

Date of Hearing: June 17, 2024

ASSEMBLY COMMITTEE ON TRANSPORTATION

Lori D. Wilson, Chair

SB 1068 (Eggman) – As Amended March 14, 2024

**SENATE VOTE:** 36-0

**SUBJECT:** Tri-Valley-San Joaquin Valley Regional Rail Authority: contracting: Construction Manager/General Contractor project delivery method

**SUMMARY:** Authorizes the Tri-Valley-San Joaquin Valley Regional Rail Authority (Authority) to use the Construction Manager/General Contractor (CM/GC) project delivery method for transit connectivity. Specifically, **this bill:**

- 1) Clarifies that these contracts may extend to work on the state highway system for the construction of passenger rail service through the Altamont Pass Corridor.
- 2) Stipulates that any authorized contracts shall not include the authority to perform construction inspection services on, or interfacing with, the state highway system and requires the California Department of Transportation (Caltrans) to perform these services.

**EXISTING LAW:**

- 1) Establishes Authority as Tri-Valley-San Joaquin Valley Regional Rail Authority. (Public Utilities Code (PUC) 13251)
- 2) Creates the Authority for purposes of planning, developing, delivering, and operating cost-effective and responsive transit connectivity, between the Bay Area Rapid Transit District (BART) and the Altamont Corridor Express (ACE) commuter rail service. (PUC 132652)
- 3) Establishes a governing board of the Authority comprised of local leaders. (PUC 132655)
- 4) Grants all powers necessary for the planning, design, development, and construction of the connection between BART and ACE, including the power to contract with public and private entities for the planning, design, and construction of the connection. (PUC 132656)
- 5) Authorizes Caltrans to procure through the (CM/GC) procurement method for projects costing more than \$10 million. (Public Contract Code (PCC) 6701)
- 6) Provides for an alternative procurement procedure for certain transportation projects performed by a regional transportation agency. (PCC 6970)
- 7) Establishes the CM/GC method allows the regional transportation agency to engage a construction manager during the design process to provide input on the design. (PCC 6970)
- 8) Establishes that utilizing a CM/GC method requires a clear understanding of the roles and responsibilities of each participant in the process, and that cost-effective benefits are achieved by shifting the liability and risk for cost containment and project schedule to the construction manager. (PCC 6970)

**FISCAL EFFECT:** Unknown

**COMMENTS:** The CM/GC project delivery method allows an agency to engage a construction manager during the design process to provide assistance to the design team, such as constructability reviews, value engineering suggestions, construction estimates, and other construction-related recommendations. When design is nearly complete, the agency and the construction manager negotiate a guaranteed maximum price for the construction of the project based on the defined scope and schedule. If this price is acceptable to both parties, they execute a contract for construction services, and the construction manager becomes the general contractor. Studies suggest CM/GC often leads to less costly or more expediently delivered projects because of the construction manager's involvement in the design process.

In 2012, legislation was enacted that authorized Caltrans to use the CM/GC delivery method on up to six projects as a pilot program. Subsequent legislation provided additional authority for six additional projects and in 2017 legislation provided authority to 10 additional projects. In 2018, Caltrans was authorized general authority for use of the CM/GC delivery method on projects over \$10 million in construction capital cost.

The optimal CM/GC project has one or more of the following attributes: a high level of technical complexity, the need for a high level of risk management, complex phasing, the need for overall schedule acceleration, the need for Caltrans to retain control over some or all of the design, phased funding, a new non-standard type of design, and/or budget constraints requiring construction cost certainty.

Caltrans has used CM/GC authority on toll projects and recently utilized CM/GC on a \$73 million project to convert toll plazas at the Antioch, Benicia, Carquinez, Dumbarton, San Mateo-Hayward, Richmond-San Rafael, and the San Francisco-Oakland Bay bridges to Open Road Tolling in Contra Costa, Solano, and Alameda counties. Similarly, Caltrans authorized the use of CM/GC project delivery method for the San Mateo US 101 express lanes, which include tolling.

The Tri-Valley-San Joaquin Valley Regional Rail Authority is comprised of the following member agencies; San Joaquin Regional Rail Commission/Altamont Corridor Express (ACE), Bay Area Rapid Transit (BART), Livermore Amador Valley Transit Authority (Wheels), Town of Danville, City of Dublin, City of Lathrop, City of Livermore, City of Manteca, Mountain House Community Services District, City of Pleasanton, City of San Ramon, City of Stockton, City of Tracy, County of Alameda, and the County of San Joaquin.

The Altamont Pass serves as the commuter corridor connecting the San Joaquin Valley to the Bay Area. I-580 is the freeway connector and ranks as one of the most congested freeways in the Northern California mega-region during peak hours due to high volume of regional and interregional commuter, freight, and recreational traffic. Additionally, San Joaquin County, and other counties in the San Joaquin Valley, are some of the fastest growing in the state. Since 1990, the number of people commuting daily from the northern San Joaquin Valley to the Bay Area has nearly tripled, growing from 32,000 to over 90,000 commuters. The Bay Area Council estimates that congestion will increase an additional 75% between 2016 and 2040. Currently, the ACE commuter train system provides an alternative to driving, bringing commuters from the northern San Joaquin Valley, such as the cities of Stockton, Lathrop, and Tracy, to the Bay Area.

Before the pandemic, ACE carried nearly 3,000 commuters daily one way or 6,000 daily round trips.

Although the ACE commuter service and BART both serve the Tri-Valley region, there is no direct transit connection between the two systems. This connection has long been a priority for the local governments and businesses, and greater Bay Area region planners. In 2016, local officials created the Altamont Regional Rail Working Group to focus on potential BART to ACE linkages to better connect the Bay Area to the Central Valley region. The Working Group was made up of local officials from the area communities, and representatives from BART and ACE. Additionally, both BART and ACE were exploring ways to connect their respective systems near Livermore, including conducting environmental reviews and dedicating funding to the project effort.

Specifically, the Valley Link project is a new 42-mile, 7-station passenger rail project to connect the existing Dublin/Pleasanton BART Station in Alameda County to the planned ACE North Lathrop Station in San Joaquin County utilizing existing transportation rights-of-way where feasible. The project is planned in two phases. The 22-mile initial operating phase is between Dublin/Pleasanton and a new Mountain House Community station in San Joaquin County, with additional stations at Isabel Avenue and Southfront Road. This initial operating phase will provide all-day, bi-directional service at 15-minute frequencies during peak commute periods with 45-minute frequencies at other times. It is projected to carry 30,000 riders each day by 2040.

Segments of the initial operating phase of the project will utilize state highway rights-of-way, including the I-580 freeway median. Final design and construction of the initial operating phase is expected in 2025, and is estimated to cost \$1.86 billion. The Authority has identified \$844 million in funding from local and state funds. Additionally, Valley Link has been approved by the Federal Transit Administration (FTA) into project development through the Capital Investment Grants Program, which puts it in line for future federal funding. It is anticipated that the Valley Link service would be operated by ACE.

*Local authority to use CM/CG.* Caltrans and several transportation planning agencies currently have the authority to utilize CM/GC, including the Golden Gate Bridge - Highway and Transportation District, Placer County Transportation Planning Agency, Riverside County Transportation Commission, and San Diego Association of Governments.

The Authority was established in 2017 with the mandate to plan and deliver cost-effective and responsive transit connectivity between the BART and ACE that meets the goals and objectives of the communities it will serve. In October 2019 the Authority published a final feasibility study of the corridor, identifying the proposed Valley Link project. The report includes recommendations for expediting the development of cost-effective and responsive connectivity between the BART and ACE rail systems in the Tri-Valley. The report cites the Board dismissed the use of CM/GC, “CM/GC provides few overall advantages. There are better ways to gain contractor ideas on how to build a major transit project. The lack of price competition is a major problem.”

This bill authorizes the Tri-Valley-San Joaquin Valley Regional Rail Authority to utilize the CM/GC project delivery method. At the time of the final feasibility report, the project was not at a stage to utilize CM/GC. CM/GC methodology is determined after the design is further along

and more is known about the project overall. The 2019 was a preliminary assessment that was anticipated to be revisited later in the project development timeline. The project is now at a stage where CM/GC can be utilized.

*According to the author*, “SB 1068 will allow the Tri-Valley - San Joaquin Valley Regional Rail Authority to use a Construction Manager/General Contractor (CM/GC) project delivery method. The Valley Link Rail Project is moving into the design process, and having the ability to use a CM/GC process provides invaluable synergy between the design and construction firms for the 42-mile project by allowing constructability input from the contractor during the design process to avoid liability risks and increase in costs during construction.”

*In support*, Tri-Valley San Joaquin Valley Regional Rail Authority writes, “Unlike traditional design-bid-build, the CM/GC process provides invaluable input and coordination by the contractor and design team early in the process to mitigate liability risks and ensure a successful and efficient project timeline while potentially saving funds to use for the construction and operation of the system.”

*Previous legislation*. SB 746 (Eggman), Chapter 410, Statutes of 2023 authorizes the Tri-Valley San Joaquin Valley Regional Rail Authority to enter into contracts related to green electrolytic hydrogen.

SB 548 (Eggman) Chapter 220, Statutes of 2021 clarifies the Tri-Valley–San Joaquin Regional Rail Authority is a rail transit district and the project being developed by the Authority to connect BART and ACE commuter rail service is not required to be located in the Tri-Valley region.

SB 1262 (Beall) Chapter 465, Statutes of 2018 provides authority for Caltrans to use the CM/GC delivery method on state highway projects over \$10 million in construction capital costs.

AB 758 (Eggman) Chapter 747, Statutes of 2017 creates the Tri-Valley-San Joaquin Valley Regional Rail Authority to oversee the planning, development, and delivery of a connection between the BART and the ACE in the Tri-Valley region.

AB 115 (Committee on Budget) Chapter 20, Statutes of 2017 provides authority for Caltrans to use CM/GC for 12 additional projects, at least 10 of which shall have construction costs greater than \$10 million.

AB 2126 (Mullin) Chapter 750, Statutes of 2016 authorizes Caltrans to use CMGC on 12 projects and required eight out of the 12 projects to use department employees or consultants under contract with the department to perform all project design and engineering services.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

East Bay Leadership Council  
Streets for All  
Tri Valley San Joaquin Valley Regional Rail Authority

**Opposition**

None on file

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