



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3318

Introduced 2/7/2012, by Sen. Toi W. Hutchinson

SYNOPSIS AS INTRODUCED:

605 ILCS 130/25
605 ILCS 130/80
605 ILCS 130/95
735 ILCS 30/15-5-35

Amends the Public Private Agreements for the Illiana Expressway Act. Removes language providing that a public private agreement includes a provision stating that, in the event the contractor finds it necessary, proper, or desirable to enter into subcontracts with one or more design build entities, then it must follow a selection process that is, to the greatest extent possible, identical to the selection process contained in the Design Build Procurement Act. Provides that the Department of Transportation may acquire property for the Illiana Expressway project using the powers granted to it in the Eminent Domain Act. Provides that any bonds, debt, or other securities or other financing issued by or on behalf of a contractor for the purposes of a project undertaken pursuant to the Act shall not be deemed to constitute a debt of the State. Removes language providing that the Department may not exercise the power of quick take in connection with the Illiana Expressway project. Makes a corresponding change in the Eminent Domain Act. Effective immediately.

LRB097 17401 HEP 64211 b

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 5. The Public Private Agreements for the Illiana
5 Expressway Act is amended by changing Sections 25, 80, and 95
6 as follows:

7 (605 ILCS 130/25)

8 Sec. 25. Provisions of the public private agreement.

9 (a) The public private agreement shall include all of the
10 following:

11 (1) The term of the public private agreement that is
12 consistent with Section 15 of this Act;

13 (2) The powers, duties, responsibilities, obligations,
14 and functions of the Department and the contractor;

15 (3) Compensation or payments to the Department, if
16 applicable;

17 (4) Compensation or payments to the contractor;

18 (5) A provision specifying that the Department:

19 (A) has ready access to information regarding the
20 contractor's powers, duties, responsibilities,
21 obligations, and functions under the public private
22 agreement;

23 (B) has the right to demand and receive information

1 from the contractor concerning any aspect of the
2 contractor's powers, duties, responsibilities,
3 obligations, and functions under the public private
4 agreement; and

5 (C) has the authority to direct or countermand
6 decisions by the contractor at any time;

7 (6) A provision imposing an affirmative duty on the
8 contractor to provide the Department with any information
9 the contractor reasonably believes the Department would
10 want to know or would need to know to enable the Department
11 to exercise its powers, carry out its duties,
12 responsibilities, and obligations, and perform its
13 functions under this Act or the public private agreement or
14 as otherwise required by law;

15 (7) A provision requiring the contractor to provide the
16 Department with advance notice of any decision that bears
17 significantly on the public interest so the Department has
18 a reasonable opportunity to evaluate and countermand that
19 decision pursuant to this Section;

20 (8) A requirement that the Department monitor and
21 oversee the contractor's practices and take action that the
22 Department considers appropriate to ensure that the
23 contractor is in compliance with the terms of the public
24 private agreement;

25 (9) The authority of the Department to enter into
26 contracts with third parties pursuant to Section 50 of this

1 Act;

2 (10) A provision governing the contractor's authority
3 to negotiate and execute subcontracts with third parties;

4 (10.5) (Blank). ~~A provision stating that, in the event~~
5 ~~the contractor finds it necessary, proper, or desirable to~~
6 ~~enter into subcontracts with one or more design build~~
7 ~~entities, then it must follow a selection process that is,~~
8 ~~to the greatest extent possible, identical to the selection~~
9 ~~process contained in the Design Build Procurement Act;~~

10 (11) The authority of the contractor to impose user
11 fees and the amounts of those fees, including the authority
12 of the contractor to use congestion pricing, pursuant to
13 which higher tolls rates are imposed during times or in
14 locations of increased congestion;

15 (12) A provision governing the deposit and allocation
16 of revenues including user fees;

17 (13) A provision governing rights to real and personal
18 property of the State, the Department, the contractor, and
19 other third parties;

20 (14) A provision stating that the contractor must,
21 pursuant to Section 75 of this Act, finance an independent
22 audit if the construction costs under the contract exceed
23 \$50,000,000;

24 (15) A provision regarding the implementation and
25 delivery of a comprehensive system of internal audits;

26 (16) A provision regarding the implementation and

1 delivery of reports, which must include a requirement that
2 the contractor file with the Department, at least on an
3 annual basis, financial statements containing information
4 required by generally accepted accounting principles
5 (GAAP);

6 (17) Procedural requirements for obtaining the prior
7 approval of the Department when rights that are the subject
8 of the agreement, including but not limited to development
9 rights, construction rights, property rights, and rights
10 to certain revenues, are sold, assigned, transferred, or
11 pledged as collateral to secure financing or for any other
12 reason;

13 (18) Grounds for termination of the agreement by the
14 Department or the contractor and a restatement of the
15 Department's rights under Section 35 of this Act;

16 (19) A requirement that the contractor enter into a
17 project labor agreement pursuant to Section 100 of this
18 Act;

19 (19.5) A provision stating that construction
20 contractors shall comply with the requirements of Section
21 30-22 of the Illinois Procurement Code pursuant to Section
22 100 of this Act;

23 (20) Timelines, deadlines, and scheduling;

24 (21) Review of plans, including development,
25 financing, construction, management, or operations plans,
26 by the Department;

1 (22) Inspections by the Department, including
2 inspections of construction work and improvements;

3 (23) Rights and remedies of the Department in the event
4 that the contractor defaults or otherwise fails to comply
5 with the terms of the agreement;

6 (24) A code of ethics for the contractor's officers and
7 employees; and

8 (25) Procedures for amendment to the agreement.

9 (b) The public private agreement may include any or all of
10 the following:

11 (1) A provision regarding the extension of the
12 agreement that is consistent with Section 15 of this Act;

13 (2) Cash reserves requirements;

14 (3) Delivery of performance and payment bonds or other
15 performance security in a form and amount that is
16 satisfactory to the Department;

17 (4) Maintenance of public liability insurance;

18 (5) Maintenance of self-insurance;

19 (6) Provisions governing grants and loans, pursuant to
20 which the Department may agree to make grants or loans for
21 the development, financing, construction, management, or
22 operation of the Illiana Expressway project from time to
23 time from amounts received from the federal government or
24 any agency or instrumentality of the federal government or
25 from any State or local agency;

26 (7) Reimbursements to the Department for work

1 performed and goods, services, and equipment provided by
2 the Department; and

3 (8) All other terms, conditions, and provisions
4 acceptable to the Department that the Department deems
5 necessary and proper and in the public interest.

6 (Source: P.A. 96-913, eff. 6-9-10.)

7 (605 ILCS 130/80)

8 Sec. 80. Property acquisition. The Department may acquire
9 property for the Illiana Expressway project using the powers
10 granted to it in the Illinois Highway Code and the Eminent
11 Domain Act. ~~The Department may not exercise the power of quick~~
12 ~~take in connection with the Illiana Expressway project.~~

13 (Source: P.A. 96-913, eff. 6-9-10.)

14 (605 ILCS 130/95)

15 Sec. 95. Financial arrangements.

16 (a) The Department may apply for, execute, or endorse
17 applications submitted by contractors and other third parties
18 to obtain federal, State, or local credit assistance to
19 develop, finance, maintain, or operate the Illiana Expressway
20 project.

21 (b) The Department may take any action to obtain federal,
22 State, or local assistance for the Illiana Expressway project
23 that serves the public purpose of this Act and may enter into
24 any contracts required to receive the federal assistance. The

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

10 (c) The Department may agree to make grants or loans for
11 the development, financing, construction, management, or
12 operation of the Illiana Expressway project from time to time,
13 from amounts received from the federal, State, or local
14 government or any agency or instrumentality of the federal,
15 State, or local government.

16 (d) Any financing of the Illiana Expressway project may be
17 in the amounts and subject to the terms and conditions
18 contained in the public private agreement.

19 (e) For the purpose of financing the Illiana Expressway
20 project, the contractor and the Department may do the
21 following:

22 (1) propose to use any and all revenues that may be
23 available to them;

24 (2) enter into grant agreements;

25 (3) access any other funds available to the Department;

26 and

1 (4) accept grants from any public or private agency or
2 entity.

3 (f) For the purpose of financing the Illiana Expressway
4 project, public funds may be used and mixed and aggregated with
5 funds provided by or on behalf of the contractor or other
6 private entities.

7 (g) For the purpose of financing the Illiana Expressway
8 project, the Department is authorized to apply for, execute, or
9 endorse applications for an allocation of tax-exempt bond
10 financing authorization provided by Section 142(m) of the
11 United States Internal Revenue Code, as well as financing
12 available under any other federal law or program.

13 (h) Any bonds, debt, or other securities or other financing
14 issued by or on behalf of a contractor for the purposes of a
15 project undertaken pursuant to this Act shall not be deemed to
16 constitute a debt of the State or any political subdivision of
17 the State or a pledge of the faith and credit of the State or
18 any political subdivision of the State.

19 (Source: P.A. 96-913, eff. 6-9-10.)

20 Section 10. The Eminent Domain Act is amended by changing
21 Section 15-5-35 as follows:

22 (735 ILCS 30/15-5-35)

23 Sec. 15-5-35. Eminent domain powers in ILCS Chapters 605
24 through 625. The following provisions of law may include

1 express grants of the power to acquire property by condemnation
2 or eminent domain:

3 (605 ILCS 5/4-501); Illinois Highway Code; Department of
4 Transportation and counties; for highway purposes.

5 (605 ILCS 5/4-502); Illinois Highway Code; Department of
6 Transportation; for ditches and drains.

7 (605 ILCS 5/4-505); Illinois Highway Code; Department of
8 Transportation; for replacement of railroad and public
9 utility property taken for highway purposes.

10 (605 ILCS 5/4-509); Illinois Highway Code; Department of
11 Transportation; for replacement of property taken for
12 highway purposes.

13 (605 ILCS 5/4-510); Illinois Highway Code; Department of
14 Transportation; for rights-of-way for future highway
15 purposes.

16 (605 ILCS 5/4-511); Illinois Highway Code; Department of
17 Transportation; for relocation of structures taken for
18 highway purposes.

19 (605 ILCS 5/5-107); Illinois Highway Code; counties; for county
20 highway relocation.

21 (605 ILCS 5/5-801); Illinois Highway Code; counties; for
22 highway purposes.

23 (605 ILCS 5/5-802); Illinois Highway Code; counties; for
24 ditches and drains.

25 (605 ILCS 5/6-309); Illinois Highway Code; highway

1 commissioners or county superintendents; for township or
2 road district roads.

3 (605 ILCS 5/6-801); Illinois Highway Code; highway
4 commissioners; for road district or township roads.

5 (605 ILCS 5/6-802); Illinois Highway Code; highway
6 commissioners; for ditches and drains.

7 (605 ILCS 5/8-102); Illinois Highway Code; Department of
8 Transportation, counties, and municipalities; for limiting
9 freeway access.

10 (605 ILCS 5/8-103); Illinois Highway Code; Department of
11 Transportation, counties, and municipalities; for freeway
12 purposes.

13 (605 ILCS 5/8-106); Illinois Highway Code; Department of
14 Transportation and counties; for relocation of existing
15 crossings for freeway purposes.

16 (605 ILCS 5/9-113); Illinois Highway Code; highway
17 authorities; for utility and other uses in rights-of-ways.

18 (605 ILCS 5/10-302); Illinois Highway Code; counties; for
19 bridge purposes.

20 (605 ILCS 5/10-602); Illinois Highway Code; municipalities;
21 for ferry and bridge purposes.

22 (605 ILCS 5/10-702); Illinois Highway Code; municipalities;
23 for bridge purposes.

24 (605 ILCS 5/10-901); Illinois Highway Code; Department of
25 Transportation; for ferry property.

26 (605 ILCS 10/9); Toll Highway Act; Illinois State Toll Highway

1 Authority; for toll highway purposes.
2 (605 ILCS 10/9.5); Toll Highway Act; Illinois State Toll
3 Highway Authority; for its authorized purposes.
4 (605 ILCS 10/10); Toll Highway Act; Illinois State Toll Highway
5 Authority; for property of a municipality or political
6 subdivision for toll highway purposes.
7 (605 ILCS 115/14); Toll Bridge Act; counties; for toll bridge
8 purposes.
9 (605 ILCS 115/15); Toll Bridge Act; counties; for the purpose
10 of taking a toll bridge to make it a free bridge.
11 (605 ILCS 130/80); Public Private Agreements for the Illiana
12 Expressway Act; Department of Transportation; for the
13 Illiana Expressway project.
14 (610 ILCS 5/17); Railroad Incorporation Act; railroad
15 corporation; for real estate for railroad purposes.
16 (610 ILCS 5/18); Railroad Incorporation Act; railroad
17 corporations; for materials for railways.
18 (610 ILCS 5/19); Railroad Incorporation Act; railways; for land
19 along highways.
20 (610 ILCS 70/1); Railroad Powers Act; purchasers and lessees of
21 railroad companies; for railroad purposes.
22 (610 ILCS 115/2 and 115/3); Street Railroad Right of Way Act;
23 street railroad companies; for street railroad purposes.
24 (615 ILCS 5/19); Rivers, Lakes, and Streams Act; Department of
25 Natural Resources; for land along public waters for
26 pleasure, recreation, or sport purposes.

1 (615 ILCS 10/7.8); Illinois Waterway Act; Department of Natural
2 Resources; for waterways and appurtenances.

3 (615 ILCS 15/7); Flood Control Act of 1945; Department of
4 Natural Resources; for the purposes of the Act.

5 (615 ILCS 30/9); Illinois and Michigan Canal Management Act;
6 Department of Natural Resources; for dams, locks, and
7 improvements.

8 (615 ILCS 45/10); Illinois and Michigan Canal Development Act;
9 Department of Natural Resources; for development and
10 management of the canal.

11 (620 ILCS 5/72); Illinois Aeronautics Act; Division of
12 Aeronautics of the Department of Transportation; for
13 airport purposes.

14 (620 ILCS 5/73); Illinois Aeronautics Act; Division of
15 Aeronautics of the Department of Transportation; for
16 removal of airport hazards.

17 (620 ILCS 5/74); Illinois Aeronautics Act; Division of
18 Aeronautics of the Department of Transportation; for
19 airport purposes.

20 (620 ILCS 25/33); Airport Zoning Act; Division of Aeronautics
21 of the Department of Transportation; for air rights.

22 (620 ILCS 40/2 and 40/3); General County Airport and Landing
23 Field Act; counties; for airport purposes.

24 (620 ILCS 40/5); General County Airport and Landing Field Act;
25 counties; for removing hazards.

26 (620 ILCS 45/6 and 45/7); County Airport Law of 1943; boards of

1 directors of airports and landing fields; for airport and
2 landing field purposes.

3 (620 ILCS 50/22 and 50/31); County Airports Act; counties; for
4 airport purposes.

5 (620 ILCS 50/24); County Airports Act; counties; for removal of
6 airport hazards.

7 (620 ILCS 50/26); County Airports Act; counties; for
8 acquisition of airport protection privileges.

9 (620 ILCS 52/15); County Air Corridor Protection Act; counties;
10 for airport zones.

11 (620 ILCS 55/1); East St. Louis Airport Act; Department of
12 Transportation; for airport in East St. Louis metropolitan
13 area.

14 (620 ILCS 65/15); O'Hare Modernization Act; Chicago; for the
15 O'Hare modernization program, including quick-take power.

16 (625 ILCS 5/2-105); Illinois Vehicle Code; Secretary of State;
17 for general purposes.

18 (625 ILCS 5/18c-7501); Illinois Vehicle Code; rail carriers;
19 for railroad purposes, including quick-take power.

20 (Source: P.A. 94-1055, eff. 1-1-07.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.