

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

s20 Adams	s44 Farley	s58 Kennedy	s18 Montgomery	s23 Savino
s15 Addabbo	s02 Planagan	s34 Klein	s54 Nozzolio	s28 Serrano
s55 Alesi	s08 Fuschillo	s26 Krueger	s53 O'Mara	s51 Seward
s11 Avella	s59 Gallivan	s27 Kruger	s37 Oppenheimer	s09 Skelos
s40 Ball	s12 Gianaris	s24 Lanza	s21 Parker	s14 Smith
s42 Bonacic	s22 Golden	s39 Larkin	s13 Peralta	s25 Squadron
s46 Breslin	s47 Griffo	s01 LaValle	s30 Perkins	s16 Stavisky
s38 Carlucci	s60 Grisanti	s52 Libous	s61 Ranzenhofer	s35 Stewart-
s50 DeFrancisco	s06 Hannon	s45 Little	s48 Ritchie	Cousins
s32 Diaz	s36 Hassell-	s05 Marcellino	s33 Rivera	s49 Valesky
s17 Dilan	Thompson	s07 Martins	s56 Robach	s57 Young
s29 Duane	s10 Huntley	s62 Maziarz	s41 Saland	s03 Zeldin
s31 Espallat	s04 Johnson	s43 McDonald	s19 Sampson	

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

EXECLA
(Relates to enacting the infrastruc-
ture investment act)

Ex infrastrctr invstmnt act

AN ACT

to permit authorized state entities
to utilize the design-build method
for infrastructure projects; and
providing for the repeal of such
provisions upon expiration thereof

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a107 Crouch	a095 Jaffee	a038 Miller, M.	a118 Russell
a092 Abinanti	a014 Curran	a057 Jeffries	a052 Millman	a144 Ryan
a105 Amedore	a063 Cusick	a135 Johns	a103 Molinaro	a012 Saladino
a084 Arroyo	a045 Cymbrowitz	a112 Jordan	a015 Montesano	a113 Sayward
a035 Aubry	a034 DenDekker	a099 Katz	a132 Morelle	a029 Scarborough
a124 Barclay	a081 Dinowitz	a074 Kavanagh	a039 Moya	a016 Schimel
a040 Barron	a114 Duprey	a065 Kellner	a003 Murray	a140 Schimminger
a082 Benedetto	a004 Englebright	a100 Kirwan	a037 Nolan	a145 Schroeder
a122 Blankenbush	a054 Espinal	a129 Kolb	a128 Oaks	a064 Silver
a055 Boyland	a071 Farrell	a025 Lancman	a069 O'Donnell	a027 Simanowitz
a008 Boyle	a123 Finch	a091 Latimer	a051 Ortiz	a036 Simotas
a026 Braunstein	a007 Fitzpatrick	a013 Lavine	a136 Palmesano	a146 Smardz
a044 Brennan	a137 Friend	a050 Lentol	a088 Paulin	a093 Spano
a116 Brindisi	a143 Gabryszak	a125 Lifton	a141 Peoples-	a079 Stevenson
a131 Bronson	a090 Galef	a072 Linares	Stokes	a011 Sweeney
a046 Brook-Krasny	a133 Gantt	a127 Lopez, P.	a058 Perry	a110 Tedisco
a147 Burling	a077 Gibson	a053 Lopez, V.	a087 Pretlow	a115 Tenny
a117 Butler	a149 Giglio	a001 Losquadro	a073 Quart	a002 Thiele
a101 Cahill	a066 Glick	a126 Lupardo	a021 Ra	a061 Titone
a096 Calhoun	a023 Goldfeder	a111 Magee	a097 Rabbitt	a031 Titus
a043 Camara	a150 Goodell	a120 Magnarelli	a009 Raia	a062 Tobacco
a106 Canestrari	a075 Gottfried	a059 Maisel	a006 Ramos	a041 Weinstein
a089 Castelli	a005 Graf	a060 Malliotakis	a134 Rellich	a020 Weisenberg
a086 Castro	a098 Gunther	a030 Markey	a109 Reilly	a024 Weprin
a138 Ceretto	a130 Hanna	a019 McDonough	a078 Rivera, J.	a070 Wright
a033 Clark	a139 Hawley	a104 McEneny	a080 Rivera, N.	a094 Zebrowski
a047 Colton	a083 Heastie	a017 McKevitt	a076 Rivera, P.	a148
a010 Conte	a028 Hevesi	a108 McLaughlin	a119 Roberts	
a032 Cook	a048 Hikind	a022 Meng	a056 Robinson	
a142 Corwin	a018 Hooper	a121 Miller, D.	a068 Rodriguez	
a085 Crespo	a042 Jacobs	a102 Miller, J.	a067 Rosenthal	

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. This act shall be known and may be cited as the "Infras-
2 tructure investment act".

3 § 2. The legislature hereby finds and declares as follows:

4 (1) Our state's aging infrastructure, the on-going economic crisis and
5 the resulting increase in unemployment in the state have all contributed
6 to a decline in our state's competitiveness and in a significant
7 decrease in New York state tax revenues.

8 (2) Sufficient modern infrastructure is of paramount importance not
9 only as a catalyst for job creation but also as a key driver for the
10 state's economic performance and competitiveness and the health, safety,
11 education and quality of life of our citizens and as the means to ensure
12 the efficient movement of people and goods.

13 (3) Expediting the delivery of projects in New York state would lead
14 directly to job creation and increases in the state's competitiveness.

15 (4) Businesses in New York state have extensive and diverse experience
16 in alternative project delivery methods for the study, planning, design,
17 development, financing, acquisition, installation, construction, recon-
18 struction, improvement, maintenance and management of public infrastruc-
19 ture facilities. These alternative project delivery methods provide
20 significant benefits to the public by:

21 (a) Reducing the public cost of delivering and obtaining services for
22 infrastructure assets;

23 (b) Expediting project delivery;

24 (c) Encouraging life cycle efficiencies;

25 (d) Providing better use and leverage of public human and capital
26 resources, and enhancing capital formation for large projects;

27 (e) Creating jobs;

28 (f) Promoting performance efficiencies; and

1 (g) Bringing additional innovative best practice contracting by the
2 private sector to bear on public infrastructure needs within the state.

3 (5) For certain projects, the design-build project delivery method has
4 the potential to achieve projects delivered on guaranteed or accelerated
5 schedules, lower costs and risk shifting to the private sector generally
6 retained in conventional design-bid-build projects as well as to accel-
7 erate capital investments throughout the state.

8 (6) Recognizing the need to repair the state's aging infrastructure
9 and maximize job creation in New York, the Governor and Legislature seek
10 to:

11 (a) accelerate capital investment in New York state's infrastructure;

12 (b) coordinate among New York state's agencies and authorities on
13 capital investment;

14 (c) encourage private sector capital investment in New York;

15 (d) ensure that job creation benefits New York workers; and

16 (e) assist the use of the most efficient and effective procurement and
17 project management for infrastructure projects in the transportation,
18 energy, environment, public facilities, and economic development
19 sectors.

20 § 3. For the purposes of this act:

21 (a) "authorized state entity" shall mean the New York state thruway
22 authority, the department of transportation, the office of parks, recre-
23 ation and historic preservation, the department of environmental conser-
24 vation and the New York state bridge authority.

25 (b) "best value" shall mean the basis for awarding contracts for
26 services to the offerer that optimize quality, cost and efficiency,
27 price and performance criteria, which may include, but is not limited
28 to:

- 1 1. The quality of the contractor's performance on previous projects;
- 2 2. The timeliness of the contractor's performance on previous
- 3 projects;
- 4 3. The level of customer satisfaction with the contractor's perform-
- 5 ance on previous projects;
- 6 4. The contractor's record of performing previous projects on budget
- 7 and ability to minimize cost overruns;
- 8 5. The contractor's ability to limit change orders;
- 9 6. The contractor's ability to prepare appropriate project plans;
- 10 7. The contractor's technical capacities;
- 11 8. The individual qualifications of the contractor's key personnel;
- 12 9. The contractor's ability to assess and manage risk and minimize
- 13 risk impact; and
- 14 10. The contractor's past record of compliance with article 15-A of
- 15 the executive law.

16 Such basis shall reflect, wherever possible, objective and quantifi-
17 able analysis.

18 (c) "capital project" shall have the same meaning as such term is
19 defined by subdivision 2-a of section 2 of the state finance law.

20 (d) "cost plus" shall mean compensating a contractor for the cost to
21 complete a contract by reimbursing actual costs for labor, equipment and
22 materials plus an additional amount for overhead and profit.

23 (e) "design-build contract" shall mean a contract for the design and
24 construction of a capital project with a single entity, which may be a
25 team comprised of separate entities.

26 (f) "procurement record" means documentation of the decisions made and
27 the approach taken in the procurement process.

1 § 4. Notwithstanding the provisions of section 38 of the highway law,
2 section 136-a of the state finance law, section 359 of the public
3 authorities law, section 7210 of the education law, and the provisions
4 of any other law to the contrary, and in conformity with the require-
5 ments of this act, an authorized state entity may utilize the alterna-
6 tive delivery method referred to as design-build contracts for capital
7 projects related to the physical infrastructure of the state's highways,
8 bridges, dams, canals, and parks, including, but not limited to, to
9 repair damage caused by natural disaster, to correct health and safety
10 defects, to comply with federal and state laws, standards, and regu-
11 lations, to extend the useful life of or replace the state's highways,
12 bridges, dams, canals, and parks or to improve or add to the state's
13 highways, bridges, dams, canals, and parks; provided that for the
14 contracts executed by the department of transportation, the office of
15 parks, recreation and historic preservation, or the department of envi-
16 ronmental conservation, the total cost of each such project shall not be
17 less than one million two hundred thousand dollars (\$1,200,000).

18 § 5. An entity selected by an authorized state entity to enter into a
19 design-build contract shall be selected through a two-step method, as
20 follows:

21 (a) Step one. Generation of a list of entities that have demonstrated
22 the general capability to perform the design-build contract. Such list
23 shall consist of a specified number of entities, as determined by an
24 authorized state entity, and shall be generated based upon the author-
25 ized state entity's review of responses to a publicly advertised request
26 for qualifications. The authorized state entity's request for qualifica-
27 tions shall include a general description of the project, the maximum
28 number of entities to be included on the list, and the selection crite-

1 ria to be used in generating the list. Such selection criteria shall
2 include the qualifications and experience of the design and construction
3 team, organization, demonstrated responsibility, ability of the team or
4 of a member or members of the team to comply with applicable require-
5 ments, including the provisions of articles 145, 147 and 148 of the
6 education law, past record of compliance with the labor law, and such
7 other qualifications the authorized state entity deems appropriate which
8 may include but are not limited to project understanding, financial
9 capability and record of past performance. The authorized state entity
10 shall evaluate and rate all entities responding to the request for qual-
11 ifications. Based upon such ratings, the authorized state entity shall
12 list the entities that shall receive a request for proposals in accord-
13 ance with subdivision (b) of this section. To the extent consistent
14 with applicable federal law, the authorized state entity shall consider,
15 when awarding any contract pursuant to this section, the participation
16 of: (i) firms certified pursuant to article 15-A of the executive law as
17 minority or women-owned businesses and the ability of other businesses
18 under consideration to work with minority and women-owned businesses so
19 as to promote and assist participation by such businesses; and (ii)
20 small business concerns identified pursuant to subdivision (b) of
21 section 139-g of the state finance law.

22 (b) Step two. Selection of the proposal which is the best value to the
23 state. The authorized state entity shall issue a request for proposals
24 to the entities listed pursuant to subdivision (a) of this section. If
25 such an entity consists of a team of separate entities, the entities
26 that comprise such a team must remain unchanged from the entity as list-
27 ed pursuant to subdivision (a) of this section unless otherwise approved
28 by the authorized state entity. The request for proposals shall set

1 forth the project's scope of work, and other requirements, as determined
2 by the authorized state entity. The request for proposals shall specify
3 the criteria to be used to evaluate the responses and the relative
4 weight of each such criteria. Such criteria shall include the
5 proposal's cost, the quality of the proposal's solution, the qualifica-
6 tions and experience of the design-build entity, and other factors
7 deemed pertinent by the authorized state entity, which may include, but
8 shall not be limited to, the proposal's project implementation, ability
9 to complete the work in a timely and satisfactory manner, maintenance
10 costs of the completed project, maintenance of traffic approach, and
11 community impact. Any contract awarded pursuant to this act shall be
12 awarded to a responsive and responsible entity that submits the
13 proposal, which, in consideration of these and other specified criteria
14 deemed pertinent to the project, offers the best value to the state, as
15 determined by the authorized state entity. Nothing herein shall be
16 construed to prohibit the authorized entity from negotiating final
17 contract terms and conditions including cost.

18 § 6. Any contract entered into pursuant to this act shall include a
19 clause requiring that any professional services regulated by articles
20 145, 147 and 148 of the education law shall be performed and stamped and
21 sealed, where appropriate, by a professional licensed in accordance with
22 such articles.

23 § 7. Construction for each capital project undertaken by the author-
24 ized state entity pursuant to this act shall be deemed a "public work"
25 to be performed in accordance with the provisions of article 8 of the
26 labor law, as well as subject to sections 200, 240, 241 and 242 of the
27 labor law and enforcement of prevailing wage requirements by the New
28 York state department of labor.

1 § 8. If otherwise applicable, capital projects undertaken by the
2 authorized state entity pursuant to this act shall be subject to section
3 135 of the state finance law and section 222 of the labor law.

4 § 9. Each contract entered into by the authorized state entity pursu-
5 ant to this section shall comply with the objectives and goals of minor-
6 ity and women-owned business enterprises pursuant to article 15-A of the
7 executive law or, for projects receiving federal aid, shall comply with
8 applicable federal requirements for disadvantaged business enterprises.

9 § 10. Capital projects undertaken by the authorized state entity
10 pursuant to this act shall be subject to the requirements of article
11 eight of the environmental conservation law, and, where applicable, the
12 requirements of the national environmental policy act.

13 § 11. If otherwise applicable, capital projects undertaken by the
14 authorized state entity pursuant to this act shall be governed by
15 sections 139-d, 139-j, 139-k, paragraph f of subdivision 1 and paragraph
16 g of subdivision 9 of section 163 of the state finance law.

17 § 12. The submission of a proposal or responses or the execution of a
18 design-build contract pursuant to this act shall not be construed to be
19 a violation of section 6512 of the education law.

20 § 13. Nothing contained in this act shall limit the right or obli-
21 gation of the authorized state entity to comply with the provisions of
22 any existing contract, including any existing contract with or for the
23 benefit of the holders of the obligations of the authorized state enti-
24 ty, or to award contracts as otherwise provided by law.

25 § 14. Alternative construction awarding processes. (i) Notwithstand-
26 ing the provisions of any other law to the contrary, the authorized
27 state entity may award a construction contract:

28 1. To the contractor offering the best value; or

1 2. Utilizing a cost-plus not to exceed guaranteed maximum price form
2 of contract in which the authorized state entity shall be entitled to
3 monitor and audit all project costs. In establishing the schedule and
4 process for determining a guaranteed maximum price, the contract between
5 the authorized state entity and the contractor shall:

6 (a) describe the scope of the work and the cost of performing such
7 work;

8 (b) include a detailed line item cost breakdown;

9 (c) include a list of all drawings, specifications and other informa-
10 tion on which the guaranteed maximum price is based;

11 (d) include the dates for substantial and final completion on which
12 the guaranteed maximum price is based; and

13 (e) include a schedule of unit prices; or

14 3. Utilizing a lump sum contract in which the contractor agrees to
15 accept a set dollar amount for a contract which comprises a single bid
16 without providing a cost breakdown for all costs such as for equipment,
17 labor, materials, as well as such contractor's profit for completing all
18 items of work comprising the project.

19 (ii) Capital projects undertaken by an authorized state entity may
20 include an incentive clause in the contract for various performance
21 objectives, but the incentive clause shall not include an incentive that
22 exceeds the quantifiable value of the benefit received by the state. The
23 authorized state entity shall establish such performance and payment
24 bonds as it deems necessary.

25 § 15. Prequalified contractors. (a) Notwithstanding any other
26 provision of law, the authorized state entity may maintain a list of
27 prequalified contractors who are eligible to submit a proposal pursuant
28 to this act and entry into such list shall be continuously available.

1 Prospective contractors may be prequalified as contractors to provide
2 particular types of construction, in accordance with general criteria
3 established by the authorized state entity which may include, but shall
4 not be limited to, the experience, past performance, ability to under-
5 take the type and complexity of work, financial capability, responsibil-
6 ity, compliance with equal employment opportunity requirements and anti-
7 discrimination laws, and reliability. Such prequalification may be by
8 categories designed by size and other factors.

9 (b) A contractor who is denied prequalification or whose prequalifica-
10 tion is revoked or suspended by the authorized state entity may appeal
11 such decision to the authorized state entity. If such a suspension
12 extends for more than three months, it shall be deemed a revocation of
13 the prequalification. The authorized state entity may proceed with the
14 contract award during any appeal.

15 § 16. Nothing in this act shall affect existing powers of New York
16 state public entities to use alternative project delivery methods.

17 § 17. This act shall take effect immediately and shall expire and be
18 deemed repealed 3 years after such date, provided that, projects with
19 requests for qualifications issued prior to such repeal shall be permit-
20 ted to continue under this act notwithstanding such repeal.