

APPENDIX F. 2010 STATE LEGISLATION CONCERNING DESIGN-BUILD FOR TRANSPORTATION PROJECTS²⁴⁷

As of Oct. 1, 2010, 19 states—California, Delaware, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maine, Minnesota, Missouri, New Jersey, New York, Pennsylvania, South Carolina, South Dakota, Utah, Washington and Wyoming—and the District of Columbia had considered 28 legislative measures concerning design-build contracting for transportation projects during their 2010 sessions. Eight bills had been enacted and eight were pending; the remainder had failed or had been vetoed.

State	Legislation	Status	Design-Build Provisions
California	Senate Bill 474	Enrolled on Aug. 23, 2010; vetoed by the governor on Sept. 23, 2010	<ul style="list-style-type: none"> • Would require the lead agency for a project, before entering into any agreement involving design-build contracting or a PPP, to pass a resolution that identifies the anticipated benefits from using those methods in comparison to using traditional contracting or financing methods (see also Appendix C).
Delaware	House Bill 500	Enacted on July 1, 2010: Del. Laws, Chap. 329	<ul style="list-style-type: none"> • Within a larger bond and capital improvements act, authorizes the state DOT to continue utilization of the design-build contract mechanism for a total of 12 transportation construction projects (eight of which have been authorized). • Makes design-build contracts subject to prevailing wage rates, certain environmental measures, equal employment opportunity assurances, performance bonding requirements and other provisions. • Requires the co-chairs of the Joint Legislative Committee on the Capital Improvement Program and the Director of the Office of Management and Budget to approve all other projects subject to this section.
Georgia	Senate Bill 305	Enacted on May 24, 2010: 2010 Ga. Laws, Act 440	<ul style="list-style-type: none"> • Amends Ga. Code Ann. §32-2-81 to increase the total that the DOT may contract for using the design-build method to no more than 30 percent of the total amount of construction projects awarded in the previous fiscal year, and to provide for a reversion to a limit of 15 percent as of July 1, 2014.
Hawaii	House Bill 2901 (companion bill: Senate Bill 2907) ²⁴⁸	Failed (adjourned) on April 29, 2010	<ul style="list-style-type: none"> • Would specifically authorize the use of design-build by purchasing agencies, subject to certain criteria.²⁴⁹ • Would set forth requirements for procurement.
	House Bill 2406 (companion bill: Senate Bill 2659) ²⁵⁰	Failed (adjourned) on April 29, 2010	<ul style="list-style-type: none"> • Among other provisions, would streamline requirements for a pre-bid conference for a construction or design-build project.

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Idaho	House Bill 600 (similar to House Bill 577) ²⁵¹	HB 600 enacted on April 11, 2010: 2010 Idaho Sess. Laws, Chap. 293; HB 577 failed (adjourned) on March 29, 2010	<ul style="list-style-type: none"> Amends and adds to existing law to provide for design-build, construction manager and general contractor contracts on state highway projects. 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. 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.
Illinois	Senate Bill 297	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> Would create the Design-Build for Highway Construction Demonstration Act. Would authorize the state DOT and the Illinois State Toll Highway Authority to design-build for highway construction projects. Would set forth procedures for using the design-build method. Would require the agencies to submit an evaluation report concerning the design-build method no later than Dec. 31, 2012. Would repeal the act on June 30, 2013.
	Senate Bill 3482	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> Would create the Public-Private Partnerships for Transportation Act (see also Appendix C). Would allow construction, financing and operation of a project under terms set forth in the PPP agreement, in any form deemed appropriate by the transportation agency, including but not limited to a long-term concession and lease, design-build, design-build-maintain, design-build-operate-maintain and design-build-finance-operate-maintain.
Kansas	House Bill 2650	Enacted on May 25, 2010: 2010 Kan. Sess. Laws, Chap. 156	<ul style="list-style-type: none"> Within a larger bill that establishes the Transportation Works for Kansas (T-Works) Program, authorizes the state DOT to procure one design-build demonstration project in Johnson or Wyandotte county.
Louisiana	Senate Bill 777	Failed (adjourned) on June 21, 2010	<ul style="list-style-type: none"> Would prohibit design-build contracts for transportation facilities from being entered into after June 30, 2010.
Maine	House Bill 1167	Enacted on April 13, 2010: 2010 Me. Laws, Chap. 648	<ul style="list-style-type: none"> Authorizes the state DOT to use design-build contracting to deliver projects. Allows the DOT to evaluate and select proposals based on either best value or low bid, and sets requirements for procurement. Allows the DOT to provide a stipend to unsuccessful firms.
Minnesota	Senate Bill 740	Enacted on Feb. 16, 2010: 2010 Minn. Laws, Chap. 181	<ul style="list-style-type: none"> Authorizes Anoka County to use design-build for reconstruction of a certain intersection.
Missouri	Senate Bill 585	Failed (adjourned) on May 25, 2010	<ul style="list-style-type: none"> Would authorize the state DOT to construct toll roads under certain conditions. Would authorize the state Highways and Transportation Commission to construct the toll facility projects authorized in this section using the design-build project delivery system.

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			<ul style="list-style-type: none"> • Would require any toll facility project constructed using the design-build project delivery system to conform to the provisions of Mo. Rev. Stat. §227.107.
New Jersey	Assembly Bill 1475	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would allow the New Jersey Turnpike Authority to procure multiple phases of a transportation project in a single overall contract. • Would allow the authority to award bids based on price and other factors, rather than low bid alone.
New York	Senate Bill 8331	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would authorize certain state agencies, including the state DOT, to engage in an "alternative project delivery" method, including design-build, construction manager at-risk, integrated project delivery and PPPs, for any project having a cost of \$25 million or more. (See also Appendix C.)
	Assembly Bill 11259	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would authorize the state DOT and the New York State Thruway Authority to use design-build contracts. • Would establish a two-step method for selecting an entity to enter into a design-build contract. • Would address the protection of confidential business information. • Would require the commissioner of transportation and the chair of the thruway authority to submit a report to the governor and to the chairs and ranking minority members of the Senate and Assembly transportation committees no later than four years after the date of enactment, evaluating the use of the design-build process for highway projects.
Pennsylvania	House Bill 8a	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Among other unrelated provisions, would enact a new chapter related to transportation PPPs (see also Appendix C). • Would allow any PPP project undertaken under this chapter to provide design-build, design-build-operate, design-build-operate-maintain and operate-maintain procurements, and other innovative or nontraditional competitive procurement methods for transportation-related infrastructure development.
	House Bill 22a	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would authorize the state DOT to use a design-build delivery system when the department has demonstrated that design-build meets its needs better than traditional design-bid-build and makes a determination in writing that a design-build contract is in the best interest of the public. • Would provide a two-phase procedure for awarding design-build contracts. • Would establish a Design-Build Advisory Committee, under the jurisdiction of the DOT, to advise and comment on all phases of design-build activities of the department.
South Carolina	House Bill 4033	Failed (adjourned) on June 3, 2010	<ul style="list-style-type: none"> • Would create the Transportation Infrastructure Funding Flexibility Act. • Would revise the definition of "design-build contract." • Would authorize the state DOT to enter into public-private initiatives using design-build-operate-maintain or design-build-finance-operate-maintain project delivery methods, subject to certain criteria. This article, however, would not apply to design-build contracts (see also Appendix C).
South Dakota	House Bill 1046	Enacted on March 11, 2010: 2010 S.D. Sess. Laws, Chap. 31	<ul style="list-style-type: none"> • Repeals statutes that formerly gave design-build authority to public corporations (S.D. Codified Laws Ann. §§5-18-26 et seq.). • Creates new provisions that authorize public agencies to enter into design-build contracts (S.D. Codified Laws Ann. §§5-18A-1 et seq.), but specifically excludes from design-build authorization any highway construction contract entered into by the state DOT.
Utah	House Bill 57	Enacted on March 30,	<ul style="list-style-type: none"> • Extends until July 1, 2015, the sunset of the provision in Utah Code Ann. §63G-56-502 that authorizes a transportation agency to award,

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		2010: 2010 Utah Laws, Chap. 358	under certain circumstances, a design-build contract for a transportation project that has an estimated cost of \$5 million or less.
Washington	House Bill 1209	Failed (adjourned) on April 12, 2010	<ul style="list-style-type: none"> • Would authorize the state DOT to purchase five passenger-only ferries using the design-build procurement process.
	House Bill 1873	Failed (adjourned) on April 12, 2010	<ul style="list-style-type: none"> • Would establish a joint select committee on high-speed rail. • Would charge the committee to examine, among other issues, public-private financing opportunities—including design-build-operate—for a high-speed rail network (see also Appendix C).
Wyoming	Senate Bill 35	Failed (died; no report prior to Committee of the Whole cutoff) on February 24, 2010	<ul style="list-style-type: none"> • Would authorize the state DOT to toll I-80 and authorize the director of transportation—subject to approval of the state Transportation Commission and the Legislature—to operate a program for tolling I-80. • Would authorize the use of alternative design and construction delivery methods—which include construction manager agent, construction manager at risk and design-build, as defined in Wyo. Stat. §16-6-701—for the I-80 project, if the DOT chief engineer determined that use of such methods is appropriate. The project would comprise highway improvements, maintenance and services, and tolling, which could include planning, financing, construction, operation and/or maintenance of a comprehensive I-80 toll facility.
District of Columbia	Bill 635	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would enact many provisions relating to procurement of goods, services and construction in the District of Columbia. • Would authorize several project delivery methods—including construction management at risk, design-build, design-build-finance-operate-maintain, design-build-operate-maintain, and operations and maintenance—for procurements relating to infrastructure facilities and services in the district (see also Appendix C).