

1 AN ACT concerning State government.

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

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

6 Section 5. Public policy and legislative intent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 undertaken pursuant to this Act.

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

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

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

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

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

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

26 (c) A contractor has:

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

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

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

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

25 (e) Each year, at least 30 days prior to the beginning of
26 the transportation agency's fiscal year, the transportation

1 agency shall submit a description of potential projects that
2 the transportation agency is considering undertaking under
3 this Act to each county, municipality, and metropolitan
4 planning organization, with respect to each project located
5 within its boundaries.

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

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

15 Section 20. Procurement process.

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

1 obtain information relating to possible public-private
2 partnerships.

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

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

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

18 (b) The transportation agency shall establish a process for
19 prequalification of all potential private entities. The
20 transportation agency shall: (i) provide a public notice of the
21 prequalification process for such period as deemed appropriate
22 by the agency; (ii) set forth requirements and evaluation
23 criteria in order to become prequalified; (iii) determine which
24 private entities that have submitted prequalification
25 applications, if any, meet the requirements and evaluation
26 criteria; and (iv) allow only those entities that have been

1 prequalified to submit proposals or bids. The transportation
2 agency shall make publicly available on its website during the
3 request for qualifications period information regarding firms
4 that are prequalified by the transportation agency pursuant to
5 Section 20 of the Architectural, Engineering, and Land
6 Surveying Qualifications Based Selection Act to provide
7 architectural, engineering, and land surveying services and
8 shall require the use of such firms for such services.

9 (c) Competitive sealed bidding requirements:

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

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

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

23 (4) Bids shall be opened publicly in the presence of
24 one or more witnesses at the time and place designated in
25 the invitation for bids. The name of each bidder, the
26 amount of each bid, and other relevant information as may

1 be specified by rule shall be recorded. After the award of
2 the contract, the winning bid and the record of each
3 unsuccessful bid shall be open to public inspection.

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

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

25 (7) The contract shall be awarded with reasonable
26 promptness by written notice to the lowest responsible and

1 responsive bidder whose bid meets the requirements and
2 criteria set forth in the invitation for bids, except when
3 the transportation agency determines it is not in the best
4 interest of the State and by written explanation determines
5 another bidder shall receive the award. The explanation
6 shall appear in the appropriate volume of the State of
7 Illinois Procurement Bulletin. The written explanation
8 must include:

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

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

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

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

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

23 (d) Competitive sealed proposal requirements:

24 (1) When the transportation agency determines in
25 writing that the use of competitive sealed bidding or
26 design-build procurement is either not practicable or not

1 advantageous to the State, a contract may be entered into
2 by competitive sealed proposals.

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

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

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

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

22 (6) As provided in the request for proposals and under
23 any applicable rules, discussions may be conducted with
24 responsible offerors who submit proposals determined to be
25 reasonably susceptible of being selected for award for the
26 purpose of clarifying and assuring full understanding of

1 and responsiveness to the solicitation requirements. Those
2 offerors shall be accorded fair and equal treatment with
3 respect to any opportunity for discussion and revision of
4 proposals. Revisions may be permitted after submission and
5 before award for the purpose of obtaining best and final
6 offers. In conducting discussions there shall be no
7 disclosure of any information derived from proposals
8 submitted by competing offerors. If information is
9 disclosed to any offeror, it shall be provided to all
10 competing offerors.

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

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

25 (1) submit the proposal or proposals to the Commission
26 on Government Forecasting and Accountability, which,

1 within 20 days of submission by the transportation agency,
2 shall complete a review of the proposal or proposals and
3 report on the value of the proposal or proposals to the
4 State;

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

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

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

26 (f) In addition to any other rights under this Act, in

1 connection with any procurement under this Act, the following
2 rights are reserved to each transportation agency:

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

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

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

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

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

20 (6) to interview proposers; and

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

23 (g) If a proposal is approved, the transportation agency
24 shall execute the public-private agreement, publish notice of
25 the execution of the public-private agreement on its website
26 and in a newspaper or newspapers of general circulation within

1 the county or counties in which the transportation project is
2 to be located, and publish the entire agreement on its website.
3 Any action to contest the validity of a public-private
4 agreement entered into under this Act must be brought no later
5 than 60 days after the date of publication of the notice of
6 execution of the public-private agreement.

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

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

1 Section 25. Design-build procurement.

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

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

19 (2) The request for qualifications shall be prepared for
20 each project and must contain, without limitation, the
21 following information: (i) the name of the transportation
22 agency; (ii) a preliminary schedule for the completion of the
23 contract; (iii) the proposed budget for the project, the source
24 of funds, and the currently available funds at the time the
25 request for proposal is submitted; (iv) prequalification

1 criteria for design-build entities wishing to submit proposals
2 (the transportation agency shall include, at a minimum, its
3 normal prequalification, licensing, registration, and other
4 requirements, but nothing contained herein precludes the use of
5 additional prequalification criteria by the transportation
6 agency); (v) material requirements of the contract, including
7 but not limited to, the proposed terms and conditions, required
8 performance and payment bonds, insurance, and the entity's plan
9 to comply with the utilization goals established by the
10 corporate authorities of the transportation agency for
11 minority and women business enterprises and to comply with
12 Section 2-105 of the Illinois Human Rights Act; (vi) the
13 performance criteria; (vii) the evaluation criteria for each
14 phase of the solicitation; and (viii) the number of entities
15 that will be considered for the request for proposals phase.

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

21 (4) The date that statements of qualifications are due must
22 be at least 21 calendar days after the date of the issuance of
23 the request for qualifications. In the event the cost of the
24 project is estimated to exceed \$12,000,000, then the statement
25 of qualifications due date must be at least 28 calendar days
26 after the date of the issuance of the request for

1 qualifications. The transportation agency shall include in the
2 request for proposals a minimum of 30 days to develop the
3 proposals after the selection of entities from the evaluation
4 of the statements of qualifications is completed.

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

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

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

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

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

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

21 The transportation agency shall include the following
22 criteria in every request for qualifications phase evaluation
23 of private entities: (i) experience of personnel; (ii)
24 successful experience with similar project types; (iii)
25 financial capability; (iv) timeliness of past performance; (v)
26 experience with similarly sized projects; (vi) successful

1 reference checks of the firm; (vii) commitment to assign
2 personnel for the duration of the project and qualifications of
3 the entity's consultants; and (viii) ability or past
4 performance in meeting or exhausting good faith efforts to meet
5 the utilization goals for business enterprises established in
6 the Business Enterprise for Minorities, Females, and Persons
7 with Disabilities Act and in complying with Section 2-105 of
8 the Illinois Human Rights Act. No proposal shall be considered
9 that does not include an entity's plan to comply with the
10 requirements established in the minority and women business
11 enterprises and economically disadvantaged firms established
12 by the corporate authorities of the transportation agency and
13 with Section 2-105 of the Illinois Human Rights Act. The
14 transportation agency may include any additional relevant
15 criteria in the request for qualifications phase that it deems
16 necessary for a proper qualification review.

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

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

1 (3) The transportation agency shall include in the request
2 for proposals the evaluating factors to be used in the
3 technical and cost submission components. Each request for
4 proposals shall establish, for both the technical and cost
5 submission components, the relative importance assigned to
6 each evaluation factor and subfactor, including any weighting
7 of criteria to be employed by the transportation agency. The
8 transportation agency must maintain a record of the evaluation
9 scoring to be disclosed in event of a protest regarding the
10 solicitation.

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

22 The transportation agency shall include the following
23 criteria in every request for proposals phase cost evaluation:
24 the total project cost and the time of completion. The
25 transportation agency may include any additional relevant
26 technical evaluation factors it deems necessary for proper

1 selection. The guaranteed maximum project cost criteria
2 weighing factor shall not exceed 30%.

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

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

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

26 Statements of qualifications and proposals must meet all

1 material requirements of the request for qualifications or
2 request for proposals, or else they may be rejected as
3 non-responsive. The transportation agency shall have the right
4 to reject any and all statements of qualifications and
5 proposals.

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

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

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

17 Section 30. Interim agreements.

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

22 (1) permit the approved proposer to commence
23 activities relating to a proposed project as the
24 transportation agency and the approved proposer shall
25 agree to and for which the approved proposer may be

1 compensated, including, but not limited to, project
2 planning, advance right-of-way acquisition, design and
3 engineering, environmental analysis and mitigation,
4 survey, conducting transportation and revenue studies, and
5 ascertaining the availability of financing for the
6 proposed facility or facilities;

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

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

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

21 (5) establish procedures for the selection of
22 professional design firms and subcontractors, which shall
23 include procedures consistent with the Architectural,
24 Engineering, and Land Surveying Qualifications Based
25 Selection Act for the selection of design professional
26 firms and may include, in the discretion of the

1 transportation agency, procedures consistent with the low
2 bid procurement procedures outlined in the Illinois
3 Procurement Code for the selection of construction
4 companies; and

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

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

12 (c) The approved proposer shall select firms that are
13 prequalified by the transportation agency pursuant to Section
14 20 of the Architectural, Engineering, and Land Surveying
15 Qualifications Based Selection Act to provide architectural,
16 engineering, and land surveying services to undertake
17 activities related to the transportation project.

18 Section 35. Public-private agreements.

19 (a) Unless undertaking actions otherwise permitted in an
20 interim agreement entered into under Section 30 of this Act,
21 before developing, financing, or operating the transportation
22 project, the approved proposer shall enter into a
23 public-private agreement with the transportation agency.
24 Subject to the requirements of this Act, a public-private
25 agreement may provide that the approved proposer, acting on

1 behalf of the transportation agency, is partially or entirely
2 responsible for any combination of developing, financing, or
3 operating the transportation project under terms set forth in
4 the public-private agreement.

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

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

18 (2) Delivery of performance and payment bonds or other
19 performance security determined suitable by the
20 transportation agency, including letters of credit, United
21 States bonds and notes, parent guaranties, and cash
22 collateral, in connection with the development, financing,
23 or operation of the transportation project, in the forms
24 and amounts set forth in the public-private agreement or
25 otherwise determined as satisfactory by the transportation
26 agency to protect the transportation agency and payment

1 bond beneficiaries who have a direct contractual
2 relationship with the contractor or a subcontractor of the
3 contractor to supply labor or material. The payment or
4 performance bond or alternative form of performance
5 security is not required for the portion of a
6 public-private agreement that includes only design,
7 planning, or financing services, the performance of
8 preliminary studies, or the acquisition of real property.

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

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

19 (5) Maintenance of:

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

24 (B) self-insurance;

25 each in form and amount as set forth in the public-private
26 agreement or otherwise satisfactory to the transportation

1 agency as reasonably sufficient to insure coverage of tort
2 liability to the public and employees and to enable the
3 continued operation of the transportation project.

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

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

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

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

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

25 (B) a development fee, payable on a lump-sum basis,
26 progress payment basis, time and materials basis, or

1 another basis deemed appropriate by the transportation
2 agency;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (14) Procedures for the selection of professional
26 design firms and subcontractors, which shall include

1 procedures consistent with the Architectural, Engineering,
2 and Land Surveying Qualifications Based Selection Act for
3 the selection of professional design firms and may include,
4 in the discretion of the transportation agency, procedures
5 consistent with the low bid procurement procedures
6 outlined in the Illinois Procurement Code for the selection
7 of construction companies.

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

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

19 (d) A public-private agreement may:

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

23 (2) authorize the contractor to adjust the user fees
24 for the use of the transportation project, so long as the
25 amounts charged and collected by the contractor do not
26 exceed the maximum amounts established by the

1 transportation agency under this Act;

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

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

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

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

26 (f) Upon the termination or expiration of the

1 public-private agreement, including a termination for default,
2 the transportation agency shall have the right to take over the
3 transportation project and to succeed to all of the right,
4 title, and interest in the transportation project, subject to
5 any liens on revenues previously granted by the contractor to
6 any person providing financing for the transportation project.
7 Upon termination or expiration of the public-private agreement
8 relating to a transportation project undertaken by the
9 Department, all real property acquired as a part of the
10 transportation project shall be held in the name of the State
11 of Illinois. Upon termination or expiration of the
12 public-private agreement relating to a transportation project
13 undertaken by the Authority, all real property acquired as a
14 part of the transportation project shall be held in the name of
15 the Authority.

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

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

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

24 (h) If a transportation agency elects to take over a
25 transportation project as provided in subsection (f) of this
26 Section, the transportation agency may use the revenues, if

1 any, for any lawful purpose, including to:

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

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

9 (3) pay development costs of the project;

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

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

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

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

25 (j) The transportation agency may enter into a
26 public-private agreement with multiple approved proposers if

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

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

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

16 Section 40. Development and operations standards for
17 transportation projects.

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

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

23 (2) the Professional Engineering Practice Act of 1989,
24 the Structural Engineering Practice Act of 1989, the
25 Illinois Architecture Practice Act of 1989, the

1 requirements of Section 30-22 of the Illinois Procurement
2 Code as they apply to responsible bidders, and the Illinois
3 Professional Land Surveyor Act of 1989; and

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

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

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

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

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

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

1 Section 45. Financial arrangements.

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

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

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

1 instrumentality of the federal, State, or local government.

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

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

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

10 (2) enter into grant agreements;

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

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

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

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

26 (h) Any bonds, debt, or other securities or other financing

1 issued for the purposes of this Act shall not be deemed to
2 constitute a debt of the State or any political subdivision of
3 the State or a pledge of the faith and credit of the State or
4 any political subdivision of the State.

5 Section 50. Acquisition of property.

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

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

21 Section 55. Labor.

22 (a) A public-private agreement related to a transportation
23 project pertaining to the building, altering, repairing,
24 maintaining, improving, or demolishing a transportation

1 facility shall require the contractor and all subcontractors to
2 comply with the requirements of Section 30-22 of the Illinois
3 Procurement Code as they apply to responsible bidders and to
4 present satisfactory evidence of that compliance to the
5 transportation agency, unless the transportation project is
6 federally funded and the application of those requirements
7 would jeopardize the receipt or use of federal funds in support
8 of the transportation project.

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

13 Section 60. Law enforcement.

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

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

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

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

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

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

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

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

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

20 (a) Each transportation agency may exercise any powers
21 provided under this Act in participation or cooperation with
22 any governmental entity and enter into any contracts to
23 facilitate that participation or cooperation without
24 compliance with any other statute. Each transportation agency

1 shall cooperate with each other and with other governmental
2 entities in carrying out transportation projects under this
3 Act.

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

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

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

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

26 (f) Each transportation agency is authorized to enter into

1 arrangements with the Department of State Police related to
2 costs incurred in providing law enforcement assistance under
3 this Act.

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

10 Section 80. Powers liberally construed. The powers
11 conferred by this Act shall be liberally construed in order to
12 accomplish their purposes and shall be in addition and
13 supplemental to the powers conferred by any other law. If any
14 other law or rule is inconsistent with this Act, this Act is
15 controlling as to any public-private agreement entered into
16 under this Act.

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

1 agreement or lease.

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

5 (20 ILCS 2705/2705-222 new)

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

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

12 (20 ILCS 3501/825-106 new)

13 Sec. 825-106. Transportation project financing. For the
14 purpose of financing a transportation project undertaken under
15 the Public-Private Partnerships for Transportation Act, the
16 Authority is authorized to apply for an allocation of
17 tax-exempt bond financing authorization provided by Section
18 142(m) of the United States Internal Revenue Code, as well as
19 financing available under any other federal law or program.

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

1 (30 ILCS 500/1-10)

2 Sec. 1-10. Application.

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

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

17 (1) Contracts between the State and its political
18 subdivisions or other governments, or between State
19 governmental bodies except as specifically provided in
20 this Code.

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

23 (3) Purchase of care.

24 (4) Hiring of an individual as employee and not as an
25 independent contractor, whether pursuant to an employment

1 code or policy or by contract directly with that
2 individual.

3 (5) Collective bargaining contracts.

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

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

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

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

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

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

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

17 (d) Except for Section 20-160 and Article 50 of this Code,
18 and as expressly required by Section 9.1 of the Illinois
19 Lottery Law, the provisions of this Code do not apply to the
20 procurement process provided for under Section 9.1 of the
21 Illinois Lottery Law.

22 (Source: P.A. 95-481, eff. 8-28-07; 95-615, eff. 9-11-07;
23 95-876, eff. 8-21-08; 96-840, eff. 12-23-09; 96-1331, eff.
24 7-27-10.)

25 Section 920. The Public Construction Bond Act is amended by

1 adding Section 1.7 as follows:

2 (30 ILCS 550/1.7 new)

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

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

8 (30 ILCS 570/2.7 new)

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

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

15 (30 ILCS 575/2.7 new)

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

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

1 (35 ILCS 120/1r new)

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

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

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

15 (c) To document the exemption allowed under this Section,
16 the retailer must obtain from the purchaser a copy of the
17 Certificate of Eligibility for Sales Tax Exemption issued by
18 the agency having jurisdiction over the project into which the
19 building materials will be incorporated is located. The
20 Certificate of Eligibility for Sales Tax Exemption must contain
21 all of the following:

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

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

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

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

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

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

12 (3) the name of the project;

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

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

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

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

19 (35 ILCS 200/15-55)

20 Sec. 15-55. State property.

21 (a) All property belonging to the State of Illinois is
22 exempt. However, the State agency holding title shall file the
23 certificate of ownership and use required by Section 15-10,
24 together with a copy of any written lease or agreement, in

1 effect on March 30 of the assessment year, concerning parcels
2 of 1 acre or more, or an explanation of the terms of any oral
3 agreement under which the property is leased, subleased or
4 rented.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (c-1) If the Illinois State Toll Highway Authority sells
22 the Illinois State Toll Highway Authority headquarters
23 building and surrounding land, located at 2700 Ogden Avenue,
24 Downers Grove, Illinois as provided in subdivision (a)(2) of
25 Section 7.5 of the State Property Control Act, to another
26 entity whose property is not exempt and immediately thereafter

1 enters into a leaseback or other agreement that directly or
2 indirectly gives the State or the Illinois State Toll Highway
3 Authority a right to use, control, and possess the property,
4 that portion of the property leased and occupied exclusively by
5 the State or the Authority shall remain exempt under this
6 Section. For the property to remain exempt under this
7 subsection (c), the Authority must retain an option to purchase
8 the property at a future date or, within the limitations period
9 for reverters, the property must revert back to the Authority.

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

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

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

19 Pursuant to Sections 15-15 and 15-20 of this Code, the
20 Authority shall notify the chief county assessment officer of
21 any transaction under this subsection (c). The chief county
22 assessment officer shall determine initial and continuing
23 compliance with the requirements of this Section for tax
24 exemption. Failure to notify the chief county assessment
25 officer of a transaction under this subsection (c) or to
26 otherwise comply with the requirements of Sections 15-15 and

1 15-20 of this Code shall, in the discretion of the chief county
2 assessment officer, constitute cause to terminate the
3 exemption, notwithstanding any other provision of this Code.

4 (d) The fair market rent of each parcel of real property in
5 Will County owned by the State of Illinois for the purpose of
6 developing an airport by the Department of Transportation shall
7 include the assessed value of leasehold tax. The lessee of each
8 parcel of real property in Will County owned by the State of
9 Illinois for the purpose of developing an airport by the
10 Department of Transportation shall not be liable for the taxes
11 thereon. In order for the State to compensate taxing districts
12 for the leasehold tax under this paragraph the Will County
13 Supervisor of Assessments shall certify, in writing, to the
14 Department of Transportation, the amount of leasehold taxes
15 extended for the 2002 property tax year for each such exempt
16 parcel. The Department of Transportation shall pay to the Will
17 County Treasurer, from the Tax Recovery Fund, on or before July
18 1 of each year, the amount of leasehold taxes for each such
19 exempt parcel as certified by the Will County Supervisor of
20 Assessments. The tax compensation shall terminate on December
21 31, 2020. It is the duty of the Department of Transportation to
22 file with the Office of the Will County Supervisor of
23 Assessments an affidavit stating the termination date for
24 rental of each such parcel due to airport construction. The
25 affidavit shall include the property identification number for
26 each such parcel. In no instance shall tax compensation for

1 property owned by the State be deemed delinquent or bear
2 interest. In no instance shall a lien attach to the property of
3 the State. In no instance shall the State be required to pay
4 leasehold tax compensation in excess of the Tax Recovery Fund's
5 balance.

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

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

16 (g) Notwithstanding anything to the contrary in this
17 Section, all property owned by the State or the Illinois State
18 Toll Highway Authority that is defined as a transportation
19 project under the Public-Private Partnerships for
20 Transportation Act and that is used for transportation purposes
21 and that is leased for those purposes to another entity whose
22 property is not exempt shall remain exempt, and any leasehold
23 interest in the property shall not be subject to taxation under
24 Section 9-195 of this Act.

25 (Source: P.A. 95-331, eff. 8-21-07; 96-192, eff. 8-10-09;
26 96-913, eff. 6-9-10.)

1 (35 ILCS 200/15-195 new)

2 Sec. 15-195. Exemption for qualified airport leased
3 property. Notwithstanding anything in this Code to the
4 contrary, all property owned by an airport authority created
5 and established under the Airport Authorities Act shall remain
6 exempt from taxation and any leasehold interest in that
7 property is not subject to taxation under Section 9-195 if that
8 property is used for transportation purposes as part of a
9 transportation project undertaken pursuant to the
10 Public-Private Partnerships for Transportation Act and is
11 leased to another entity whose property is not exempt.

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

14 (605 ILCS 10/11.1 new)

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

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

20 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

21 Sec. 2. This Act applies to the wages of laborers,

1 mechanics and other workers employed in any public works, as
2 hereinafter defined, by any public body and to anyone under
3 contracts for public works. This includes any maintenance,
4 repair, assembly, or disassembly work performed on equipment
5 whether owned, leased, or rented.

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

8 "Public works" means all fixed works constructed or
9 demolished by any public body, or paid for wholly or in part
10 out of public funds. "Public works" as defined herein includes
11 all projects financed in whole or in part with bonds, grants,
12 loans, or other funds made available by or through the State or
13 any of its political subdivisions, including but not limited
14 to: bonds issued under the Industrial Project Revenue Bond Act
15 (Article 11, Division 74 of the Illinois Municipal Code), the
16 Industrial Building Revenue Bond Act, the Illinois Finance
17 Authority Act, the Illinois Sports Facilities Authority Act, or
18 the Build Illinois Bond Act; loans or other funds made
19 available pursuant to the Build Illinois Act; or funds from the
20 Fund for Illinois' Future under Section 6z-47 of the State
21 Finance Act, funds for school construction under Section 5 of
22 the General Obligation Bond Act, funds authorized under Section
23 3 of the School Construction Bond Act, funds for school
24 infrastructure under Section 6z-45 of the State Finance Act,
25 and funds for transportation purposes under Section 4 of the
26 General Obligation Bond Act. "Public works" also includes (i)

1 all projects financed in whole or in part with funds from the
2 Department of Commerce and Economic Opportunity under the
3 Illinois Renewable Fuels Development Program Act for which
4 there is no project labor agreement; ~~and~~ (ii) all work
5 performed pursuant to a public private agreement under the
6 Public Private Agreements for the Illiana Expressway Act; and
7 (iii) all projects undertaken under a public-private agreement
8 under the Public-Private Partnerships for Transportation Act.

9 "Public works" also includes all projects at leased facility
10 property used for airport purposes under Section 35 of the
11 Local Government Facility Lease Act. "Public works" also
12 includes the construction of a new wind power facility by a
13 business designated as a High Impact Business under Section
14 5.5(a)(3)(E) of the Illinois Enterprise Zone Act. "Public
15 works" does not include work done directly by any public
16 utility company, whether or not done under public supervision
17 or direction, or paid for wholly or in part out of public
18 funds. "Public works" does not include projects undertaken by
19 the owner at an owner-occupied single-family residence or at an
20 owner-occupied unit of a multi-family residence.

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

25 "Locality" means the county where the physical work upon
26 public works is performed, except (1) that if there is not

1 available in the county a sufficient number of competent
2 skilled laborers, workers and mechanics to construct the public
3 works efficiently and properly, "locality" includes any other
4 county nearest the one in which the work or construction is to
5 be performed and from which such persons may be obtained in
6 sufficient numbers to perform the work and (2) that, with
7 respect to contracts for highway work with the Department of
8 Transportation of this State, "locality" may at the discretion
9 of the Secretary of the Department of Transportation be
10 construed to include two or more adjacent counties from which
11 workers may be accessible for work on such construction.

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

21 The terms "general prevailing rate of hourly wages",
22 "general prevailing rate of wages" or "prevailing rate of
23 wages" when used in this Act mean the hourly cash wages plus
24 fringe benefits for training and apprenticeship programs
25 approved by the U.S. Department of Labor, Bureau of
26 Apprenticeship and Training, health and welfare, insurance,

1 vacations and pensions paid generally, in the locality in which
2 the work is being performed, to employees engaged in work of a
3 similar character on public works.

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

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