



Rep. Al Riley

Filed: 11/4/2013

09800SB2365ham002

LRB098 06614 MLW 49563 a

1 AMENDMENT TO SENATE BILL 2365

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2365 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Public Private Agreements for the Illiana  
5 Expressway Act is amended by changing Section 25 as follows:

6 (605 ILCS 130/25)

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

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

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

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

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

16 (4) Compensation or payments to the contractor;

1 (5) A provision specifying that the Department:

2 (A) has ready access to information regarding the  
3 contractor's powers, duties, responsibilities,  
4 obligations, and functions under the public private  
5 agreement;

6 (B) has the right to demand and receive information  
7 from the contractor concerning any aspect of the  
8 contractor's powers, duties, responsibilities,  
9 obligations, and functions under the public private  
10 agreement; and

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

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

21 (7) A provision requiring the contractor to provide the  
22 Department with advance notice of any decision that bears  
23 significantly on the public interest so the Department has  
24 a reasonable opportunity to evaluate and countermand that  
25 decision pursuant to this Section;

26 (8) A requirement that the Department monitor and

1       oversee the contractor's practices and take action that the  
2       Department considers appropriate to ensure that the  
3       contractor is in compliance with the terms of the public  
4       private agreement;

5           (9) The authority of the Department to enter into  
6       contracts with third parties pursuant to Section 50 of this  
7       Act;

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

10          (10.5) A provision stating that, in the event that the  
11       contractor does not have a subcontract with a design-build  
12       entity in effect at the time of execution of the  
13       public-private agreement by the Department, the contractor  
14       ~~must~~ ~~the contractor finds it necessary, proper, or~~  
15       ~~desirable to enter into subcontracts with one or more~~  
16       ~~design build entities, then it must~~ follow a selection  
17       process that is, to the greatest extent possible, identical  
18       to the selection process contained in the Design-Build  
19       Procurement Act;

20          (11) The authority of the contractor to impose user  
21       fees and the amounts of those fees, including the authority  
22       of the contractor to use congestion pricing, pursuant to  
23       which higher tolls rates are imposed during times or in  
24       locations of increased congestion;

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

1           (13) A provision governing rights to real and personal  
2 property of the State, the Department, the contractor, and  
3 other third parties;

4           (14) A provision stating that the contractor must,  
5 pursuant to Section 75 of this Act, finance an independent  
6 audit if the construction costs under the contract exceed  
7 \$50,000,000;

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

10          (16) A provision regarding the implementation and  
11 delivery of reports, which must include a requirement that  
12 the contractor file with the Department, at least on an  
13 annual basis, financial statements containing information  
14 required by generally accepted accounting principles  
15 (GAAP);

16          (17) Procedural requirements for obtaining the prior  
17 approval of the Department when rights that are the subject  
18 of the agreement, including but not limited to development  
19 rights, construction rights, property rights, and rights  
20 to certain revenues, are sold, assigned, transferred, or  
21 pledged as collateral to secure financing or for any other  
22 reason;

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

26          (19) A requirement that the contractor enter into a

1 project labor agreement pursuant to Section 100 of this  
2 Act;

3 (19.5) A provision stating that construction  
4 contractors shall comply with the requirements of Section  
5 30-22 of the Illinois Procurement Code pursuant to Section  
6 100 of this Act;

7 (20) Timelines, deadlines, and scheduling;

8 (21) Review of plans, including development,  
9 financing, construction, management, or operations plans,  
10 by the Department;

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

13 (23) Rights and remedies of the Department in the event  
14 that the contractor defaults or otherwise fails to comply  
15 with the terms of the agreement;

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

18 (25) Procedures for amendment to the agreement.

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

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

23 (2) Cash reserves requirements;

24 (3) Delivery of performance and payment bonds or other  
25 performance security in a form and amount that is  
26 satisfactory to the Department;

1 (4) Maintenance of public liability insurance;

2 (5) Maintenance of self-insurance;

3 (6) Provisions governing grants and loans, pursuant to  
4 which the Department may agree to make grants or loans for  
5 the development, financing, construction, management, or  
6 operation of the Illiana Expressway project from time to  
7 time from amounts received from the federal government or  
8 any agency or instrumentality of the federal government or  
9 from any State or local agency;

10 (7) Reimbursements to the Department for work  
11 performed and goods, services, and equipment provided by  
12 the Department; and

13 (8) All other terms, conditions, and provisions  
14 acceptable to the Department that the Department deems  
15 necessary and proper and in the public interest.

16 (Source: P.A. 96-913, eff. 6-9-10; 97-808, eff. 7-13-12.)".