

AN ACT concerning State government.

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

Section 1. Short title. This Act may be cited as the Public-Private Partnerships for Transportation Act.

Section 5. Public policy and legislative intent.

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

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

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

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

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

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

Section 10. Definitions. As used in this Act:

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

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

"Authority" means the Illinois State Toll Highway Authority.

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

"Department" means the Illinois Department of Transportation.

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

"Maintain" or "maintenance" includes ordinary maintenance,

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

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

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

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

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

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

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

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

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

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

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

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

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

"Transportation agency" means (i) the Department or (ii) the Authority.

"Transportation facility" means any new or existing road, highway, toll highway, bridge, tunnel, intermodal facility, intercity or high-speed passenger rail, or other transportation facility or infrastructure, excluding airports, under the jurisdiction of the Department or the Authority. The term "transportation facility" may refer to one or more transportation facilities that are proposed to be developed or operated as part of a single transportation project.

"Transportation project" or "project" means any or the combination of the development, financing, or operation with respect to all or a portion of any transportation facility under the jurisdiction of the transportation agency, undertaken pursuant to this Act.

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

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

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

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

(b) The Authority shall not enter into a public-private agreement involving a lease or other transfer of any toll highway, or portions thereof, under the Authority's jurisdiction which were open to vehicular traffic on the effective date of this Act. The Authority shall not enter into a public-private agreement for the purpose of making roadway improvements, including but not limited to reconstruction,

adding lanes, and adding ramps, to any toll highway, or portions thereof, under the Authority's jurisdiction which were open to vehicular traffic on the effective date of this Act. The Authority shall not use any revenue generated by any toll highway, or portions thereof, under the Authority's jurisdiction which were open to vehicular traffic on the effective date of this Act to enter into or provide funding for a public-private agreement. The Authority shall not use any asset, or the proceeds from the sale or lease of any such asset, which was owned by the Authority on the effective date of this Act to enter into or provide funding for a public-private agreement. The Authority may enter into a public-private partnership to develop, finance, and operate new toll highways authorized by the Governor and the General Assembly pursuant to Section 14.1 of the Toll Highway Act, non-highway transportation projects on the toll highway system such as commuter rail or high-speed rail lines, and intelligent transportation infrastructure that will enhance the safety, efficiency, and environmental quality of the toll highway system. The Authority may operate or provide operational services such as toll collection on highways which are developed or financed, or both, through a public-private agreement entered into by another public entity.

(c) A contractor has:

(1) all powers allowed by law generally to a private entity having the same form of organization as the

contractor; and

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

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

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

(e) Each year, at least 30 days prior to the beginning of the transportation agency's fiscal year, the transportation agency shall submit a description of potential projects that the transportation agency is considering undertaking under

this Act to each county, municipality, and metropolitan planning organization, with respect to each project located within its boundaries.

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

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

Section 20. Procurement process.

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

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

Nothing in this Act shall preclude a public agency, including the Department or the Authority, from submitting a proposal to develop or operate, or to develop and operate, a transportation facility as a transportation project. The transportation agency shall give a proposal submitted by a public agency equal consideration as it gives proposals submitted by private entities, and, for that purpose, treat the public agency as a private entity.

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

(b) The transportation agency shall establish a process for prequalification of all potential private entities. The transportation agency shall: (i) provide a public notice of the prequalification process for such period as deemed appropriate by the agency; (ii) set forth requirements and evaluation criteria in order to become prequalified; (iii) determine which private entities that have submitted prequalification applications, if any, meet the requirements and evaluation criteria; and (iv) allow only those entities that have been prequalified to submit proposals or bids. The transportation agency shall make publicly available on its website during the

request for qualifications period information regarding firms that are prequalified by the transportation agency pursuant to Section 20 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act to provide architectural, engineering, and land surveying services and shall require the use of such firms for such services.

(c) Competitive sealed bidding requirements:

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

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

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

(4) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information as may be specified by rule shall be recorded. After the award of the contract, the winning bid and the record of each

unsuccessful bid shall be open to public inspection.

(5) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Act. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award, such as discounts, transportation costs, and total or life cycle costs, shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.

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

(7) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, except when

the transportation agency determines it is not in the best interest of the State and by written explanation determines another bidder shall receive the award. The explanation shall appear in the appropriate volume of the State of Illinois Procurement Bulletin. The written explanation must include:

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

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

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

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

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

(d) Competitive sealed proposal requirements:

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

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

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

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

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

(6) As provided in the request for proposals and under any applicable rules, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarifying and assuring full understanding of and responsiveness to the solicitation requirements. Those offerors shall be accorded fair and equal treatment with

respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submission and before award for the purpose of obtaining best and final offers. In conducting discussions there shall be no disclosure of any information derived from proposals submitted by competing offerors. If information is disclosed to any offeror, it shall be provided to all competing offerors.

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

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

(1) submit the proposal or proposals to the Commission on Government Forecasting and Accountability, which, within 20 days of submission by the transportation agency, shall complete a review of the proposal or proposals and

report on the value of the proposal or proposals to the State;

(2) hold one or more public hearings on the proposal or proposals, publish notice of the hearing or hearings at least 7 days before the hearing, and include the following in the notice: (i) the date, time, and place of the hearing and the address of the transportation agency, (ii) the subject matter of the hearing, (iii) a description of the agreement to be awarded, (iv) the determination made by the transportation agency that such proposal or proposals best serve the public purpose of this Act and satisfy the criteria set forth in the request for proposals, and (v) that the public may be heard on the proposal or proposals during the public hearing; and

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

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

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

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

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

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

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

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

(6) to interview proposers; and

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

(g) If a proposal is approved, the transportation agency shall execute the public-private agreement, publish notice of the execution of the public-private agreement on its website and in a newspaper or newspapers of general circulation within the county or counties in which the transportation project is to be located, and publish the entire agreement on its website.

Any action to contest the validity of a public-private agreement entered into under this Act must be brought no later than 60 days after the date of publication of the notice of execution of the public-private agreement.

(h) For any transportation project with an estimated construction cost of over \$50,000,000, the transportation agency may also require the approved proposer to pay the costs for an independent audit of any and all traffic and cost estimates associated with the approved proposal, as well as a review of all public costs and potential liabilities to which taxpayers could be exposed (including improvements to other transportation facilities that may be needed as a result of the approved proposal, failure by the approved proposer to reimburse the transportation agency for services provided, and potential risk and liability in the event the approved proposer defaults on the public-private agreement or on bonds issued for the project). If required by the transportation agency, this independent audit must be conducted by an independent consultant selected by the transportation agency, and all information from the review must be fully disclosed.

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

Section 25. Design-build procurement.

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

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

(2) The request for qualifications shall be prepared for each project and must contain, without limitation, the following information: (i) the name of the transportation agency; (ii) a preliminary schedule for the completion of the contract; (iii) the proposed budget for the project, the source of funds, and the currently available funds at the time the request for proposal is submitted; (iv) prequalification criteria for design-build entities wishing to submit proposals (the transportation agency shall include, at a minimum, its

normal prequalification, licensing, registration, and other requirements, but nothing contained herein precludes the use of additional prequalification criteria by the transportation agency); (v) material requirements of the contract, including but not limited to, the proposed terms and conditions, required performance and payment bonds, insurance, and the entity's plan to comply with the utilization goals established by the corporate authorities of the transportation agency for minority and women business enterprises and to comply with Section 2-105 of the Illinois Human Rights Act; (vi) the performance criteria; (vii) the evaluation criteria for each phase of the solicitation; and (viii) the number of entities that will be considered for the request for proposals phase.

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

(4) The date that statements of qualifications are due must be at least 21 calendar days after the date of the issuance of the request for qualifications. In the event the cost of the project is estimated to exceed \$12,000,000, then the statement of qualifications due date must be at least 28 calendar days after the date of the issuance of the request for qualifications. The transportation agency shall include in the request for proposals a minimum of 30 days to develop the

proposals after the selection of entities from the evaluation of the statements of qualifications is completed.

(c)(1) The transportation agency shall develop, with the assistance of a licensed design professional, the request for qualifications and the request for proposals, which shall include scope and performance criteria. The scope and performance criteria must be in sufficient detail and contain adequate information to reasonably apprise the private entities of the transportation agency's overall programmatic needs and goals, including criteria and preliminary design plans, general budget parameters, schedule, and delivery requirements.

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

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

(4) The design professional that prepares the scope and performance criteria is prohibited from participating in any

private entity proposal for the project.

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

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

The transportation agency shall include the following criteria in every request for qualifications phase evaluation of private entities: (i) experience of personnel; (ii) successful experience with similar project types; (iii) financial capability; (iv) timeliness of past performance; (v) experience with similarly sized projects; (vi) successful reference checks of the firm; (vii) commitment to assign personnel for the duration of the project and qualifications of

the entity's consultants; and (viii) ability or past performance in meeting or exhausting good faith efforts to meet the utilization goals for business enterprises established in the Business Enterprise for Minorities, Females, and Persons with Disabilities Act and in complying with Section 2-105 of the Illinois Human Rights Act. No proposal shall be considered that does not include an entity's plan to comply with the requirements established in the minority and women business enterprises and economically disadvantaged firms established by the corporate authorities of the transportation agency and with Section 2-105 of the Illinois Human Rights Act. The transportation agency may include any additional relevant criteria in the request for qualifications phase that it deems necessary for a proper qualification review.

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

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

(3) The transportation agency shall include in the request for proposals the evaluating factors to be used in the

technical and cost submission components. Each request for proposals shall establish, for both the technical and cost submission components, the relative importance assigned to each evaluation factor and subfactor, including any weighting of criteria to be employed by the transportation agency. The transportation agency must maintain a record of the evaluation scoring to be disclosed in event of a protest regarding the solicitation.

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

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

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

(e) Statements of qualifications and proposals must be properly identified and sealed. Statements of qualifications and proposals may not be reviewed until after the deadline for submission has passed as set forth in the request for qualifications or the request for proposals. All private entities submitting statements of qualifications or proposals shall be disclosed after the deadline for submission, and all private entities who are selected for request for proposals phase evaluation shall also be disclosed at the time of that determination.

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

Statements of qualifications and proposals must meet all material requirements of the request for qualifications or request for proposals, or else they may be rejected as

non-responsive. The transportation agency shall have the right to reject any and all statements of qualifications and proposals.

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

The transportation agency shall review the statements of qualifications and the proposals for compliance with the performance criteria and evaluation factors.

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

Section 30. Interim agreements.

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

(1) permit the approved proposer to commence activities relating to a proposed project as the transportation agency and the approved proposer shall agree to and for which the approved proposer may be compensated, including, but not limited to, project planning, advance right-of-way acquisition, design and

engineering, environmental analysis and mitigation, survey, conducting transportation and revenue studies, and ascertaining the availability of financing for the proposed facility or facilities;

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

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

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

(5) establish procedures for the selection of professional design firms and subcontractors, which shall include procedures consistent with the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act for the selection of design professional firms and may include, in the discretion of the transportation agency, procedures consistent with the low bid procurement procedures outlined in the Illinois

Procurement Code for the selection of construction companies; and

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

(b) A transportation agency may enter into an interim agreement with multiple approved proposers if the transportation agency determines in writing that it is in the public interest to do so.

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

Section 35. Public-private agreements.

(a) Unless undertaking actions otherwise permitted in an interim agreement entered into under Section 30 of this Act, before developing, financing, or operating the transportation project, the approved proposer shall enter into a public-private agreement with the transportation agency. Subject to the requirements of this Act, a public-private agreement may provide that the approved proposer, acting on behalf of the transportation agency, is partially or entirely responsible for any combination of developing, financing, or

operating the transportation project under terms set forth in the public-private agreement.

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

(1) Construction, financing, and operation of the transportation project under terms set forth in the public-private agreement, in any form as deemed appropriate by the transportation agency, including, but not limited to, a long-term concession and lease, a design-bid-build agreement, a design-build agreement, a design-build-maintain agreement, a design-build-operate-maintain agreement and a design-build-finance-operate-maintain agreement.

(2) Delivery of performance and payment bonds or other performance security determined suitable by the transportation agency, including letters of credit, United States bonds and notes, parent guaranties, and cash collateral, in connection with the development, financing, or operation of the transportation project, in the forms and amounts set forth in the public-private agreement or otherwise determined as satisfactory by the transportation agency to protect the transportation agency and payment bond beneficiaries who have a direct contractual relationship with the contractor or a subcontractor of the

contractor to supply labor or material. The payment or performance bond or alternative form of performance security is not required for the portion of a public-private agreement that includes only design, planning, or financing services, the performance of preliminary studies, or the acquisition of real property.

(3) Review of plans for any development or operation, or both, of the transportation project by the transportation agency.

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

(5) Maintenance of:

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

(B) self-insurance;

each in form and amount as set forth in the public-private agreement or otherwise satisfactory to the transportation agency as reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the

continued operation of the transportation project.

(6) Where operations are included within the contractor's obligations under the public-private agreement, monitoring of the maintenance practices of the contractor by the transportation agency or another entity designated by the transportation agency or under the public-private agreement and the taking of the actions the transportation agency finds appropriate to ensure that the transportation project is properly maintained.

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

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

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

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

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

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

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

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

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

(G) compensation in the event of any termination;

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

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

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

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

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

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

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

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

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

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

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

(14) Procedures for the selection of professional design firms and subcontractors, which shall include procedures consistent with the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act for

the selection of professional design firms and may include, in the discretion of the transportation agency, procedures consistent with the low bid procurement procedures outlined in the Illinois Procurement Code for the selection of construction companies.

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

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

(d) A public-private agreement may:

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

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

(3) provide that any adjustment by the contractor

permitted under paragraph (2) of this subsection (d) may be based on the indices, methodologies, or other factors described in the public-private agreement or approved by the transportation agency;

(4) authorize the contractor to charge and collect user fees through methods, including, but not limited to, automatic vehicle identification systems, electronic toll collection systems, and, to the extent permitted by law, global positioning system-based, photo-based, or video-based toll collection enforcement, provided that to the maximum extent feasible the contractor will (i) utilize open road tolling methods that allow payment of tolls at highway speeds and (ii) comply with United States Department of Transportation requirements and best practices with respect to tolling methods; and

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

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

(f) Upon the termination or expiration of the public-private agreement, including a termination for default, the transportation agency shall have the right to take over the

transportation project and to succeed to all of the right, title, and interest in the transportation project, subject to any liens on revenues previously granted by the contractor to any person providing financing for the transportation project. Upon termination or expiration of the public-private agreement relating to a transportation project undertaken by the Department, all real property acquired as a part of the transportation project shall be held in the name of the State of Illinois. Upon termination or expiration of the public-private agreement relating to a transportation project undertaken by the Authority, all real property acquired as a part of the transportation project shall be held in the name of the Authority.

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

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

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

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

(1) make payments to individuals or entities in

connection with any financing of the transportation project, including through a public-private agreement entered into in accordance with this Act;

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

(3) pay development costs of the project;

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

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

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

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

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

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

(l) With respect to a public-private agreement entered into by the Department, the Department shall certify in its State budget request to the Governor each year the amount required by the Department during the next State fiscal year to enable the Department to make any payment obligated to be made by the Department pursuant to that public-private agreement, and the Governor shall include that amount in the State budget submitted to the General Assembly.

Section 40. Development and operations standards for transportation projects.

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

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

(2) the Professional Engineering Practice Act of 1989, the Structural Engineering Practice Act of 1989, the Illinois Architecture Practice Act of 1989, the requirements of Section 30-22 of the Illinois Procurement Code as they apply to responsible bidders, and the Illinois

Professional Land Surveyor Act of 1989; and

(3) any other applicable State or federal standards.

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

(1) the State highway system for purposes of identification, maintenance standards, and enforcement of traffic laws if the highway project is under the jurisdiction of the Department; or

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

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

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

Section 45. Financial arrangements.

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

(b) The transportation agency may take any action to obtain federal, State, or local assistance for a transportation project that serves the public purpose of this Act and may enter into any contracts required to receive the federal assistance. The transportation agency may determine that it serves the public purpose of this Act for all or any portion of the costs of a transportation project to be paid, directly or indirectly, from the proceeds of a grant or loan, line of credit, or loan guarantee made by a local, State, or federal government or any agency or instrumentality of a local, State, or federal government. Such assistance may include, but not be limited to, federal credit assistance pursuant to the Transportation Infrastructure Finance and Innovation Act (TIFIA).

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

(d) Any financing of a transportation project may be in the

amounts and upon the terms and conditions that are determined by the parties to the public-private agreement.

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

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

(2) enter into grant agreements;

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

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

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

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

(h) Any bonds, debt, or other securities or other financing issued for the purposes of this Act shall not be deemed to constitute a debt of the State or any political subdivision of

the State or a pledge of the faith and credit of the State or any political subdivision of the State.

Section 50. Acquisition of property.

(a) The transportation agency may exercise any power of condemnation or eminent domain, including quick-take powers, that it has under law, including, in the case of the Department, all powers for acquisition of property rights granted it in the Illinois Highway Code, for the purpose of acquiring any lands or estates or interests in land for a transportation project to the extent provided in the public-private agreement or otherwise to the extent that the transportation agency finds that the action serves the public purpose of this Act and deems it appropriate in the exercise of its powers under this Act.

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

Section 55. Labor.

(a) A public-private agreement related to a transportation project pertaining to the building, altering, repairing, maintaining, improving, or demolishing a transportation facility shall require the contractor and all subcontractors to comply with the requirements of Section 30-22 of the Illinois

Procurement Code as they apply to responsible bidders and to present satisfactory evidence of that compliance to the transportation agency, unless the transportation project is federally funded and the application of those requirements would jeopardize the receipt or use of federal funds in support of the transportation project.

(b) A public-private agreement related to a transportation project pertaining to a new transportation facility shall require the contractor to enter into a project labor agreement utilized by the Department.

Section 60. Law enforcement.

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

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

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

(d) Punishment for infractions and offenses shall be as prescribed by law for conduct occurring on similar projects in

the State of Illinois or the local jurisdiction.

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

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

(b) The transportation agency shall terminate the contractor's authority and duties under the public-private agreement on the date set forth in the public-private agreement.

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

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

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

Act.

(b) Each transportation agency may make and enter into all contracts and agreements necessary or incidental to the performance of the transportation agency's duties and the execution of the transportation agency's powers under this Act. Except as otherwise required by law, these contracts or agreements are not subject to any approvals other than the approval of the transportation agency and may be for any term of years and contain any terms that are considered reasonable by the transportation agency.

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

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

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

(f) Each transportation agency is authorized to enter into arrangements with the Department of State Police related to costs incurred in providing law enforcement assistance under

this Act.

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

Section 80. Powers liberally construed. The powers conferred by this Act shall be liberally construed in order to accomplish their purposes and shall be in addition and supplemental to the powers conferred by any other law. If any other law or rule is inconsistent with this Act, this Act is controlling as to any public-private agreement entered into under this Act. To implement the powers conferred by this Act, the transportation agency may establish rules and procedures for the procurement of a public-private agreement under this Act. Nothing contained in this Act is intended to supersede applicable federal law or to foreclose the use or potential use of federal funds. In the event any provision of this Act is inconsistent with applicable federal law or would have the effect of foreclosing the use or potential use of federal funds, the applicable federal law or funding condition shall prevail, but only to the extent of such inconsistency.

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

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

(20 ILCS 2705/2705-222 new)

Sec. 2705-222. Public-private partnerships for transportation. The Department may exercise all powers granted to it under the Public-Private Partnerships for Transportation Act.

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

(20 ILCS 3501/825-106 new)

Sec. 825-106. Transportation project financing. For the purpose of financing a transportation project undertaken under the Public-Private Partnerships for Transportation Act, the

Authority is authorized to apply for an allocation of tax-exempt bond financing authorization provided by Section 142(m) of the United States Internal Revenue Code, as well as financing available under any other federal law or program.

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

(30 ILCS 500/1-10)

Sec. 1-10. Application.

(a) This Code applies only to procurements for which contractors were first solicited on or after July 1, 1998. This Code shall not be construed to affect or impair any contract, or any provision of a contract, entered into based on a solicitation prior to the implementation date of this Code as described in Article 99, including but not limited to any covenant entered into with respect to any revenue bonds or similar instruments. All procurements for which contracts are solicited between the effective date of Articles 50 and 99 and July 1, 1998 shall be substantially in accordance with this Code and its intent.

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

(1) Contracts between the State and its political subdivisions or other governments, or between State

governmental bodies except as specifically provided in this Code.

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

(3) Purchase of care.

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

(5) Collective bargaining contracts.

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

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

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

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

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

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

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

(d) Except for Section 20-160 and Article 50 of this Code, and as expressly required by Section 9.1 of the Illinois Lottery Law, the provisions of this Code do not apply to the

procurement process provided for under Section 9.1 of the Illinois Lottery Law.

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

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

(30 ILCS 550/1.7 new)

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

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

(30 ILCS 570/2.7 new)

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

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

(30 ILCS 575/2.7 new)

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

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

(35 ILCS 120/1r new)

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

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

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

(c) To document the exemption allowed under this Section, the retailer must obtain from the purchaser a copy of the Certificate of Eligibility for Sales Tax Exemption issued by the agency having jurisdiction over the project into which the

building materials will be incorporated is located. The Certificate of Eligibility for Sales Tax Exemption must contain all of the following:

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

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

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

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

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

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

(3) the name of the project;

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

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

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

Section 940. The Property Tax Code is amended by changing Section 15-55 as follows:

(35 ILCS 200/15-55)

Sec. 15-55. State property.

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

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

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

(b) However, all property of every kind belonging to the State of Illinois, which is or may hereafter be leased to the Illinois Prairie Path Corporation, shall be exempt from all

assessments, taxation or collection, despite the making of any such lease, if it is used for:

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

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

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

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

(5) similar public recreational activities conducted by the Illinois Prairie Path Corporation.

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

(c) If the State sells the James R. Thompson Center or the Elgin Mental Health Center and surrounding land located at 750 S. State Street, Elgin, Illinois, as provided in subdivision (a)(2) of Section 7.4 of the State Property Control Act, to another entity whose property is not exempt and immediately thereafter enters into a leaseback or other agreement that

directly or indirectly gives the State a right to use, control, and possess the property, that portion of the property leased and occupied exclusively by the State shall remain exempt under this Section. For the property to remain exempt under this subsection (c), the State must retain an option to purchase the property at a future date or, within the limitations period for reverters, the property must revert back to the State.

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

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

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

Pursuant to Sections 15-15 and 15-20 of this Code, the State shall notify the chief county assessment officer of any transaction under this subsection (c). The chief county assessment officer shall determine initial and continuing compliance with the requirements of this Section for tax exemption. Failure to notify the chief county assessment officer of a transaction under this subsection (c) or to otherwise comply with the requirements of Sections 15-15 and 15-20 of this Code shall, in the discretion of the chief county assessment officer, constitute cause to terminate the

exemption, notwithstanding any other provision of this Code.

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

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

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

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

Pursuant to Sections 15-15 and 15-20 of this Code, the

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

(d) The fair market rent of each parcel of real property in Will County owned by the State of Illinois for the purpose of developing an airport by the Department of Transportation shall include the assessed value of leasehold tax. The lessee of each parcel of real property in Will County owned by the State of Illinois for the purpose of developing an airport by the Department of Transportation shall not be liable for the taxes thereon. In order for the State to compensate taxing districts for the leasehold tax under this paragraph the Will County Supervisor of Assessments shall certify, in writing, to the Department of Transportation, the amount of leasehold taxes extended for the 2002 property tax year for each such exempt parcel. The Department of Transportation shall pay to the Will County Treasurer, from the Tax Recovery Fund, on or before July 1 of each year, the amount of leasehold taxes for each such exempt parcel as certified by the Will County Supervisor of

Assessments. The tax compensation shall terminate on December 31, 2020. It is the duty of the Department of Transportation to file with the Office of the Will County Supervisor of Assessments an affidavit stating the termination date for rental of each such parcel due to airport construction. The affidavit shall include the property identification number for each such parcel. In no instance shall tax compensation for property owned by the State be deemed delinquent or bear interest. In no instance shall a lien attach to the property of the State. In no instance shall the State be required to pay leasehold tax compensation in excess of the Tax Recovery Fund's balance.

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

(f) Notwithstanding anything to the contrary in this Code, all property owned by the State that is the Illiana Expressway, as defined in the Public Private Agreements for the Illiana Expressway Act, and that is used for transportation purposes and that is leased for those purposes to another entity whose property is not exempt shall remain exempt, and any leasehold interest in the property shall not be subject to taxation under Section 9-195 of this Act.

(g) Notwithstanding anything to the contrary in this Section, all property owned by the State or the Illinois State Toll Highway Authority that is defined as a transportation project under the Public-Private Partnerships for

Transportation Act and that is used for transportation purposes and that is leased for those purposes to another entity whose property is not exempt shall remain exempt, and any leasehold interest in the property shall not be subject to taxation under Section 9-195 of this Act.

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

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

(605 ILCS 10/11.1 new)

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

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

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

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

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

"Public works" means all fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds. "Public works" as defined herein includes all projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through the State or any of its political subdivisions, including but not limited to: bonds issued under the Industrial Project Revenue Bond Act (Article 11, Division 74 of the Illinois Municipal Code), the Industrial Building Revenue Bond Act, the Illinois Finance Authority Act, the Illinois Sports Facilities Authority Act, or the Build Illinois Bond Act; loans or other funds made available pursuant to the Build Illinois Act; or funds from the Fund for Illinois' Future under Section 6z-47 of the State Finance Act, funds for school construction under Section 5 of the General Obligation Bond Act, funds authorized under Section 3 of the School Construction Bond Act, funds for school infrastructure under Section 6z-45 of the State Finance Act, and funds for transportation purposes under Section 4 of the General Obligation Bond Act. "Public works" also includes (i) all projects financed in whole or in part with funds from the Department of Commerce and Economic Opportunity under the Illinois Renewable Fuels Development Program Act for which there is no project labor agreement; ~~and~~ (ii) all work performed pursuant to a public private agreement under the

Public Private Agreements for the Illiana Expressway Act; and (iii) all projects undertaken under a public-private agreement under the Public-Private Partnerships for Transportation Act.

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

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

"Locality" means the county where the physical work upon public works is performed, except (1) that if there is not available in the county a sufficient number of competent skilled laborers, workers and mechanics to construct the public works efficiently and properly, "locality" includes any other county nearest the one in which the work or construction is to be performed and from which such persons may be obtained in

sufficient numbers to perform the work and (2) that, with respect to contracts for highway work with the Department of Transportation of this State, "locality" may at the discretion of the Secretary of the Department of Transportation be construed to include two or more adjacent counties from which workers may be accessible for work on such construction.

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

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

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

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eff. 7-2-10.)

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