



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB2865

by Rep. Marcus C. Evans, Jr.

#### SYNOPSIS AS INTRODUCED:

See Index

Creates the Innovations for Transportation Infrastructure Act. Contains a statement of legislative policy. Defines terms. Adds provisions governing: authorization of project delivery methods; preconditions to commencement of procurement; procurement; evaluation and selection of proposals; project records; confidentiality; public disclosure; design-build contracts; construction manager/general contractor contracts; funding and financing; minority, disadvantaged, and women-owned businesses; acquisition of property; federal requirements; powers of the Department of Transportation and the Illinois State Toll Highway Authority; and rulemaking. Makes corresponding changes in the Department of Transportation Law of the Civil Administrative Code of Illinois; Illinois Finance Authority Act; the Illinois Procurement Code; the Public Construction Bond Act; the Employment of Illinois Workers on Public Works Act; the Business Enterprise for Minorities, Women, and Persons with Disabilities Act; the Toll Highway Act; the Eminent Domain Act; and the Prevailing Wage Act. Provides that the provisions of the Act are severable. Effective immediately.

LRB101 09899 TAE 55001 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning transportation.

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

4 Section 1. Short title. This Act may be cited as the  
5 Innovations for Transportation Infrastructure Act.

6 Section 5. Legislative policy.

7 (a) It is the public policy of the State of Illinois to  
8 promote the development of infrastructure projects that serve  
9 the needs of the public.

10 (b) The design-build project delivery method and  
11 Construction Manager/General Contractor project delivery  
12 method and use of Alternative Technical Concepts have the  
13 potential to capture private sector innovation and safely  
14 deliver infrastructure projects on more predictable schedules  
15 and budgets. Earlier completion and lower cost for projects are  
16 possible with the ability to shift or share risks with the  
17 private sector that are generally retained by the public in the  
18 conventional design-bid-build project delivery method.

19 (c) It is the intent of the General Assembly that the  
20 Department of Transportation and the Illinois State Toll  
21 Highway Authority may evaluate and use Alternative Technical  
22 Concepts proposed by bidders and proposers and to use the  
23 design-build project delivery method and Construction

1 Manager/General Contractor project delivery method.

2 (d) It is the intent of this Act to use design  
3 professionals, construction companies, and workers from this  
4 State to the greatest extent possible.

5 (e) The powers granted in this Act are in addition to any  
6 other powers authorized under applicable law.

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

8 "Alternative Technical Concepts" means a proposed  
9 deviation from the contract technical requirements set forth in  
10 the procurement documents for a transportation facility that  
11 offers a solution that is equal to or better than the  
12 requirements in the procurement documents.

13 "Authority" means the Illinois State Toll Highway  
14 Authority.

15 "Best value" means any selection process in which proposals  
16 contain both price and qualitative components and award is  
17 based upon a combination of price, qualitative concepts, and  
18 other factors.

19 "Chief procurement officer" means the chief procurement  
20 officer for the Transportation Agency.

21 "Construction Manager/General Contractor" means a proposer  
22 that has entered into a Construction Manager/General  
23 Contractor contract under this Act.

24 "Construction Manager/General Contractor contract" means a  
25 two-phase contract between the Transportation Agency and a

1 Construction Manager/General Contractor that includes a first  
2 phase addressing preconstruction services and a second phase  
3 addressing the construction of the transportation facility.

4 "Construction Manager/General Contractor project delivery  
5 method" means a method of procurement and contracting that  
6 makes a Construction Manager/General Contractor who enters  
7 into a contract with the Transportation Agency responsible for  
8 certain preconstruction services and then, if the parties reach  
9 agreement on key terms, responsible for construction of the  
10 transportation facility.

11 "Department" means the Illinois Department of  
12 Transportation.

13 "Design-bid-build project delivery method" means the  
14 traditional method of procuring and contracting for design  
15 services and construction services used separately in this  
16 State, that incorporates the Architectural, Engineering, and  
17 Land Surveying Qualifications Based Selection Act and the  
18 principles of competitive bidding under the Illinois  
19 Procurement Code.

20 "Design-build contract" means a contract between the  
21 Transportation Agency and a design-builder under which the  
22 design-builder agrees to furnish architectural, surveying,  
23 engineering, construction, and related services for a  
24 transportation facility.

25 "Design-build project delivery method" means a method of  
26 procurement and contracting that provides responsibility

1 within a single contract between the Transportation Agency and  
2 a design-builder for the furnishing of architectural,  
3 surveying, engineering, construction, and related services for  
4 a transportation facility.

5 "Design-builder" means a proposer that has entered into a  
6 design-build contract with the Transportation Agency under  
7 this Act.

8 "Evaluation Committee" means the committee assembled to  
9 evaluate and score statements of qualifications and proposals.

10 "Evaluation criteria" means the standards and requirements  
11 established by the Transportation Agency against which the  
12 qualifications and proposals of a proposer will be assessed  
13 during the procurement of a design-build contract or  
14 Construction Manager/General Contractor contract, as  
15 applicable.

16 "Executive Director" means the Executive Director of the  
17 Illinois State Toll Highway Authority.

18 "Metropolitan planning organization" means a metropolitan  
19 planning organization under 23 U.S.C. 134 whose metropolitan  
20 planning area boundaries are partially or completely within  
21 this State.

22 "Preconstruction services" means all  
23 non-construction-related services that a Construction  
24 Manager/General Contractor is required to perform during the  
25 first phase of a Construction Manager/General Contractor  
26 contract, and may include, but is not limited to, giving advice

1 to the Transportation Agency regarding scheduling, work  
2 sequencing, cost engineering, constructability, cost  
3 estimating, and risk identification.

4 "Proposal" means a proposer's response to a request for  
5 proposals.

6 "Proposer" means any individual, sole proprietorship,  
7 firm, partnership, joint venture, corporation, professional  
8 corporation, or other entity legally established to conduct  
9 business in this State that proposes to be the design-builder  
10 or Construction Manager/General Contractor for any  
11 transportation facility under this Act.

12 "Qualifications" means a statement of qualifications  
13 submitted by a proposer in response to a request for  
14 qualifications.

15 "Request for proposals" means the document issued by the  
16 Transportation Agency to solicit proposals and describe the  
17 procurement process for a design-build contract or  
18 Construction Manager/General Contractor contract in accordance  
19 with the design-build project delivery method or the  
20 Construction Manager/General Contractor project delivery  
21 method, as applicable.

22 "Request for qualifications" means the document issued by  
23 the Transportation Agency in the first phase of a two-phase  
24 procurement to solicit qualifications from proposers in  
25 accordance with the design-build project delivery method or the  
26 Construction Manager/General Contractor project delivery

1 method, as applicable.

2 "Scope and performance requirements" means the activities,  
3 constructed elements, and standards of performance the  
4 Transportation Agency requires the design-builder or the  
5 Construction Manager/General Contractor to comply with in the  
6 development of the transportation facility, and may include,  
7 but is not limited to, the intended usage, capacity, size,  
8 scope, quality and performance standards, life-cycle costs,  
9 preliminary engineering, design, and other requirements as  
10 developed and determined by the Transportation Agency.

11 "Secretary" means the Secretary of the Illinois Department  
12 of Transportation.

13 "Transportation Agency" means the Illinois Department of  
14 Transportation or the Illinois State Toll Highway Authority.

15 "Transportation facility" means any new or existing  
16 facility or group of facilities that are the subject of a  
17 design-build contract or a Construction Manager/General  
18 Contractor contract, and includes highways, roads, bridges,  
19 tunnels, overpasses, bus ways, guideways, ferries, airports or  
20 other aviation facilities, public transportation facilities,  
21 vehicle parking facilities, port facilities, rail facilities,  
22 stations, hubs, terminals, intermodal facilities, transit  
23 facilities, or similar facilities used for the transportation  
24 of persons or goods, together with any buildings, structures,  
25 parking areas, appurtenances, intelligent transportation  
26 systems, and other property or facilities related to the

1 operation or maintenance of these facilities.

2 Section 15. Authorization of project delivery methods.

3 (a) Notwithstanding any other law, and as authority  
4 supplemental to its existing powers, the Transportation  
5 Agency, in accordance with this Act, may use the design-build  
6 project delivery method for transportation facilities if the  
7 capital costs for transportation facilities delivered  
8 utilizing the design-build project delivery method or  
9 Construction Manager/General Contractor project delivery  
10 method or Alternative Technical Concepts in a design-bid-build  
11 project delivery method do not: (i) for transportation  
12 facilities delivered by the Department, exceed 20% of the  
13 Department's multi-year highway improvement program for any  
14 5-year period with no one year period exceeding 30%; or (ii)  
15 for transportation facilities delivered by the Authority,  
16 exceed 20% of the Authority's annual improvement program. The  
17 Transportation Agency shall make this calculation before  
18 commencing the procurement. Notwithstanding any other law, and  
19 as authority supplemental to its existing powers, the  
20 Department, in accordance with this Act, may use the  
21 Construction Manager/General Contractor project delivery  
22 method for up to 2 transportation facilities. Before commencing  
23 a procurement under this Act for either a design-build contract  
24 or a Construction Manager/General Contractor contract, the  
25 Transportation Agency shall first undertake an analysis and



1 make a written determination that it is in the best interests  
2 of this State to use the selected delivery method for that  
3 transportation facility. The analysis and determination shall  
4 discuss the design-build project delivery method or  
5 Construction Manager/General Contractor project delivery  
6 method's impact on the anticipated schedule, completion date,  
7 and project costs. The best interests of the State analysis  
8 shall be made available to the public.

9 (b) The Transportation Agency shall report to the General  
10 Assembly annually for the first 5 years after the effective  
11 date of this Act on the progress of procurements and  
12 transportation facilities procured under this Act.

13 (c) The Architectural, Engineering, and Land Surveying  
14 Qualifications Based Selection Act does not apply to  
15 procurements under this Act.

16 Section 20. Preconditions to commencement of procurement.

17 If the Transportation Agency determines to use the  
18 design-build project delivery method or the Construction  
19 Manager/General Contractor project delivery method for a  
20 particular transportation facility, the Transportation Agency  
21 may not commence a procurement for the transportation facility  
22 until the Transportation Agency has satisfied the following  
23 requirements:

24 (1) the Transportation Agency does one of the following:

25 (A) the Transportation Agency includes the

1 transportation facility in the Transportation Agency's  
2 respective multi-year highway improvement program and  
3 designates it as a design-build project delivery method  
4 project or Construction Manager/General Contractor  
5 project;

6 (B) the Transportation Agency issues a notice of intent  
7 to receive qualifications, that includes a description of  
8 the proposed procurement and transportation facility, at  
9 least 14 days before the issuance of the request for  
10 qualifications, and for a Department-issued notice of  
11 intent publishes the notice in the Illinois Transportation  
12 Procurement Bulletin and for an Authority-issued notice of  
13 intent publishes the notice in the Illinois Procurement  
14 Bulletin; or

15 (C) for a single-phase procurement authorized under  
16 subsection (a) of Section 25 of this Act, the  
17 Transportation Agency issues a notice of intent to receive  
18 proposals, that includes a description of the proposed  
19 procurement and transportation facility, at least 14 days  
20 before the issuance of the request for proposals, and for a  
21 Department-issued notice of intent publishes the notice in  
22 the Illinois Transportation Procurement Bulletin and for  
23 an Authority-issued notice of intent publishes the notice  
24 in the Illinois Procurement Bulletin; and

25 (2) the Transportation Agency uses its best efforts to  
26 ensure that the transportation facility is consistent with the

1 regional plan in existence at the time of any metropolitan  
2 planning organization in which the boundaries of the  
3 transportation facility is located, or any other  
4 publicly-approved plan.

5 Section 25. Procurement process.

6 (a) The Transportation Agency may solicit a proposer with  
7 which to enter into a design-build contract or Construction  
8 Manager/General Contractor contract, as applicable, by using,  
9 without limitation, one or more requests for qualifications, a  
10 shortlisting of the most highly qualified proposers, requests  
11 for proposals, and negotiations. The Transportation Agency  
12 shall use a two-phase procurement for a design-build contract  
13 to select the successful proposer, except that the  
14 Transportation Agency may use a single-phase procurement if the  
15 transportation facility is estimated to cost less than  
16 \$5,000,000 or the Secretary or the Executive Director makes a  
17 written determination that the Transportation Agency may use a  
18 single-phase procurement for a particular transportation  
19 facility. In a two-phase procurement, the Transportation  
20 Agency shall use the first phase to evaluate and shortlist the  
21 most highly qualified proposers based on a proposer's  
22 qualifications, and then use the second phase to evaluate and  
23 select a proposer based on proposals submitted by the  
24 shortlisted proposers. During the first phase of a two-phase  
25 procurement, the Transportation Agency shall not consider

1 price proposals to make its shortlist decision. In a  
2 single-phase procurement, the Transportation Agency shall  
3 solicit proposers with a request for proposals, and shall  
4 evaluate and select a proposer based on those proposals.

5 (b) The request for qualifications may contain any terms  
6 deemed appropriate by the Transportation Agency including,  
7 without limitation, the following:

8 (1) a description of the anticipated scope of work for  
9 the transportation facility;

10 (2) a requirement that the proposer identify certain  
11 key personnel, and for design-build contracts certain key  
12 firms, the experience of the personnel and firms, and the  
13 conditions on which identified personnel and firms can be  
14 replaced;

15 (3) the evaluation criteria for the qualifications and  
16 the relative importance of those criteria; these  
17 evaluation criteria may address, without limitation, the  
18 proposer's technical and financial qualifications, such as  
19 specialized experience, technical competence, capability  
20 to perform, financial capacity, the proposer's workload,  
21 local office presence, past performance including the  
22 proposer's safety record, and any other  
23 qualifications-based factors;

24 (4) the Transportation Agency's prequalification,  
25 licensing, and registration requirements, including any  
26 requirements from the Professional Engineering Practice

1 Act of 1989, the Illinois Architecture Practice Act of  
2 1989, the Structural Engineering Practice Act of 1989, and  
3 the Illinois Professional Land Surveyor Act of 1989, except  
4 that nothing contained herein precludes the Transportation  
5 Agency's use of additional prequalification criteria or  
6 pass-fail evaluation factors addressing minimum levels of  
7 technical experience or financial capabilities;

8 (5) the maximum number of proposers the Transportation  
9 Agency will shortlist to submit proposals; and

10 (6) any other relevant information the Transportation  
11 Agency deems appropriate.

12 (c) Upon completion of the qualifications evaluation, the  
13 Transportation Agency shall, based on the evaluation criteria  
14 set forth in the request for qualifications, create a shortlist  
15 of the most highly qualified proposers. The Transportation  
16 Agency shall shortlist no more than 5 and no fewer than 2 of  
17 the most highly qualified proposers. Notwithstanding other  
18 provisions of this subsection (c), the Transportation Agency  
19 may shortlist fewer than 2 proposers if the Secretary or the  
20 Executive Director makes a finding that an emergency situation  
21 justifies the limited shortlisting and fewer than 2 proposers  
22 meet any applicable prequalification or pass-fail requirements  
23 set forth in the request for qualifications.

24 (d) The request for proposals may contain any terms deemed  
25 appropriate by the Transportation Agency including, without  
26 limitation, the following:

- 1 (1) the form and amount of required bid security;
- 2 (2) the terms of the design-build contract or  
3 Construction Manager/General Contractor contract,  
4 including, but not limited to, scope and performance  
5 requirements, schedule or completion date requirements,  
6 subcontractor requirements, payment and performance  
7 security requirements, and insurance requirements;
- 8 (3) the requirements for the technical component of the  
9 proposal, including a description of the level of design,  
10 scope and type of renderings, drawings, and specifications  
11 to be provided in the proposals;
- 12 (4) the requirements for the price component of the  
13 proposal, which for Construction Manager/General  
14 Contractor contracts may include a requirement for the  
15 proposer to submit a lump sum price for the direct costs to  
16 perform the required preconstruction services and  
17 percentage mark-up on those direct costs;
- 18 (5) the evaluation criteria for the proposals,  
19 including technical criteria, innovation, and schedule,  
20 and the relative importance of those criteria, as the  
21 Transportation Agency deems appropriate;
- 22 (6) a process for the Transportation Agency to review  
23 and accept Alternative Technical Concepts;
- 24 (7) requirements regarding the proposer's  
25 qualifications; and
- 26 (8) any other relevant information the Transportation

1 Agency deems appropriate.

2 (e) Before the proposers' submittal of proposals, the  
3 Transportation Agency may conduct confidential meetings and  
4 exchange confidential information with proposers to promote  
5 understanding of the request for proposals, review Alternative  
6 Technical Concepts, or discuss other issues related to the  
7 procurement.

8 (f) The date proposals are due must be at least 28 calendar  
9 days after the date the Transportation Agency first issues the  
10 request for proposals.

11 (g) The Transportation Agency may offer to pay a stipend in  
12 an amount and on the terms and conditions determined by the  
13 Transportation Agency and as set forth in the request for  
14 proposals to: (1) all shortlisted proposers if the  
15 Transportation Agency cancels the procurement before the due  
16 date for proposals; or (2) each unsuccessful proposer that  
17 submits a responsive proposal. The Transportation Agency may  
18 pay a stipend only to those proposers who grant to the  
19 Transportation Agency the right to use any work product  
20 contained in the unsuccessful proposer's proposal and other  
21 proposal-related submissions or, if the Transportation Agency  
22 cancels the procurement before the due date for proposals, any  
23 work product developed before cancellation, including  
24 technologies, techniques, methods, processes, and information  
25 contained in the recipient's design for the transportation  
26 facility.

1           (h) The Transportation Agency shall, as appropriate  
2 depending on whether the transportation facility includes  
3 building facilities, directly employ or retain a professional  
4 engineer or engineers licensed in this State or a licensed  
5 architect or architects, or both engineers licensed in this  
6 State and licensed architects, to prepare the scope and assist  
7 in the evaluation of the proposals' technical submissions under  
8 a design-build project delivery method. The professional  
9 engineers and licensed architects performing these services  
10 are generally precluded from participating in the procurement  
11 of the transportation facility at issue as a member of a  
12 proposer team.

13           (i) The Transportation Agency has the right to reject any  
14 and all qualifications or proposals, including, but not limited  
15 to, the right to reject any qualifications or proposals as  
16 non-responsive, if, in the Transportation Agency's sole  
17 discretion, the qualifications or proposals do not meet all  
18 material requirements of the request for qualifications or  
19 request for proposals, as appropriate. The Transportation  
20 Agency shall not consider a proposal that does not include:

21           (1) the proposer's plan to comply with requirements  
22 established by the Transportation Agency regarding  
23 utilization of business enterprises, including  
24 disadvantaged business enterprises; or

25           (2) bid security in the form and amount designated in  
26 the request for proposals.



1           (j) The Transportation Agency shall consult with the  
2 appropriate chief procurement officer on the design-build  
3 project delivery method and the Construction Manager/General  
4 Contractor project delivery method procurement processes, and  
5 the Secretary or the Executive Director, in consultation with  
6 the chief procurement officer, shall determine which  
7 procedures to adopt and apply to the design-build project  
8 delivery method and Construction Manager/General Contractor  
9 project delivery method procurement processes in order to  
10 ensure an open, transparent, and efficient process that  
11 accomplishes the purposes of this Act.

12           Section 30. Evaluation committee.

13           (a) The Transportation Agency shall establish one or more  
14 evaluation committees to assist in selecting a design-builder  
15 and a Construction Manager/General Contractor. The  
16 Transportation Agency, in its sole discretion, shall determine  
17 the appropriate size and composition of the evaluation  
18 committee; however, at least half of the committee must be  
19 licensed design professionals.

20           (b) The Transportation Agency may establish an evaluation  
21 committee for a set term or for the procurement of a particular  
22 transportation facility.

23           (c) Once the Transportation Agency identifies the  
24 proposers for a transportation facility, each member of an  
25 evaluation committee must certify that no conflict of interest

1 exists between the member and the proposers. If the  
2 Transportation Agency, after consultation with the chief  
3 procurement officer, determines that an actual conflict  
4 exists, the member shall not participate on the evaluation  
5 committee for that procurement and the Transportation Agency  
6 shall appoint a replacement member on either a permanent or a  
7 temporary basis.

8 Section 35. Procedures for selection. The Transportation  
9 Agency shall review, evaluate, score, and rank proposals and  
10 determine which proposal offers the best value to the public  
11 based on the evaluation criteria set forth in the request for  
12 proposals. The Transportation Agency shall award the contract  
13 based on this determination. Notwithstanding other provisions  
14 of this Section, if for any reason the proposer awarded the  
15 contract is unable or unwilling to execute the contract,  
16 including the failure of the proposer and the Transportation  
17 Agency to successfully complete negotiations, if any, of the  
18 contract, the Transportation Agency may award the contract to  
19 the proposer whose proposal the Transportation Agency  
20 determines offers the public the next best value.

21 Section 40. Project records; confidentiality; public  
22 disclosure.

23 (a) The Transportation Agency shall maintain all written  
24 decisions, qualification and proposal evaluations, scoring

1 documents, selection evaluations, proposals, and procurement  
2 documents in a procurement file maintained by the  
3 Transportation Agency.

4 (b) A proposer may identify those portions of a proposal or  
5 other submission that the proposer considers to be trade  
6 secrets or confidential, commercial, financial, or proprietary  
7 information. Confidential and proprietary information,  
8 including trade secrets, shall be exempt from disclosure only  
9 if the proposer does the following:

10 (1) requests exclusion from disclosure upon submission  
11 of the information or other materials for which protection  
12 is sought;

13 (2) identifies the data or other materials for which  
14 protection is sought;

15 (3) states the statutory or regulatory basis for the  
16 protection;

17 (4) fully complies with the federal Freedom of  
18 Information Act and any other applicable provisions of  
19 State law, including, but not limited to, the Freedom of  
20 Information Act, with respect to information the proposer  
21 contends should be exempt from disclosure; and

22 (5) certifies if the information is in accordance with  
23 the protection of the Illinois Trade Secrets Act.

24 (c) Notwithstanding any other provision of law, in order to  
25 properly balance the need to maximize competition under this  
26 Act with the need to create a transparent procurement process,

1 the qualifications, proposals, and other information and  
2 documents submitted by proposers and the Transportation  
3 Agency's evaluation records shall not be subject to release or  
4 disclosure by the Transportation Agency until execution of the  
5 design-build contract or Construction Manager/General  
6 Contractor contract, as applicable. If the Transportation  
7 Agency terminates the procurement for a transportation  
8 facility, the exemption from release or disclosure under this  
9 Section shall remain in place until the Transportation Agency  
10 re-procures the transportation facility and has entered into a  
11 design-build contract or Construction Manager/General  
12 Contractor contract, as applicable. However, this exemption  
13 shall lapse if the Transportation Agency does not commence the  
14 re-procurement of the transportation facility within 5 years of  
15 the termination.

16 Section 45. Design-build contract. A design-build contract  
17 may include any provisions the Transportation Agency  
18 determines are necessary or appropriate, including, but not  
19 limited to, provisions regarding the following:

- 20 (1) compensation or payments to the design-builder;
- 21 (2) grounds for termination of the design-build  
22 contract, including the Transportation Agency's right to  
23 terminate for convenience;
- 24 (3) liability for damages and nonperformance;
- 25 (4) events of default and the rights and remedies

1 available to the design-builder and the Transportation  
2 Agency in the event of a default or delay;

3 (5) the identification of any technical specifications  
4 that the design-builder must comply with when developing  
5 plans or performing construction work;

6 (6) the procedures for review and approval of the  
7 design-builder's plans;

8 (7) required performance and payment security;

9 (8) the terms and conditions of indemnification and  
10 minimum insurance requirements; and

11 (9) any other terms and conditions the Transportation  
12 Agency deems necessary.

13 Section 50. Construction Manager/General Contractor  
14 contract.

15 (a) The Construction Manager/General Contractor contract  
16 shall divide the Construction Manager/General Contractor  
17 services into 2 phases. The first phase shall address  
18 preconstruction services and the procedures the parties shall  
19 follow to finalize the contract terms for the second phase. The  
20 second phase shall address the Construction Manager/General  
21 Contractor's construction of the transportation facility for a  
22 lump sum or a guaranteed maximum price.

23 (b) A Construction Manager/General Contractor contract  
24 shall include provisions regarding the following:

25 (1) the Construction Manager/General Contractor's

1 provision of preconstruction services during the first  
2 phase of the contract, including the Construction  
3 Manager/General Contractor's compensation for those  
4 services;

5 (2) a requirement that, during the first phase of the  
6 contract, the Construction Manager/General Contractor  
7 shall use a competitive bidding process to procure  
8 subcontracts for at least the minimum percentage of  
9 construction work specified in the request for proposals,  
10 provided that:

11 (A) compliance with this requirement shall be  
12 based on an estimated cost for the construction work  
13 approved by the Transportation Agency before the start  
14 of the competitive bidding process; and

15 (B) the Construction Manager/General Contractor  
16 may not use subcontracts with its wholly or partially  
17 owned subsidiaries, parent companies, or affiliates to  
18 satisfy this obligation;

19 (3) the process the Transportation Agency and the  
20 Construction Manager/General Contractor shall use to  
21 determine a lump sum or guaranteed maximum price for the  
22 construction work, including a requirement that the  
23 Transportation Agency conduct an independent cost estimate  
24 for the construction work; and

25 (4) grounds for termination of the Construction  
26 Manager/General Contractor contract, including the

1           Transportation Agency's right to terminate the contract  
2           and not proceed with the construction phase of the project  
3           if the Transportation Agency and the Construction  
4           Manager/General Contractor are unable to negotiate a lump  
5           sum or guaranteed maximum price for the construction work.

6           (c) In addition to the provisions under subsection (b) of  
7           this Section, a Construction Manager/General Contractor  
8           contract may include any other provisions the Transportation  
9           Agency determines are necessary or appropriate, including, but  
10          not limited to, provisions regarding the following:

11                 (1) liability for damages and nonperformance;

12                 (2) events of default and the rights and remedies  
13                 available to the Construction Manager/General Contractor  
14                 and the Transportation Agency in the event of a default or  
15                 delay;

16                 (3) the identification of any technical specifications  
17                 that the Construction Manager/General Contractor must  
18                 comply with when aiding the Transportation Agency with  
19                 developing plans or performing construction work;

20                 (4) required performance and payment security for the  
21                 construction phase of the contract;

22                 (5) the terms and conditions of indemnification and  
23                 minimum insurance requirements; and

24                 (6) any other terms and conditions the Transportation  
25                 Agency deems necessary.

26          (d) If the Construction Manager/General Contractor

1 contract is terminated for any reason, the Transportation  
2 Agency, in its sole discretion, may readvertise the  
3 Construction Manager/General Contractor contract under this  
4 Act or use any other authorized procurement method to complete  
5 the transportation facility or any portion of the  
6 transportation facility. Once the contract is terminated, the  
7 Transportation Agency may use any work product developed by the  
8 Construction Manager/General Contractor to complete the  
9 transportation facility.

10 Section 55. Funding and financing.

11 (a) The Transportation Agency may use any lawful source of  
12 funding and financing to compensate a design-builder and  
13 Construction Manager/General Contractor for work and services  
14 performed under a design-build contract or Construction  
15 Manager/General Contractor contract, as applicable, and the  
16 Transportation Agency may combine federal, State, local, and  
17 private funds to finance a transportation facility.

18 (b) Subject to appropriation by the General Assembly of the  
19 required amounts, the Transportation Agency may obligate and  
20 make expenditures of funds as and when needed to satisfy its  
21 payment obligations under a design-build contract or  
22 Construction Manager/General Contractor contract.

23 Section 56. Utilization requirements. Design-builder and  
24 Construction Manager/General Contractor projects shall comply



1 with Section 2-105 of the Illinois Human Rights Act and all  
2 applicable laws and rules that establish standards and  
3 procedures for the utilization of minority, disadvantaged, and  
4 women-owned businesses, including, but not limited to, the  
5 Business Enterprise for Minorities, Women, and Persons with  
6 Disabilities Act.

7 Section 60. Acquisition of property and related  
8 agreements. The Transportation Agency may exercise any and all  
9 powers of condemnation or eminent domain, including quick-take  
10 powers, to acquire lands or estates or interests in land for a  
11 transportation facility under this Act to the extent the  
12 Transportation Agency finds that the action serves the public  
13 purpose of this Act and deems the action appropriate in the  
14 exercise of its powers under this Act. In addition, the  
15 Transportation Agency and a design-builder or Construction  
16 Manager/General Contractor may enter into leases, licenses,  
17 easements, and other grants of property interests that the  
18 Transportation Agency determines are necessary to deliver a  
19 transportation facility under this Act.

20 Section 65. Federal requirements. In the procurement of  
21 design-build contracts and Construction Manager/General  
22 Contractor contracts, the Transportation Agency shall, to the  
23 extent applicable, comply with federal law and regulations and  
24 take all necessary steps to adapt its rules, policies, and

1 procedures to remain eligible for federal aid.

2 Section 70. Powers. The powers granted to the  
3 Transportation Agency under this Act, including the power to  
4 procure and enter into design-build contracts and Construction  
5 Manager/General Contractor contracts, shall be liberally  
6 construed to accomplish its purpose, are in addition to any  
7 existing powers of the Transportation Agency, and shall not  
8 affect or impair any other powers authorized under applicable  
9 law.

10 Section 75. Rulemaking.

11 (a) The Illinois Administrative Procedure Act applies to  
12 all administrative rules and procedures of the Transportation  
13 Agency under this Act, except that nothing in this Act shall be  
14 construed to render any prequalification or other  
15 responsibility criteria as a "license" or "licensing" under  
16 that Act.

17 (b) The appropriate chief procurement officer, in  
18 consultation with the Transportation Agency, may adopt rules to  
19 carry out the provisions of this Act.

20 Section 905. The Department of Transportation Law of the  
21 Civil Administrative Code of Illinois is amended by adding  
22 Section 2705-233 as follows:

1 (20 ILCS 2705/2705-233 new)

2 Sec. 2705-233. Innovations for Transportation  
3 Infrastructure Act. The Department may exercise all powers  
4 granted to it under the Innovations for Transportation  
5 Infrastructure Act, including, but not limited to, the power to  
6 enter into all contracts or agreements necessary or incidental  
7 to the performance of its powers under that Act, and powers  
8 related to any transportation facility implemented under that  
9 Act.

10 Section 910. The Illinois Finance Authority Act is amended  
11 by adding Section 825-108 as follows:

12 (20 ILCS 3501/825-108 new)

13 Sec. 825-108. Transportation project financing. For the  
14 purpose of financing a transportation facility undertaken  
15 under the Innovations for Transportation Infrastructure Act,  
16 the Authority may apply for an allocation of tax-exempt bond  
17 financing authorization provided by subsection (m) of Section  
18 142 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 adding Section 1-10.5 as follows:

22 (30 ILCS 500/1-10.5 new)

1       Sec. 1-10.5. Alternative Technical Concepts.

2       (a) For the purposes of this Section, "Alternative  
3 Technical Concepts" and "design-bid-build project delivery  
4 method" have the meanings ascribed to those terms in the  
5 Innovations for Transportation Infrastructure Act.

6       (b) Notwithstanding subsection (b) of Section 1-10 of this  
7 Code, the Department of Transportation may allow bidders and  
8 proposers to submit Alternative Technical Concepts in their  
9 bids and proposals, if the Department determines that the  
10 Alternative Technical Concepts provide an equal or better  
11 solution than the underlying technical requirements applicable  
12 to the work. Notwithstanding the foregoing, for projects the  
13 Department delivers using the design-bid-build project  
14 delivery method, the Department shall use the Alternative  
15 Technical Concepts process for no more than 3 projects. If the  
16 Department allows bidders or proposers for a particular  
17 contract to submit Alternative Technical Concepts, the  
18 Department shall describe the process for submission and  
19 evaluation of Alternative Technical Concepts in the  
20 procurement documents for that contract, including the  
21 potential use of confidential meetings and the exchange of  
22 confidential information with bidders and proposers to review  
23 and discuss potential or proposed Alternative Technical  
24 Concepts.

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

1 adding Section 1.9 as follows:

2 (30 ILCS 550/1.9 new)

3 Sec. 1.9. Design-build contracts and Construction  
4 Manager/General Contractor contracts. This Act applies to any  
5 design-build contract or Construction Manager/General  
6 Contractor contract entered into under the Innovations for  
7 Transportation Infrastructure Act.

8 Section 925. The Employment of Illinois Workers on Public  
9 Works Act is amended by adding Section 2.8 as follows:

10 (30 ILCS 570/2.8 new)

11 Sec. 2.8. Design-build and Construction Manager/General  
12 Contractor contracts. This Act applies to any design-build  
13 contracts and Construction Manager/General Contractor  
14 contracts entered into under the Innovations for  
15 Transportation Infrastructure Act.

16 Section 930. The Business Enterprise for Minorities,  
17 Women, and Persons with Disabilities Act is amended by adding  
18 Section 2.8 as follows:

19 (30 ILCS 575/2.8 new)

20 Sec. 2.8. Design-build and Construction Manager/General  
21 Contractor contracts. This Act applies to any design-build

1 contracts and Construction Manager/General Contractor  
2 contracts entered into under the Innovations for  
3 Transportation Infrastructure Act.

4 Section 935. The Toll Highway Act is amended by adding  
5 Section 11.2 as follows:

6 (605 ILCS 10/11.2 new)

7 Sec. 11.2. Innovations for Transportation Infrastructure  
8 Act. The Authority may exercise all powers granted to it under  
9 the Innovations for Transportation Infrastructure Act,  
10 including, but not limited to, the power to enter into all  
11 contracts or agreements necessary to perform its powers under  
12 that Act, and any powers related to a transportation facility  
13 implemented under that Act.

14 Section 940. The Eminent Domain Act is amended by adding  
15 Section 15-5-48 as follows:

16 (735 ILCS 30/15-5-48 new)

17 Sec. 15-5-48. Eminent domain powers in new Acts. The  
18 following provisions of law may include express grants of the  
19 power to acquire property by condemnation or eminent domain:

20 The Innovations for Transportation Infrastructure Act; for  
21 the purposes of constructing a transportation facility under  
22 the Act.

1 Section 945. The Prevailing Wage Act is amended by changing  
2 Section 2 as follows:

3 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

4 (Text of Section before amendment by P.A. 100-1177)

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

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

13 "Public works" means all fixed works constructed or  
14 demolished by any public body, or paid for wholly or in part  
15 out of public funds. "Public works" as defined herein includes  
16 all projects financed in whole or in part with bonds, grants,  
17 loans, or other funds made available by or through the State or  
18 any of its political subdivisions, including but not limited  
19 to: bonds issued under the Industrial Project Revenue Bond Act  
20 (Article 11, Division 74 of the Illinois Municipal Code), the  
21 Industrial Building Revenue Bond Act, the Illinois Finance  
22 Authority Act, the Illinois Sports Facilities Authority Act, or  
23 the Build Illinois Bond Act; loans or other funds made  
24 available pursuant to the Build Illinois Act; loans or other

1 funds made available pursuant to the Riverfront Development  
2 Fund under Section 10-15 of the River Edge Redevelopment Zone  
3 Act; or funds from the Fund for Illinois' Future under Section  
4 6z-47 of the State Finance Act, funds for school construction  
5 under Section 5 of the General Obligation Bond Act, funds  
6 authorized under Section 3 of the School Construction Bond Act,  
7 funds for school infrastructure under Section 6z-45 of the  
8 State Finance Act, and funds for transportation purposes under  
9 Section 4 of the General Obligation Bond Act. "Public works"  
10 also includes (i) all projects financed in whole or in part  
11 with funds from the Department of Commerce and Economic  
12 Opportunity under the Illinois Renewable Fuels Development  
13 Program Act for which there is no project labor agreement; (ii)  
14 all work performed pursuant to a public private agreement under  
15 the Public Private Agreements for the Illiana Expressway Act or  
16 the Public-Private Agreements for the South Suburban Airport  
17 Act; ~~and~~ (iii) all projects undertaken under a public-private  
18 agreement under the Public-Private Partnerships for  
19 Transportation Act; and (iv) all transportation facilities  
20 undertaken under a design-build contract or a Construction  
21 Manager/General Contractor contract under the Innovations for  
22 Transportation Infrastructure Act. "Public works" also  
23 includes all projects at leased facility property used for  
24 airport purposes under Section 35 of the Local Government  
25 Facility Lease Act. "Public works" also includes the  
26 construction of a new wind power facility by a business



1 designated as a High Impact Business under Section 5.5(a)(3)(E)  
2 of the Illinois Enterprise Zone Act. "Public works" does not  
3 include work done directly by any public utility company,  
4 whether or not done under public supervision or direction, or  
5 paid for wholly or in part out of public funds. "Public works"  
6 also includes any corrective action performed pursuant to Title  
7 XVI of the Environmental Protection Act for which payment from  
8 the Underground Storage Tank Fund is requested. "Public works"  
9 does not include projects undertaken by the owner at an  
10 owner-occupied single-family residence or at an owner-occupied  
11 unit of a multi-family residence. "Public works" does not  
12 include work performed for soil and water conservation purposes  
13 on agricultural lands, whether or not done under public  
14 supervision or paid for wholly or in part out of public funds,  
15 done directly by an owner or person who has legal control of  
16 those lands.

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

21 "Locality" means the county where the physical work upon  
22 public works is performed, except (1) that if there is not  
23 available in the county a sufficient number of competent  
24 skilled laborers, workers and mechanics to construct the public  
25 works efficiently and properly, "locality" includes any other  
26 county nearest the one in which the work or construction is to

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

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

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

26 (Source: P.A. 97-502, eff. 8-23-11; 98-109, eff. 7-25-13;

1 98-482, eff. 1-1-14; 98-740, eff. 7-16-14; 98-756, eff.  
2 7-16-14.)

3 (Text of Section after amendment by P.A. 100-1177)

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

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

12 "Public works" means all fixed works constructed or  
13 demolished by any public body, or paid for wholly or in part  
14 out of public funds. "Public works" as defined herein includes  
15 all projects financed in whole or in part with bonds, grants,  
16 loans, or other funds made available by or through the State or  
17 any of its political subdivisions, including but not limited  
18 to: bonds issued under the Industrial Project Revenue Bond Act  
19 (Article 11, Division 74 of the Illinois Municipal Code), the  
20 Industrial Building Revenue Bond Act, the Illinois Finance  
21 Authority Act, the Illinois Sports Facilities Authority Act, or  
22 the Build Illinois Bond Act; loans or other funds made  
23 available pursuant to the Build Illinois Act; loans or other  
24 funds made available pursuant to the Riverfront Development  
25 Fund under Section 10-15 of the River Edge Redevelopment Zone

1 Act; or funds from the Fund for Illinois' Future under Section  
2 6z-47 of the State Finance Act, funds for school construction  
3 under Section 5 of the General Obligation Bond Act, funds  
4 authorized under Section 3 of the School Construction Bond Act,  
5 funds for school infrastructure under Section 6z-45 of the  
6 State Finance Act, and funds for transportation purposes under  
7 Section 4 of the General Obligation Bond Act. "Public works"  
8 also includes (i) all projects financed in whole or in part  
9 with funds from the Department of Commerce and Economic  
10 Opportunity under the Illinois Renewable Fuels Development  
11 Program Act for which there is no project labor agreement; (ii)  
12 all work performed pursuant to a public private agreement under  
13 the Public Private Agreements for the Illiana Expressway Act or  
14 the Public-Private Agreements for the South Suburban Airport  
15 Act; ~~and~~ (iii) all projects undertaken under a public-private  
16 agreement under the Public-Private Partnerships for  
17 Transportation Act; and (iv) all transportation facilities  
18 undertaken under a design-build contract or a Construction  
19 Manager/General Contractor contract under the Innovations for  
20 Transportation Infrastructure Act. "Public works" also  
21 includes all projects at leased facility property used for  
22 airport purposes under Section 35 of the Local Government  
23 Facility Lease Act. "Public works" also includes the  
24 construction of a new wind power facility by a business  
25 designated as a High Impact Business under Section 5.5(a)(3)(E)  
26 of the Illinois Enterprise Zone Act. "Public works" does not

1 include work done directly by any public utility company,  
2 whether or not done under public supervision or direction, or  
3 paid for wholly or in part out of public funds. "Public works"  
4 also includes any corrective action performed pursuant to Title  
5 XVI of the Environmental Protection Act for which payment from  
6 the Underground Storage Tank Fund is requested. "Public works"  
7 does not include projects undertaken by the owner at an  
8 owner-occupied single-family residence or at an owner-occupied  
9 unit of a multi-family residence. "Public works" does not  
10 include work performed for soil and water conservation purposes  
11 on agricultural lands, whether or not done under public  
12 supervision or paid for wholly or in part out of public funds,  
13 done directly by an owner or person who has legal control of  
14 those lands.

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

19 "Locality" means the county where the physical work upon  
20 public works is performed, except (1) that if there is not  
21 available in the county a sufficient number of competent  
22 skilled laborers, workers and mechanics to construct the public  
23 works efficiently and properly, "locality" includes any other  
24 county nearest the one in which the work or construction is to  
25 be performed and from which such persons may be obtained in  
26 sufficient numbers to perform the work and (2) that, with

1 respect to contracts for highway work with the Department of  
2 Transportation of this State, "locality" may at the discretion  
3 of the Secretary of the Department of Transportation be  
4 construed to include two or more adjacent counties from which  
5 workers may be accessible for work on such construction.

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

15 "Labor organization" means an organization that is the  
16 exclusive representative of an employer's employees recognized  
17 or certified pursuant to the National Labor Relations Act.

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

1 (Source: P.A. 100-1177, eff. 6-1-19.)

2 Section 995. No acceleration or delay. Where this Act makes  
3 changes in a statute that is represented in this Act by text  
4 that is not yet or no longer in effect (for example, a Section  
5 represented by multiple versions), the use of that text does  
6 not accelerate or delay the taking effect of (i) the changes  
7 made by this Act or (ii) provisions derived from any other  
8 Public Act.

9 Section 997. Severability. The provisions of this Act are  
10 severable under Section 1.31 of the Statute on Statutes.

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

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 20 ILCS 2705/2705-233 new

5 20 ILCS 3501/825-108 new

6 30 ILCS 500/1-10.5 new

7 30 ILCS 550/1.9 new

8 30 ILCS 570/2.8 new

9 30 ILCS 575/2.8 new

10 605 ILCS 10/11.2 new

11 735 ILCS 30/15-5-48 new

12 820 ILCS 130/2 from Ch. 48, par. 39s-2