



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1091

Introduced 02/04/11, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

New Act

20 ILCS 2705/2705-222 new

20 ILCS 3501/825-106 new

30 ILCS 500/1-10

30 ILCS 550/1.7 new

30 ILCS 570/2.7 new

30 ILCS 575/2.7 new

35 ILCS 120/1r new

35 ILCS 200/15-55

35 ILCS 200/15-195 new

605 ILCS 10/11.1 new

820 ILCS 130/2

from Ch. 48, par. 39s-2

Creates the Public-Private Partnerships for Transportation Act. Contains a statement of public policy and legislative intent. Grants to the Illinois Department of Transportation and the Illinois State Toll Highway Authority the necessary powers for the development, financing, and operation of transportation projects through public-private agreements with one or more private entities. Contains provisions regarding procurement, agreements, development and operations standards for transportation projects, financial arrangements, acquisition of property, labor matters, law enforcement, property, powers, prohibitions, and other matters. Amends the Department of Transportation Law of the Civil Administrative Code of Illinois; Illinois Finance Authority Act; Illinois Procurement Code; Public Construction Bond Act; Employment of Illinois Workers on Public Works Act; Business Enterprise for Minorities, Females, and Persons with Disabilities Act; Retailers' Occupation Tax Act; Property Tax Code; Toll Highway Act; and Prevailing Wage Act to implement and conform to the new Act. Makes other changes. Effective immediately.

LRB097 05970 HEP 46040 b

1 AN ACT concerning State government.

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 Public-Private Partnerships for Transportation Act.

6 Section 5. Public policy and legislative intent.

7 (a) It is the public policy of the State of Illinois to
8 promote the development, financing, and operation of
9 transportation facilities that serve the needs of the public.

10 (b) Existing methods of procurement and financing of
11 transportation facilities by transportation agencies impose
12 limitations on the methods by which transportation facilities
13 may be developed and operated within the State.

14 (c) Authorizing transportation agencies to enter into
15 public-private partnerships, whereby private entities may
16 develop, operate, and finance transportation facilities, has
17 the potential to promote the development of transportation
18 facilities in the State as well as investment in the State.

19 (d) It is the intent of this Act to promote public-private
20 partnerships for transportation by authorizing transportation
21 agencies to enter into public-private agreements related to the
22 development, operation, and financing of transportation
23 facilities.

1 (e) It is the intent of this Act to encourage the practice
2 of congestion pricing in connection with toll highways,
3 pursuant to which higher toll rates are charged during times or
4 in locations of most congestion.

5 (f) It is the intent of this Act to use Illinois design
6 professionals, construction companies, and workers to the
7 greatest extent possible by offering them the right to compete
8 for this work.

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

10 "Approved proposal" means the proposal that is approved by
11 the transportation agency pursuant to subsection (e) of Section
12 20 of this Act.

13 "Approved proposer" means the private entity whose
14 proposal is the approved proposal.

15 "Authority" means the Illinois State Toll Highway
16 Authority.

17 "Contractor" means a private entity that has entered into a
18 public-private agreement with the transportation agency to
19 provide services to or on behalf of the transportation agency.

20 "Department" means the Illinois Department of
21 Transportation.

22 "Develop" or "development" means to do one or more of the
23 following: plan, design, develop, lease, acquire, install,
24 construct, reconstruct, rehabilitate, extend, or expand.

25 "Maintain" or "maintenance" includes ordinary maintenance,

1 repair, rehabilitation, capital maintenance, maintenance
2 replacement, and any other categories of maintenance that may
3 be designated by the transportation agency.

4 "Metropolitan planning organization" means a metropolitan
5 planning organization designated under 23 U.S.C. Section 134
6 whose metropolitan planning area boundaries are partially or
7 completely within the State.

8 "Operate" or "operation" means to do one or more of the
9 following: maintain, improve, equip, modify, or otherwise
10 operate.

11 "Private entity" means any combination of one or more
12 individuals, corporations, general partnerships, limited
13 liability companies, limited partnerships, joint ventures,
14 business trusts, nonprofit entities, or other business
15 entities that are parties to a proposal for a transportation
16 project or an agreement related to a transportation project. A
17 public agency may provide services to a contractor as a
18 subcontractor or subconsultant without affecting the private
19 status of the private entity and the ability to enter into a
20 public-private agreement.

21 "Proposal" means all materials and documents prepared by or
22 on behalf of a private entity relating to the proposed
23 development, financing, or operation of a transportation
24 facility as a transportation project.

25 "Proposer" means a private entity that has submitted a
26 proposal or statement of qualifications for a public-private

1 agreement in response to a request for proposals or a request
2 for qualifications issued by a transportation agency under this
3 Act.

4 "Public-private agreement" means the public-private
5 agreement between the contractor and the transportation agency
6 relating to one or more of the development, financing, or
7 operation of a transportation project that is entered into
8 under this Act.

9 "Request for information" means all materials and
10 documents prepared by or on behalf of the transportation agency
11 to solicit information from private entities with respect to
12 transportation projects.

13 "Request for proposals" means all materials and documents
14 prepared by or on behalf of the transportation agency to
15 solicit proposals from private entities to enter into a
16 public-private agreement.

17 "Request for qualifications" means all materials and
18 documents prepared by or on behalf of the transportation agency
19 to solicit statements of qualification from private entities to
20 enter into a public-private agreement.

21 "Revenues" means all revenues, including any combination
22 of: income; earnings and interest; user fees; lease payments;
23 allocations; federal, State, and local appropriations, grants,
24 loans, lines of credit, and credit guarantees; bond proceeds;
25 equity investments; service payments; or other receipts;
26 arising out of or in connection with a transportation project,

1 including the development, financing, and operation of a
2 transportation project. The term includes money received as
3 grants, loans, lines of credit, credit guarantees, or otherwise
4 in aid of a transportation project from the federal government,
5 the State, a unit of local government, or any agency or
6 instrumentality of the federal government, the State, or a unit
7 of local government.

8 "Transportation agency" means (i) the Department, (ii) the
9 Authority, or (iii), with respect to an existing airport, an
10 airport authority created and established under the Airport
11 Authorities Act owning and operating the airport.

12 "Transportation facility" means (i) any new or existing
13 road, highway, toll highway, bridge, tunnel, intermodal
14 facility, intercity or high-speed passenger rail, or other
15 transportation facility or infrastructure, excluding airports,
16 under the jurisdiction of the Department or the Authority, or
17 (ii) any existing airport owned and operated by an airport
18 authority created and established under the Airport
19 Authorities Act. The term "transportation facility" may refer
20 to one or more transportation facilities that are proposed to
21 be developed or operated as part of a single transportation
22 project.

23 "Transportation project" or "project" means any or the
24 combination of the development, financing, or operation with
25 respect to all or a portion of any transportation facility
26 under the jurisdiction of the transportation agency,

1 undertaken pursuant to this Act.

2 "Unit of local government" has the meaning ascribed to that
3 term in Article VII, Section 1 of the Constitution of the State
4 of Illinois and also means any unit designated as a municipal
5 corporation.

6 "User fees" or "tolls" means the rates, tolls, fees, or
7 other charges imposed by the contractor for use of all or a
8 portion of a transportation project under a public-private
9 agreement.

10 Section 15. Formation of public-private agreements;
11 project planning.

12 (a) Each transportation agency may exercise the powers
13 granted by this Act to do some or all of develop, finance, and
14 operate any part of one or more transportation projects through
15 public-private agreements with one or more private entities.
16 The net proceeds arising out of a transportation project or
17 public-private agreement undertaken by the Department pursuant
18 to this Act shall be deposited into the State Construction
19 Account Fund. The net proceeds arising out of a transportation
20 project or public-private agreement undertaken by the
21 Authority pursuant to this Act shall be deposited into the
22 Illinois State Toll Highway Authority Fund and shall be used
23 only as authorized by Section 23 of the Toll Highway Act.

24 (b) The Authority shall not enter into a public-private
25 agreement involving a lease or other transfer of any toll

1 highway, or portions thereof, under the Authority's
2 jurisdiction which were open to vehicular traffic on the
3 effective date of this Act. The Authority shall not enter into
4 a public-private agreement for the purpose of making roadway
5 improvements, including but not limited to reconstruction,
6 adding lanes, and adding ramps, to any toll highway, or
7 portions thereof, under the Authority's jurisdiction which
8 were open to vehicular traffic on the effective date of this
9 Act. The Authority may enter into a public-private partnership
10 to develop, finance, and operate new toll highways authorized
11 by the Governor and the General Assembly pursuant to Section
12 14.1 of the Toll Highway Act, non-highway transportation
13 projects on the toll highway system such as commuter rail or
14 high-speed rail lines, and intelligent transportation
15 infrastructure that will enhance the safety, efficiency, and
16 environmental quality of the toll highway system.

17 (c) A contractor has:

18 (1) all powers allowed by law generally to a private
19 entity having the same form of organization as the
20 contractor; and

21 (2) the power to develop, finance, and operate the
22 transportation facility and to impose user fees in
23 connection with the use of the transportation facility,
24 subject to the terms of the public-private agreement.

25 No tolls or user fees may be imposed by the contractor
26 except as set forth in a public-private agreement.

1 (d) Each year, at least 30 days prior to the beginning of
2 the transportation agency's fiscal year, and at other times the
3 transportation agency deems necessary, the Department and the
4 Authority shall submit for review to the General Assembly a
5 description of potential projects that the transportation
6 agency is considering undertaking under this Act. Any
7 submission from the Authority shall indicate which of its
8 potential projects, if any, will involve the proposer operating
9 the transportation facility for a period of one year or more.
10 Prior to the issuance of any request for qualifications or
11 request for proposals with respect to any potential project
12 undertaken by the Department or the Authority pursuant to
13 Section 20 of this Act, the commencement of a procurement
14 process for that particular potential project shall be
15 authorized by joint resolution of the General Assembly.

16 (e) Each year, at least 30 days prior to the beginning of
17 the transportation agency's fiscal year, the transportation
18 agency shall submit a description of potential projects that
19 the transportation agency is considering undertaking under
20 this Act to each county, municipality, and metropolitan
21 planning organization, with respect to each project located
22 within its boundaries.

23 (f) Any project undertaken under this Act shall be subject
24 to all applicable planning requirements otherwise required by
25 law, including land use planning, regional planning,
26 transportation planning, and environmental compliance

1 requirements.

2 (g) Any new transportation facility developed as a project
3 under this Act must be consistent with the regional plan then
4 in existence of any metropolitan planning organization in whose
5 boundaries the project is located.

6 Section 20. Procurement process.

7 (a) A transportation agency seeking to enter into a
8 public-private partnership with a private entity for the
9 development, finance, and operation of a transportation
10 facility as a transportation project shall determine and set
11 forth the criteria for the selection process. The
12 transportation agency shall use (i) a competitive sealed
13 bidding process, (ii) a competitive sealed proposal process, or
14 (iii) a design-build procurement process in accordance with
15 Section 25 of this Act. Before using one of these processes the
16 transportation agency may use a request for information to
17 obtain information relating to possible public-private
18 partnerships.

19 The selection of professional design firms by a
20 transportation agency or private entity shall comply with the
21 Architectural, Engineering, and Land Surveying Qualifications
22 Based Selection Act or Section 25 of this Act.

23 Nothing in this Act shall preclude a public agency,
24 including the Department or the Authority, from submitting a
25 proposal to develop or operate, or to develop and operate, a

1 transportation facility as a transportation project. The
2 transportation agency shall give a proposal submitted by a
3 public agency equal consideration as it gives proposals
4 submitted by private entities, and, for that purpose, treat the
5 public agency as a private entity.

6 All procurement processes shall incorporate requirements
7 and set forth goals for participation by disadvantaged business
8 enterprises as allowed under State and federal law.

9 (b) The transportation agency shall establish a process for
10 prequalification of all potential private entities. The
11 transportation agency shall: (i) provide a public notice of the
12 prequalification process for such period as deemed appropriate
13 by the agency; (ii) set forth requirements and evaluation
14 criteria in order to become prequalified; (iii) determine which
15 private entities that have submitted prequalification
16 applications, if any, meet the requirements and evaluation
17 criteria; and (iv) allow only those entities that have been
18 prequalified to submit proposals or bids. The transportation
19 agency shall make publicly available on its website during the
20 request for qualifications period information regarding firms
21 that are prequalified by the transportation agency pursuant to
22 Section 20 of the Architectural, Engineering, and Land
23 Surveying Qualifications Based Selection Act to provide
24 architectural, engineering, and land surveying services and
25 shall require the use of such firms for such services.

26 (c) Competitive sealed bidding requirements:

1 (1) All contracts shall be awarded by competitive
2 sealed bidding except as otherwise provided in subsection
3 (d) of this Section and Section 25 of this Act.

4 (2) An invitation for bids shall be issued and shall
5 include a description of the public-private partnership
6 with a private entity for the development, finance, and
7 operation of a transportation facility as a transportation
8 project, and the material contractual terms and conditions
9 applicable to the procurement.

10 (3) Public notice of the invitation for bids shall be
11 published in the State of Illinois Procurement Bulletin at
12 least 21 days before the date set in the invitation for the
13 opening of bids.

14 (4) Bids shall be opened publicly in the presence of
15 one or more witnesses at the time and place designated in
16 the invitation for bids. The name of each bidder, the
17 amount of each bid, and other relevant information as may
18 be specified by rule shall be recorded. After the award of
19 the contract, the winning bid and the record of each
20 unsuccessful bid shall be open to public inspection.

21 (5) Bids shall be unconditionally accepted without
22 alteration or correction, except as authorized in this Act.
23 Bids shall be evaluated based on the requirements set forth
24 in the invitation for bids, which may include criteria to
25 determine acceptability such as inspection, testing,
26 quality, workmanship, delivery, and suitability for a

1 particular purpose. Those criteria that will affect the bid
2 price and be considered in evaluation for award, such as
3 discounts, transportation costs, and total or life cycle
4 costs, shall be objectively measurable. The invitation for
5 bids shall set forth the evaluation criteria to be used.

6 (6) Correction or withdrawal of inadvertently
7 erroneous bids before or after award, or cancellation of
8 awards of contracts based on bid mistakes, shall be
9 permitted in accordance with rules. After bid opening, no
10 changes in bid prices or other provisions of bids
11 prejudicial to the interest of the State or fair
12 competition shall be permitted. All decisions to permit the
13 correction or withdrawal of bids based on bid mistakes
14 shall be supported by written determination made by the
15 transportation agency.

16 (7) The contract shall be awarded with reasonable
17 promptness by written notice to the lowest responsible and
18 responsive bidder whose bid meets the requirements and
19 criteria set forth in the invitation for bids, except when
20 the transportation agency determines it is not in the best
21 interest of the State and by written explanation determines
22 another bidder shall receive the award. The explanation
23 shall appear in the appropriate volume of the State of
24 Illinois Procurement Bulletin. The written explanation
25 must include:

26 (A) a description of the agency's needs;

1 (B) a determination that the anticipated cost will
2 be fair and reasonable;

3 (C) a listing of all responsible and responsive
4 bidders; and

5 (D) the name of the bidder selected, pricing, and
6 the reasons for selecting that bidder.

7 (8) When it is considered impracticable to initially
8 prepare a purchase description to support an award based on
9 price, an invitation for bids may be issued requesting the
10 submission of unpriced offers to be followed by an
11 invitation for bids limited to those bidders whose offers
12 have been qualified under the criteria set forth in the
13 first solicitation.

14 (d) Competitive sealed proposal requirements:

15 (1) When the transportation agency determines in
16 writing that the use of competitive sealed bidding or
17 design-build procurement is either not practicable or not
18 advantageous to the State, a contract may be entered into
19 by competitive sealed proposals.

20 (2) Proposals shall be solicited through a request for
21 proposals.

22 (3) Public notice of the request for proposals shall be
23 published in the State of Illinois Procurement Bulletin at
24 least 21 days before the date set in the invitation for the
25 opening of proposals.

26 (4) Proposals shall be opened publicly in the presence

1 of one or more witnesses at the time and place designated
2 in the request for proposals, but proposals shall be opened
3 in a manner to avoid disclosure of contents to competing
4 offerors during the process of negotiation. A record of
5 proposals shall be prepared and shall be open for public
6 inspection after contract award.

7 (5) The requests for proposals shall state the relative
8 importance of price and other evaluation factors.
9 Proposals shall be submitted in 2 parts: (i) covering items
10 except price; and (ii) covering price. The first part of
11 all proposals shall be evaluated and ranked independently
12 of the second part of all proposals.

13 (6) As provided in the request for proposals and under
14 any applicable rules, discussions may be conducted with
15 responsible offerors who submit proposals determined to be
16 reasonably susceptible of being selected for award for the
17 purpose of clarifying and assuring full understanding of
18 and responsiveness to the solicitation requirements. Those
19 offerors shall be accorded fair and equal treatment with
20 respect to any opportunity for discussion and revision of
21 proposals. Revisions may be permitted after submission and
22 before award for the purpose of obtaining best and final
23 offers. In conducting discussions there shall be no
24 disclosure of any information derived from proposals
25 submitted by competing offerors. If information is
26 disclosed to any offeror, it shall be provided to all

1 competing offerors.

2 (7) Awards shall be made to the responsible offeror
3 whose proposal is determined in writing to be the most
4 advantageous to the State, taking into consideration price
5 and the evaluation factors set forth in the request for
6 proposals. The contract file shall contain the basis on
7 which the award is made.

8 (e) In the case of a proposal or proposals to the
9 Department or the Authority, the transportation agency shall
10 determine, based on its review and evaluation of the proposal
11 or proposals received in response to the request for proposals,
12 which one or more proposals, if any, best serve the public
13 purpose of this Act and satisfy the criteria set forth in the
14 request for proposals and, with respect to such proposal or
15 proposals, shall:

16 (1) submit the proposal or proposals to the Commission
17 on Government Forecasting and Accountability, which,
18 within 20 days of submission by the transportation agency,
19 shall complete a review of the proposal or proposals and
20 report on the value of the proposal or proposals to the
21 State;

22 (2) hold one or more public hearings on the proposal or
23 proposals, publish notice of the hearing or hearings at
24 least 7 days before the hearing, and include the following
25 in the notice: (i) the date, time, and place of the hearing
26 and the address of the transportation agency, (ii) the

1 subject matter of the hearing, (iii) a description of the
2 agreement to be awarded, (iv) the determination made by the
3 transportation agency that such proposal or proposals best
4 serve the public purpose of this Act and satisfy the
5 criteria set forth in the request for proposals, and (v)
6 that the public may be heard on the proposal or proposals
7 during the public hearing; and

8 (3) determine whether or not to recommend to the
9 Governor that the Governor approve the proposal or
10 proposals.

11 The Governor may approve one or more proposals recommended
12 by the Department or the Authority based upon the review,
13 evaluation, and recommendation of the transportation agency,
14 the review and report of the Commission on Government
15 Forecasting and Accountability, the public hearing, and the
16 best interests of the State.

17 (f) In addition to any other rights under this Act, in
18 connection with any procurement under this Act, the following
19 rights are reserved to each transportation agency:

20 (1) to withdraw a request for information, a request
21 for qualifications, or a request for proposals at any time,
22 and to publish a new request for information, request for
23 qualifications, or request for proposals;

24 (2) to not approve a proposal for any reason;

25 (3) to not award a public-private agreement for any
26 reason;

1 (4) to request clarifications to any statement of
2 information, qualifications, or proposal received, to seek
3 one or more revised proposals or one or more best and final
4 offers, or to conduct negotiations with one or more private
5 entities that have submitted proposals;

6 (5) to modify, during the pendency of a procurement,
7 the terms, provisions, and conditions of a request for
8 information, request for qualifications, or request for
9 proposals or the technical specifications or form of a
10 public-private agreement;

11 (6) to interview proposers; and

12 (7) any other rights available to the transportation
13 agency under applicable law and regulations.

14 (g) If a proposal is approved, the transportation agency
15 shall execute the public-private agreement, publish notice of
16 the execution of the public-private agreement on its website
17 and in a newspaper or newspapers of general circulation within
18 the county or counties in which the transportation project is
19 to be located, and publish the entire agreement on its website.
20 Any action to contest the validity of a public-private
21 agreement entered into under this Act must be brought no later
22 than 60 days after the date of publication of the notice of
23 execution of the public-private agreement.

24 (h) For any transportation project with an estimated
25 construction cost of over \$50,000,000, the transportation
26 agency may also require the approved proposer to pay the costs

1 for an independent audit of any and all traffic and cost
2 estimates associated with the approved proposal, as well as a
3 review of all public costs and potential liabilities to which
4 taxpayers could be exposed (including improvements to other
5 transportation facilities that may be needed as a result of the
6 approved proposal, failure by the approved proposer to
7 reimburse the transportation agency for services provided, and
8 potential risk and liability in the event the approved proposer
9 defaults on the public-private agreement or on bonds issued for
10 the project). If required by the transportation agency, this
11 independent audit must be conducted by an independent
12 consultant selected by the transportation agency, and all
13 information from the review must be fully disclosed.

14 (i) The transportation agency may also apply for, execute,
15 or endorse applications submitted by private entities to obtain
16 federal credit assistance for qualifying projects developed or
17 operated pursuant to this Act.

18 Section 25. Design-build procurement.

19 (a) This Section 25 shall apply only to transportation
20 projects for which the Department or the Authority intends to
21 execute a design-build agreement, in which case the Department
22 or the Authority shall abide by the requirements and procedures
23 of this Section 25 in addition to other applicable requirements
24 and procedures set forth in this Act.

25 (b) (1) The transportation agency must issue a notice of

1 intent to receive proposals for the project at least 14 days
2 before issuing the request for the qualifications. The
3 transportation agency must publish the advance notice in a
4 daily newspaper of general circulation in the county where the
5 transportation agency is located. The transportation agency is
6 encouraged to use publication of the notice in related
7 construction industry service publications. A brief
8 description of the proposed procurement must be included in the
9 notice. The transportation agency must provide a copy of the
10 request for qualifications to any party requesting a copy.

11 (2) The request for qualifications shall be prepared for
12 each project and must contain, without limitation, the
13 following information: (i) the name of the transportation
14 agency; (ii) a preliminary schedule for the completion of the
15 contract; (iii) the proposed budget for the project, the source
16 of funds, and the currently available funds at the time the
17 request for proposal is submitted; (iv) prequalification
18 criteria for design-build entities wishing to submit proposals
19 (the transportation agency shall include, at a minimum, its
20 normal prequalification, licensing, registration, and other
21 requirements, but nothing contained herein precludes the use of
22 additional prequalification criteria by the transportation
23 agency); (v) material requirements of the contract, including
24 but not limited to, the proposed terms and conditions, required
25 performance and payment bonds, insurance, and the entity's plan
26 to comply with the utilization goals established by the

1 corporate authorities of the transportation agency for
2 minority and women business enterprises and to comply with
3 Section 2-105 of the Illinois Human Rights Act; (vi) the
4 performance criteria; (vii) the evaluation criteria for each
5 phase of the solicitation; and (viii) the number of entities
6 that will be considered for the request for proposals phase.

7 (3) The transportation agency may include any other
8 relevant information in the request for qualifications that it
9 chooses to supply. The private entity shall be entitled to rely
10 upon the accuracy of this documentation in the development of
11 its statement of qualifications and its proposal.

12 (4) The date that statements of qualifications are due must
13 be at least 21 calendar days after the date of the issuance of
14 the request for qualifications. In the event the cost of the
15 project is estimated to exceed \$12,000,000, then the statement
16 of qualifications due date must be at least 28 calendar days
17 after the date of the issuance of the request for
18 qualifications. The transportation agency shall include in the
19 request for proposals a minimum of 30 days to develop the
20 proposals after the selection of entities from the evaluation
21 of the statements of qualifications is completed.

22 (c)(1) The transportation agency shall develop, with the
23 assistance of a licensed design professional, the request for
24 qualifications and the request for proposals, which shall
25 include scope and performance criteria. The scope and
26 performance criteria must be in sufficient detail and contain

1 adequate information to reasonably apprise the private
2 entities of the transportation agency's overall programmatic
3 needs and goals, including criteria and preliminary design
4 plans, general budget parameters, schedule, and delivery
5 requirements.

6 (2) Each request for qualifications and request for
7 proposals shall also include a description of the level of
8 design to be provided in the proposals. This description must
9 include the scope and type of renderings, drawings, and
10 specifications that, at a minimum, will be required by the
11 transportation agency to be produced by the private entities.

12 (3) The scope and performance criteria shall be prepared by
13 a design professional who is an employee of the transportation
14 agency, or the transportation agency may contract with an
15 independent design professional selected under the
16 Architectural, Engineering, and Land Surveying Qualifications
17 Based Selection Act to provide these services.

18 (4) The design professional that prepares the scope and
19 performance criteria is prohibited from participating in any
20 private entity proposal for the project.

21 (d)(1) The transportation agency must use a two phase
22 procedure for the selection of the successful design-build
23 entity. The request for qualifications phase will evaluate and
24 shortlist the private entities based on qualifications, and the
25 request for proposals will evaluate the technical and cost
26 proposals.

1 (2) The transportation agency shall include in the request
2 for qualifications the evaluating factors to be used in the
3 request for qualifications phase. These factors are in addition
4 to any prequalification requirements of private entities that
5 the transportation agency has set forth. Each request for
6 qualifications shall establish the relative importance
7 assigned to each evaluation factor and subfactor, including any
8 weighting of criteria to be employed by the transportation
9 agency. The transportation agency must maintain a record of the
10 evaluation scoring to be disclosed in event of a protest
11 regarding the solicitation.

12 The transportation agency shall include the following
13 criteria in every request for qualifications phase evaluation
14 of private entities: (i) experience of personnel; (ii)
15 successful experience with similar project types; (iii)
16 financial capability; (iv) timeliness of past performance; (v)
17 experience with similarly sized projects; (vi) successful
18 reference checks of the firm; (vii) commitment to assign
19 personnel for the duration of the project and qualifications of
20 the entity's consultants; and (viii) ability or past
21 performance in meeting or exhausting good faith efforts to meet
22 the utilization goals for business enterprises established in
23 the Business Enterprise for Minorities, Females, and Persons
24 with Disabilities Act and in complying with Section 2-105 of
25 the Illinois Human Rights Act. No proposal shall be considered
26 that does not include an entity's plan to comply with the

1 requirements established in the minority and women business
2 enterprises and economically disadvantaged firms established
3 by the corporate authorities of the transportation agency and
4 with Section 2-105 of the Illinois Human Rights Act. The
5 transportation agency may include any additional relevant
6 criteria in the request for qualifications phase that it deems
7 necessary for a proper qualification review.

8 Upon completion of the qualifications evaluation, the
9 transportation agency shall create a shortlist of the most
10 highly qualified private entities.

11 The transportation agency shall notify the entities
12 selected for the shortlist in writing. This notification shall
13 commence the period for the preparation of the request for
14 proposals phase technical and cost evaluations. The
15 transportation agency must allow sufficient time for the
16 shortlist entities to prepare their proposals considering the
17 scope and detail requested by the transportation agency.

18 (3) The transportation agency shall include in the request
19 for proposals the evaluating factors to be used in the
20 technical and cost submission components. Each request for
21 proposals shall establish, for both the technical and cost
22 submission components, the relative importance assigned to
23 each evaluation factor and subfactor, including any weighting
24 of criteria to be employed by the transportation agency. The
25 transportation agency must maintain a record of the evaluation
26 scoring to be disclosed in event of a protest regarding the

1 solicitation.

2 The transportation agency shall include the following
3 criteria in every request for proposals phase technical
4 evaluation of private entities: (i) compliance with objectives
5 of the project; (ii) compliance of proposed services to the
6 request for proposal requirements; (iii) quality of products or
7 materials proposed; (iv) quality of design parameters; (v)
8 design concepts; (vi) innovation in meeting the scope and
9 performance criteria; and (vii) constructability of the
10 proposed project. The transportation agency may include any
11 additional relevant technical evaluation factors it deems
12 necessary for proper selection.

13 The transportation agency shall include the following
14 criteria in every request for proposals phase cost evaluation:
15 the total project cost and the time of completion. The
16 transportation agency may include any additional relevant
17 technical evaluation factors it deems necessary for proper
18 selection. The guaranteed maximum project cost criteria
19 weighing factor shall not exceed 30%.

20 The transportation agency shall directly employ or retain a
21 licensed design professional to evaluate the technical and cost
22 submissions to determine if the technical submissions are in
23 accordance with generally accepted industry standards.

24 (e) Statements of qualifications and proposals must be
25 properly identified and sealed. Statements of qualifications
26 and proposals may not be reviewed until after the deadline for

1 submission has passed as set forth in the request for
2 qualifications or the request for proposals. All private
3 entities submitting statements of qualifications or proposals
4 shall be disclosed after the deadline for submission, and all
5 private entities who are selected for request for proposals
6 phase evaluation shall also be disclosed at the time of that
7 determination.

8 Phase II design-build proposals shall include a bid bond in
9 the form and security as designated in the request for
10 proposals. Proposals shall also contain a separate sealed
11 envelope with the cost information within the overall proposal
12 submission. Proposals shall include a list of all design
13 professionals and other entities to which any work identified
14 in Section 30-30 of the Illinois Procurement Code as a
15 subdivision of construction work may be subcontracted during
16 the performance of the contract.

17 Statements of qualifications and proposals must meet all
18 material requirements of the request for qualifications or
19 request for proposals, or else they may be rejected as
20 non-responsive. The transportation agency shall have the right
21 to reject any and all statements of qualifications and
22 proposals.

23 The drawings and specifications of any unsuccessful
24 statement of qualifications or proposal shall remain the
25 property of the private entity.

26 The transportation agency shall review the statements of

1 qualifications and the proposals for compliance with the
2 performance criteria and evaluation factors.

3 Statements of qualifications and proposals may be
4 withdrawn prior to the due date and time for submissions for
5 any cause. After evaluation begins by the transportation
6 agency, clear and convincing evidence of error is required for
7 withdrawal.

8 Section 30. Interim agreements.

9 (a) Prior to or in connection with the negotiation of the
10 public-private agreement, the transportation agency may enter
11 into an interim agreement with the approved proposer. Such
12 interim agreement may:

13 (1) permit the approved proposer to commence
14 activities relating to a proposed project as the
15 transportation agency and the approved proposer shall
16 agree to and for which the approved proposer may be
17 compensated, including, but not limited to, project
18 planning, advance right-of-way acquisition, design and
19 engineering, environmental analysis and mitigation,
20 survey, conducting transportation and revenue studies, and
21 ascertaining the availability of financing for the
22 proposed facility or facilities;

23 (2) establish the process and timing of the exclusive
24 negotiation of a public-private agreement with an approved
25 proposer;

1 (3) require that in the event the transportation agency
2 determines not to proceed with a project after the approved
3 proposer and the transportation agency have executed an
4 interim agreement, and thereby terminates the interim
5 agreement or declines to proceed with negotiation of a
6 public-private agreement with an approved proposer, the
7 transportation agency shall pay to the approved proposer
8 certain fees and costs incurred by the approved proposer;

9 (4) establish the ownership in the State or in the
10 Authority of the concepts and designs in the event of
11 termination of the interim agreement;

12 (5) establish procedures for the selection of
13 professional design firms and subcontractors, which shall
14 include procedures consistent with the Architectural,
15 Engineering, and Land Surveying Qualifications Based
16 Selection Act for the selection of design professional
17 firms and may include, in the discretion of the
18 transportation agency, procedures consistent with the low
19 bid procurement procedures outlined in the Illinois
20 Procurement Code for the selection of construction
21 companies; and

22 (6) contain any other provisions related to any aspect
23 of the transportation project that the parties may deem
24 appropriate.

25 (b) A transportation agency may enter into an interim
26 agreement with multiple approved proposers if the

1 transportation agency determines in writing that it is in the
2 public interest to do so.

3 (c) The approved proposer shall select firms that are
4 prequalified by the transportation agency pursuant to Section
5 20 of the Architectural, Engineering, and Land Surveying
6 Qualifications Based Selection Act to provide architectural,
7 engineering, and land surveying services to undertake
8 activities related to the transportation project.

9 Section 35. Public-private agreements.

10 (a) Unless undertaking actions otherwise permitted in an
11 interim agreement entered into under Section 30 of this Act,
12 before developing, financing, or operating the transportation
13 project, the approved proposer shall enter into a
14 public-private agreement with the transportation agency.
15 Subject to the requirements of this Act, a public-private
16 agreement may provide that the approved proposer, acting on
17 behalf of the transportation agency, is partially or entirely
18 responsible for any combination of developing, financing, or
19 operating the transportation project under terms set forth in
20 the public-private agreement.

21 (b) The public-private agreement may, as determined
22 appropriate by the transportation agency for the particular
23 transportation project, provide for some or all of the
24 following:

25 (1) Construction, financing, and operation of the

1 transportation project under terms set forth in the
2 public-private agreement, in any form as deemed
3 appropriate by the transportation agency, including, but
4 not limited to, a long-term concession and lease, a
5 design-bid-build agreement, a design-build agreement, a
6 design-build-maintain agreement, a
7 design-build-operate-maintain agreement and a
8 design-build-finance-operate-maintain agreement.

9 (2) Delivery of performance and payment bonds or other
10 performance security determined suitable by the
11 transportation agency, including letters of credit, United
12 States bonds and notes, parent guaranties, and cash
13 collateral, in connection with the development, financing,
14 or operation of the transportation project, in the forms
15 and amounts set forth in the public-private agreement or
16 otherwise determined as satisfactory by the transportation
17 agency to protect the transportation agency and payment
18 bond beneficiaries who have a direct contractual
19 relationship with the contractor or a subcontractor of the
20 contractor to supply labor or material. The payment or
21 performance bond or alternative form of performance
22 security is not required for the portion of a
23 public-private agreement that includes only design,
24 planning, or financing services, the performance of
25 preliminary studies, or the acquisition of real property.

26 (3) Review of plans for any development or operation,

1 or both, of the transportation project by the
2 transportation agency.

3 (4) Inspection of any construction of or improvements
4 to the transportation project by the transportation agency
5 or another entity designated by the transportation agency
6 or under the public-private agreement to ensure that the
7 construction or improvements conform to the standards set
8 forth in the public-private agreement or are otherwise
9 acceptable to the transportation agency.

10 (5) Maintenance of:

11 (A) one or more policies of public liability
12 insurance (copies of which shall be filed with the
13 transportation agency accompanied by proofs of
14 coverage); or

15 (B) self-insurance;

16 each in form and amount as set forth in the public-private
17 agreement or otherwise satisfactory to the transportation
18 agency as reasonably sufficient to insure coverage of tort
19 liability to the public and employees and to enable the
20 continued operation of the transportation project.

21 (6) Where operations are included within the
22 contractor's obligations under the public-private
23 agreement, monitoring of the maintenance practices of the
24 contractor by the transportation agency or another entity
25 designated by the transportation agency or under the
26 public-private agreement and the taking of the actions the

1 transportation agency finds appropriate to ensure that the
2 transportation project is properly maintained.

3 (7) Reimbursement to be paid to the transportation
4 agency as set forth in the public-private agreement for
5 services provided by the transportation agency.

6 (8) Filing of appropriate financial statements and
7 reports as set forth in the public-private agreement or as
8 otherwise in a form acceptable to the transportation agency
9 on a periodic basis.

10 (9) Compensation or payments to the contractor.
11 Compensation or payments may include any or a combination
12 of the following:

13 (A) a base fee and additional fee for project
14 savings as the design-builder of a construction
15 project;

16 (B) a development fee, payable on a lump-sum basis,
17 progress payment basis, time and materials basis, or
18 another basis deemed appropriate by the transportation
19 agency;

20 (C) an operations fee, payable on a lump-sum basis,
21 time and material basis, periodic basis, or another
22 basis deemed appropriate by the transportation agency;

23 (D) some or all of the revenues, if any, arising
24 out of operation of the transportation project;

25 (E) a maximum rate of return on investment or
26 return on equity or a combination of the two;

1 (F) in-kind services, materials, property,
2 equipment, or other items;

3 (G) compensation in the event of any termination;

4 (H) availability payments or similar arrangements
5 whereby payments are made to the contractor pursuant to
6 the terms set forth in the public-private agreement or
7 related agreements; or

8 (I) other compensation set forth in the
9 public-private agreement or otherwise deemed
10 appropriate by the transportation agency.

11 (10) Compensation or payments to the transportation
12 agency, if any. Compensation or payments may include any or
13 a combination of the following:

14 (A) a concession or lease payment or other fee,
15 which may be payable upfront or on a periodic basis or
16 on another basis deemed appropriate by the
17 transportation agency;

18 (B) sharing of revenues, if any, from the operation
19 of the transportation project;

20 (C) sharing of project savings from the
21 construction of the transportation project;

22 (D) payment for any services, materials,
23 equipment, personnel, or other items provided by the
24 transportation agency to the contractor under the
25 public-private agreement or in connection with the
26 transportation project; or

1 (E) other compensation set forth in the
2 public-private agreement or otherwise deemed
3 appropriate by the transportation agency.

4 (11) The date and terms of termination of the
5 contractor's authority and duties under the public-private
6 agreement and the circumstances under which the
7 contractor's authority and duties may be terminated prior
8 to that date.

9 (12) Reversion of the transportation project to the
10 transportation agency at the termination or expiration of
11 the public-private agreement.

12 (13) Rights and remedies of the transportation agency
13 in the event that the contractor defaults or otherwise
14 fails to comply with the terms of the public-private
15 agreement.

16 (14) Procedures for the selection of professional
17 design firms and subcontractors, which shall include
18 procedures consistent with the Architectural, Engineering,
19 and Land Surveying Qualifications Based Selection Act for
20 the selection of professional design firms and may include,
21 in the discretion of the transportation agency, procedures
22 consistent with the low bid procurement procedures
23 outlined in the Illinois Procurement Code for the selection
24 of construction companies.

25 (15) Other terms, conditions, and provisions that the
26 transportation agency believes are in the public interest.

1 (c) The transportation agency may fix and revise the
2 amounts of user fees that a contractor may charge and collect
3 for the use of any part of a transportation project in
4 accordance with the public-private agreement. In fixing the
5 amounts, the transportation agency may establish maximum
6 amounts for the user fees and may provide that the maximums and
7 any increases or decreases of those maximums shall be based
8 upon the indices, methodologies, or other factors the
9 transportation agency considers appropriate.

10 (d) A public-private agreement may:

11 (1) authorize the imposition of tolls in any manner
12 determined appropriate by the transportation agency for
13 the transportation project;

14 (2) authorize the contractor to adjust the user fees
15 for the use of the transportation project, so long as the
16 amounts charged and collected by the contractor do not
17 exceed the maximum amounts established by the
18 transportation agency under this Act;

19 (3) provide that any adjustment by the contractor
20 permitted under paragraph (2) of this subsection (d) may be
21 based on the indices, methodologies, or other factors
22 described in the public-private agreement or approved by
23 the transportation agency;

24 (4) authorize the contractor to charge and collect user
25 fees through methods, including, but not limited to,
26 automatic vehicle identification systems, electronic toll

1 collection systems, and, to the extent permitted by law,
2 global positioning system-based, photo-based, or
3 video-based toll collection enforcement, provided that to
4 the maximum extent feasible the contractor will (i) utilize
5 open road tolling methods that allow payment of tolls at
6 highway speeds and (ii) comply with United States
7 Department of Transportation requirements and best
8 practices with respect to tolling methods; and

9 (5) authorize the collection of user fees by a third
10 party.

11 (e) In the public-private agreement, the transportation
12 agency may agree to make grants or loans for the development or
13 operation, or both, of the transportation project from time to
14 time from amounts received from the federal government or any
15 agency or instrumentality of the federal government or from any
16 State or local agency.

17 (f) Upon the termination or expiration of the
18 public-private agreement, including a termination for default,
19 the transportation agency shall have the right to take over the
20 transportation project and to succeed to all of the right,
21 title, and interest in the transportation project, subject to
22 any liens on revenues previously granted by the contractor to
23 any person providing financing for the transportation project.
24 Upon termination or expiration of the public-private agreement
25 relating to a transportation project undertaken by the
26 Department, all real property acquired as a part of the

1 transportation project shall be held in the name of the State
2 of Illinois. Upon termination or expiration of the
3 public-private agreement relating to a transportation project
4 undertaken by the Authority, all real property acquired as a
5 part of the transportation project shall be held in the name of
6 the Authority.

7 (g) If a transportation agency elects to take over a
8 transportation project as provided in subsection (f) of this
9 Section, the transportation agency may do the following:

10 (1) develop, finance, or operate the project,
11 including through a public-private agreement entered into
12 in accordance with this Act; or

13 (2) impose, collect, retain, and use user fees, if any,
14 for the project.

15 (h) If a transportation agency elects to take over a
16 transportation project as provided in subsection (f) of this
17 Section, the transportation agency may use the revenues, if
18 any, for any lawful purpose, including to:

19 (1) make payments to individuals or entities in
20 connection with any financing of the transportation
21 project, including through a public-private agreement
22 entered into in accordance with this Act;

23 (2) permit a contractor to receive some or all of the
24 revenues under a public-private agreement entered into
25 under this Act;

26 (3) pay development costs of the project;

1 (4) pay current operation costs of the project or
2 facilities;

3 (5) pay the contractor for any compensation or payment
4 owing upon termination; and

5 (6) pay for the development, financing, or operation of
6 any other project or projects the transportation agency
7 deems appropriate.

8 (i) The full faith and credit of the State or any political
9 subdivision of the State or the transportation agency is not
10 pledged to secure any financing of the contractor by the
11 election to take over the transportation project. Assumption of
12 development or operation, or both, of the transportation
13 project does not obligate the State or any political
14 subdivision of the State or the transportation agency to pay
15 any obligation of the contractor.

16 (j) The transportation agency may enter into a
17 public-private agreement with multiple approved proposers if
18 the transportation agency determines in writing that it is in
19 the public interest to do so.

20 (k) A public-private agreement shall not include any
21 provision under which the transportation agency agrees to
22 restrict or to provide compensation to the private entity for
23 the construction or operation of a competing transportation
24 facility during the term of the public-private agreement.

25 (l) With respect to a public-private agreement entered into
26 by the Department, the Department shall certify in its State

1 budget request to the Governor each year the amount required by
2 the Department during the next State fiscal year to enable the
3 Department to make any payment obligated to be made by the
4 Department pursuant to that public-private agreement, and the
5 Governor shall include that amount in the State budget
6 submitted to the General Assembly.

7 Section 40. Development and operations standards for
8 transportation projects.

9 (a) The plans and specifications, if any, for each project
10 developed under this Act must comply with:

11 (1) the transportation agency's standards for other
12 projects of a similar nature or as otherwise provided in
13 the public-private agreement;

14 (2) the Professional Engineering Practice Act of 1989,
15 the Structural Engineering Practice Act of 1989, the
16 Illinois Architecture Practice Act of 1989, the
17 requirements of Section 30-22 of the Illinois Procurement
18 Code as they apply to responsible bidders, and the Illinois
19 Professional Land Surveyor Act of 1989; and

20 (3) any other applicable State or federal standards.

21 (b) Each highway project constructed or operated under this
22 Act is considered to be part of:

23 (1) the State highway system for purposes of
24 identification, maintenance standards, and enforcement of
25 traffic laws if the highway project is under the

1 jurisdiction of the Department; or

2 (2) the toll highway system for purposes of
3 identification, maintenance standards, and enforcement of
4 traffic laws if the highway project is under the
5 jurisdiction of the Authority.

6 (c) Any unit of local government or State agency may enter
7 into agreements with the contractor for maintenance or other
8 services under this Act.

9 (d) Any electronic toll collection system used on a toll
10 highway, bridge, or tunnel as part of a transportation project
11 must be compatible with the electronic toll collection system
12 used by the Authority. The Authority is authorized to
13 construct, operate, and maintain any electronic toll
14 collection system used on a toll highway, bridge, or tunnel as
15 part of a transportation project pursuant to an agreement with
16 the transportation agency or the contractor responsible for the
17 transportation project.

18 Section 45. Financial arrangements.

19 (a) The transportation agency may do any combination of
20 applying for, executing, or endorsing applications submitted
21 by private entities to obtain federal, State, or local credit
22 assistance for transportation projects developed, financed, or
23 operated under this Act, including loans, lines of credit, and
24 guarantees.

25 (b) The transportation agency may take any action to obtain

1 federal, State, or local assistance for a transportation
2 project that serves the public purpose of this Act and may
3 enter into any contracts required to receive the federal
4 assistance. The transportation agency may determine that it
5 serves the public purpose of this Act for all or any portion of
6 the costs of a transportation project to be paid, directly or
7 indirectly, from the proceeds of a grant or loan, line of
8 credit, or loan guarantee made by a local, State, or federal
9 government or any agency or instrumentality of a local, State,
10 or federal government. Such assistance may include, but not be
11 limited to, federal credit assistance pursuant to the
12 Transportation Infrastructure Finance and Innovation Act
13 (TIFIA).

14 (c) The transportation agency may agree to make grants or
15 loans for the development, financing, or operation of a
16 transportation project from time to time, from amounts received
17 from the federal, State, or local government or any agency or
18 instrumentality of the federal, State, or local government.

19 (d) Any financing of a transportation project may be in the
20 amounts and upon the terms and conditions that are determined
21 by the parties to the public-private agreement.

22 (e) For the purpose of financing a transportation project,
23 the contractor and the transportation agency may do the
24 following:

- 25 (1) propose to use any and all revenues that may be
26 available to them;

1 (2) enter into grant agreements;

2 (3) access any other funds available to the
3 transportation agency; and

4 (4) accept grants from the transportation agency or
5 other public or private agency or entity.

6 (f) For the purpose of financing a transportation project,
7 public funds may be used and mixed and aggregated with funds
8 provided by or on behalf of the contractor or other private
9 entities.

10 (g) For the purpose of financing a transportation project,
11 each transportation agency is authorized to do any combination
12 of applying for, executing, or endorsing applications for an
13 allocation of tax-exempt bond financing authorization provided
14 by Section 142(m) of the United States Internal Revenue Code,
15 as well as financing available under any other federal law or
16 program.

17 (h) Any bonds, debt, or other securities or other financing
18 issued for the purposes of this Act shall not be deemed to
19 constitute a debt of the State or any political subdivision of
20 the State or a pledge of the faith and credit of the State or
21 any political subdivision of the State.

22 Section 50. Acquisition of property.

23 (a) The transportation agency may exercise any power of
24 condemnation or eminent domain, including quick-take powers,
25 that it has under law, including, in the case of the

1 Department, all powers for acquisition of property rights
2 granted it in the Illinois Highway Code, for the purpose of
3 acquiring any lands or estates or interests in land for a
4 transportation project to the extent provided in the
5 public-private agreement or otherwise to the extent that the
6 transportation agency finds that the action serves the public
7 purpose of this Act and deems it appropriate in the exercise of
8 its powers under this Act.

9 (b) The transportation agency and a contractor may enter
10 into the leases, licenses, easements, and other grants of
11 property interests that the transportation agency determines
12 necessary to carry out this Act.

13 Section 55. Labor.

14 (a) A public-private agreement related to a transportation
15 project pertaining to the building, altering, repairing,
16 maintaining, improving, or demolishing a transportation
17 facility shall require the contractor and all subcontractors to
18 comply with the requirements of Section 30-22 of the Illinois
19 Procurement Code as they apply to responsible bidders and to
20 present satisfactory evidence of that compliance to the
21 transportation agency, unless the transportation project is
22 federally funded and the application of those requirements
23 would jeopardize the receipt or use of federal funds in support
24 of the transportation project.

25 (b) A public-private agreement related to a transportation

1 project pertaining to a new transportation facility shall
2 require the contractor to enter into a project labor agreement
3 utilized by the Department.

4 Section 60. Law enforcement.

5 (a) All law enforcement officers of the State and of each
6 affected local jurisdiction have the same powers and
7 jurisdiction within the limits of the transportation facility
8 as they have in their respective areas of jurisdiction.

9 (b) Law enforcement officers shall have access to the
10 transportation facility at any time for the purpose of
11 exercising the law enforcement officers' powers and
12 jurisdiction.

13 (c) The traffic and motor vehicle laws of the State of
14 Illinois or, if applicable, any local jurisdiction shall be the
15 same as those applying to conduct on similar projects in the
16 State of Illinois or the local jurisdiction.

17 (d) Punishment for infractions and offenses shall be as
18 prescribed by law for conduct occurring on similar projects in
19 the State of Illinois or the local jurisdiction.

20 Section 65. Term of agreement; reversion of property to
21 transportation agency.

22 (a) The term of a public-private agreement, including all
23 extensions, may not exceed 99 years.

24 (b) The transportation agency shall terminate the

1 contractor's authority and duties under the public-private
2 agreement on the date set forth in the public-private
3 agreement.

4 (c) Upon termination of the public-private agreement, the
5 authority and duties of the contractor under this Act cease,
6 except for those duties and obligations that extend beyond the
7 termination, as set forth in the public-private agreement, and
8 all interests in the transportation facility shall revert to
9 the transportation agency.

10 Section 70. Additional powers of transportation agencies
11 with respect to transportation projects.

12 (a) Each transportation agency may exercise any powers
13 provided under this Act in participation or cooperation with
14 any governmental entity and enter into any contracts to
15 facilitate that participation or cooperation without
16 compliance with any other statute. Each transportation agency
17 shall cooperate with each other and with other governmental
18 entities in carrying out transportation projects under this
19 Act.

20 (b) Each transportation agency may make and enter into all
21 contracts and agreements necessary or incidental to the
22 performance of the transportation agency's duties and the
23 execution of the transportation agency's powers under this Act.
24 Except as otherwise required by law, these contracts or
25 agreements are not subject to any approvals other than the

1 approval of the transportation agency and may be for any term
2 of years and contain any terms that are considered reasonable
3 by the transportation agency.

4 (c) Each transportation agency may pay the costs incurred
5 under a public-private agreement entered into under this Act
6 from any funds available to the transportation agency under
7 this Act or any other statute.

8 (d) A transportation agency or other State agency may not
9 take any action that would impair a public-private agreement
10 entered into under this Act.

11 (e) Each transportation agency may enter into an agreement
12 between and among the contractor, the transportation agency,
13 and the Department of State Police concerning the provision of
14 law enforcement assistance with respect to a transportation
15 project that is the subject of a public-private agreement under
16 this Act.

17 (f) Each transportation agency is authorized to enter into
18 arrangements with the Department of State Police related to
19 costs incurred in providing law enforcement assistance under
20 this Act.

21 Section 75. Prohibited local action. A unit of local
22 government may not take any action that would have the effect
23 of impairing a public-private agreement under this Act,
24 provided that this Section 75 shall not diminish any existing
25 police power or other power provided by law to a unit of local

1 government.

2 Section 80. Powers liberally construed. The powers
3 conferred by this Act shall be liberally construed in order to
4 accomplish their purposes and shall be in addition and
5 supplemental to the powers conferred by any other law. If any
6 other law or rule is inconsistent with this Act, this Act is
7 controlling as to any public-private agreement entered into
8 under this Act.

9 Section 85. Full and complete authority. This Act contains
10 full and complete authority for agreements and leases with
11 private entities to carry out the activities described in this
12 Act. Except as otherwise required by law, no procedure,
13 proceedings, publications, notices, consents, approvals,
14 orders, or acts by the transportation agency or any other State
15 or local agency or official are required to enter into an
16 agreement or lease.

17 Section 905. The Department of Transportation Law of the
18 Civil Administrative Code of Illinois is amended by adding
19 Section 2705-222 as follows:

20 (20 ILCS 2705/2705-222 new)

21 Sec. 2705-222. Public-private partnerships for
22 transportation. The Department may exercise all powers granted

1 to it under the Public-Private Partnerships for Transportation
2 Act.

3 Section 910. The Illinois Finance Authority Act is amended
4 by adding Section 825-106 as follows:

5 (20 ILCS 3501/825-106 new)

6 Sec. 825-106. Transportation project financing. For the
7 purpose of financing a transportation project undertaken under
8 the Public-Private Partnerships for Transportation Act, the
9 Authority is authorized to apply for an allocation of
10 tax-exempt bond financing authorization provided by Section
11 142(m) of the United States Internal Revenue Code, as well as
12 financing available under any other federal law or program.

13 Section 915. The Illinois Procurement Code is amended by
14 changing Section 1-10 as follows:

15 (30 ILCS 500/1-10)

16 Sec. 1-10. Application.

17 (a) This Code applies only to procurements for which
18 contractors were first solicited on or after July 1, 1998. This
19 Code shall not be construed to affect or impair any contract,
20 or any provision of a contract, entered into based on a
21 solicitation prior to the implementation date of this Code as
22 described in Article 99, including but not limited to any

1 covenant entered into with respect to any revenue bonds or
2 similar instruments. All procurements for which contracts are
3 solicited between the effective date of Articles 50 and 99 and
4 July 1, 1998 shall be substantially in accordance with this
5 Code and its intent.

6 (b) This Code shall apply regardless of the source of the
7 funds with which the contracts are paid, including federal
8 assistance moneys. This Code shall not apply to:

9 (1) Contracts between the State and its political
10 subdivisions or other governments, or between State
11 governmental bodies except as specifically provided in
12 this Code.

13 (2) Grants, except for the filing requirements of
14 Section 20-80.

15 (3) Purchase of care.

16 (4) Hiring of an individual as employee and not as an
17 independent contractor, whether pursuant to an employment
18 code or policy or by contract directly with that
19 individual.

20 (5) Collective bargaining contracts.

21 (6) Purchase of real estate, except that notice of this
22 type of contract with a value of more than \$25,000 must be
23 published in the Procurement Bulletin within 7 days after
24 the deed is recorded in the county of jurisdiction. The
25 notice shall identify the real estate purchased, the names
26 of all parties to the contract, the value of the contract,

1 and the effective date of the contract.

2 (7) Contracts necessary to prepare for anticipated
3 litigation, enforcement actions, or investigations,
4 provided that the chief legal counsel to the Governor shall
5 give his or her prior approval when the procuring agency is
6 one subject to the jurisdiction of the Governor, and
7 provided that the chief legal counsel of any other
8 procuring entity subject to this Code shall give his or her
9 prior approval when the procuring entity is not one subject
10 to the jurisdiction of the Governor.

11 (8) Contracts for services to Northern Illinois
12 University by a person, acting as an independent
13 contractor, who is qualified by education, experience, and
14 technical ability and is selected by negotiation for the
15 purpose of providing non-credit educational service
16 activities or products by means of specialized programs
17 offered by the university.

18 (9) Procurement expenditures by the Illinois
19 Conservation Foundation when only private funds are used.

20 (10) Procurement expenditures by the Illinois Health
21 Information Exchange Authority involving private funds
22 from the Health Information Exchange Fund. "Private funds"
23 means gifts, donations, and private grants.

24 (11) Public-private agreements entered into according
25 to the procurement requirements of Section 20 of the
26 Public-Private Partnerships for Transportation Act and

1 design-build agreements entered into according to the
2 procurement requirements of Section 25 of the
3 Public-Private Partnerships for Transportation Act.

4 (c) This Code does not apply to the electric power
5 procurement process provided for under Section 1-75 of the
6 Illinois Power Agency Act and Section 16-111.5 of the Public
7 Utilities Act.

8 (d) Except for Section 20-160 and Article 50 of this Code,
9 and as expressly required by Section 9.1 of the Illinois
10 Lottery Law, the provisions of this Code do not apply to the
11 procurement process provided for under Section 9.1 of the
12 Illinois Lottery Law.

13 (Source: P.A. 95-481, eff. 8-28-07; 95-615, eff. 9-11-07;
14 95-876, eff. 8-21-08; 96-840, eff. 12-23-09; 96-1331, eff.
15 7-27-10.)

16 Section 920. The Public Construction Bond Act is amended by
17 adding Section 1.7 as follows:

18 (30 ILCS 550/1.7 new)

19 Sec. 1.7. Public-private agreements. This Act applies to
20 any public-private agreement entered into under the
21 Public-Private Partnerships for Transportation Act.

22 Section 925. The Employment of Illinois Workers on Public
23 Works Act is amended by adding Section 2.7 as follows:

1 (30 ILCS 570/2.7 new)

2 Sec. 2.7. Public-private agreements. This Act applies to
3 any public-private agreement entered into under the
4 Public-Private Partnerships for Transportation Act.

5 Section 930. The Business Enterprise for Minorities,
6 Females, and Persons with Disabilities Act is amended by adding
7 Section 2.7 as follows:

8 (30 ILCS 575/2.7 new)

9 Sec. 2.7. Public-private agreements. This Act applies to
10 any public-private agreement entered into under the
11 Public-Private Partnerships for Transportation Act.

12 Section 935. The Retailers' Occupation Tax Act is amended
13 by adding Section 1r as follows:

14 (35 ILCS 120/1r new)

15 Sec. 1r. Building materials exemption; public-private
16 partnership transportation projects.

17 (a) Each retailer that makes a qualified sale of building
18 materials to be incorporated into a "project" as defined in the
19 Public-Private Partnerships for Transportation Act, by
20 remodeling, rehabilitating, or new construction, may deduct
21 receipts from those sales when calculating the tax imposed by

1 this Act.

2 (b) As used in this Section, "qualified sale" means a sale
3 of building materials that will be incorporated into a project
4 for which a Certificate of Eligibility for Sales Tax Exemption
5 has been issued by the agency having authority over the
6 project.

7 (c) To document the exemption allowed under this Section,
8 the retailer must obtain from the purchaser a copy of the
9 Certificate of Eligibility for Sales Tax Exemption issued by
10 the agency having jurisdiction over the project into which the
11 building materials will be incorporated is located. The
12 Certificate of Eligibility for Sales Tax Exemption must contain
13 all of the following:

14 (1) statement that the project identified in the
15 Certificate meets all the requirements of the agency having
16 authority over the project;

17 (2) the location or address of the project; and

18 (3) the signature of the director of the agency with
19 authority over the project or the director's delegate.

20 (d) In addition to meeting the requirements of subsection
21 (c) of this Act, the retailer must obtain a certificate from
22 the purchaser that contains all of the following:

23 (1) a statement that the building materials are being
24 purchased for incorporation into a project in accordance
25 with the Public-Private Partnerships for Transportation
26 Act;

1 (2) the location or address of the project into which
2 the building materials will be incorporated;

3 (3) the name of the project;

4 (4) a description of the building materials being
5 purchased; and

6 (5) the purchaser's signature and date of purchase.

7 (e) This Section is exempt from Section 2-70 of this Act.

8 Section 940. The Property Tax Code is amended by changing
9 Section 15-55 and by adding Section 15-195 as follows:

10 (35 ILCS 200/15-55)

11 Sec. 15-55. State property.

12 (a) All property belonging to the State of Illinois is
13 exempt. However, the State agency holding title shall file the
14 certificate of ownership and use required by Section 15-10,
15 together with a copy of any written lease or agreement, in
16 effect on March 30 of the assessment year, concerning parcels
17 of 1 acre or more, or an explanation of the terms of any oral
18 agreement under which the property is leased, subleased or
19 rented.

20 The leased property shall be assessed to the lessee and the
21 taxes thereon extended and billed to the lessee, and collected
22 in the same manner as for property which is not exempt. The
23 lessee shall be liable for the taxes and no lien shall attach
24 to the property of the State.

1 For the purposes of this Section, the word "leases"
2 includes licenses, franchises, operating agreements and other
3 arrangements under which private individuals, associations or
4 corporations are granted the right to use property of the
5 Illinois State Toll Highway Authority and includes all property
6 of the Authority used by others without regard to the size of
7 the leased parcel.

8 (b) However, all property of every kind belonging to the
9 State of Illinois, which is or may hereafter be leased to the
10 Illinois Prairie Path Corporation, shall be exempt from all
11 assessments, taxation or collection, despite the making of any
12 such lease, if it is used for:

13 (1) conservation, nature trail or any other
14 charitable, scientific, educational or recreational
15 purposes with public benefit, including the preserving and
16 aiding in the preservation of natural areas, objects,
17 flora, fauna or biotic communities;

18 (2) the establishment of footpaths, trails and other
19 protected areas;

20 (3) the conservation of the proper use of natural
21 resources or the promotion of the study of plant and animal
22 communities and of other phases of ecology, natural history
23 and conservation;

24 (4) the promotion of education in the fields of nature,
25 preservation and conservation; or

26 (5) similar public recreational activities conducted

1 by the Illinois Prairie Path Corporation.

2 No lien shall attach to the property of the State. No tax
3 liability shall become the obligation of or be enforceable
4 against Illinois Prairie Path Corporation.

5 (c) If the State sells the James R. Thompson Center or the
6 Elgin Mental Health Center and surrounding land located at 750
7 S. State Street, Elgin, Illinois, as provided in subdivision
8 (a) (2) of Section 7.4 of the State Property Control Act, to
9 another entity whose property is not exempt and immediately
10 thereafter enters into a leaseback or other agreement that
11 directly or indirectly gives the State a right to use, control,
12 and possess the property, that portion of the property leased
13 and occupied exclusively by the State shall remain exempt under
14 this Section. For the property to remain exempt under this
15 subsection (c), the State must retain an option to purchase the
16 property at a future date or, within the limitations period for
17 reverters, the property must revert back to the State.

18 If the property has been conveyed as described in this
19 subsection (c), the property is no longer exempt pursuant to
20 this Section as of the date when:

21 (1) the right of the State to use, control, and possess
22 the property has been terminated; or

23 (2) the State no longer has an option to purchase or
24 otherwise acquire the property and there is no provision
25 for a reverter of the property to the State within the
26 limitations period for reverters.

1 Pursuant to Sections 15-15 and 15-20 of this Code, the
2 State shall notify the chief county assessment officer of any
3 transaction under this subsection (c). The chief county
4 assessment officer shall determine initial and continuing
5 compliance with the requirements of this Section for tax
6 exemption. Failure to notify the chief county assessment
7 officer of a transaction under this subsection (c) or to
8 otherwise comply with the requirements of Sections 15-15 and
9 15-20 of this Code shall, in the discretion of the chief county
10 assessment officer, constitute cause to terminate the
11 exemption, notwithstanding any other provision of this Code.

12 (c-1) If the Illinois State Toll Highway Authority sells
13 the Illinois State Toll Highway Authority headquarters
14 building and surrounding land, located at 2700 Ogden Avenue,
15 Downers Grove, Illinois as provided in subdivision (a)(2) of
16 Section 7.5 of the State Property Control Act, to another
17 entity whose property is not exempt and immediately thereafter
18 enters into a leaseback or other agreement that directly or
19 indirectly gives the State or the Illinois State Toll Highway
20 Authority a right to use, control, and possess the property,
21 that portion of the property leased and occupied exclusively by
22 the State or the Authority shall remain exempt under this
23 Section. For the property to remain exempt under this
24 subsection (c), the Authority must retain an option to purchase
25 the property at a future date or, within the limitations period
26 for reverters, the property must revert back to the Authority.

1 If the property has been conveyed as described in this
2 subsection (c), the property is no longer exempt pursuant to
3 this Section as of the date when:

4 (1) the right of the State or the Authority to use,
5 control, and possess the property has been terminated; or

6 (2) the Authority no longer has an option to purchase
7 or otherwise acquire the property and there is no provision
8 for a reverter of the property to the Authority within the
9 limitations period for reverters.

10 Pursuant to Sections 15-15 and 15-20 of this Code, the
11 Authority shall notify the chief county assessment officer of
12 any transaction under this subsection (c). The chief county
13 assessment officer shall determine initial and continuing
14 compliance with the requirements of this Section for tax
15 exemption. Failure to notify the chief county assessment
16 officer of a transaction under this subsection (c) or to
17 otherwise comply with the requirements of Sections 15-15 and
18 15-20 of this Code shall, in the discretion of the chief county
19 assessment officer, constitute cause to terminate the
20 exemption, notwithstanding any other provision of this Code.

21 (d) The fair market rent of each parcel of real property in
22 Will County owned by the State of Illinois for the purpose of
23 developing an airport by the Department of Transportation shall
24 include the assessed value of leasehold tax. The lessee of each
25 parcel of real property in Will County owned by the State of
26 Illinois for the purpose of developing an airport by the

1 Department of Transportation shall not be liable for the taxes
2 thereon. In order for the State to compensate taxing districts
3 for the leasehold tax under this paragraph the Will County
4 Supervisor of Assessments shall certify, in writing, to the
5 Department of Transportation, the amount of leasehold taxes
6 extended for the 2002 property tax year for each such exempt
7 parcel. The Department of Transportation shall pay to the Will
8 County Treasurer, from the Tax Recovery Fund, on or before July
9 1 of each year, the amount of leasehold taxes for each such
10 exempt parcel as certified by the Will County Supervisor of
11 Assessments. The tax compensation shall terminate on December
12 31, 2020. It is the duty of the Department of Transportation to
13 file with the Office of the Will County Supervisor of
14 Assessments an affidavit stating the termination date for
15 rental of each such parcel due to airport construction. The
16 affidavit shall include the property identification number for
17 each such parcel. In no instance shall tax compensation for
18 property owned by the State be deemed delinquent or bear
19 interest. In no instance shall a lien attach to the property of
20 the State. In no instance shall the State be required to pay
21 leasehold tax compensation in excess of the Tax Recovery Fund's
22 balance.

23 (e) Public Act 81-1026 applies to all leases or agreements
24 entered into or renewed on or after September 24, 1979.

25 (f) Notwithstanding anything to the contrary in this Code,
26 all property owned by the State that is the Illiana Expressway,

1 as defined in the Public Private Agreements for the Illiana
2 Expressway Act, and that is used for transportation purposes
3 and that is leased for those purposes to another entity whose
4 property is not exempt shall remain exempt, and any leasehold
5 interest in the property shall not be subject to taxation under
6 Section 9-195 of this Act.

7 (g) Notwithstanding anything to the contrary in this
8 Section, all property owned by the State or the Illinois State
9 Toll Highway Authority that is defined as a transportation
10 project under the Public-Private Partnerships for
11 Transportation Act and that is used for transportation purposes
12 and that is leased for those purposes to another entity whose
13 property is not exempt shall remain exempt, and any leasehold
14 interest in the property shall not be subject to taxation under
15 Section 9-195 of this Act.

16 (Source: P.A. 95-331, eff. 8-21-07; 96-192, eff. 8-10-09;
17 96-913, eff. 6-9-10.)

18 (35 ILCS 200/15-195 new)

19 Sec. 15-195. Exemption for qualified airport leased
20 property. Notwithstanding anything in this Code to the
21 contrary, all property owned by an airport authority created
22 and established under the Airport Authorities Act shall remain
23 exempt from taxation and any leasehold interest in that
24 property is not subject to taxation under Section 9-195 if that
25 property is used for transportation purposes as part of a

1 transportation project undertaken pursuant to the
2 Public-Private Partnerships for Transportation Act and is
3 leased to another entity whose property is not exempt.

4 Section 945. The Toll Highway Act is amended by adding
5 Section 11.1 as follows:

6 (605 ILCS 10/11.1 new)

7 Sec. 11.1. Public-private partnerships. The Authority may
8 exercise all powers granted to it under the Public-Private
9 Partnerships for Transportation Act.

10 Section 950. The Prevailing Wage Act is amended by changing
11 Section 2 as follows:

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

13 Sec. 2. This Act applies to the wages of laborers,
14 mechanics and other workers employed in any public works, as
15 hereinafter defined, by any public body and to anyone under
16 contracts for public works. This includes any maintenance,
17 repair, assembly, or disassembly work performed on equipment
18 whether owned, leased, or rented.

19 As used in this Act, unless the context indicates
20 otherwise:

21 "Public works" means all fixed works constructed or
22 demolished by any public body, or paid for wholly or in part

1 out of public funds. "Public works" as defined herein includes
2 all projects financed in whole or in part with bonds, grants,
3 loans, or other funds made available by or through the State or
4 any of its political subdivisions, including but not limited
5 to: bonds issued under the Industrial Project Revenue Bond Act
6 (Article 11, Division 74 of the Illinois Municipal Code), the
7 Industrial Building Revenue Bond Act, the Illinois Finance
8 Authority Act, the Illinois Sports Facilities Authority Act, or
9 the Build Illinois Bond Act; loans or other funds made
10 available pursuant to the Build Illinois Act; or funds from the
11 Fund for Illinois' Future under Section 6z-47 of the State
12 Finance Act, funds for school construction under Section 5 of
13 the General Obligation Bond Act, funds authorized under Section
14 3 of the School Construction Bond Act, funds for school
15 infrastructure under Section 6z-45 of the State Finance Act,
16 and funds for transportation purposes under Section 4 of the
17 General Obligation Bond Act. "Public works" also includes (i)
18 all projects financed in whole or in part with funds from the
19 Department of Commerce and Economic Opportunity under the
20 Illinois Renewable Fuels Development Program Act for which
21 there is no project labor agreement; ~~and~~ (ii) all work
22 performed pursuant to a public private agreement under the
23 Public Private Agreements for the Illiana Expressway Act; and
24 (iii) all projects undertaken under a public-private agreement
25 under the Public-Private Partnerships for Transportation Act.
26 "Public works" also includes all projects at leased facility

1 property used for airport purposes under Section 35 of the
2 Local Government Facility Lease Act. "Public works" also
3 includes the construction of a new wind power facility by a
4 business designated as a High Impact Business under Section
5 5.5(a)(3)(E) of the Illinois Enterprise Zone Act. "Public
6 works" does not include work done directly by any public
7 utility company, whether or not done under public supervision
8 or direction, or paid for wholly or in part out of public
9 funds. "Public works" does not include projects undertaken by
10 the owner at an owner-occupied single-family residence or at an
11 owner-occupied unit of a multi-family residence.

12 "Construction" means all work on public works involving
13 laborers, workers or mechanics. This includes any maintenance,
14 repair, assembly, or disassembly work performed on equipment
15 whether owned, leased, or rented.

16 "Locality" means the county where the physical work upon
17 public works is performed, except (1) that if there is not
18 available in the county a sufficient number of competent
19 skilled laborers, workers and mechanics to construct the public
20 works efficiently and properly, "locality" includes any other
21 county nearest the one in which the work or construction is to
22 be performed and from which such persons may be obtained in
23 sufficient numbers to perform the work and (2) that, with
24 respect to contracts for highway work with the Department of
25 Transportation of this State, "locality" may at the discretion
26 of the Secretary of the Department of Transportation be

1 construed to include two or more adjacent counties from which
2 workers may be accessible for work on such construction.

3 "Public body" means the State or any officer, board or
4 commission of the State or any political subdivision or
5 department thereof, or any institution supported in whole or in
6 part by public funds, and includes every county, city, town,
7 village, township, school district, irrigation, utility,
8 reclamation improvement or other district and every other
9 political subdivision, district or municipality of the state
10 whether such political subdivision, municipality or district
11 operates under a special charter or not.

12 The terms "general prevailing rate of hourly wages",
13 "general prevailing rate of wages" or "prevailing rate of
14 wages" when used in this Act mean the hourly cash wages plus
15 fringe benefits for training and apprenticeship programs
16 approved by the U.S. Department of Labor, Bureau of
17 Apprenticeship and Training, health and welfare, insurance,
18 vacations and pensions paid generally, in the locality in which
19 the work is being performed, to employees engaged in work of a
20 similar character on public works.

21 (Source: P.A. 95-341, eff. 8-21-07; 96-28, eff. 7-1-09; 96-58,
22 eff. 1-1-10; 96-186, eff. 1-1-10; 96-913, eff. 6-9-10; 96-1000,
23 eff. 7-2-10.)

24 Section 999. Effective date. This Act takes effect upon
25 becoming law.