F I S C A L I M P A C T R E P O R T

SPONSOR Brown **ORIGINAL DATE** 2/17/15 **LAST UPDATED** 3/6/15 **HB** 447/aHTPWC

SHORT TITLE Transportation Project Delivery Methods **SB**

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	Unknown	Unknown	Unknown	Recurring	

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with: *see conflicts section.*
Duplicates SB 239

SOURCES OF INFORMATION
LFC Files

Responses Received From
General Services Department (GSD)
Department of Transportation (DOT)

SUMMARY

Synopsis of HTPWC Amendment

The House Transportation and Public Works Committee amendment strikes the findings and purpose statement section and renumbers subsequent sections accordingly. The amendment removes “finance services and maintenance services” from the list of functions to be provided by a construction manager general contractor and from the definition of construction. Finally, the amendment adds language to the design build and construction manager general contractor criteria that states the design-bid-build method is the preferred and primary project procurement delivery method.

Synopsis of Original Bill

House Bill 447 proposes a new section to the Procurement Code that may be cited as the Transportation Procurement Act to allow DOT to elect use of two alternate procurement methods, both qualifications-based, for DOT highway and bridge construction projects. Specifically, HB 447 adds new sections to the Procurement Code authorizing design-build and construction manager general contractor (CMGC) procurement methods. The legislation also requires DOT to develop procedures to implement the procurement methods and requires

industry participation in that process, and, where possible in the contractor selection process, for any project to be awarded through the additional methods.

According to the Design-Build Institute of America, the design-build form of project delivery is a system of contracting whereby one entity performs both architectural/engineering and construction under one contract. This delivery method often leads to faster project completion times as it is possible for design and construction to occur simultaneously.

The Federal Highway Administration (FHWA) states the construction manager general contractor (CMGC) project delivery method allows an owner (in this case, DOT) to engage a construction manager during the design process to provide input regarding scheduling, pricing, and phasing to help design a more constructible project. During the design process, the owner and the construction manager negotiate a 'guaranteed maximum price' for the construction of the project based on the defined scope and schedule and execute a contract for construction services, so that the construction manager becomes the general contractor.

FISCAL IMPLICATIONS

While DOT may experience more rapid project completion, it is unclear if there will be any additional savings from implementing the two additional project procurement methods.

GSD writes:

The use of either the design-build or CMGC methods (where substantial cost and performance risk is transferred to the Contractor) versus traditional “design-bid-build” delivery methods currently employed, may result in the cost of such delivery methods increasing commensurate with the amount of risk transferred to the contractor. At the same time, however, the risk to the owner (such as costs for unforeseen circumstances and change orders) decrease. Additionally, the cost to the owner of oversight of the project decreases as the number of FTE assigned to such projects decline and much of the work of such FTEs is shifted to the contractor.

SIGNIFICANT ISSUES

The National Conference of State Legislatures (NCSL) stated in a 2010 report that 38 states have statutes enabling design-build delivery for transportation projects (see Attachment 1).

Currently, DOT does not have the authority under the Procurement Code, 13-1-119.1 NMSA 1978, to use the design-build method. However, DOT has used design-build contracts in the past on large projects including the recent construction of the Paseo Del Norte flyover as well as the I-25/I-40 interchange, the “Big I”, and the Coors/I-40 interchange. In these cases, DOT was granted specific legislative authorization to use the design-build method. Enactment of HB 447 would allow DOT to employ the design-build and CMGC methods at its discretion.

PERFORMANCE IMPLICATIONS

GSD states “these types of procurement vehicles are very common for large projects and use by DOT of the proposed project delivery methods would likely improve reliability of on-time schedule and budget performance for projects in which these methodologies are employed.”

CONFLICT

NMSA 1978, Section 13-1-119.1 (2013) allows for design-build project "[e]xcept for road and highway construction or reconstruction projects," thereby prohibiting NMDOT from using a design build project delivery system for road and highway construction or reconstruction projects. This would be a possible conflict with HB 447.

TECHNICAL ISSUES

GSD notes that the definition of construction as found on page 4, line 16 may be too broad. GSD suggests adding language which would exclude "vertical" construction components as listed in 13-1-40 NMSA 1978.

OTHER SUBSTANTIVE ISSUES

FHWA lists the proclaimed advantages of design-build project delivery as follows:

Time savings through:

- Early contractor involvement that enables construction engineering considerations to be incorporated into the design phase and enhances the constructability of the engineered project plans;
- Fast-tracking of the design and construct portions of the project, with overlapping (concurrency) of design and construction phases for different segments of the project; and
- Elimination of a separate construction contractor bid phase following completion of the design phase.

Cost savings from:

- Communication efficiencies and integration between design, construction engineering, and construction team members throughout project schedule;
- Reduced construction engineering and inspection (CEI) costs to the contracting agency when these quality control activities and risks are transferred to the design-builder;
- Fewer change and extra work orders resulting from more complete field data and earlier identification and elimination of design errors or omissions that might otherwise show up during the construction phase;
- Reduced potential for claims and litigation after project completion as issues are resolved by the members of the design-build team; and
- Shortened project timeline that reduces the level of staff commitment by the design-build team and motorist inconvenience due to reduced lane closures.

Improved quality through:

- Greater focus on quality control and quality assurance through continuous involvement by design team throughout project development; and
- Project innovations uniquely fashioned by project needs and contractor capabilities.

FHWA lists the proclaimed disadvantages of design-build project delivery as follows:

- Reduces competition for construction services by excluding smaller firms unable to lead the larger projects most amenable to the design-build approach;
- Favors large national engineering and construction firms in competing for larger design-build contracts that are too big for smaller local or regional firms to pursue;
- Provides an opportunity for favoritism to enter into the contract award process by including non-price factors in the basis for selection;
- Undermines the inherent checks and balances between design and construction teams in the traditional delivery systems, with the design team no longer independent of the construction contractor;
- Strikes at the foundation of the traditional quality assurance/quality control roles through the combination of engineering and construction; and
- Increases project costs due to the elimination of the low bid contractor selection criteria.

https://www.fhwa.dot.gov/reports/designbuild/designbuild2.htm

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

DOT will continue to use the standard project delivery system, design-bid-build for its public works road and highway construction and reconstruction projects, and will seek legislative approval for use of the alternate delivery design-build or construction manager general contractor method for projects on a case by case basis.

CJ/bb

Appendix E. State Design-Build Enabling Statutes for Transportation Projects as of October 2010[244]

	State	Statute	Provisions
1	Alabama	Ala. Code §§23-2-140 to 163	Under legislation enacted in 2009 (House Bill 217; 2009 Ala. Acts, Act 769), authorizes the Alabama Toll Road, Bridge and Tunnel Authority to enter into agreements for design-build contracts, leases, licenses, franchises, concessions or other agreements (see also Appendix B).
2	Alaska	Alaska Stat. §36.30.200; Alaska Stat. §36.30.990	The state procurement code authorizes competitive sealed proposals, defines design-build and authorizes design-build contracts for all state agencies.
3	Arizona	Ariz. Rev. Stat. Ann. §§28-7361 et seq.	Authorize the state DOT to use the design-build method of project delivery through Dec. 31, 2025. Prohibit the DOT from entering into a contract to operate any structure or facility under the design-build provisions. Each design-build agreement must be for a specific, single project. Section 28-7364 lists specific criteria to determine when design-build is appropriate. These include the extent to which the department can define the project requirements, time constraints for project delivery, the capability and experience of the potential design-build teams and other criteria. Section 28-7365 defines specific solicitation methods that must be used for design-build proposals and selection criteria.
4	Arkansas	Ark. Stat. Ann. §27-67-206	Authorizes the State Highway Commission to establish written procedures and regulations for procuring design-build services and administering design-build contracts for new highway construction projects. The statute allows the commission to receive solicited and unsolicited proposals for design-build construction projects and to award design-build contracts. The commission may enter into an unlimited number of design-build contracts if no state money is used, but is limited until July 16, 2013, to two projects costing more than $50 million each if state revenues are used.
5	California	Cal. Pub. Cont. Code §§20209.5 et seq.; Cal. Pub. Cont. Code §§6800 et seq.; Cal. Streets & Highways Code §143	Sections 20209.5 et seq. authorize transit operators to enter into transit design-build contracts, describe in detail the process that must be used for each design-build project, and provide specific criteria for evaluating design-build proposals. Section 20209.10 includes requirements for design-builders, including bonding and errors and omissions insurance coverage. The statute allows transit operators to establish minimum performance criteria and design standards for quality, durability, longevity, life-cycle costs and other standards. Transit operators that award design-build contracts must submit a report to the legislative analyst's office that includes project details. Under legislation enacted in 2009 (Senate Bill 4b; 2009 Cal. Stats., Chap. 2), sections 6800 et seq. establish the Design-Build Demonstration Program, which authorizes use of design-build by local transportation entities for up to five projects and by the state DOT for up to 10 projects, subject to eligibility requirements and approval by the California Transportation Commission. This chapter has a sunset provision by which it will be repealed on Jan. 1, 2014. It also sets forth reporting requirements, including to the Legislature. Under the same 2009 legislation (Senate Bill 4b; 2009 Cal. Stats., Chap. 2), section 143 allows the state DOT and regional transportation agencies to use the design-build method for PPP projects, subject to other requirements for such projects (see also Appendix B).

	State	Statute	Provisions
6	Colorado	Colo. Rev. Stat. §§43-1-1401 et seq.; Colo. Rev. Stat. §§43-4-801 et seq.	Sections 43-1-1401 et seq. authorize the state DOT to enter into design-build contracts and to use an adjusted score design-build selection and procurement process for particular transportation projects, regardless of the minimum or maximum cost of such projects, based on the individual needs and merits of such projects, and subject to approval by the state Transportation Commission. The statute allows the DOT to include warranty provisions in any design-build contract that requires maintenance of the completed product. Includes criteria for awarding design-build projects, public notice requirements, and general procedures for soliciting and awarding proposals. Under legislation enacted in 2009 (Senate Bill 108; 2009 Colo. Sess. Laws, Chap. 5), sections 43-4-801 et seq. create the High-Performance Transportation Enterprise (HPTE) to seek out and enter into PPPs and other innovative means of completing surface transportation infrastructure projects, including design-build contracting (see also Appendix B).
7	Delaware	Del. Code Ann. tit. 2, §2003[245]	Section 2003 is part of the state's larger PPP enabling statute, which authorizes the state DOT to enter into agreements with private entities for PPP projects (see also Appendix B). Section 2003(e) specifically allows all proposals made pursuant to this chapter to provide for the design-build mode of infrastructure development.
8	Florida	Fla. Stat. Ann. §337.11(7 and 8)	Authorizes the state DOT to combine the design and construction phases of a building, a major bridge, a limited access facility or a rail corridor project into a single design-build contract. The statute includes guidelines for rules and procedures to administer design-build agreements and procedures for accepting proposals. Under legislation enacted in 2009 (House Bill 1021; 2009 Fla. Laws, Chap. 85), this statute also allows the state DOT to pay a stipend to nonselected design-build firms that have submitted responsive proposals for construction contracts and to retain the right to use those designs from firms that accept such a stipend.
9	Georgia	Ga. Code Ann. §32-2-81	Authorizes the state DOT to use the design-build contract method for certain transportation projects when it is in the public interest. These include buildings, bridges and approaches, rail corridors, limited or controlled access projects, or projects that may be constructed within existing rights-of-way where the scope of work can be clearly defined or when a significant savings in project delivery time can be attained. Such projects cannot begin until title to the necessary rights-of-way has vested in the state or local government entity. The statute requires the DOT to adopt procedures for administering design-build contracts, including prequalification requirements, public advertisement procedures, scope of service requirements, letters of interest requirements and requests for proposals. It includes criteria for selecting and awarding design-build contracts and requirements for reporting to the legislature. Under legislation enacted in 2010 (Senate Bill 305; 2010 Ga. Laws, Act 440), the DOT is limited to design-build contracting for no more than 30 percent of the total amount of construction projects awarded in the previous fiscal year; as of July 1, 2014, the limit will revert to 15 percent.
10	Idaho	Idaho Code §67-2309; Idaho Code §40-904	Section 67-2309 authorizes the design-build construction method in contracts for construction, repair or improvement of public works, public buildings, public places or other work. The statute defines a design-build contract as one between a public entity and a nongovernmental party in which the nongovernmental party contracting with the public entity agrees to both design and build a structure, roadway or other item specified in the contract. Under legislation enacted in 2010 (House Bill 600; 2010 Idaho Sess. Laws, Chap. 293), section 40-904 authorizes the state DOT to select design-build firms and award contracts for design-build projects if the board determines that the projects are of appropriate size and scope, that awarding a design-build contract will serve the public interest, and that the method is superior to that described in section 40-902. The statute sets criteria for determining when to use design-build and limits the use of design-build and construction manager/general contractor contracts combined to no more than 20 percent of the annual highway construction budget for the state transportation improvement program. Sets forth procurement guidelines, including RFQ and RFP requirements. Allows the DOT to pay a stipend to unsuccessful design-build firms.

	State	Statute	Provisions
11	Illinois	Ill. Rev. Stat. ch. 70, §3615/4.06(b)(2)	Authorizes regional transportation authorities to use design-build contracting methods for transportation facilities. It includes criteria for soliciting and evaluating design-build proposals.
N/A	Indiana	Ind. Code Ann. §§5-30-1-1 et seq.	Authorizes public agencies to use design-build; section 5-30-1-11 excludes the state DOT from this authorization.
12	Kansas	Kan. Stat. Ann. §68-2314a[246]	Section 68-2314a authorizes the state DOT to use a design-build methodology for a demonstration project to demonstrate advanced and innovative pavement technologies. The project may include financing, design, construction and performance guarantee.
13	Kentucky	Ky. Rev. Stat. §§45A.180 et seq.	Gives the secretary of the Finance and Administration Cabinet authority to develop regulations guiding the design-build contract process for capital projects. It includes requirements for design-build proposals and criteria for the selection of proposals. The secretary may develop procedures for a multi-phased proposal that is based on qualifications, experience, technical requirements, the guaranteed maximum price and other criteria.
14	Louisiana	La. Rev. Stat. Ann. §§48:250.2 et seq.	Section 250.2 authorizes the state DOT, with approval of the House and Senate Transportation, Highways And Public Works committees, to develop a program to combine into a single contract the design and construction phases of a transportation facility or facilities, including, but not limited to, highways, interchanges or bridges. Each project must also be approved by said legislative committees. The statute limits legal challenges to the selection of design-build projects and restricts cost increases by design-builders for projects under contract. Section 250.3 provides specific requirements for design-build contracts and the qualifications of design-build entities. It also includes procedures for publicly announcing design-build proposals and bids and defines the selection process for bid awards. This section was amended by legislation enacted in 2009 (Senate Bill 351; La. Acts 2009, 262). The same 2009 legislation (Senate Bill 351; La. Acts 2009, 262) repealed section 250.4, which previously authorized the state DOT, with legislative approval, to use the design-build contracting method for transportation infrastructure projects in areas affected by a hurricane.
15	Maine	Me. Rev. Stat. Ann. tit. 23, §4244	Under legislation enacted in 2010 (House Bill 1167; 2010 Me. Laws, Chap. 648), authorizes the state DOT to use design-build contracting to deliver projects. The statute sets requirements for procurement and allows the DOT to provide a stipend to unsuccessful firms.
16	Maryland	Md. State Fin. & Proc. Code Ann. §3-602(g)	Authorizes design-build and fast-track construction methods for capital projects by state agencies. The statute defines design-build as a single solicitation to design and build a facility. Fast-track allows design and construction to be implemented concurrently.
17	Massachusetts	Mass. Gen. Laws Ann. ch. 149A, §§14 et seq.; Mass. Gen. Laws Ann. ch. 6C, §§1 et seq.	Chapter 149A authorizes state agencies to use design-build contracting for construction, reconstruction, alteration, remodeling or repair of public works projects with cost estimates that exceed $5 million. By statute, the Massachusetts Highway Department, the Massachusetts Port Authority and the Massachusetts Water Resources Authority are exempt from requirements that each design-build contract be submitted to the inspector general for approval. Instead, the inspector general must annually approve procedures developed by these agencies for procurement and use of design-build. Note that the Massachusetts Highway Department was merged into the new state DOT under legislation enacted in 2009 (Senate Bill 2087; 2009 Mass. Acts, Chap. 25). Under the same 2009 legislation (Senate Bill 2087; 2009 Mass. Acts, Chap. 25), Chapter 6C allows the board of directors of the newly created state DOT to solicit proposals and enter into contracts for design-build-finance-operate-maintain or design-build-operate-maintain services (see also Appendix B).

	State	Statute	Provisions
18	Minnesota	Minn. Stat. Ann. §473.3993; Minn. Stat. Ann. §160.262; Minn. Stat. Ann. §§161.3410 et seq.	Section 473.3993 authorizes the commissioner of transportation to use a design-build method of project development and construction for light rail transit. Absent any law to the contrary, the commissioner may award a design-build contract on the basis of requests for proposals or requests for qualifications without bids. "Design-build method of project development and construction" is defined as a project delivery system in which a single contractor is responsible for both the design and construction of the project and bids the design and construction together. Section 160.262 authorizes acceptance of performance-specification bids, made by the lowest responsible bidder, for constructing design-build bridges for certain bicycle paths, bicycle trails and pedestrian facilities. Sections 161.3410 et seq. authorize the state transportation commissioner to solicit and award design-build contracts for transportation projects based on best value. Design-build projects can be awarded only by use of a two-step competitive process involving public solicitation. The number of design-build contracts awarded for transportation projects cannot exceed 10 percent of the total number of transportation construction contracts awarded by the commissioner in the previous fiscal year. The commissioner must notify the chairs of the Senate and House committees with jurisdiction over transportation policy and transportation finance each time the commissioner decides to use the design-build method of procurement and explain why that method was chosen. Use of design-build contracting is subject to state law regarding municipal consent. The statutes contain general and specific criteria for using design-build projects. They also contain public notice requirements for design-build projects, proposal and selection criteria, and requirements for design-builders.
19	Mississippi	Miss. Code Ann. §65-1-85	Authorizes the state DOT to use design-build contracting for projects for the Mississippi Development Authority, a limited number of projects with an estimated cost of less than $10 million, and a limited number of projects with an estimated cost exceeding $50 million. The statute requires the DOT to keep detailed records about design-build projects and to submit a report to the Legislature that compares design-build contracting with the low-bid contracting method.
20	Missouri	Mo. Rev. Stat. §227.107	Under legislation enacted in 2009 (House Bill 359; 2009 Mo. Laws, H.B. 359), section 227.107 authorizes the Highways and Transportation Commission to enter into three design-build project contracts before July 1, 2012. The statute authorizes the commission to issue RFPs to a maximum of five prequalified design-builders and includes other specific requirements for proposals, contract content and criteria for awards. Requires the commission to submit status reports to the legislature and the governor regarding design-build projects.
21	Montana	Mont. Code Ann. §60-2-111; Mont. Code Ann. §60-2-112; Mont. Code Ann. §60-2-137	Sections 60-2-111 and 60-2-112 authorize the state Transportation Commission to award design-build contracts, subject to section 60-2-137, which authorizes the design-build contracting program and contains specific requirements for the DOT's duties in soliciting and evaluating design-build proposals.

	State	Statute	Provisions
22	Nevada	Nev. Rev. Stat. §§338.1711 et seq.; Nev. Rev. Stat. §§408.3875 et seq.	Sections 338.1711 et seq. authorize design-build contracting for public works projects with estimated costs that exceed $100,000. The statutes include specific qualifications for design-build contractors and procedures for advertising and awarding contracts. Sections 408.3875 et seq. specifically authorize design-build contracting for highway projects—including construction, reconstruction or improvement—with an estimated cost that exceeds $20 million. The statutes also authorize one project per year with an estimated cost that exceeds $5 million but is less than $20 million. The design-build contracting method can be used only if it enables the state DOT to lower project costs; decrease the time required for project completion; or ensure that the design and construction of the project are properly coordinated, if the project is unique, highly technical and complex in nature. This section contains specific requirements for design-build teams and procedures for advertising, submitting, evaluating and awarding design-build proposals.
23	New Hampshire	N.H. Rev. Stat. Ann. §228:4(I)(c and d)	Under legislation enacted in 2009 (Senate Bill 69; 2009 N.H. Laws, Chap. 135), authorizes design-build contracting for projects with costs that do not exceed $25 million and permits the use of design-build contracting for certain transportation projects that exceed the cost limit, subject to approval from the governor and the Executive Council. Selection of design-build projects must be based on an objective standard and measurable criteria. The commissioner must report the results of any statewide transportation improvement program project using design-build to the Capital Budget Overview Committee within 90 days after project completion.
N/A	New Mexico	N.M. Stat. Ann. §13-1-119.1	Statute specifically excludes highway and road projects from design-build authorization.
24	North Carolina	N.C. Gen. Stat. §136-28.11	Authorizes the Board of Transportation to award 25 design-build contracts per fiscal year for transportation projects. Allows design-build contracts of any amount, but the state DOT must ensure that such contracts are awarded on a basis to maximize participation, competition and cost benefit. For each design-build contract, the state DOT must determine that the delivery must be expedited and that it is not in the public interest to comply with normal design and construction contracting procedures. The department must present information to the legislature about design-build projects with costs estimated to exceed $50 million.
25	North Dakota	N.D. Cent. Code §24-02-47 et seq.	Under legislation enacted in 2009 (Senate Bill 2147; 2009 N.D. Sess. Laws, Chap. 236), authorizes the director of transportation to use the design-build method to expedite the construction of two pilot projects (one signal light project and one box culvert structure project). Requires a report to the legislature. Includes a sunset provision, by which this chapter expires on Dec. 31, 2013.
26	Ohio	Ohio Rev. Code Ann. §5517.011; Ohio Rev. Code Ann. §5537.07; Ohio Rev. Code Ann. §5543.22	Section 5517.011 authorizes the state DOT to use design-build for highway and bridge projects. The statute requires the director to prepare and distribute a scope of work document upon which bidders must base their bids. Under legislation enacted in 2009 (House Bill 2; 2009 Ohio Laws, H. 2), the total dollar value of design-build contracts authorized under this section cannot exceed $1 billion from July 2009 to July 2011 and $250 million for each biennium after July 1, 2011, unless otherwise authorized by the legislature. Under the same 2009 legislation, section 5537.07 allows the state Turnpike Commission to establish a program to expedite special projects by combining design and construction elements of any public improvement project into a single contract, and requires the commission to prepare and distribute a scope of work document upon which bidders must base their bids. Section 5543.22 authorizes county engineers to combine the design and construction elements for highway, bridge and safety projects into a single contract. The cost for design-build contracts authorized under this section cannot exceed $1.5 million.

	State	Statute	Provisions
27	Oregon	Or. Rev. Stat. §383.005	Authorizes the state DOT to enter into design-build contracts for tollway projects.
28	Pennsylvania	Pa. Cons. Stat. tit. 75, §9511.5	Authorizes the state DOT to use design-build arrangements for construction projects. Requires the selection of the party for a design-build arrangement to be consistent with the procurement and public bidding laws applicable to the DOT.
29	South Carolina	S.C. Code Ann. §57-5-1625	Authorizes the state DOT to award highway construction contracts using a design-build procedure. A design-build contract is defined as an agreement that provides for design, right-of-way acquisition and construction of a project by a single entity; it also may provide for project maintenance, operation or financing. The agreement may be in the form of a design-build contract, a franchise agreement or any other form of contract approved by the department. Selection criteria must include the project cost and may include contractor qualifications, time of completion, innovation, design and construction quality, design innovation, or other technical or quality-related criteria.
N/A	South Dakota	S.D. Codified Laws Ann. §§5-18A-1 et seq.	Legislation enacted in 2010 (House Bill 1046; 2010 S.D. Sess. Laws, Chap. 31) repealed the statutes that formerly gave design-build authority to public corporations (S.D. Codified Laws Ann. §§5-18-26 et seq.) and created new provisions that authorize public agencies to enter into design-build contracts (S.D. Codified Laws Ann. §§5-18A-1 et seq.). The new provisions, however, specifically exclude from design-build authorization any highway construction contract entered into by the state DOT.
30	Tennessee	Tenn. Code Ann. §54-1-119	Authorizes the state DOT to award up to 15 design-build contracts in any one fiscal year, if the contract has a total estimated contract amount of less than $1 million, or up to five contracts if the contract amount is more than $1 million. If the proposed contract has a total estimated amount of more than $70 million, the DOT must specifically identify the project as a proposed design-build project in the transportation improvement program submitted annually to the legislature in support of the commissioner's annual funding recommendations. Requires the DOT to report on the effectiveness of design-build contracts to the chairs of the Senate and House transportation committees upon completion of three contracts with a total contract amount of more than $1 million. Sets forth selection criteria. Allows the DOT to award a fee to design-build firms that submit responsive proposals but are not awarded the contract.
31	Texas	Tex. Transportation Code Ann. §§223.201 et seq. (many provisions expired on Aug. 31, 2009); Tex. Transportation Code Ann. §370.314; Tex. Transportation Code Ann. §366.185	Chapter 223 authorized the state DOT to enter into comprehensive development agreements with private entities to design, develop, finance, construct, maintain, repair, operate, extend or expand toll projects, facilities on the Trans-Texas Corridor and certain state highway improvement projects. Some provisions address design-build contracts specifically. This authority expired Aug. 31, 2009, except in relation to certain non-tolled managed lanes projects, which expires on Aug. 31, 2011. Section 370.314 authorizes regional mobility authorities to obtain a combination of engineering, design and construction services in a single procurement for a transportation project, provided that any contract awarded results in the best value to the authority. Procurement procedures may not materially conflict with the design-build procedures provided by Subchapter J, Chapter 271, Local Government Code. Section 366.185 authorizes regional tollway authorities to obtain a combination of engineering, design and construction services in a single procurement for a turnpike project, provided that any contract awarded results in the best value to the authority. Procurement procedures may not materially conflict with the design-build procedures provided by Subchapter J, Chapter 271, Local Government Code. Under legislation enacted in 2009 (Senate Bill 882; 2009 Tex. Gen. Laws, Chap. 770), regional tollway authorities are authorized to offer stipends to unsuccessful design-build firms for projects that exceed $50 million.

	State	Statute	Provisions
32	Utah	Utah Code Ann. §63G-56-502; Utah Code Ann. §63I-1-263	Section 63G-56-502 authorizes the state DOT and other transportation agencies to award design-build contracts for projects with an estimated cost of at least $50 million. A public airport authority or public transit district with more than 200,000 residents also may award a design-build contract. The statute contains specific requirements for design-build proposals and awards. Under legislation passed in 2010 (House Bill 57; 2010 Utah Laws, Chap. 358), section 63I-1-263 repeals, as of July 1, 2015, the provision that allows a transportation agency to award a design-build contract for a transportation project with an estimated cost of $5 million or less under certain circumstances.
33	Vermont	Vt. Stat. Ann. tit. 19, §§2601 et seq.; see also 2009 Vt. Acts, Act 50	Under legislation enacted in 2009 (House Bill 438; 2009 Vt. Acts, Act 50), this statute authorizes the state DOT to use design-build contracting to deliver projects, and to evaluate and select proposals based on either best value or low bid. Section 85 limits the DOT to exercising this authority on no more than four projects during FY 2010.
34	Virginia	Va. Code §33.1-12; Va. Code §33.1-223.2:16	Section 33.1-12 authorizes the Commonwealth Transportation Board to award design-build contracts for construction of transportation projects. These contracts may be awarded after a written determination is made by the commonwealth transportation commissioner or the director of the Department of Rail and Public Transportation, pursuant to objective criteria previously adopted by the board regarding the use of design-build, that delivery of the projects must be expedited and that it is not in the public interest to comply with the normal design and construction contracting procedures. Section 333.1-223.2:16 authorizes counties, cities and towns to award design-build contracts for construction of transportation projects, subject to certain requirements.
35	Washington	Wash. Rev. Code §39.10.300; Wash. Rev. Code §47.20.780; Wash. Rev. Code §47.20.785; Wash. Rev. Code §§47.60.810 et seq.	Section 39.10.300 is a general authorization that allows certain state agencies to use design-build contracting. This section contains criteria for design-build projects and some procedures for advertising and awarding contracts. Section 47.20.780 requires the state DOT to develop a process for awarding competitively bid highway construction contracts for design-build projects over $10 million. The process developed by the DOT must include at least the scope of services required under the design-build procedure, contractor prequalification requirements, criteria for evaluating technical information and project costs, contractor selection criteria, and issue resolution procedures. Section 47.20.785 limits the DOT's use of design-build to projects over $10 million where the construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or the project selected provides opportunity for greater innovation and efficiencies between the designer and the builder; or significant savings in project delivery time would be realized. It also authorizes the DOT to conduct up to five pilot projects that cost between $2 million and $10 million to test the applicability of design-build to smaller and specialty projects. Sections 47.60.810 et seq. authorize the purchase of new auto ferries through design-build contracting.
36	West Virginia	W. Va. Code §§17-2D-1 et seq.	Under legislation enacted in 2009 (House Bill 2753; 2009 W. Va. Acts, Chap. 71), this chapter authorizes the commissioner of the state Division of Highways to continue the Highway Design-Build Pilot Program through June 30, 2011, to expedite no more than 10 special projects—in addition to the three projects authorized by prior enactment of this section—by combining into a single contract the design and construction elements of a highway or bridge project. The Division of Highways may expend no more than $50 million per remaining year of the program, or $150 million total. Requires a report to the Legislature on or before Dec. 1, 2011.

	State	Statute	Provisions
37	Wisconsin	Wis. Stat. Ann. §§84.11(5n) et seq.	Authorize the use of design-build contracting for bridge construction. Design-build contracts under this section must be selected through a competitive process and approved by the U.S. Department of Transportation and the governor. Required the state DOT to submit a report to the Legislature by October 2004 describing the effectiveness of design-build contracting under this section.
38	Wyoming	Wyo. Stat. §§16-6-701 et seq.	Broadly authorize state and local public entities to use alternate design and construction delivery methods—including construction manager agent, construction manager at risk or design-build—for public works projects, including highway projects. Sets requirements for procurement.
39	Puerto Rico	P.R. 2009 Act No. 29	Within a comprehensive statute that authorizes PPPs, passed in 2009 (Senate Bill 469) (see Appendix B), section 2(g) states that a partnership contract may be any modality of several kinds of contract, including design-build, design-build-operate, design-build-finance-operate, design-build-transfer-operate, design-build-operate-transfer or others, or any other kind of contract that separates or combines the design, building, financing, operation or maintenance phases of priority projects.