

February 23, 2015



NYSSPE February 2015 Position Statement on Design Build Budget Proposal

Good Afternoon Jaclyn,

As we have received many questions from our members about the current Design Build legislation, therefore we have posted an updated position statement on our website, which was drafted by Mark C. Kriss, Esq., The New York State Society of Professional Engineers (NYSSPE) Legislative and Legal Counsel.

The following is an introduction to the position statement which discusses the Design Build process with respect to both the private and public sector.

Private Sector

Design Build (an alternative project delivery methodology used in lieu of Design-Bid-Build) is permitted to be employed on private sector projects in New York State, provided that the scope of design services and the amount to be paid for such services is clearly set forth in a contract executed by the project owner, the contractor and the design professional. While many, particularly in the general contractor community, maintain that the use of a three-way contract is not required and that a general contractor can contract with a design professional on project owned by a third party, the NYS Education Department unequivocally maintains that this type of an arrangement runs afoul of the State Education Law and Rules governing the design professions. A design professional should consider the potential for professional disciplinary action (e.g. fee splitting and aiding and abetting the illegal practice of engineering) before participating in a Design Build project.

Public Sector

With regard to the public sector projects in 2011 legislation was enacted on a pilot basis to permit specially named state agencies to utilize Design Build. NYSSPE along with others in the design professional community, as well as the State Education Department, voiced concern regarding the failure of the 2011 legislation to expressly include quality assurance safeguards in the legislation. The original statute expired in early December 2014 (with an exemption for ongoing projects) and new legislation has been proposed by Governor Cuomo as part of his executive budget. The Society has issued, and broadly disseminated, a position statement which renews our concerns regarding the 2015 Governor's Budget Proposal which proposes some amendments to the pilot program. A copy of the NYSSPE's position statement is set forth below. (For additional information please consult the [NYSSPE website FAQ addressing Design Build.](#))

[Click here to read our entire position statement.](#)

Thank you,

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