

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Brian A. Joyce**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act Creating flexibility in contracting for public construction.**

PETITION OF:

NAME:

Brian A. Joyce

DISTRICT/ADDRESS:

Norfolk, Bristol and Plymouth

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT CREATING FLEXIBILITY IN CONTRACTING FOR PUBLIC CONSTRUCTION.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 149A of the General Laws is hereby amended by inserting after section 14 the  
2 following section:-

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4 Section 14A. Design-bid-build

5 Notwithstanding section 39M of chapter 30, for each contract for the construction,  
6 reconstruction, alteration, remodeling or repair of a public works project by an awarding  
7 authority and estimated by the awarding authority to cost not less than \$5,000,000, the awarding  
8 authority may utilize design-bid-build for the construction, reconstruction, alteration, remodeling  
9 or repair of any public works project pursuant to this section and sections 15 to 21, inclusive;  
10 but, before using the design build, the awarding authority shall seek the approval of the inspector  
11 general pursuant to section 16.

12 SECTION 2. Said chapter 149A, as appearing, is hereby amended by inserting after section 14A  
13 the following section:-

14 Section 14B. design-build-finance-operate-maintain

15 Notwithstanding section 39M of chapter 30, for each contract for the construction,  
16 reconstruction, alteration, remodeling or repair of a public works project by an awarding  
17 authority and estimated by the awarding authority to cost not less than \$5,000,000, the awarding  
18 authority may utilize design-build-finance-operate-maintain for the construction, reconstruction,  
19 alteration, remodeling or repair of any public works project pursuant to this section and sections

20 15 to 21, inclusive; but, before using the design build, the awarding authority shall seek the  
21 approval of the inspector general pursuant to section 16.

22 SECTION 3. Said chapter 149A, as appearing, is hereby amended by inserting after section 14B  
23 the following section:-

24 Section 14C. design-build-operate-maintain

25 Notwithstanding section 39M of chapter 30, for each contract for the construction,  
26 reconstruction, alteration, remodeling or repair of a public works project by an awarding  
27 authority and estimated by the awarding authority to cost not less than \$5,000,000, the awarding  
28 authority may utilize design-build-operate-maintain for the construction, reconstruction,  
29 alteration, remodeling or repair of any public works project pursuant to this section and sections  
30 15 to 21, inclusive; but, before using the design build, the awarding authority shall seek the  
31 approval of the inspector general pursuant to section 16.

32 SECTION 4. Section 15 of aid chapter 149A, as appearing, is hereby amended by inserting after  
33 line 7 the following:

34 “Design-bid-build” a project delivery method in which the awarding authority sequentially  
35 awards separate contracts, the first for architectural and engineering services to design an  
36 infrastructure facility and the second for construction of the infrastructure facility according to  
37 the design.

38 SECTION 5. Section 15 of said chapter 149A, as appearing, is hereby amended by striking out  
39 “Design build contract, a contract for a public works project between an awarding authority and  
40 a design build entity to furnish design build services,” from lines 10-11, inclusive and insert in  
41 place thereof the following:-

42 “Alternative delivery method contract “, a contract for a public works project between an  
43 awarding authority and an alternative delivery method entity to furnish design build, design-bid-  
44 build, design-build-operate-maintain or design-build-finance-operate-maintain services

45 SECTION 6. Section 15 of said chapter 149A, as appearing, is hereby amended by striking out  
46 “Design build entity, an individual sole proprietorship, firm, partnership, joint venture,  
47 corporation, or other entity that provides design build services,” from lines 12-13, inclusive and  
48 insert in place thereof the following:-

49 “Alternative delivery method entity”, an individual sole proprietorship, firm, partnership, joint  
50 venture, corporation, or other entity that provides design build, design-bid-build, design-build-  
51 operate-maintain or design-build-finance-operate-maintain services

52 SECTION 7. Section 15 of aid chapter 149A, as appearing, is hereby amended by inserting after  
53 line 9 the following:

54 “Design-build-finance-operate-maintain”, a project delivery method in which the awarding  
55 authority enters into a single contract for design, construction, finance, maintenance, and  
56 operation of an infrastructure facility over a contractually defined period. Money appropriated by  
57 the State is not used to pay for a part of the services provided by the contractor during the  
58 contract period.

59 SECTION 8. Section 15 of said chapter 149A, as appearing, is hereby amended by inserting  
60 after line 9 the following:

61 “Design-build-operate-maintain”, a project delivery method in which the awarding authority  
62 enters into a single contract for design, construction, maintenance, and operation of an  
63 infrastructure facility over a contractually defined period. All or a portion of the money required  
64 to pay for the services provided by the contractor during the contract period are either  
65 appropriated by the State before the award of the contract or secured by the State through fare,  
66 toll, or user charges.

67 SECTION 9. Section 16 of said chapter 149A, as appearing, is hereby amended by striking out  
68 from the section heading the words “design build contract” and inserting in place thereof the  
69 following words:- alternative delivery method contract.

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71 SECTION 10. Section 16 of said chapter 149A, as appearing, is hereby amended by striking out,  
72 in lines 1, 9, 14, 17, 24, 30, 32 and 42 the words “design build” and inserting in place thereof the  
73 following words:- design build, design-bid-build, design-build-finance-operate-maintain or  
74 design-build-operate-maintain.

75 SECTION 11. Section 17 of said chapter 149A, as appearing, is hereby amended by striking out,  
76 from the section heading and lines 2-3 the following words “ design build contract” and inserting  
77 in place thereof the following words:- Alternative method delivery contract.

78 SECTION 12. Section 17 of said chapter 149A, as appearing, is hereby further amended by  
79 striking out, from lines 5, 18, 19, 20, 32, 50, 53 the following words “design build entities” and  
80 inserting in place thereof the following words:- Alternative delivery method entities

81 SECTION 13. Section 17 of said chapter 149A, as appearing, is hereby further amended by  
82 striking out, from line 36 the following words “design build” and inserting in place thereof the  
83 following words:- design build, design-bid-build, design-build-finance-operate-maintain or  
84 design-build-operate-maintain.

85 SECTION 14. Section 18 of said chapter 149A, as appearing, is hereby amended by striking out,  
86 from lines 10, 13, 17 and 23 the following words “design build entities” and inserting in place  
87 thereof the following words:- alternative delivery method entities

88 SECTION 15. Section 18 of said chapter 149A, as appearing, is hereby further amended by  
89 striking out, from line 24 the following words “ design build contract” and inserting in place  
90 thereof the following words:- alternative delivery method contract.

91 SECTION 16. Section 19 of said chapter 149A, as appearing, is hereby amended by striking out,  
92 from line 1 the following words “design build entity” and inserting in place thereof the following  
93 words:- alternative delivery method entity.

94 SECTION 17. Section 20 of said chapter 149A, as appearing, is hereby amended by striking out,  
95 from lines 29 and 31 the following words “ design build entity” and inserting in place thereof the  
96 following words:- alternative delivery method entity.

97 SECTION 18. Section 20 of said chapter 149A, as appearing, is hereby further amended by  
98 striking out, from line 30 the following words “design build contract” and inserting in place  
99 thereof the following words:- alternative delivery method contract.

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