdivision (a) and (b), which shall be deposited in a special fund created for those purposes, until such time as the county elects to fund a dispute resolution program. Records of those fees shall be available for inspection by the public, upon request.

Article 7. Rules and Regulations

471. Rules and regulations; temporary guidelines; county grants; evaluations; enforcement-Director of Consumer Affairs

- (a) The advisory council shall adopt rules and regulations to effectuate the purposes of this chapter, including, but not limited to, guidelines to be used by the programs for the recruitment and training of persons conducting dispute resolution, and provisions for periodic monitoring and evaluation of the programs funded pursuant to this chapter. The advisory council shall establish guidelines to evaluate the performance of participating programs, which shall include analysis of court caseload reduction, cost savings to the state, the efficacy of the programs, and the feasibility of operation of a statewide program of grants at the time the state assumes the responsibility for the funding of trial courts.
- (b) The advisory council shall adopt temporary guidelines within six months of its initial meeting. The adoption of these temporary guidelines shall not be subject to the procedures specified in Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of Government Code.

Upon the adoption of the temporary guidelines, counties may award grants pursuant to this chapter. Programs funded pursuant to this chapter shall comply with the temporary guidelines, the requirements of this chapter and, when adopted, the formal rules and regulations.

- (c) Formal rules and regulations implementing this chapter shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code and, upon adoption, shall supersede the temporary guidelines adopted pursuant to subdivision (b).
- (d) On and after January 1, 1989, or such earlier date as the advisory council completes its duties pursuant to this chapter, the Division of Consumer Services of the Department of Consumer Affairs shall periodically review the effectiveness of the rules and regulations adopted pursuant to this chapter and adopt changes thereto as necessary. It also shall monitor and evaluate the programs funded pursuant to this chapter as to their compliance with those rules and regulations.
- (e) The Director of Consumer Affairs shall administer and enforce this chapter and the rules and regulations adopted pursuant to this chapter, and so doing may exercise any power conferred under Chapter 4 (commencing with Section 300).

471.3. Rules and regulations; statewide uniformity

The rules and regulations adopted by the advisory council pursuant to Section 471 shall be formulated to promote statewide uniformity with the guidelines contained in those rules and regulations.

471.5. Statistical data; confidentiality and anonymity of persons employing process

Each program funded pursuant to this chapter shall annually provide the county with statistical data regarding its operating budget; the number of referrals,

categories, or types of cases referred to the program; the number of persons served by the program; the number of disputes resolved; the nature of the disputes resolved; rates of compliance; the number of persons utilizing the process more than once; the duration of and the estimated costs of the hearings conducted by the programs; and any other information that the county may require. The data shall maintain the confidentiality and anonymity of the persons employing the dispute resolution process.

¹ Government Code section 68086, subbed.(e) (as amended by Stats. 1993, ch. 158 (AB392)) precludes a board of supervisors from changing the amounts allocated from the "total filing fees" to fund conflict resolution, and effectively preclude counties from opting into the dispute Resolution Programs Act, or increasing the amount of funds from filing fees to fund conflict resolution programs. However, in 1996, counties were allowed to increase the factually total filing fee to fund conflict resolution programs, and exclude that increase from the definition of total filing fee as defined in Government Code sections 26820.6 and 72056.1 (Stats. 1996, c.942 (AB2953))

² Senate Bill 1701 (1992) increased from three dollars (\$3) to eight (\$8) the maximum which a county could use from its filing fees to fund dispute resolution. Assembly Bill 1344 (1922) imposed maximum and uniform court filing fees for all counties and made inoperable a litigant's option to lower filing fees for money damages not exceeding \$2500.

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Example Paul & Diane

If Owner determines any of the Work has not met the standards set forth in this Subcontract at any time within one (1) year after commencement of the warranty period, then Subcontractor shall correct such Work at its sole expense. Subcontractor's warranties shall apply to all Work re-done pursuant to this Subcontract. Subcontractor's warranties shall last as to each re-donement of the Work until the later of (a) one (1) year after substantial completion of the Project or (b) one (1) year after acceptance by Owner of any re-done Work, but not to exceed two (2) years from the date of substantial completion.

16.3 Upon completion of the Work, Subcontractor shall provide to Contractor all written warranties, equipment manuals, and the like relating to its Work and shall transfer or assign to Contractor any manufacturers' warranties.

16.4 Contractors' rights under this Article 16 are in addition to its other rights and remedies available under this Subcontract and at law and equity.

ARTICLE 17

Indemnification

17.1 Personal Injury and Property Damage. To the fullest extent permitted by law, Subcontractor agrees to indemnify, defend and hold harmless Contractor, Owner and their respective officers, employees, sureties, invitees, architects, engineers, privies and assigns, from any loss, claim, suit, damage or liability for injury or death of any person, including employees of Subcontractor, or damage or destruction to any property, arising out of or in connection with any actual or alleged act or omission of Subcontractor, its officers, agents, employees, or its sub-subcontractors or suppliers, regardless of whether there is concurrent negligence, whether active or passive, on the part of Contractor or Owner or the others required to be indemnified in this section. Subcontractor's indemnity obligation shall not extend to any loss, damage or expense arising from the sole negligence or willful misconduct of Contractor or Owner or of others required to be indemnified in this section.

17.2 Non-Personal Injury and Non-Property Damage. To the fullest extent permitted by law, Subcontractor agrees to indemnify, defend and hold harmless Contractor and Owner and their respective officers, employees, sureties, invitees, architects, engineers, privies and assigns from any and all claims, suits, liability, loss, cost, expense, attorneys fees, court costs, or damages arising from or related to any of the following: (a) Subcontractor's failure or alleged failure to pay for all materials, supplies furnished (including taxes) and work and labor performed under this Subcontract; (b) Subcontractor's failure to comply with any applicable laws, ordinances or regulations or with this Subcontract; (c) Subcontractor's alleged or actual infringement or violation of any patent or patent right, arising from or in connection with this Subcontract; and (d) Subcontractor's actual or alleged failure to comply with its obligations under Article 11. Subcontractor's indemnity obligation shall not extend to any loss, damage or expense arising from the sole negligence or willful misconduct of Contractor or Owner or of others required to be indemnified in this section.

17.3 Subcontractor's indemnification obligations, as set forth herein, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefits acts, or by the insurance coverage provided by Subcontractor pursuant to this Subcontract.

17.4 ~~Subcontractor's defense and indemnity obligations shall include the duty to reimburse all reasonable attorney's fees and expenses incurred by Contractor or other indemnified parties for legal action to enforce Subcontractor's indemnity obligations.~~

ARTICLE 18

Other Contracts

Owner or Contractor may contract for and perform other or additional work on or near the Project site. Subcontractor shall cooperate with such other contractors to the extent reasonably necessary for the performance by them of their work and shall cause its employees, agents, officers and sub-subcontractors and other persons for whom Subcontractor may be contractually or legally responsible to cooperate. Subcontractor shall conduct its Work without interfering with or hindering the progress or completion of work being performed by other contractors. In case of a conflict, the matter shall be referred to

Initial *[Signature]*

Initial *[Signature]*

49 CFR 26.39 - FOSTERING SMALL BUSINESS PARTICIPATION.

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§ 26.39 Fostering small business participation.

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (*e.g.*, \$1 million).

(2) In multi-year design-build contracts or other large contracts (*e.g.*, for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

[76 FR 5097, Jan. 28, 2011]

Title 49 published on 2013-10-01

no entries appear in the Federal Register **after** this date.

This is a list of United States Code sections, Statutes at Large, Public Laws, and Presidential Documents, which provide rulemaking authority for this CFR Part.

This list is taken from the Parallel Table of Authorities and Rules provided by GPO [Government Printing Office].

It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the GPO site.

Hide United States Code

Hide U.S. Code: Title 23 - HIGHWAYS

§ 304 - Participation by small business enterprises

§ 324 - Prohibition of discrimination on the basis of sex

Hide U.S. Code: Title 42 - THE PUBLIC HEALTH AND WELFARE

§ 2000d - Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

42 U.S. Code § 2000d-1 - Federal authority and financial assistance to programs or activities by way of grant, loan, or contract...requirements; reports to Congressional committees; effective date of administrative action

42 U.S. Code § 2000d-2 - Judicial review; administrative procedure provisions

42 U.S. Code § 2000d-3 - Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

42 U.S. Code § 2000d-4 - Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

42 U.S. Code § 2000d-4a - "Program or activity" and "program" defined

DEPARTMENT OF TRANSPORTATION

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July 25, 2014

The Honorable Mark DeSaulnier
Chair, Senate Committee on Transportation and Housing
California State Senate
State Capitol, Room 2209
Sacramento, CA 95814

Dear Senator DeSaulnier:

As a follow up to a commitment I made to you in prior hearings on the Bay Bridge construction project—and as yet another step toward modernizing the California Department of Transportation (Caltrans)—here is a copy of our *Mega-Project Management Lessons Learned Report*. The purpose of this document is to analyze some of the overarching management and organizational practices during our years of work on the East Span of the San Francisco-Oakland Bay Bridge project, with a particular focus on what worked and what did not work during the project so that we can improve our operations in the future. This review follows our practice of conducting post-construction reviews of significant projects. The purpose of these reviews is to summarize what we learned so we can improve our work going forward.

This report supports the important endeavor that you have undertaken in your committee to not only improve Caltrans moving forward, but also assist other State agencies who may undertake mega-projects in the future. It gives us an opportunity to continue our conversations on reform and identify further opportunities to improve our delivery of transportation infrastructure for the people of California.

As the purpose of this report is to articulate what we learned about management practices, it does not discuss technical details of various construction challenges that have been investigated, resolved and thoroughly documented elsewhere. For example, the reason 32 steel rods failed on pier E2 and were fixed with a seismic retrofit was extensively investigated by the Toll Bridge Program Oversight Committee last summer and is detailed in its preliminary investigative report¹ with the final report pending later this summer. Similarly, welds on the orthotropic box girders from China—fabricated from 2008 to 2011—were thoroughly investigated by a panel of external quality assurance experts who published a roughly 300-page report that concluded that implementing expert recommendations for improving the welding process resulted in welds of

¹ Metropolitan Transportation Commission, Bay Bridge East Span Bolts Update
http://www.mtc.ca.gov/news/current_topics/4-13/sfobb.htm

Honorable Mark DeSaulnier

July 25, 2014

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high quality and with very low rejection and repair percentages.² This evaluation process—thorough investigation, engagement with experts, fixing the problem, and documenting the resolution—has been repeated on many occasions over the years on this project.³

Although this report does not restate the technical conclusions of those concluded investigations, it does identify common themes that occurred over the lifespan of this project. Our honest evaluation and identification of those things that worked and did not work is part of our ongoing effort to make Caltrans and our projects more accessible and understandable to the public. For example, we recently held a six-hour town hall-style technical workshop where we invited the public and vocal critics to debate engineering and scientific issues surrounding our approach to fixing the 32 bolts that broke and the testing of other bolts.⁴ Another particularly important initiative was the decision by the Toll Bridge Program Oversight Committee to open its monthly meetings to the public.

One of the lessons we articulate in this report is that public access to problem-solving in action helps us explain how we work through challenges over time. The closed meeting structure put the Toll Bridge Program Oversight Committee and Caltrans in the difficult position of having to explain—years later—actions taken long ago to overcome construction challenges.

At the risk of overly simplifying this important document, here are a few key points worth identifying:

- 1) **The Toll Bridge Program Oversight Committee was an effective government concept, but should have been transparent.** For example, after the Committee took control of oversight responsibility in 2005, the seismic retrofit program was delivered on time and within its contingency budget. On the other hand, this process could have been more effective had it occurred during regular public meetings. Today, the meetings are public. Going forward, we recommend this type of multi-agency oversight structure, which is consistent with our ongoing effort to strengthen strategic partnerships.

² *Self-Anchored Suspension Bridge Project: Project Team Response to QA/QC Expert Panel Recommendations* (2011) <http://baybridgeinfo.org/sites/default/files/pdf/UpdatedFinal-QAQC-Rpt-2011Nov-v1.pdf>

³ We have posted literally hundreds of thousands of records on our Internet website in an effort to engage the public in our project and describe how our engineers solved problems. See, e.g., *Caltrans Tendon Corrosion Report Phase 1, 2, and 3* (2006) <http://baybridgeinfo.org/quality-assurance> (describes how Caltrans joined with the Federal Highway Administration to use a bore scope at 4,300 access points to inspect 1,635 steel strands and found 25 strands with moderate corrosion that retain 90 percent of their tensile strength and the rest retained 100 percent of their strength); *Peer Review Document: T1 Foundation Review* (2012), <http://baybridgeinfo.org/quality-assurance> (independently concludes there is no evidence that a rogue former Caltrans inspector falsified tests on the Bay Bridge and confirms, along with the Federal Highway Administration, that the foundation concrete data is sound and the structure is safe).

⁴ See 354BD Rod Testing Technical Briefing, <http://baybridgeinfo.org/rods/briefing> (Video of this six-plus hour public meeting).

- 2) **A robust risk management program helped us quantify the risk of potential construction scenarios—and plan accordingly—using statistical algorithms for calculating probability.** For example, the team identified overseas steel manufacturing as a critical risk and recommended robust material inspection engineers and construction management staff in China to oversee the quality of fabrication work. Although this risk management was useful, the project did not get the full benefits that would have accrued from implementing it earlier than 2005. Here, our use of risk management came along too late, and going forward, we recommend employing a risk manager from the beginning of a project.
- 3) **Bringing in outside experts to get technical advice was extremely valuable for ensuring quality throughout construction.** Caltrans' Materials Engineering and Testing Services provided quality assurance services. The Seismic Safety Peer Review Panel—an independent body of world-renowned engineering experts—provided technical guidance. An external Quality Assurance and Quality Control panel assisted with evaluation of steel and overseas welding fabrication. The earlier these activities occur, the better. We should have implemented this review structure from the beginning of the project. We strongly recommend that all mega-projects engage world-renowned industry experts to provide technical consultation during construction.
- 4) **Mega-projects produce potentially overwhelming volumes of records of project documentation that would benefit from dedicated records management and retention personnel.** For example, the approximate one million welds fabricated overseas required individual inspection reports, testing and follow-up tests, which generated a truly staggering volume of paperwork. Developing electronic databases to track these voluminous records can be quite difficult to implement in the midst of construction. Going forward, we recommend that Caltrans establish a formalized records management process and staffing at the beginning of the project that is capable of managing and retaining library-style volumes of construction records throughout the project.

Honorable Mark DeSaulnier

July 25, 2014

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- 5) **Consideration should be given to the contextual relationships that exist when building large infrastructure projects.** California is a diverse place and no one project is the right one for all communities. For example, the State originally proposed a spartan concrete viaduct, but that design was unacceptable to the local community, which not only sought a lifeline structure but also one that related to the identity of the region it would serve. Caltrans is currently going through a period of self-analysis, including implementing recommendations from the State Smart Transportation Initiative to modernize our mission, vision and goals and strengthen our communication with local communities. This process has opened a window of opportunity to substantially improve our organization and our responsiveness to local community needs.

Again, we hope that this report will assist us both in accomplishing the jointly held desire to improve the State's ability to improve the management of mega-projects going forward.

Sincerely,

MALCOLM DOUGHERTY

Director

Enclosure: Mega-Project Management Lessons Learned Report

San Francisco-Oakland Bay Bridge
New East Span Project

Lessons Learned Report

Final Report - May 2014

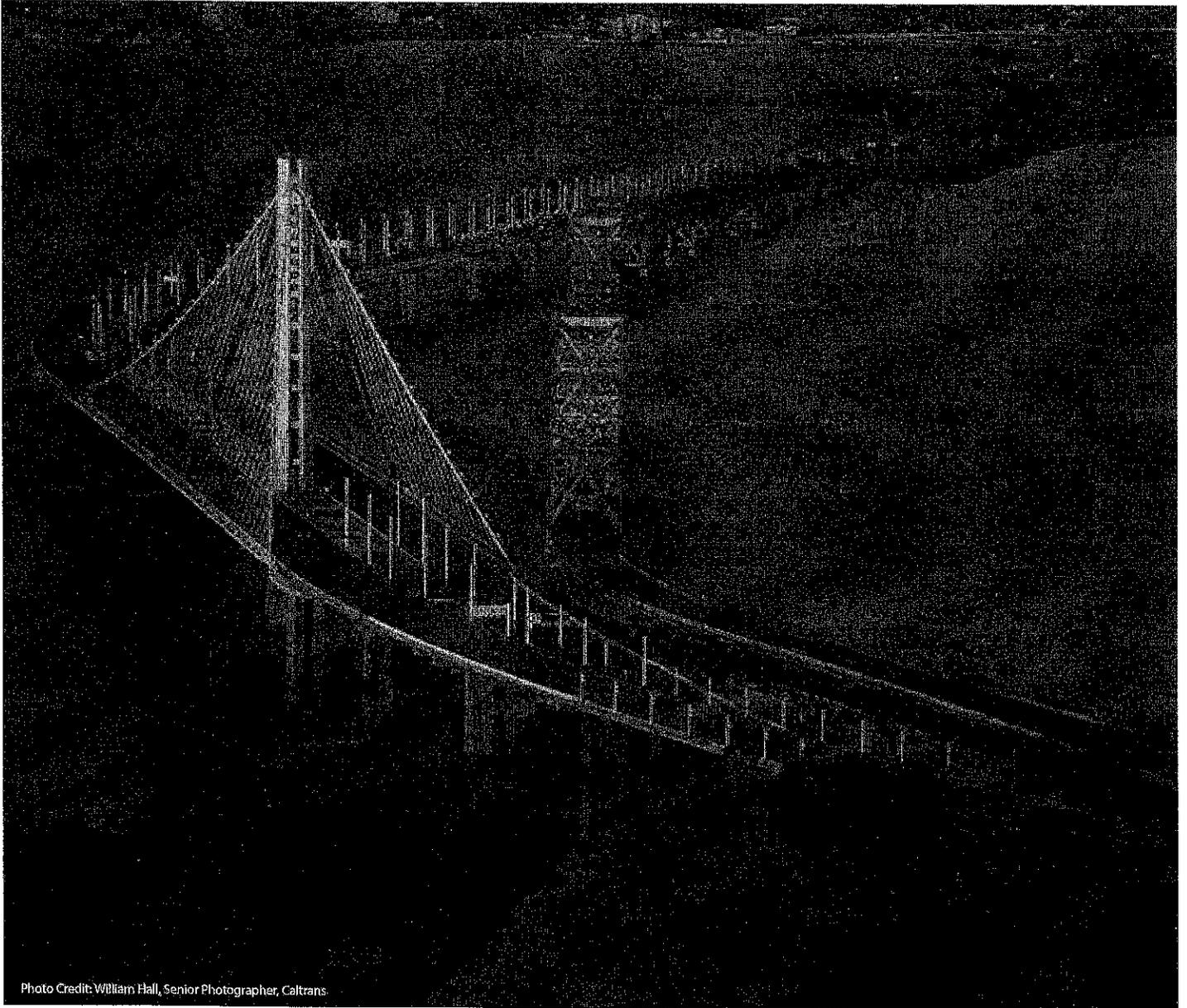


Photo Credit: William Hall, Senior Photographer, Caltrans

Prepared for:
Malcolm Dougherty, Caltrans Director



March 9, 2015

Board Of Directors
CALIFORNIA HIGH-SPEED RAIL AUTHORITY
770 L St, Suite 800
Sacramento, CA 95814

Dear Board,

The voters were provided in 2008 with a Prop 1A Voters Information Guide which said the statewide system high-speed rail system would "connect the major metropolitan areas of San Francisco, Sacramento, through the Central Valley, into Los Angeles, Orange County, the Inland Empire[San Bernardino and Riverside Counties], and San Diego. The Authority estimated in 2006 that the total cost to develop and construct the entire high-speed train system would be about \$45 billion." That was the last time the Authority provided a cost estimate for the entire 800-mile statewide system.

Your 2014 Business Plan cites Statutory Requirements for a Business Plan. Section 185033(b)(1)(A) of these statues requires, "the estimated capitol costs for each segment or combination of segments" of the statewide high-speed rail system. The appendix to the plan in a section entitled "Meeting Business Plan Statutory Requirements" then checks off that you have complied with this requirement. This is simply not true. You have not provided a total cost to the legislature or the public since 2006.

You continue to throw out this phony \$68 billion figure as though it somehow covers the cost of the entire statewide system. Many experts believe the final cost for the entire statewide system could be as much as \$150-200 billion, which would be a shock to the voters.

I believe the Authority has violated the law for failure to tell the Legislature and the Public the truth. I would appreciate a prompt written answer with an explanation. You continue to claim transparency, now may be the time for all of us to find out if your claim is true.

Sincerely,



Ted Hart
6847 Terreno Dr
Rancho Murieta, CA 95683

cc Ken Cooley
Tom Berryhill