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**AMENDMENT TO H.R. 3, AS REPORTED**  
**OFFERED BY MR. BURGESS OF TEXAS**

Strike section 1501 of the bill, and insert the following (and conform the table of contents of the bill accordingly):

1 **SECTION 1501. DESIGN-BUILD CONTRACTING.**

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

4 “(3) **DESIGN-BUILD CONTRACTING.**—

5 “(A) **IN GENERAL.**—A State transportation  
6 department or local transportation agency  
7 may use design-build contracts for development  
8 of projects under this chapter and may  
9 award such contracts using any procurement  
10 process permitted by applicable State and local  
11 law.

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



1           “(C) SCOPE OF WORK.—The scope of the  
2           contractor’s work under a design-build contract  
3           awarded under this paragraph may include as-  
4           sistance in the environmental review process for  
5           the project, including preparation of environ-  
6           mental impact assessments and analyses, if  
7           such work is performed under the direction of,  
8           and subject to oversight by, the State transpor-  
9           tation department or local transportation agen-  
10          cy and the State transportation department or  
11          local transportation agency conducts a review  
12          that assesses the objectivity of the environ-  
13          mental assessment, environmental analysis, or  
14          environmental impact statement prior to its  
15          submission to the Secretary.

16           “(D) PROJECT APPROVAL.—A design-build  
17          contract may be awarded under this paragraph  
18          prior to compliance with section 102 of the Na-  
19          tional Environmental Policy Act of 1969,  
20          only—

21                   “(i) upon request by the State trans-  
22                   portation department or local transpor-  
23                   tation agency;

24                   “(ii) with the concurrence of the Sec-  
25                   retary in issuance of the procurement doc-



1           uments and any amendments thereto and  
2           in award of the contract and any amend-  
3           ments thereto; and

4                   “(iii) if project approval will be pro-  
5           vided after compliance with section 102 of  
6           the National Environmental Policy Act of  
7           1969.

8                   “(E) EFFECT OF CONCURRENCE.—Con-  
9           currence by the Secretary under subparagraph  
10          (D) shall be considered a preliminary action  
11          that does not affect the environment.

12                   “(F) DESIGN-BUILD CONTRACT DE-  
13          FINED.—In this section, the term “design-build  
14          contract” means an agreement that provides for  
15          design and construction of a project by a con-  
16          tractor, regardless of whether the agreement is  
17          in the form of a design-build contract, a fran-  
18          chise agreement, or any other form of contract  
19          approved by the Secretary.”.

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



1 (1) shall allow a State transportation depart-  
2 ment or local transportation agency to use any pro-  
3 curement process permitted by applicable State and  
4 local law in awarding design-build contracts, includ-  
5 ing allowing unsolicited proposals, negotiated pro-  
6 curements, and multiple requests for final proposals;  
7 except that the Secretary may require reasonable  
8 justification to be provided for any sole source pro-  
9 curement; and

10 (2) may include "best practices" guidelines;

11 (3) shall not preclude State transportation de-  
12 partments and local transportation agencies from al-  
13 lowing proposers to include alternative technical con-  
14 cepts in their "base" proposals;

15 (4) shall not preclude State transportation de-  
16 partments and local transportation agencies from  
17 issuing a request for proposals document, proceeding  
18 with award of a design-build contract, or issuing a  
19 notice to proceed with preliminary design work  
20 under such a contract prior to compliance with sec-  
21 tion 102 of the National Environmental Policy Act  
22 of 1969 (42 U.S.C. 4332) if the design-build con-  
23 tractor is not authorized to proceed with construc-  
24 tion of permanent improvements prior to such com-  
25 pliance; and



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

