

# SENATE . . . . . No. 1496

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***Brian A. Joyce***

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*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 adoption of the accompanying bill:

An Act creating flexibility in contracting for public construction.

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PETITION OF:

NAME:

*Brian A. Joyce*

DISTRICT/ADDRESS:

*Norfolk, Bristol and Plymouth*

# SENATE . . . . . No. 1496

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By Mr. Joyce, a petition (accompanied by bill, Senate, No. 1496) of Brian A. Joyce for legislation to create a performance management system for the Commonwealth. State Administration and Regulatory Oversight.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1587 OF 2011-2012.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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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, as appearing in the 2010 Official  
2 Edition, is hereby amended by inserting after section 14 the following sections:-

3           Section 14A. Design-bid-build.

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

11          Section 14B. Design-build-finance-operate-maintain.

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

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

Section 14C. Design-build-operate-maintain.

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

SECTION 2. Section 15 of said chapter 149A, as so appearing, is hereby amended by inserting after the word “building”, in line 10, the following definition:-

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

SECTION 3. Section 15 of said chapter 149A, as so appearing, is hereby further amended by striking out, in lines 14 through 16, the definition of “Design build contract”.

SECTION 4. Section 15 of said chapter 149A, as so appearing, is hereby further amended by striking out, in lines 17 through 19, the definition of “Design build entity”.

SECTION 5. Section 15 of said chapter 149A, as so appearing, is hereby further amended by inserting after the word, “meanings”, in line 3, the following definitions:-

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

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

SECTION 6. Section 15 of said chapter 149A, as so appearing, is hereby further amended by inserting after the word, “contract”, line 13, the following definitions:-

“Design-build-finance-operate-maintain”, a project delivery method in which the awarding authority enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. Money

appropriated by the State is not used to pay for a part of the services provided by the contractor during the contract period.

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

SECTION 7. Section 16 of said chapter 149A, as so appearing, is hereby amended by striking out, in the section heading, the words “design build contract” and inserting in place thereof the following words:- alternative delivery method contract.

SECTION 8. Section 16 of said chapter 149A, as so appearing, is hereby further amended by striking out, in lines 1, 9, 13, 19, 23, 35, 42, 46, 59, 61, the words “design build” and inserting in place thereof the following words:- design build, design-bid-build, design-build-finance-operate-maintain or design-build-operate-maintain.

SECTION 9. Section 17 of said chapter 149A, as so appearing, is hereby amended by striking out, in the section heading and in line 3, the words “design build contract” and inserting in place thereof the following words:- alternative method delivery contract.

SECTION 10. Section 17 of said chapter 149A, as so appearing, is hereby further amended by striking out, in lines 3, 7, 17, 25, 26, 28, 43, 68, 71, and 72, the words “design build entities” and inserting in place thereof the following words:- alternative delivery method entities.

SECTION 11. Section 17 of said chapter 149A, as so appearing, is hereby further amended by striking out, in line 49, the words “design build” and inserting in place thereof the following words:- design build, design-bid-build, design-build-finance-operate-maintain or design-build-operate-maintain.

SECTION 12. Section 18 of said chapter 149A, as so appearing, is hereby amended by striking out, in lines 14, 18, 24, 28, 29, and 33, the words “design build entities” and inserting in place thereof the following words:- alternative delivery method entities.

SECTION 13. Section 18 of said chapter 149A, as so appearing, is hereby further amended by striking out, in line 34 the words “design build contract” and inserting in place thereof the following words:- alternative delivery method contract.

SECTION 14. Section 19 of said chapter 149A, as so appearing, is hereby amended by striking out, in line 2, the words “design build entity” and inserting in place thereof the following words:- alternative delivery method entity.

84           SECTION 15. Section 20 of said chapter 149A, as so appearing, is hereby amended by  
85 striking out, in line 43, the words “design build entity” and inserting in place thereof the  
86 following words:- alternative delivery method entity.

87           SECTION 16. Section 20 of said chapter 149A, as so appearing, is hereby further  
88 amended by striking out, in line 43, the words “design build contract” and inserting in place  
89 thereof the following words:- alternative delivery method contract.