



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0566

Introduced 2/17/2005, by Sen. Louis S. Viverito

SYNOPSIS AS INTRODUCED:

New Act

Creates the Energy Infrastructure Authority Act. Establishes the Illinois Energy Infrastructure Authority for the purpose of (i) planning, financing, constructing, developing, acquiring, maintaining, and operating electric transmission facilities and (ii) financing certain energy-related projects not owned by the Authority. Sets forth requirements for the creation and operation of the Board of Directors of the Authority. Sets forth the powers of the Authority. Provides that the Authority may not compete with private persons concerning electric transmission facilities. Authorizes the Authority to issue revenue bonds in connection with both Authority-owned and privately-owned facilities and projects and sets forth requirements for those bonds. Effective July 1, 2005.

LRB094 10676 BDD 41048 b

FISCAL NOTE ACT
MAY APPLY

STATE DEBT
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning State government.

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

4 ARTICLE 1. GENERAL PROVISIONS

5 Section 1-1. Short title. This Act may be cited as the
6 Energy Infrastructure Authority Act.

7 Section 1-5. Legislative purpose. The purpose for which the
8 Authority is created is the diversification and expansion of
9 the State economy through improvements in the State's electric
10 transmission infrastructure and to facilitate the consumption
11 of Illinois energy by planning, financing, constructing,
12 developing, acquiring, maintaining, and operating electric
13 transmission facilities and related supporting infrastructure
14 and undivided or other interests therein to facilitate the
15 transmission of energy. In order to provide for the financing,
16 construction, development, maintenance, upgrade, and operation
17 of existing and new electric transmission facilities, the
18 Authority may own, lease, or rent facilities constructed under
19 the powers conferred under this Act and all facilities,
20 structures, and properties incidental and necessary thereto in
21 order to facilitate the transmission of energy.

22 Section 1-10. Definitions. As used in this Act:

23 "Authority" means the Illinois Energy Infrastructure
24 Authority created under Section 5-5 of this Act.

25 "Board" means the Board of Directors of the Authority.

26 "Facilities" means electric transmission facilities and
27 related supporting infrastructure, including any interests
28 therein.

29 "Person" means any individual, corporation, partnership,
30 firm, organization, or association, acting individually or as a

1 group.

2 ARTICLE 5. ILLINOIS ENERGY INFRASTRUCTURE AUTHORITY

3 Section 5-5. Authority created; composition and operation
4 of Board of Directors.

5 (a) There is created the Illinois Energy Infrastructure
6 Authority, which is a political subdivision, body politic, and
7 municipal corporation.

8 (b) The Authority is governed and administered by a Board
9 of Directors, composed of 5 members appointed by the Governor,
10 with the advice and consent of the Senate. The directors of the
11 initial Board shall be appointed for staggered terms as
12 follows: 2 members for terms of one year each; one member
13 serving for a term of 2 years; one member serving for a term of
14 3 years; and one member, who shall serve as chair of the Board,
15 serving for a term of 4 years, as designated at the time of
16 appointment. Thereafter all members shall be appointed for
17 4-year terms.

18 A majority of persons appointed and serving as members must
19 be qualified voters of the State of Illinois with special
20 knowledge, as evidenced by (i) college degrees or courses or
21 (ii) at least 5 years experience in managerial positions, in
22 the field of electric transmission or generation development or
23 natural gas or coal production, transportation, marketing, or
24 industrial or municipal consumption. The members shall elect
25 from the membership a vice-chairman and secretary. The Governor
26 may remove any member in case of incompetence, neglect of duty,
27 or malfeasance in office. Vacancies shall be filled in the same
28 manner as the initial appointment. Board members shall serve
29 without compensation, but may be reimbursed for their
30 reasonable travel expenses from funds available for that
31 purpose.

32 (c) Any agency, board, commission, department, or
33 institution of the State and the governing authorities of
34 political subdivisions may make surveys, reports, and

1 investigations and furnish records, information, and other
2 assistance and advice as may be required by the Authority.

3 Section 5-10. Powers of the Authority.

4 (a) In exercising the rights and powers granted to it, the
5 Authority may:

6 (i) employ officers, agents, and employees as it deems
7 necessary for the performance of its powers and duties and
8 prescribe the powers and duties and fix the compensation of
9 the officers, agents, and employees;

10 (ii) contract, upon terms as it may agree upon, for
11 legal, financial, engineering, and other professional
12 services necessary or expedient in the conduct of its
13 affairs;

14 (iii) use the services of executive departments of the
15 State upon mutually agreeable terms and conditions;

16 (iv) plan, finance, construct, develop, acquire, own,
17 maintain, and operate within and outside the State of
18 Illinois, property, structures, equipment, facilities, and
19 works of public improvement necessary or useful for the
20 accomplishment of the purposes for which the Authority was
21 created, including the obtaining of permits and the
22 acquisition of rights of way;

23 (v) acquire by condemnation within the State of
24 Illinois any properties necessary or useful for its
25 purposes, provided the Authority does not have the power to
26 condemn mineral leases, gas supplies, gas reserves, oil
27 refineries, existing electric transmission, distribution,
28 and generation facilities, minerals, water rights, mineral
29 rights, or pipelines used in connection therewith;

30 (vi) receive by gift, grant, donation, or otherwise,
31 any sum of money, aid, or assistance from the United
32 States, the State of Illinois, any political subdivision,
33 or any other public or private entity;

34 (vii) provide light, water, communications, security,
35 and other services for its facilities as it deems

1 advisable;

2 (viii) after consultation with the Illinois Commerce
3 Commission and any other relevant governmental Authority,
4 establish and charge reasonable fees, rates, tariffs, or
5 other charges for the use of all facilities administered by
6 the Authority and for all services rendered by it;

7 (ix) in whole or in part, operate, lease, rent, and
8 dispose of facilities constructed pursuant to the
9 authority conferred herein, and all facilities,
10 structures, and properties incidental and necessary
11 thereto;

12 (x) investigate, plan, prioritize, and establish
13 corridors for the transmission of electricity;

14 (xi) enter into partnerships with public or private
15 entities; and

16 (xii) do any and all things necessary or proper for the
17 development, regulation, and accomplishment of the
18 purposes of the Authority within the limitations of
19 authority granted by this Act.

20 (b) Except as provided in this subsection, the Authority
21 may not exercise any of the rights or powers granted to it
22 under this Act to plan, finance, construct, develop, acquire,
23 maintain, or operate a facility if a private person (i) is
24 performing those acts, constructing or has constructed the
25 facility, or is providing the services contemplated by the
26 Authority, and (ii) is willing to finance and own new
27 infrastructure to meet an identified need and market.

28 Prior to exercising any rights or powers granted to it in
29 this Act, the Authority must publish in a newspaper of general
30 circulation in Chicago, Springfield, and the area where the
31 facilities or services are contemplated, a notice (i)
32 describing the acts, facilities, or services contemplated by
33 the Authority, and (ii) stating that private persons willing
34 and able to perform the acts, finance and own, and construct
35 the facilities, or provide the services described in the notice
36 shall have a period of 30 days after the date of last

1 publication of the notice within which to notify the Authority
2 of intention and ability to perform the acts, finance and
3 construct the facilities, or provide the services described in
4 the notice. In the absence of notification by a private person
5 or if a person, having given notice of intention to perform the
6 acts, finance and construct the facilities, or provide the
7 services contemplated by the Authority, fails to commence the
8 same within 180 days from the date of notification of the
9 Authority of its intention, the Authority may proceed to
10 perform the acts, construct the facilities, or provide the
11 services originally contemplated. A private person who has made
12 necessary applications to acquire any federal, State, local, or
13 private permits, certificates, or other authorizations or
14 approvals necessary to perform the acts, construct the
15 facilities, or provide the services within the time required is
16 deemed to have commenced the same. The Authority may require
17 that any person giving notice of intention to perform the acts,
18 finance and construct the facilities, or provide the services
19 contemplated by the Authority, submit a plan for completion of
20 the facility within 3 years from notification to the Authority.
21 The Authority may also require the person to provide a bond to
22 pay liquidated damages to the Authority for the person's
23 failure to perform the acts, finance and construct facilities,
24 or provide the services contemplated by the Authority. The
25 Authority is not precluded from maintaining any other action
26 for the person's failure to perform.

27 ARTICLE 10. FINANCING FOR AUTHORITY PROJECTS

28 Section 10-5. Bonds.

29 (a) In order to accomplish its purposes under this Act, the
30 Authority may borrow money and evidence the borrowing in the
31 issuance and sale of bonds or other obligations of the
32 Authority, the principal and interest of which are payable
33 solely out of revenues authorized to be dedicated and pledged
34 for the payment.

1 (b) Bonds issued under this Article are solely the
2 obligation of the Authority and must recite on their face that
3 they do not constitute obligations of the State of Illinois or
4 any county, municipality, or other political subdivision of the
5 State.

6 The bonds or other obligations shall be authorized and
7 issued by resolution of the Authority and shall be of the
8 series, bear the date or dates, mature at the time or times,
9 bear interest at the rate or rates, be in the form, carry the
10 registration and exchangeability privileges, be payable in the
11 medium of payment and at the place or places, be subject to the
12 terms of redemption, and be entitled to the priorities on the
13 revenues of the Authority, as the resolution may provide. The
14 bonds shall be executed in the form and manner provided by the
15 resolution authorizing their issuance.

16 (c) The bonds or other obligations issued under this
17 Article may be sold by the Authority at, above, or below par
18 value, at public or private sale, in a manner and from time to
19 time as determined by the Authority.

20 (d) Any bonds issued under this Article are payable from
21 and are secured by the pledge of the revenues derived from the
22 operation of the facilities, as constructed, acquired,
23 extended, or improved with the proceeds of the bonds, subject
24 only to prior payment of the reasonable and necessary expenses
25 of operating and maintaining the facilities. The bonds may also
26 be payable from unexpended bond proceeds. Any holder of the
27 bonds may, by appropriate legal action, compel performance of
28 all duties required of the Authority in order to enforce
29 payment of the bonds when due. If any bond issued under this
30 Article is permitted to go into default as to principal or
31 interest, any court of competent jurisdiction may, pursuant to
32 the application of the holder of the bonds, appoint a receiver
33 for the facilities, who shall operate the same and collect and
34 distribute the revenues thereof pursuant to the provisions and
35 requirements of the resolution authorizing the bonds.

36 (e) If more than one series of bonds is issued payable from

1 the revenues of the facilities or bond proceeds, priority of
2 lien on the revenues shall be as provided by the resolution
3 authorizing the bonds.

4 (f) All bonds issued under the provisions of this Article
5 constitute negotiable instruments within the meaning of the
6 Uniform Commercial Code. The bonds and the income thereof shall
7 be exempt from all taxation within the State of Illinois.

8 (g) No board or commission other than the Board may fix or
9 supervise the making of fees and charges concerning the bonds,
10 which shall be in amounts reasonably necessary for the purposes
11 of this Act. When the Authority has issued bonds and pledged
12 the revenues of the facilities for the payment thereof, the
13 Authority shall operate and maintain the facilities and shall
14 impose and collect fees and charges for the services furnished
15 by the facilities, including those furnished to the Authority
16 itself, in the amounts and at the rates as shall be fully
17 sufficient at all times to:

18 (i) pay the expenses of operating and maintaining the
19 facilities;

20 (ii) provide a sinking fund sufficient to assure the
21 prompt payment of principal and interest on the bonds as
22 each falls due;

23 (iii) provide a reasonable fund for contingencies as
24 may be required by any bond underwriting or by the
25 resolution authorizing the bonds; and

26 (iv) provide an adequate depreciation fund for
27 repairs, extensions, and improvements to the facilities.

28 (h) Any resolution of the Board of the Authority
29 authorizing the issuance of bonds must be published once in a
30 newspaper of general circulation published in the City of
31 Chicago, City of Springfield, and the area where the facilities
32 or services are contemplated. For a period of 30 days after the
33 date of the publication, any person in interest may contest the
34 legality of the resolution and of the bonds to be issued
35 pursuant thereto and the provisions securing the bonds,
36 including the validity of any lease or other contract pledged

1 to the payment thereof. After the expiration of 30 days no
2 person has any right of action to contest the validity of the
3 bonds, the validity of the security pledged to the payment
4 thereof, or the provisions of the resolution under which the
5 bonds were issued, and all the bonds and all proceedings
6 relating thereto are conclusively presumed to be legal.

7 (j) The Board may authorize the issuance of bonds for the
8 purpose of refunding, extending, and unifying the whole or any
9 part of the principal, interest, and redemption premiums on any
10 outstanding bonds issued under this Article. The refunding
11 bonds may either be sold and the proceeds applied to or
12 deposited in escrow for the retirement of the outstanding bonds
13 or may be delivered in exchange for the outstanding bonds. The
14 refunding bonds shall be authorized in all respects as original
15 bonds are required to be authorized. The Board, in authorizing
16 the refunding bonds, shall provide for the security of the
17 bonds, the sources from which the bonds are to be paid, and the
18 rights of the holders in all respects for other bonds issued
19 under this Article. The Board may also provide that the
20 refunding bonds shall have the same or different priority of
21 lien on the revenues pledged for their payment as was enjoyed
22 by the bonds refunded.

23 Section 10-10. Use of net revenues. The Authority, acting
24 alone or in cooperation with any agency of the State of
25 Illinois, may use and employ any net revenues derived from the
26 facilities or from any other source, after providing for all
27 the costs of maintenance and operation of the facilities and
28 after making the required principal and interest payments on
29 any revenue bonds issued and any other payments provided in any
30 resolution or resolutions authorizing the issuance and sale of
31 revenue bonds and obligations, in extending and improving the
32 facilities as the Board determines to be warranted by the need
33 for electric transmission facilities. If the Board determines
34 that no need exists, then the net revenues shall be deposited
35 into the General Revenue Fund.

1 ARTICLE 15. FINANCING OTHER PROJECTS

2 Section 15-5. Findings. The General Assembly finds that:

3 (i) in Illinois, there are extensive reserves of energy
4 and insufficient facilities to warrant the timely
5 development and marketing of those reserves;

6 (ii) the timely development of Illinois energy sources
7 will stabilize and increase revenue to the State;

8 (iii) new infrastructure will increase development of
9 Illinois energy sources;

10 (iv) it is in the public interest of the citizens of
11 this State to promote the economic welfare of the State and
12 its residents by increasing employment, stimulating
13 economic activity, augmenting sources of tax revenue,
14 fostering economic stability, and improving the balance of
15 the State's economy; and

16 (v) this Article constitutes a valid public purpose of
17 primary benefit to all citizens of this State.

18 Section 15-10. Authority revenue bonds; issuance; amount.

19 (a) In order to finance projects not owned by the
20 Authority, the Authority may issue and have outstanding bonds
21 to finance facilities, which must be located at least partially
22 within Illinois, in an amount not to exceed \$1,000,000,000. The
23 Authority shall have contracts sufficient to justify the
24 issuance of bonds.

25 (b) The principal amount of any bonds that have been
26 retired, redeemed, defeased, or refunded by the Authority need
27 not be taken into account in computing compliance with the
28 maximum amounts of bonds authorized to be issued under
29 subsection (a) of this Section.

30 (c) Subject to subsection (a), the Authority may issue
31 bonds in principal amounts the Authority determines necessary
32 to provide sufficient funds for achieving its purposes under
33 this Article, including the reduction of principal, the payment

1 of interest, the establishment of reserves, the payment of the
2 costs of administration, and the defrayal of all other
3 associated costs.

4 All bonds issued under this Article are negotiable
5 instruments under the laws of the State unless expressly
6 provided to the contrary on the face of the bonds. The
7 Authority may enter into contracts to insure the payment of
8 principal and interest, for interest rate exchange contracts,
9 and for financial guarantees to lower the cost of its
10 borrowing.

11 (d) All bonds issued by the Authority are payable solely
12 out of special funds consisting of all or part of its revenues,
13 receipts, moneys, and assets, as designated in the proceedings
14 under which the bonds are authorized. The bonds shall bear
15 interest at the rates, be executed and delivered at times and
16 in denominations, be of terms and maturities, be in registered
17 form as to principal and interest or principal alone, and bear
18 manual or facsimile signatures and seals as determined by the
19 Authority. Bonds issued by the Authority are not general
20 obligations of this State or of any political subdivision of
21 this State. The bonds shall be solely the obligation of the
22 Authority and shall recite on their face that they do not
23 constitute obligations of the State or any political
24 subdivision of the State.

25 (e) Bonds may be payable in installments and may bear
26 maturities not exceeding 40 years from the date issued as
27 determined by the Authority.

28 (f) As determined by the Authority, bonds and interest may
29 be payable at a time or place whether within or without the
30 State. Bonds may contain other provisions not inconsistent with
31 this Article.

32 (g) Any bonds issued by the Authority may contain an option
33 to redeem all or any part as may be specified. The price of
34 redemption, the terms and conditions, and the procedure of
35 notice shall be set forth in the proceedings of the Authority
36 and may appear on the face of the bonds.

1 (h) Any bonds of the Authority may be sold at, above, or
2 below par value, at public or private sale, in a manner and
3 from time to time as determined by the Authority. The Authority
4 may pay professional fees, insurance, expenses, premiums, and
5 commissions that it finds necessary or advantageous to this
6 State in connection with the issuance and sale.

7 (j) The Authority may provide for the issuance of its bonds
8 to refund any bonds of the Authority then outstanding,
9 including the payment of any redemption premium and any
10 interest or premium accrued or to accrue to, the earliest or
11 subsequent date of redemption, purchase, or maturity of the
12 bonds.

13 Section 15-15. Authority revenue bonds; security; payments
14 after retirement.

15 (a) The principal and interest on any bonds issued by the
16 Authority under this Article shall be secured (i) by a pledge
17 of revenues from the operation of the project financed, (ii) by
18 a first mortgage on the facilities, (iii) by guarantees and
19 pledges of the entity owning the project, the parent
20 corporation owning that entity, or any combination thereof, or
21 (iv) other security as may be determined by the Authority to be
22 reasonable and prudent. The guarantees and pledges shall be no
23 less favorable to the Authority than those granted other
24 lenders of the same class.

25 (b) The Authority may require additional payments, as
26 negotiated, to bondholders to be made either in a lump sum at
27 the time of retirement of the bonds or annually from the time
28 of retirement of the bonds until project use is terminated or
29 may require additional incentives from the owner of the project
30 to prospective bondholders so long as the incentives are not
31 contrary to the Illinois Constitution.

32 (c) The Authority may require any other security for
33 repayment of the bonds that it deems necessary.

34 (d) Each pledge, agreement, mortgage, or other instrument
35 made for the benefit or security of any bonds of the Authority

1 is valid and binding from the time when made. The revenues,
2 receipts, moneys, and assets pledged are immediately subject to
3 the lien of the pledge without delivery or further act. The
4 lien is valid and binding against persons having claims of any
5 kind against the Authority whether or not the persons have
6 actual notice of the lien. Neither the resolution nor the
7 indenture or other instrument by which a pledge is created need
8 be recorded or filed.

9 Section 15-20. Exemptions from taxation. The exercise of
10 the powers granted by this Article constitutes the performance
11 of an essential governmental function. Any bonds issued under
12 this Article and the income therefrom is exempt from taxation
13 of every kind by the State, municipalities, and political
14 subdivisions of the State.

15 Section 15-25. Bonds as legal investments. The bonds of the
16 Authority are legal investments that may be used as collateral
17 for public funds of the State, insurance companies, banks,
18 savings and loan associations, investment companies, trustees,
19 and other fiduciaries that may properly and legally invest
20 funds in their control or belonging to them in bonds of the
21 Authority.

22 Section 15-30. State pledge not to impair bondholder's
23 rights and remedies. The State pledges to the holders of any
24 bonds issued under this Article, that the State will not limit
25 or alter the rights vested in the Authority to fulfill the
26 terms of agreements made with the holders, or in any way impair
27 the rights and remedies of the holders until the bonds together
28 with the interest, with interest on any unpaid installments of
29 interest, and all costs and expenses in connection with any
30 action or proceeding by or on behalf of the holders are fully
31 met and discharged. The Authority is authorized to include this
32 pledge of the State in any agreement with the holders of the
33 bonds.

1 Section 15-35. Powers; duties; limitations.

2 (a) The Authority has the powers granted by Article 5 of
3 this Act as necessary to carry out the purposes of this
4 Article. In addition to the powers otherwise granted to the
5 Authority, the Authority shall have the power to:

6 (i) enter into loan or other agreements with respect to
7 one or more projects upon the terms and conditions the
8 Authority considers advisable; and

9 (ii) make and execute agreements, contracts, and other
10 instruments necessary or convenient in the exercise of its
11 powers and functions, including contracts, with any
12 person, governmental agency, or other entity.

13 (b) The Authority may assess and collect fees that are
14 nonrefundable from applicants seeking to obtain Authority
15 financing of a project.

16 (c) The Authority shall maintain such records and accounts
17 of revenues and expenditures as required by the Auditor
18 General. The Auditor General shall conduct an annual financial
19 and legal compliance audit of the accounts of the Authority and
20 file copies thereof with the Governor and the General Assembly.

21 (d) The Authority shall require any project owner receiving
22 a loan under this Article to maintain records and accounts
23 relating to receipt and disbursements of loan proceeds,
24 transportation costs, and information on energy sales and
25 deliveries and make the records available to the Auditor
26 General for inspection.

27 Section 99. Effective date. This Act takes effect July 1,
28 2005.