



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB1878

Introduced 2/17/2021, by Rep. Ryan Spain

#### SYNOPSIS AS INTRODUCED:

See Index

Creates the Innovations for Transportation Infrastructure Act. Contains a statement of legislative policy. Defines terms. Adds provisions governing: authorization of project delivery methods; preconditions to commencement of procurement; procurement; evaluation and selection of proposals; project records; confidentiality; public disclosure; design-build contracts; construction manager/general contractor contracts; funding and financing; minority, disadvantaged, and women-owned businesses; acquisition of property; federal requirements; powers of the Department of Transportation and the Illinois State Toll Highway Authority; and rulemaking. Makes corresponding changes in the Department of Transportation Law of the Civil Administrative Code of Illinois; Illinois Finance Authority Act; the Illinois Procurement Code; the Public Construction Bond Act; the Employment of Illinois Workers on Public Works Act; the Business Enterprise for Minorities, Women, and Persons with Disabilities Act; the Toll Highway Act; the Eminent Domain Act; and the Prevailing Wage Act. Provides that the provisions of the Act are severable. Effective immediately.

LRB102 15346 RAM 20705 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning transportation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Innovations for Transportation Infrastructure Act.

6 Section 5. Legislative policy.

7 (a) It is the public policy of the State of Illinois to  
8 promote the development of infrastructure projects that serve  
9 the needs of the public.

10 (b) The design-build project delivery method and  
11 Construction Manager/General Contractor project delivery  
12 method and use of Alternative Technical Concepts have the  
13 potential to capture private sector innovation and safely  
14 deliver infrastructure projects on more predictable schedules  
15 and budgets. Earlier completion and lower cost for projects  
16 are possible with the ability to shift or share risks with the  
17 private sector that are generally retained by the public in  
18 the conventional design-bid-build project delivery method.

19 (c) It is the intent of the General Assembly that the  
20 Department of Transportation and the Illinois State Toll  
21 Highway Authority may evaluate and use Alternative Technical  
22 Concepts proposed by bidders and proposers and to use the  
23 design-build project delivery method and Construction

1 Manager/General Contractor project delivery method.

2 (d) It is the intent of this Act to use design  
3 professionals, construction companies, and workers from this  
4 State to the greatest extent possible.

5 (e) The powers granted in this Act are in addition to any  
6 other powers authorized under applicable law.

7 Section 10. Definitions. As used in this Act:

8 "Alternative Technical Concepts" means a proposed  
9 deviation from the contract technical requirements set forth  
10 in the procurement documents for a transportation facility  
11 that offers a solution that is equal to or better than the  
12 requirements in the procurement documents.

13 "Authority" means the Illinois State Toll Highway  
14 Authority.

15 "Best value" means any selection process in which  
16 proposals contain both price and qualitative components and  
17 award is based upon a combination of price, qualitative  
18 concepts, and other factors.

19 "Chief procurement officer" means the chief procurement  
20 officer for the Transportation Agency.

21 "Construction Manager/General Contractor" means a proposer  
22 that has entered into a Construction Manager/General  
23 Contractor contract under this Act.

24 "Construction Manager/General Contractor contract" means a  
25 two-phase contract between the Transportation Agency and a

1 Construction Manager/General Contractor that includes a first  
2 phase addressing preconstruction services and a second phase  
3 addressing the construction of the transportation facility.

4 "Construction Manager/General Contractor project delivery  
5 method" means a method of procurement and contracting that  
6 makes a Construction Manager/General Contractor who enters  
7 into a contract with the Transportation Agency responsible for  
8 certain preconstruction services and then, if the parties  
9 reach agreement on key terms, responsible for construction of  
10 the transportation facility.

11 "Department" means the Illinois Department of  
12 Transportation.

13 "Design-bid-build project delivery method" means the  
14 traditional method of procuring and contracting for design  
15 services and construction services used separately in this  
16 State that incorporates the Architectural, Engineering, and  
17 Land Surveying Qualifications Based Selection Act and the  
18 principles of competitive bidding under the Illinois  
19 Procurement Code.

20 "Design-build contract" means a contract between the  
21 Transportation Agency and a design-builder under which the  
22 design-builder agrees to furnish architectural, surveying,  
23 engineering, construction, and related services for a  
24 transportation facility.

25 "Design-build project delivery method" means a method of  
26 procurement and contracting that provides responsibility

1 within a single contract between the Transportation Agency and  
2 a design-builder for the furnishing of architectural,  
3 surveying, engineering, construction, and related services for  
4 a transportation facility.

5 "Design-builder" means a proposer that has entered into a  
6 design-build contract with the Transportation Agency under  
7 this Act.

8 "Evaluation Committee" means the committee assembled to  
9 evaluate and score statements of qualifications and proposals.

10 "Evaluation criteria" means the standards and requirements  
11 established by the Transportation Agency against which the  
12 qualifications and proposals of a proposer will be assessed  
13 during the procurement of a design-build contract or  
14 Construction Manager/General Contractor contract, as  
15 applicable.

16 "Executive Director" means the Executive Director of the  
17 Illinois State Toll Highway Authority.

18 "Metropolitan planning organization" means a metropolitan  
19 planning organization under 23 U.S.C. 134 whose metropolitan  
20 planning area boundaries are partially or completely within  
21 this State.

22 "Preconstruction services" means all  
23 non-construction-related services that a Construction  
24 Manager/General Contractor is required to perform during the  
25 first phase of a Construction Manager/General Contractor  
26 contract, and may include, but is not limited to, giving

1 advice to the Transportation Agency regarding scheduling, work  
2 sequencing, cost engineering, constructability, cost  
3 estimating, and risk identification.

4 "Proposal" means a proposer's response to a request for  
5 proposals.

6 "Proposer" means any individual, sole proprietorship,  
7 firm, partnership, joint venture, corporation, professional  
8 corporation, or other entity legally established to conduct  
9 business in this State that proposes to be the design-builder  
10 or Construction Manager/General Contractor for any  
11 transportation facility under this Act.

12 "Qualifications" means a statement of qualifications  
13 submitted by a proposer in response to a request for  
14 qualifications.

15 "Request for proposals" means the document issued by the  
16 Transportation Agency to solicit proposals and describe the  
17 procurement process for a design-build contract or  
18 Construction Manager/General Contractor contract in accordance  
19 with the design-build project delivery method or the  
20 Construction Manager/General Contractor project delivery  
21 method, as applicable.

22 "Request for qualifications" means the document issued by  
23 the Transportation Agency in the first phase of a two-phase  
24 procurement to solicit qualifications from proposers in  
25 accordance with the design-build project delivery method or  
26 the Construction Manager/General Contractor project delivery

1 method, as applicable.

2 "Scope and performance requirements" means the activities,  
3 constructed elements, and standards of performance the  
4 Transportation Agency requires the design-builder or the  
5 Construction Manager/General Contractor to comply with in the  
6 development of the transportation facility, and may include,  
7 but is not limited to, the intended usage, capacity, size,  
8 scope, quality and performance standards, life-cycle costs,  
9 preliminary engineering, design, and other requirements as  
10 developed and determined by the Transportation Agency.

11 "Secretary" means the Secretary of the Illinois Department  
12 of Transportation.

13 "Transportation Agency" means the Illinois Department of  
14 Transportation or the Illinois State Toll Highway Authority.

15 "Transportation facility" means any new or existing  
16 facility or group of facilities that are the subject of a  
17 design-build contract or a Construction Manager/General  
18 Contractor contract, and includes highways, roads, bridges,  
19 tunnels, overpasses, bus ways, guideways, ferries, airports or  
20 other aviation facilities, public transportation facilities,  
21 vehicle parking facilities, port facilities, rail facilities,  
22 stations, hubs, terminals, intermodal facilities, transit  
23 facilities, or similar facilities used for the transportation  
24 of persons or goods, together with any buildings, structures,  
25 parking areas, appurtenances, intelligent transportation  
26 systems, and other property or facilities related to the

1 operation or maintenance of these facilities.

2 Section 15. Authorization of project delivery methods.

3 (a) Notwithstanding any other law, and as authority  
4 supplemental to its existing powers, the Transportation  
5 Agency, in accordance with this Act, may use the design-build  
6 project delivery method for transportation facilities if the  
7 capital costs for transportation facilities delivered using  
8 the design-build project delivery method or Construction  
9 Manager/General Contractor project delivery method or  
10 Alternative Technical Concepts in a design-bid-build project  
11 delivery method do not: (i) for transportation facilities  
12 delivered by the Department, exceed 20% of the Department's  
13 multi-year highway improvement program for any 5-year period  
14 with no one year period exceeding 30%; or (ii) for  
15 transportation facilities delivered by the Authority, exceed  
16 20% of the Authority's annual improvement program. The  
17 Transportation Agency shall make this calculation before  
18 commencing the procurement. Notwithstanding any other law, and  
19 as authority supplemental to its existing powers, the  
20 Department, in accordance with this Act, may use the  
21 Construction Manager/General Contractor project delivery  
22 method for up to 2 transportation facilities. Before  
23 commencing a procurement under this Act for either a  
24 design-build contract or a Construction Manager/General  
25 Contractor contract, the Transportation Agency shall first



1 undertake an analysis and make a written determination that it  
2 is in the best interests of this State to use the selected  
3 delivery method for that transportation facility. The analysis  
4 and determination shall discuss the design-build project  
5 delivery method or Construction Manager/General Contractor  
6 project delivery method's impact on the anticipated schedule,  
7 completion date, and project costs. The best interests of the  
8 State analysis shall be made available to the public.

9 (b) The Transportation Agency shall report to the General  
10 Assembly annually for the first 5 years after the effective  
11 date of this Act on the progress of procurements and  
12 transportation facilities procured under this Act.

13 (c) The Architectural, Engineering, and Land Surveying  
14 Qualifications Based Selection Act does not apply to  
15 procurements under this Act.

16 Section 20. Preconditions to commencement of procurement.

17 If the Transportation Agency determines to use the  
18 design-build project delivery method or the Construction  
19 Manager/General Contractor project delivery method for a  
20 particular transportation facility, the Transportation Agency  
21 may not commence a procurement for the transportation facility  
22 until the Transportation Agency has satisfied the following  
23 requirements:

24 (1) the Transportation Agency does one of the following:

25 (A) the Transportation Agency includes the

1 transportation facility in the Transportation Agency's  
2 respective multi-year highway improvement program and  
3 designates it as a design-build project delivery method  
4 project or Construction Manager/General Contractor  
5 project;

6 (B) the Transportation Agency issues a notice of  
7 intent to receive qualifications, that includes a  
8 description of the proposed procurement and transportation  
9 facility, at least 14 days before the issuance of the  
10 request for qualifications, and for a Department-issued  
11 notice of intent publishes the notice in the Illinois  
12 Transportation Procurement Bulletin and for an  
13 Authority-issued notice of intent publishes the notice in  
14 the Illinois Procurement Bulletin; or

15 (C) for a single-phase procurement authorized under  
16 subsection (a) of Section 25 of this Act, the  
17 Transportation Agency issues a notice of intent to receive  
18 proposals, that includes a description of the proposed  
19 procurement and transportation facility, at least 14 days  
20 before the issuance of the request for proposals, and for  
21 a Department-issued notice of intent publishes the notice  
22 in the Illinois Transportation Procurement Bulletin and  
23 for an Authority-issued notice of intent publishes the  
24 notice in the Illinois Procurement Bulletin; and

25 (2) the Transportation Agency uses its best efforts to  
26 ensure that the transportation facility is consistent with the

1 regional plan in existence at the time of any metropolitan  
2 planning organization in which the boundaries of the  
3 transportation facility is located, or any other  
4 publicly-approved plan.

5 Section 25. Procurement process.

6 (a) The Transportation Agency may solicit a proposer with  
7 which to enter into a design-build contract or Construction  
8 Manager/General Contractor contract, as applicable, by using,  
9 without limitation, one or more requests for qualifications, a  
10 shortlisting of the most highly qualified proposers, requests  
11 for proposals, and negotiations. The Transportation Agency  
12 shall use a two-phase procurement for a design-build contract  
13 to select the successful proposer, except that the  
14 Transportation Agency may use a single-phase procurement if  
15 the transportation facility is estimated to cost less than  
16 \$5,000,000 or the Secretary or the Executive Director makes a  
17 written determination that the Transportation Agency may use a  
18 single-phase procurement for a particular transportation  
19 facility. In a two-phase procurement, the Transportation  
20 Agency shall use the first phase to evaluate and shortlist the  
21 most highly qualified proposers based on a proposer's  
22 qualifications, and then use the second phase to evaluate and  
23 select a proposer based on proposals submitted by the  
24 shortlisted proposers. During the first phase of a two-phase  
25 procurement, the Transportation Agency shall not consider

1 price proposals to make its shortlist decision. In a  
2 single-phase procurement, the Transportation Agency shall  
3 solicit proposers with a request for proposals, and shall  
4 evaluate and select a proposer based on those proposals.

5 (b) The request for qualifications may contain any terms  
6 deemed appropriate by the Transportation Agency including,  
7 without limitation, the following:

8 (1) a description of the anticipated scope of work for  
9 the transportation facility;

10 (2) a requirement that the proposer identify certain  
11 key personnel, and for design-build contracts certain key  
12 firms, the experience of the personnel and firms, and the  
13 conditions on which identified personnel and firms can be  
14 replaced;

15 (3) the evaluation criteria for the qualifications and  
16 the relative importance of those criteria; these  
17 evaluation criteria may address, without limitation, the  
18 proposer's technical and financial qualifications, such as  
19 specialized experience, technical competence, capability  
20 to perform, financial capacity, the proposer's workload,  
21 local office presence, past performance including the  
22 proposer's safety record, and any other  
23 qualifications-based factors;

24 (4) the Transportation Agency's prequalification,  
25 licensing, and registration requirements, including any  
26 requirements from the Professional Engineering Practice

1 Act of 1989, the Illinois Architecture Practice Act of  
2 1989, the Structural Engineering Practice Act of 1989, and  
3 the Illinois Professional Land Surveyor Act of 1989,  
4 except that nothing contained herein precludes the  
5 Transportation Agency's use of additional prequalification  
6 criteria or pass-fail evaluation factors addressing  
7 minimum levels of technical experience or financial  
8 capabilities;

9 (5) the maximum number of proposers the Transportation  
10 Agency will shortlist to submit proposals; and

11 (6) any other relevant information the Transportation  
12 Agency deems appropriate.

13 (c) Upon completion of the qualifications evaluation, the  
14 Transportation Agency shall, based on the evaluation criteria  
15 set forth in the request for qualifications, create a  
16 shortlist of the most highly qualified proposers. The  
17 Transportation Agency shall shortlist no more than 5 and no  
18 fewer than 2 of the most highly qualified proposers.  
19 Notwithstanding other provisions of this subsection (c), the  
20 Transportation Agency may shortlist fewer than 2 proposers if  
21 the Secretary or the Executive Director makes a finding that  
22 an emergency justifies the limited shortlisting and fewer than  
23 2 proposers meet any applicable prequalification or pass-fail  
24 requirements set forth in the request for qualifications.

25 (d) The request for proposals may contain any terms deemed  
26 appropriate by the Transportation Agency including, without

1 limitation, the following:

2 (1) the form and amount of required bid security;

3 (2) the terms of the design-build contract or  
4 Construction Manager/General Contractor contract,  
5 including, but not limited to, scope and performance  
6 requirements, schedule or completion date requirements,  
7 subcontractor requirements, payment and performance  
8 security requirements, and insurance requirements;

9 (3) the requirements for the technical component of  
10 the proposal, including a description of the level of  
11 design, scope and type of renderings, drawings, and  
12 specifications to be provided in the proposals;

13 (4) the requirements for the price component of the  
14 proposal, which for Construction Manager/General  
15 Contractor contracts may include a requirement for the  
16 proposer to submit a lump sum price for the direct costs to  
17 perform the required preconstruction services and  
18 percentage mark-up on those direct costs;

19 (5) the evaluation criteria for the proposals,  
20 including technical criteria, innovation, and schedule,  
21 and the relative importance of those criteria, as the  
22 Transportation Agency deems appropriate;

23 (6) a process for the Transportation Agency to review  
24 and accept Alternative Technical Concepts;

25 (7) requirements regarding the proposer's  
26 qualifications; and

1           (8) any other relevant information the Transportation  
2           Agency deems appropriate.

3           (e) Before the proposers' submittal of proposals, the  
4           Transportation Agency may conduct confidential meetings and  
5           exchange confidential information with proposers to promote  
6           understanding of the request for proposals, review Alternative  
7           Technical Concepts, or discuss other issues related to the  
8           procurement.

9           (f) The date proposals are due must be at least 28 calendar  
10          days after the date the Transportation Agency first issues the  
11          request for proposals.

12          (g) The Transportation Agency may offer to pay a stipend  
13          in an amount and on the terms and conditions determined by the  
14          Transportation Agency and as set forth in the request for  
15          proposals to: (1) all shortlisted proposers if the  
16          Transportation Agency cancels the procurement before the due  
17          date for proposals; or (2) each unsuccessful proposer that  
18          submits a responsive proposal. The Transportation Agency may  
19          pay a stipend only to those proposers who grant to the  
20          Transportation Agency the right to use any work product  
21          contained in the unsuccessful proposer's proposal and other  
22          proposal-related submissions or, if the Transportation Agency  
23          cancels the procurement before the due date for proposals, any  
24          work product developed before cancellation, including  
25          technologies, techniques, methods, processes, and information  
26          contained in the recipient's design for the transportation

1 facility.

2 (h) The Transportation Agency shall, as appropriate  
3 depending on whether the transportation facility includes  
4 building facilities, directly employ or retain a professional  
5 engineer or engineers licensed in this State or a licensed  
6 architect or architects, or both engineers licensed in this  
7 State and licensed architects, to prepare the scope and assist  
8 in the evaluation of the proposals' technical submissions  
9 under a design-build project delivery method. The professional  
10 engineers and licensed architects performing these services  
11 are generally precluded from participating in the procurement  
12 of the transportation facility at issue as a member of a  
13 proposer team.

14 (i) The Transportation Agency has the right to reject any  
15 and all qualifications or proposals, including, but not  
16 limited to, the right to reject any qualifications or  
17 proposals as non-responsive, if, in the Transportation  
18 Agency's sole discretion, the qualifications or proposals do  
19 not meet all material requirements of the request for  
20 qualifications or request for proposals, as appropriate. The  
21 Transportation Agency shall not consider a proposal that does  
22 not include:

23 (1) the proposer's plan to comply with requirements  
24 established by the Transportation Agency regarding  
25 utilization of business enterprises, including  
26 disadvantaged business enterprises; or



1           (2) bid security in the form and amount designated in  
2           the request for proposals.

3           (j) The Transportation Agency shall consult with the  
4           appropriate chief procurement officer on the design-build  
5           project delivery method and the Construction Manager/General  
6           Contractor project delivery method procurement processes, and  
7           the Secretary or the Executive Director, in consultation with  
8           the chief procurement officer, shall determine which  
9           procedures to adopt and apply to the design-build project  
10          delivery method and Construction Manager/General Contractor  
11          project delivery method procurement processes in order to  
12          ensure an open, transparent, and efficient process that  
13          accomplishes the purposes of this Act.

14          Section 30. Evaluation committee.

15          (a) The Transportation Agency shall establish one or more  
16          evaluation committees to assist in selecting a design-builder  
17          and a Construction Manager/General Contractor. The  
18          Transportation Agency, in its sole discretion, shall determine  
19          the appropriate size and composition of the evaluation  
20          committee; however, at least half of the committee must be  
21          licensed design professionals.

22          (b) The Transportation Agency may establish an evaluation  
23          committee for a set term or for the procurement of a particular  
24          transportation facility.

25          (c) Once the Transportation Agency identifies the

1 proposers for a transportation facility, each member of an  
2 evaluation committee must certify that no conflict of interest  
3 exists between the member and the proposers. If the  
4 Transportation Agency, after consultation with the chief  
5 procurement officer, determines that an actual conflict  
6 exists, the member shall not participate on the evaluation  
7 committee for that procurement and the Transportation Agency  
8 shall appoint a replacement member on either a permanent or a  
9 temporary basis.

10 Section 35. Procedures for selection. The Transportation  
11 Agency shall review, evaluate, score, and rank proposals and  
12 determine which proposal offers the best value to the public  
13 based on the evaluation criteria set forth in the request for  
14 proposals. The Transportation Agency shall award the contract  
15 based on this determination. Notwithstanding other provisions  
16 of this Section, if for any reason the proposer awarded the  
17 contract is unable or unwilling to execute the contract,  
18 including the failure of the proposer and the Transportation  
19 Agency to successfully complete negotiations, if any, of the  
20 contract, the Transportation Agency may award the contract to  
21 the proposer whose proposal the Transportation Agency  
22 determines offers the public the next best value.

23 Section 40. Project records; confidentiality; public  
24 disclosure.

1           (a) The Transportation Agency shall maintain all written  
2 decisions, qualification and proposal evaluations, scoring  
3 documents, selection evaluations, proposals, and procurement  
4 documents in a procurement file maintained by the  
5 Transportation Agency.

6           (b) A proposer may identify those portions of a proposal  
7 or other submission that the proposer considers to be trade  
8 secrets or confidential, commercial, financial, or proprietary  
9 information. Confidential and proprietary information,  
10 including trade secrets, shall be exempt from disclosure only  
11 if the proposer does the following:

12                 (1) requests exclusion from disclosure upon submission  
13 of the information or other materials for which protection  
14 is sought;

15                 (2) identifies the data or other materials for which  
16 protection is sought;

17                 (3) states the statutory or regulatory basis for the  
18 protection;

19                 (4) fully complies with the federal Freedom of  
20 Information Act and any other applicable provisions of  
21 State law, including, but not limited to, the Freedom of  
22 Information Act, with respect to information the proposer  
23 contends should be exempt from disclosure; and

24                 (5) certifies if the information is in accordance with  
25 the protection of the Illinois Trade Secrets Act.

26           (c) Notwithstanding any other provision of law, in order

1 to properly balance the need to maximize competition under  
2 this Act with the need to create a transparent procurement  
3 process, the qualifications, proposals, and other information  
4 and documents submitted by proposers and the Transportation  
5 Agency's evaluation records shall not be subject to release or  
6 disclosure by the Transportation Agency until execution of the  
7 design-build contract or Construction Manager/General  
8 Contractor contract, as applicable. If the Transportation  
9 Agency terminates the procurement for a transportation  
10 facility, the exemption from release or disclosure under this  
11 Section shall remain in place until the Transportation Agency  
12 re-procures the transportation facility and has entered into a  
13 design-build contract or Construction Manager/General  
14 Contractor contract, as applicable. However, this exemption  
15 shall lapse if the Transportation Agency does not commence the  
16 re-procurement of the transportation facility within 5 years  
17 of the termination.

18 Section 45. Design-build contract. A design-build contract  
19 may include any provisions the Transportation Agency  
20 determines are necessary or appropriate, including, but not  
21 limited to, provisions regarding the following:

- 22 (1) compensation or payments to the design-builder;
- 23 (2) grounds for termination of the design-build  
24 contract, including the Transportation Agency's right to  
25 terminate for convenience;

- 1           (3) liability for damages and nonperformance;
- 2           (4) events of default and the rights and remedies  
3 available to the design-builder and the Transportation  
4 Agency in the event of a default or delay;
- 5           (5) the identification of any technical specifications  
6 that the design-builder must comply with when developing  
7 plans or performing construction work;
- 8           (6) the procedures for review and approval of the  
9 design-builder's plans;
- 10          (7) required performance and payment security;
- 11          (8) the terms and conditions of indemnification and  
12 minimum insurance requirements; and
- 13          (9) any other terms and conditions the Transportation  
14 Agency deems necessary.

15          Section 50. Construction Manager/General Contractor  
16 contract.

17          (a) The Construction Manager/General Contractor contract  
18 shall divide the Construction Manager/General Contractor  
19 services into 2 phases. The first phase shall address  
20 preconstruction services and the procedures the parties shall  
21 follow to finalize the contract terms for the second phase.  
22 The second phase shall address the Construction  
23 Manager/General Contractor's construction of the  
24 transportation facility for a lump sum or a guaranteed maximum  
25 price.

1 (b) A Construction Manager/General Contractor contract  
2 shall include provisions regarding the following:

3 (1) the Construction Manager/General Contractor's  
4 provision of preconstruction services during the first  
5 phase of the contract, including the Construction  
6 Manager/General Contractor's compensation for those  
7 services;

8 (2) a requirement that, during the first phase of the  
9 contract, the Construction Manager/General Contractor  
10 shall use a competitive bidding process to procure  
11 subcontracts for at least the minimum percentage of  
12 construction work specified in the request for proposals,  
13 provided that:

14 (A) compliance with this requirement shall be  
15 based on an estimated cost for the construction work  
16 approved by the Transportation Agency before the start  
17 of the competitive bidding process; and

18 (B) the Construction Manager/General Contractor  
19 may not use subcontracts with its wholly or partially  
20 owned subsidiaries, parent companies, or affiliates to  
21 satisfy this obligation;

22 (3) the process the Transportation Agency and the  
23 Construction Manager/General Contractor shall use to  
24 determine a lump sum or guaranteed maximum price for the  
25 construction work, including a requirement that the  
26 Transportation Agency conduct an independent cost estimate

1 for the construction work; and

2 (4) grounds for termination of the Construction  
3 Manager/General Contractor contract, including the  
4 Transportation Agency's right to terminate the contract  
5 and not proceed with the construction phase of the project  
6 if the Transportation Agency and the Construction  
7 Manager/General Contractor are unable to negotiate a lump  
8 sum or guaranteed maximum price for the construction work.

9 (c) In addition to the provisions under subsection (b) of  
10 this Section, a Construction Manager/General Contractor  
11 contract may include any other provisions the Transportation  
12 Agency determines are necessary or appropriate, including, but  
13 not limited to, provisions regarding the following:

14 (1) liability for damages and nonperformance;

15 (2) events of default and the rights and remedies  
16 available to the Construction Manager/General Contractor  
17 and the Transportation Agency in the event of a default or  
18 delay;

19 (3) the identification of any technical specifications  
20 that the Construction Manager/General Contractor must  
21 comply with when aiding the Transportation Agency with  
22 developing plans or performing construction work;

23 (4) required performance and payment security for the  
24 construction phase of the contract;

25 (5) the terms and conditions of indemnification and  
26 minimum insurance requirements; and

1           (6) any other terms and conditions the Transportation  
2           Agency deems necessary.

3           (d) If the Construction Manager/General Contractor  
4           contract is terminated for any reason, the Transportation  
5           Agency, in its sole discretion, may readvertise the  
6           Construction Manager/General Contractor contract under this  
7           Act or use any other authorized procurement method to complete  
8           the transportation facility or any portion of the  
9           transportation facility. Once the contract is terminated, the  
10          Transportation Agency may use any work product developed by  
11          the Construction Manager/General Contractor to complete the  
12          transportation facility.

13          Section 55. Funding and financing.

14          (a) The Transportation Agency may use any lawful source of  
15          funding and financing to compensate a design-builder and  
16          Construction Manager/General Contractor for work and services  
17          performed under a design-build contract or Construction  
18          Manager/General Contractor contract, as applicable, and the  
19          Transportation Agency may combine federal, State, local, and  
20          private funds to finance a transportation facility.

21          (b) Subject to appropriation by the General Assembly of  
22          the required amounts, the Transportation Agency may obligate  
23          and make expenditures of funds as and when needed to satisfy  
24          its payment obligations under a design-build contract or  
25          Construction Manager/General Contractor contract.



1           Section 56. Utilization requirements. Design-builder and  
2 Construction Manager/General Contractor projects shall comply  
3 with Section 2-105 of the Illinois Human Rights Act and all  
4 applicable laws and rules that establish standards and  
5 procedures for the utilization of minority, disadvantaged, and  
6 women-owned businesses, including, but not limited to, the  
7 Business Enterprise for Minorities, Women, and Persons with  
8 Disabilities Act.

9           Section 60. Acquisition of property and related  
10 agreements. The Transportation Agency may exercise any and all  
11 powers of condemnation or eminent domain, including quick-take  
12 powers, to acquire lands or estates or interests in land for a  
13 transportation facility under this Act to the extent the  
14 Transportation Agency finds that the action serves the public  
15 purpose of this Act and deems the action appropriate in the  
16 exercise of its powers under this Act. In addition, the  
17 Transportation Agency and a design-builder or Construction  
18 Manager/General Contractor may enter into leases, licenses,  
19 easements, and other grants of property interests that the  
20 Transportation Agency determines are necessary to deliver a  
21 transportation facility under this Act.

22           Section 65. Federal requirements. In the procurement of  
23 design-build contracts and Construction Manager/General

1 Contractor contracts, the Transportation Agency shall, to the  
2 extent applicable, comply with federal law and regulations and  
3 take all necessary steps to adapt its rules, policies, and  
4 procedures to remain eligible for federal aid.

5 Section 70. Powers. The powers granted to the  
6 Transportation Agency under this Act, including the power to  
7 procure and enter into design-build contracts and Construction  
8 Manager/General Contractor contracts, shall be liberally  
9 construed to accomplish its purpose, are in addition to any  
10 existing powers of the Transportation Agency, and shall not  
11 affect or impair any other powers authorized under applicable  
12 law.

13 Section 75. Rulemaking.

14 (a) The Illinois Administrative Procedure Act applies to  
15 all administrative rules and procedures of the Transportation  
16 Agency under this Act, except that nothing in this Act shall be  
17 construed to render any prequalification or other  
18 responsibility criteria as a "license" or "licensing" under  
19 that Act.

20 (b) The appropriate chief procurement officer, in  
21 consultation with the Transportation Agency, may adopt rules  
22 to carry out the provisions of this Act.

23 Section 905. The Department of Transportation Law of the

1 Civil Administrative Code of Illinois is amended by adding  
2 Section 2705-233 as follows:

3 (20 ILCS 2705/2705-233 new)

4 Sec. 2705-233. Innovations for Transportation  
5 Infrastructure Act. The Department may exercise all powers  
6 granted to it under the Innovations for Transportation  
7 Infrastructure Act, including, but not limited to, the power  
8 to enter into all contracts or agreements necessary or  
9 incidental to the performance of its powers under that Act,  
10 and powers related to any transportation facility implemented  
11 under that Act.

12 Section 910. The Illinois Finance Authority Act is amended  
13 by adding Section 825-108 as follows:

14 (20 ILCS 3501/825-108 new)

15 Sec. 825-108. Transportation project financing. For the  
16 purpose of financing a transportation facility undertaken  
17 under the Innovations for Transportation Infrastructure Act,  
18 the Authority may apply for an allocation of tax-exempt bond  
19 financing authorization provided by subsection (m) of Section  
20 142 of the United States Internal Revenue Code, as well as  
21 financing available under any other federal law or program.

22 Section 915. The Illinois Procurement Code is amended by

1 adding Section 1-10.5 as follows:

2 (30 ILCS 500/1-10.5 new)

3 Sec. 1-10.5. Alternative Technical Concepts.

4 (a) For the purposes of this Section, "Alternative  
5 Technical Concepts" and "design-bid-build project delivery  
6 method" have the meanings ascribed to those terms in the  
7 Innovations for Transportation Infrastructure Act.

8 (b) Notwithstanding subsection (b) of Section 1-10 of this  
9 Code, the Department of Transportation may allow bidders and  
10 proposers to submit Alternative Technical Concepts in their  
11 bids and proposals, if the Department determines that the  
12 Alternative Technical Concepts provide an equal or better  
13 solution than the underlying technical requirements applicable  
14 to the work. Notwithstanding the foregoing, for projects the  
15 Department delivers using the design-bid-build project  
16 delivery method, the Department shall use the Alternative  
17 Technical Concepts process for no more than 3 projects. If the  
18 Department allows bidders or proposers for a particular  
19 contract to submit Alternative Technical Concepts, the  
20 Department shall describe the process for submission and  
21 evaluation of Alternative Technical Concepts in the  
22 procurement documents for that contract, including the  
23 potential use of confidential meetings and the exchange of  
24 confidential information with bidders and proposers to review  
25 and discuss potential or proposed Alternative Technical

1 Concepts.

2 Section 920. The Public Construction Bond Act is amended  
3 by adding Section 1.9 as follows:

4 (30 ILCS 550/1.9 new)

5 Sec. 1.9. Design-build contracts and Construction  
6 Manager/General Contractor contracts. This Act applies to any  
7 design-build contract or Construction Manager/General  
8 Contractor contract entered into under the Innovations for  
9 Transportation Infrastructure Act.

10 Section 925. The Employment of Illinois Workers on Public  
11 Works Act is amended by adding Section 2.8 as follows:

12 (30 ILCS 570/2.8 new)

13 Sec. 2.8. Design-build and Construction Manager/General  
14 Contractor contracts. This Act applies to any design-build  
15 contracts and Construction Manager/General Contractor  
16 contracts entered into under the Innovations for  
17 Transportation Infrastructure Act.

18 Section 930. The Business Enterprise for Minorities,  
19 Women, and Persons with Disabilities Act is amended by adding  
20 Section 2.8 as follows:

1 (30 ILCS 575/2.8 new)

2 Sec. 2.8. Design-build and Construction Manager/General  
3 Contractor contracts. This Act applies to any design-build  
4 contracts and Construction Manager/General Contractor  
5 contracts entered into under the Innovations for  
6 Transportation Infrastructure Act.

7 Section 935. The Toll Highway Act is amended by adding  
8 Section 11.2 as follows:

9 (605 ILCS 10/11.2 new)

10 Sec. 11.2. Innovations for Transportation Infrastructure  
11 Act. The Authority may exercise all powers granted to it under  
12 the Innovations for Transportation Infrastructure Act,  
13 including, but not limited to, the power to enter into all  
14 contracts or agreements necessary to perform its powers under  
15 that Act, and any powers related to a transportation facility  
16 implemented under that Act.

17 Section 940. The Eminent Domain Act is amended by adding  
18 Section 15-5-48 as follows:

19 (735 ILCS 30/15-5-48 new)

20 Sec. 15-5-48. Eminent domain powers in new Acts. The  
21 following provisions of law may include express grants of the  
22 power to acquire property by condemnation or eminent domain:

1       The Innovations for Transportation Infrastructure Act; for  
2       the purposes of constructing a transportation facility under  
3       the Act.

4       Section 945. The Prevailing Wage Act is amended by  
5       changing Section 2 as follows:

6           (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

7       Sec. 2. This Act applies to the wages of laborers,  
8       mechanics and other workers employed in any public works, as  
9       hereinafter defined, by any public body and to anyone under  
10       contracts for public works. This includes any maintenance,  
11       repair, assembly, or disassembly work performed on equipment  
12       whether owned, leased, or rented.

13       As used in this Act, unless the context indicates  
14       otherwise:

15       "Public works" means all fixed works constructed or  
16       demolished by any public body, or paid for wholly or in part  
17       out of public funds. "Public works" as defined herein includes  
18       all projects financed in whole or in part with bonds, grants,  
19       loans, or other funds made available by or through the State or  
20       any of its political subdivisions, including but not limited  
21       to: bonds issued under the Industrial Project Revenue Bond Act  
22       (Article 11, Division 74 of the Illinois Municipal Code), the  
23       Industrial Building Revenue Bond Act, the Illinois Finance  
24       Authority Act, the Illinois Sports Facilities Authority Act,

1 or the Build Illinois Bond Act; loans or other funds made  
2 available pursuant to the Build Illinois Act; loans or other  
3 funds made available pursuant to the Riverfront Development  
4 Fund under Section 10-15 of the River Edge Redevelopment Zone  
5 Act; or funds from the Fund for Illinois' Future under Section  
6 6z-47 of the State Finance Act, funds for school construction  
7 under Section 5 of the General Obligation Bond Act, funds  
8 authorized under Section 3 of the School Construction Bond  
9 Act, funds for school infrastructure under Section 6z-45 of  
10 the State Finance Act, and funds for transportation purposes  
11 under Section 4 of the General Obligation Bond Act. "Public  
12 works" also includes (i) all projects financed in whole or in  
13 part with funds from the Department of Commerce and Economic  
14 Opportunity under the Illinois Renewable Fuels Development  
15 Program Act for which there is no project labor agreement;  
16 (ii) all work performed pursuant to a public private agreement  
17 under the Public Private Agreements for the Illiana Expressway  
18 Act or the Public-Private Agreements for the South Suburban  
19 Airport Act; ~~and~~ (iii) all projects undertaken under a  
20 public-private agreement under the Public-Private Partnerships  
21 for Transportation Act; and (iv) all transportation facilities  
22 undertaken under a design-build contract or a Construction  
23 Manager/General Contractor contract under the Innovations for  
24 Transportation Infrastructure Act. "Public works" also  
25 includes all projects at leased facility property used for  
26 airport purposes under Section 35 of the Local Government



1 Facility Lease Act. "Public works" also includes the  
2 construction of a new wind power facility by a business  
3 designated as a High Impact Business under Section  
4 5.5(a)(3)(E) of the Illinois Enterprise Zone Act. "Public  
5 works" does not include work done directly by any public  
6 utility company, whether or not done under public supervision  
7 or direction, or paid for wholly or in part out of public  
8 funds. "Public works" also includes any corrective action  
9 performed pursuant to Title XVI of the Environmental  
10 Protection Act for which payment from the Underground Storage  
11 Tank Fund is requested. "Public works" does not include  
12 projects undertaken by the owner at an owner-occupied  
13 single-family residence or at an owner-occupied unit of a  
14 multi-family residence. "Public works" does not include work  
15 performed for soil and water conservation purposes on  
16 agricultural lands, whether or not done under public  
17 supervision or paid for wholly or in part out of public funds,  
18 done directly by an owner or person who has legal control of  
19 those lands.

20 "Construction" means all work on public works involving  
21 laborers, workers or mechanics. This includes any maintenance,  
22 repair, assembly, or disassembly work performed on equipment  
23 whether owned, leased, or rented.

24 "Locality" means the county where the physical work upon  
25 public works is performed, except (1) that if there is not  
26 available in the county a sufficient number of competent

1 skilled laborers, workers and mechanics to construct the  
2 public works efficiently and properly, "locality" includes any  
3 other county nearest the one in which the work or construction  
4 is to be performed and from which such persons may be obtained  
5 in sufficient numbers to perform the work and (2) that, with  
6 respect to contracts for highway work with the Department of  
7 Transportation of this State, "locality" may at the discretion  
8 of the Secretary of the Department of Transportation be  
9 construed to include two or more adjacent counties from which  
10 workers may be accessible for work on such construction.

11 "Public body" means the State or any officer, board or  
12 commission of the State or any political subdivision or  
13 department thereof, or any institution supported in whole or  
14 in part by public funds, and includes every county, city,  
15 town, village, township, school district, irrigation, utility,  
16 reclamation improvement or other district and every other  
17 political subdivision, district or municipality of the state  
18 whether such political subdivision, municipality or district  
19 operates under a special charter or not.

20 "Labor organization" means an organization that is the  
21 exclusive representative of an employer's employees recognized  
22 or certified pursuant to the National Labor Relations Act.

23 The terms "general prevailing rate of hourly wages",  
24 "general prevailing rate of wages" or "prevailing rate of  
25 wages" when used in this Act mean the hourly cash wages plus  
26 annualized fringe benefits for training and apprenticeship

1 programs approved by the U.S. Department of Labor, Bureau of  
2 Apprenticeship and Training, health and welfare, insurance,  
3 vacations and pensions paid generally, in the locality in  
4 which the work is being performed, to employees engaged in  
5 work of a similar character on public works.

6 (Source: P.A. 100-1177, eff. 6-1-19.)

7 Section 997. Severability. The provisions of this Act are  
8 severable under Section 1.31 of the Statute on Statutes.

9 Section 999. Effective date. This Act takes effect upon  
10 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 20 ILCS 2705/2705-233 new

5 20 ILCS 3501/825-108 new

6 30 ILCS 500/1-10.5 new

7 30 ILCS 550/1.9 new

8 30 ILCS 570/2.8 new

9 30 ILCS 575/2.8 new

10 605 ILCS 10/11.2 new

11 735 ILCS 30/15-5-48 new

12 820 ILCS 130/2 from Ch. 48, par. 39s-2

13 735 ILCS 30/15-5-48 new