

109TH CONGRESS  
1ST SESSION

# H. R. 1111

To amend title 23, United States Code, relating to design-build contracting.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2005

Mr. MARCHANT introduced the following bill; which was referred to the  
Committee on Transportation and Infrastructure

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## A BILL

To amend title 23, United States Code, relating to design-build contracting.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Design-Build Flexi-  
5       bility Act”.

6       **SEC. 2. DESIGN-BUILD CONTRACTING.**

7       (a) IN GENERAL.—Section 112(b)(3) of title 23,  
8       United States Code, is amended to read as follows:

9               “(3) DESIGN-BUILD CONTRACTING.—

10               “(A) IN GENERAL.—A State transpor-  
11               tation department or local transportation agen-

1           cy may use design-build contracts for develop-  
2           ment of projects under this chapter and may  
3           award such contracts using any procurement  
4           process permitted by applicable State and local  
5           law.

6           “(B) LIMITATION ON WORK TO BE PER-  
7           FORMED UNDER DESIGN-BUILD CONTRACTS.—  
8           Construction of permanent improvements shall  
9           not commence under a design-build contract  
10          awarded under this paragraph before compli-  
11          ance with section 102 of the National Environ-  
12          mental Policy Act of 1969 (42 U.S.C. 4332).

13          “(C) SCOPE OF WORK.—The scope of the  
14          contractor’s work under a design-build contract  
15          awarded under this paragraph may include as-  
16          sistance in the environmental review process for  
17          the project, including preparation of environ-  
18          mental impact assessments and analyses, if  
19          such work is performed under the direction of,  
20          and subject to oversight by, the State transpor-  
21          tation department or local transportation agen-  
22          cy and the State transportation department or  
23          local transportation agency conducts a review  
24          that assesses the objectivity of the environ-  
25          mental assessment, environmental analysis, or

1 environmental impact statement prior to its  
2 submission to the Secretary.

3 “(D) PROJECT APPROVAL.—A design-build  
4 contract may be awarded under this paragraph  
5 prior to compliance with section 102 of the Na-  
6 tional Environmental Policy Act of 1969,  
7 only—

8 “(i) upon request by the State trans-  
9 portation department or local transpor-  
10 tation agency;

11 “(ii) with the concurrence of the Sec-  
12 retary in issuance of the procurement doc-  
13 uments and any amendments thereto and  
14 in award of the contract and any amend-  
15 ments thereto; and

16 “(iii) if project approval will be pro-  
17 vided after compliance with section 102 of  
18 the National Environmental Policy Act of  
19 1969.

20 “(E) EFFECT OF CONCURRENCE.—Con-  
21 currence by the Secretary under subparagraph  
22 (D) shall be considered a preliminary action  
23 that does not affect the environment.

24 “(F) DESIGN-BUILD CONTRACT DE-  
25 FINED.—In this section, the term “design-build

contract” means an agreement that provides for design and construction of a project by a contractor, regardless of whether the agreement is in the form of a design-build contract, a franchise agreement, or any other form of contract approved by the Secretary.”.

(b) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue regulations that amend the regulations issued under section 1307(c) of the Transportation Equity Act for the 21st Century (23 U.S.C. 112 note). The regulations—

(1) shall allow a State transportation department or local transportation agency to use any procurement process permitted by applicable State and local law in awarding design-build contracts, including allowing unsolicited proposals, negotiated procurements, and multiple requests for final proposals; except that the Secretary may require reasonable justification to be provided for any sole source procurement; and

(2) may include “best practices” guidelines;

(3) shall not preclude State transportation departments and local transportation agencies from allowing proposers to include alternative technical concepts in their “base” proposals;

1           (4) shall not preclude State transportation de-  
2       partments and local transportation agencies from  
3       issuing a request for proposals document, proceeding  
4       with award of a design-build contract, or issuing a  
5       notice to proceed with preliminary design work  
6       under such a contract prior to compliance with sec-  
7       tion 102 of the National Environmental Policy Act  
8       of 1969 (42 U.S.C. 4332) if the design-build con-  
9       tractor is not authorized to proceed with construc-  
10      tion of permanent improvements prior to such com-  
11      pliance; and

12          (5) shall provide guidelines regarding proce-  
13      dures to be followed by the State transportation de-  
14      partment or local transportation agency in their di-  
15      rection of and oversight over any environmental im-  
16      pact assessments or analyses for the project which  
17      are to be prepared by the contractor or its affiliates.

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