

**REPORT ON LEGISLATION BY  
THE CONSTRUCTION LAW COMMITTEE**

**A.8134  
S.6427**

**M. of A. Benedetto  
Sen. Lanza**

AN ACT to authorize, for certain public works undertaken pursuant to project labor agreements, use of the alternative delivery method known as design-build contracts; and providing for the repeal of such provisions upon expiration thereof

**THIS BILL IS APPROVED**

The Construction Law Committee (the “Committee”) of the New York City Bar Association supports passage of A.8134/S.6427 (the “Design-Build Bill”), which authorizes New York City's use of the design-build service delivery methodology for specified projects.<sup>1</sup> Though we support the authorization of all modern service delivery methodologies for all public owners in New York State, adoption of the Design-Build Bill is a concrete step in the right direction.

Design-build is an essential modern service delivery methodology that enables public owners to match service delivery methodologies to project needs, and avoid unnecessary costs. This in turn increases the number of projects that can be funded in any fiscal year, thereby optimizing the positive economic benefits of public capital expenditures.

As it currently stands, the State’s existing public construction procurement laws do not afford local governments, including New York City – the State's largest economic engine – the ability to choose the best service delivery methodologies for their public projects. These laws are outdated, compared to those in other jurisdictions across the country, and do not befit a state that prides itself as a leader among states.

The capability to do design build does not exist broadly across the State. Instead, it has been authorized on an *ad hoc* basis for certain State-level entities. The City’s capital program is at least as broad and comprehensive as the State’s, and is supported by a sophisticated and highly-rated financing program and a time-tested and complete set of procurement rules effected

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<sup>1</sup> The City Bar takes no position on whether the specified projects, as opposed to other projects, are the most appropriate candidates for use of design-build. We have not analyzed the parameters, financing or other details of the projects identified in the bill. Rather, the City Bar has long supported the availability of the design-build option for all public projects throughout the State, including New York City. Our support of the bill, therefore, is based on our general support of the design-build option and not based on the identity of the projects named in the bill.

by highly professionalized procurement personnel. The City should be granted the same ability to avoid unnecessary construction costs and optimize its capital budget and program, as does the State.

Since 2008, most recently in the Committee's 2014 update to its *21st Century Construction, 20th Century Construction Law* report (the "Report"),<sup>2</sup> the Committee has continually advocated for the adoption of modern construction procurement laws for *all* New York State agencies and political subdivisions/ local governments, including New York City. Many organizations have endorsed the Report, a list of which is attached to this letter.

In the Report, the Committee suggested that the Legislature consider using the American Bar Association's Model Code of Public Infrastructure Procurement as a starting point for comprehensively reforming the State's public construction procurement laws. Although, as noted above, the State has started the process of modernizing its laws, it has done so in an *ad hoc* manner, authorizing design-build only for some State-level construction entities and excluding all local government counterpart entities. It seems counterproductive for the State, as a whole, to continue to deny local governments, especially New York City, from benefitting from a modern service delivery methodology that the State has deemed necessary to meet its own state-level capital needs. The Committee hopes that the Legislature will treat the Design-Build Bill as a pilot experiment with an expectation of more general application as soon as it has been proven workable.

Construction Law Committee  
Virginia K. Trunkes, Chair

June 2017

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<sup>2</sup> Available at <http://www2.nycbar.org/pdf/report/uploads/20072665-21stCenturyConstruction20thCenturyLawUpdated.pdf>. All of the Committee's reports and event information related to modernizing the State's archaic public construction procurement laws can be found at <http://www.nycbar.org/member-and-career-services/committees/construction-law-committee/built-environment-series-recap-and-materials>.

**NEW YORK CITY BAR ASSOCIATION  
CONSTRUCTION LAW COMMITTEE 2014 REPORT**

***21ST CENTURY CONSTRUCTION, 20TH CENTURY CONSTRUCTION LAW***

**ENDORISING ORGANIZATIONS**

**AIA New York State**

50 State Street, 5th Floor, Albany, NY 12207  
518-449-3334

**Associated General Contractors of New York State, LLC**

10 Airline Drive, Suite 203, Albany, NY 12205  
518-456-1134

**Building Trades Employers' Association**

1430 Broadway, Suite 1106, New York, NY 10018  
212-704-9745

**Citizens Budget Commission**

Two Penn Plaza, 5th Floor, New York, NY 10121  
212-279-2605

**New York Building Congress**

44 W. 28th Street, 12th Floor, New York, NY 10001  
212-481-9230

**New York County Lawyers' Association, Construction Law Committee**

14 Vesey Street, New York, NY 10007  
212-267-6646

**New York State Conference of Mayors and Municipal Officials**

119 Washington Avenue, Albany, NY 12210  
518-463-1185

\* Report available at <http://www2.nycbar.org/pdf/report/uploads/20072665-21stCenturyConstruction20thCenturyLawUpdated.pdf>.