



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3927

Introduced 2/17/2023, by Rep. Jay Hoffman

SYNOPSIS AS INTRODUCED:

New Act
5 ILCS 140/7.5
30 ILCS 235/2

from Ch. 85, par. 902

Creates the Public-Private Partnerships Act. Provides that the intent of the Act, among others, is to authorize responsible public entities to develop and enter into public-private partnership agreements for qualifying projects which result in the availability of such projects to the public in a more timely and less costly fashion, thereby serving the public safety, benefit, and welfare. Creates the Infrastructure Investment Commission, including its membership and duties. Establishes the qualifications and processes related to unsolicited proposals for projects that become public-private agreements for the building, upgrading, providing of services, operating, ownership or financing of facilities. Sets forth the procedures and standards for the formation of public-private agreements between public and private entities, including the powers of the entities and the provisions of the agreements. Establishes development and operation standards for projects. Includes provisions related to the taxation and financial arrangements related to public-private partnerships. Sets forth additional provisions related to: the acquisition of property; law enforcement; and additional powers of responsible public entities with respect to qualifying projects. Makes conforming changes in the Freedom of Information Act and the Public Funds Investment Act.

LRB103 31057 DTM 57677 b

1 AN ACT concerning transportation.

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

4 Article 1. Purpose; Authority

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

7 Section 1-5. Legislative findings and declaration.

8 (a) It is hereby found and declared that it is the public
9 policy and the public purpose of the State to promote the
10 development, financing, providing of services, and operation
11 of facilities that serve the needs of the public.

12 (b) It is hereby found and declared that there are
13 inadequate public resources to develop, modernize, refurbish,
14 and maintain public infrastructure and services in a timely
15 and cost certain manner, and that such need is impeded by
16 existing methods of procurement and funding.

17 (c) It is hereby found and declared that authorizing
18 private entities to do all or part of the development,
19 planning, design, construction, maintenance, repair,
20 rehabilitation, expansion, financing, and operation of one or
21 more facilities, and the providing of services, can result in
22 the availability of facilities and services to the public in a

1 more timely, more efficient, or less costly fashion, thereby
2 serving the public safety and welfare. Properly planned and
3 structured public-private partnerships and unsolicited
4 proposals can help meet such needs by improving the schedule
5 for delivery, lowering the cost, and providing additional
6 funding. Obtaining private sector financing using a P3 model
7 leverages resources to meet the demand for new infrastructure
8 and services in the State. Pension funds, private investors,
9 developers, contractors, and other private entities through a
10 public-private partnership can use long-term financing to
11 invest in public infrastructure and services and further use
12 their private expertise in construction, design-build,
13 management and oversight, project life-cycle planning, and
14 other areas of expertise not employed by public entities.
15 Private capital invested in infrastructure and service
16 investments have the potential to generate stable long-term
17 returns while ensuring public infrastructure and services are
18 progressively maintained to benefit State residents. Pension
19 funds and insurance companies seek investments to match their
20 long-term liabilities.

21 (d) It is hereby found and declared that citizens have a
22 right to transparency and public accountability, including
23 dissemination of information about the public benefits of P3
24 projects, open, equitable, transparent, proactive, and
25 effective communications with the public achieved through
26 consistent communication activities that recognize the

1 respective contributions of the responsible public entity and
2 the partnering private entity.

3 (e) It is hereby found and declared that public-private
4 agreements entered into by private entities and responsible
5 public entities under this Act shall allow for:

6 (1) transparency, oversight, and public information
7 sharing;

8 (2) compliance with all State and federal
9 environmental laws;

10 (3) fairness for local jurisdictions when negotiating
11 the public-private agreements;

12 (4) the public sector to gain access to new revenue
13 sources;

14 (5) new service delivery capacity;

15 (6) the optimal sharing of risk based upon P3 best
16 practice, industry feedback, relevant project precedents,
17 and prevailing market conditions;

18 (7) cost and schedule certainty; and

19 (8) predicted service quality, performance,
20 innovation, and whole-of-life asset management.

21 Section 1-10. Actions serving a public purpose. Actions
22 pursuant to this Act serve the public purposes of this Act if
23 such actions facilitate the timely development, planning,
24 design, construction, maintenance, repair, rehabilitation,
25 expansion, financing, or operation of a qualifying project.

1 Section 1-15. Intent. It is the intent of this Act to:

2 (1) Authorize responsible public entities to develop
3 and enter into public-private partnership agreements for
4 qualifying projects which result in the availability of
5 such projects to the public in a more timely and less
6 costly fashion, thereby serving the public safety,
7 benefit, and welfare.

8 (2) Permit responsible public entities to receive and
9 consider unsolicited proposals from private sector parties
10 in a manner that eliminates the perception of bias,
11 ensures transparency, fairness, and best value for the
12 responsible public entity and which bring innovative
13 concepts and ideas to benefit responsible public entities.

14 (3) Grant public and private entities the greatest
15 possible flexibility in contracting with each other for
16 the provision of infrastructure and public services.

17 (4) Encourage investment in the State by private
18 entities that facilitates services, development, planning,
19 design, construction, maintenance, repair,
20 rehabilitation, expansion, financing, and operation of
21 facilities.

22 (5) Establish an Infrastructure Investment Commission
23 that focuses on supporting and promoting P3 procurement
24 models and unsolicited proposals that result in the
25 construction, renewal, or material enhancement of public

1 services and infrastructure.

2 (6) Provide responsible public entities:

3 (A) the best-in-class project tools, expertise,
4 and resources to develop predictable procedures for
5 developing P3 projects and unsolicited proposals; and

6 (B) a process to submit unsolicited proposals to
7 responsible public entities that protects their
8 proprietary trade information.

9 (7) Provide responsible public entities and private
10 entities with:

11 (A) clarity on the intake process, evaluation, and
12 procedural aspects of unsolicited proposals; and

13 (B) a process that is short and stable resulting
14 in a competitive market and lower costs.

15 (8) Develop a steady flow of P3 projects to benefit
16 both private entities and responsible public entities.

17 (9) Establish transparency and accountability
18 guidelines for P3 projects and unsolicited proposals.

19 (10) Support the use of State design professionals,
20 construction companies, and workers to the greatest extent
21 possible by offering them the right to compete for this
22 work.

23 (11) Ensure open, equitable, transparent, proactive,
24 and effective communication with the public.

25 (12) Improve upon project development due diligence
26 practices.

1 (13) Support the use of local, minority-owned, and
2 women-owned business enterprises and economically
3 disadvantaged firms to the greatest extent possible.

4 (14) Create jobs and provide training for those jobs
5 for minorities, women, and veterans to the greatest extent
6 possible.

7 (15) Facilitate and encourage the use of pension funds
8 to develop qualifying projects.

9 (16) Leverage private sector expertise and capital in
10 support of efficient, innovative, and timely P3
11 investments.

12 (17) Serve as a catalyst for the development of
13 public-private partnerships and unsolicited proposals in
14 the State.

15 (18) Authorize public-private agreements that
16 distribute the risk optimally between both the private and
17 public-sector partners.

18 (19) Support economic growth, clean air and water, a
19 healthy environment, and stronger communities.

20 Section 1-20. Construction; authority.

21 (a) The powers conferred by this Act shall be liberally
22 construed in order to accomplish their purposes and are in
23 addition and supplemental to the powers conferred by any other
24 law. If any other law or rule is inconsistent with this Act,
25 this Act is controlling as to any public-private agreement and

1 financing of any project subject to a public-private agreement
2 entered into under this Act.

3 (b) This Act contains full and complete authority for
4 responsible public entities to enter into agreements,
5 financing, and leases with private entities to carry out the
6 activities described in this Act. Except as provided in this
7 Act, no procedure, proceeding, publication, notice, consent,
8 approval, order, or act by a responsible public entity or any
9 other State or local government or official is required to
10 enter into an agreement or lease, and no law to the contrary
11 affects, limits, or diminishes the authority for agreements
12 and leases with private entities.

13 (c) To the extent that this Act permits or requires a
14 responsible public entity or a private entity to carry out or
15 comply with any law other than this Act under a public-private
16 agreement, the action shall be carried out in conformity with
17 this Act.

18 (d) Each responsible public entity may exercise any powers
19 provided under this Act in participation or cooperation with
20 any governmental entity and enter into any contracts to
21 facilitate that participation or cooperation without
22 compliance with any other statute. Each responsible public
23 entity shall cooperate with each other and with other
24 governmental entities in carrying out qualifying projects
25 under this Act.

26 (e) A unit of local government may not take any action that

1 would have the effect of impairing a public-private agreement
2 under this Act, except that this Section shall not diminish
3 any existing police power or other power provided by law to a
4 unit of local government.

5 (f) Notwithstanding any provision of law to the contrary,
6 any public-private agreement entered into under a
7 public-private partnership shall include a provision requiring
8 any employer on the project to enter into a labor peace
9 agreement with any bona fide labor organization representing,
10 or attempting to represent, its employees, including employees
11 employed in classifications within the craft jurisdiction, or
12 in classifications called by different names when performing
13 similar duties.

14 Section 1-25. Definitions. As used in this Act:

15 "Affected jurisdiction" means the following:

16 (1) The State and any or all of its departments,
17 divisions, agencies, authorities, or other subdivisions or
18 parts of the State.

19 (2) Any county, municipality, township, special
20 district, or unit designated as a unit of local government
21 by law in which all or a part of a qualifying project is
22 located.

23 (3) Any other public entity directly affected by the
24 qualifying project.

25 "Authority" means the Illinois State Toll Highway

1 Authority.

2 "Bona fide labor organization" means a labor organization
3 recognized under the National Labor Relations Act as a bona
4 fide labor organization or a labor organization with an
5 accredited training program that is recognized by the Illinois
6 Community College Board and the Higher Learning Commission.

7 "Commercially confidential meetings" means bilateral
8 meetings prior to the execution of a project agreement between
9 the responsible public entity and private sector entities
10 (along with their respective advisors) to discuss matters such
11 as the project agreement and proponent's suggested amendments
12 to the project agreement, project design matters, and
13 innovation submissions.

14 "Contractor" means a private entity that has entered into
15 a public-private agreement with the responsible public entity
16 to provide services to or on behalf of the responsible public
17 entity.

18 "Department" means the Department of Transportation.

19 "Design-build agreement" means the agreement between the
20 selected private entity and the responsible public entity
21 under which the selected private entity agrees to furnish
22 design, construction, and related services for a facility
23 under this Act.

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

1 provide any other service.

2 "Employees employed in classifications within the craft
3 jurisdiction" means all maintenance employees, including, but
4 not limited to, stationary engineers, building engineers,
5 maintenance engineers, maintenance technicians, maintenance
6 mechanics, mechanics, operating engineers, operators, domestic
7 water operators, wastewater operators, water treatment
8 technicians, and other related jobs.

9 "Facility" means:

10 (1) A facility or project that serves a public
11 purpose, including, but not limited to, any new or
12 existing local, county, or state or interstate road,
13 highway, toll highway, bridge, tunnel, or intermodal
14 facility; intercity or high-speed passenger rail; rail
15 project or facility; ferry or mass transit facility;
16 vehicle parking facility; regional or local airport;
17 seaport or waterway facility; intelligent-transport system
18 infrastructure or other transportation technology project
19 such as, but not limited to, transit priority signaling or
20 fare collection; other transportation facility or
21 infrastructure; any administrative facility
22 broadband-related project or facility; correctional
23 institution or facility; disaster mitigation facility;
24 green-energy-related project or facility; energy-related
25 project or facility; fuel supply facility or oil or gas
26 pipeline; medical or nursing care facility; recreational

1 facility; tourism facility; solid waste management
2 facility or energy-from-waste facility; sporting or
3 cultural facility; educational facility or other building
4 or facility that is used or will be used by a public
5 educational institution; or any other public facility or
6 infrastructure or service that is used or will be used by
7 the public at large or in support of an accepted public
8 purpose or activity.

9 (2) An improvement, including equipment, of a
10 structure that will be principally used by a public entity
11 or the public at large or that supports a service delivery
12 system in the public sector.

13 (3) A sanitation, water, potable water, underground
14 water, wastewater, or surface water facility or other
15 related infrastructure; or in support of an accepted
16 public purpose or activity.

17 "Labor peace agreement" means an agreement between the
18 vendor and any bona fide labor organization, that, at a
19 minimum, protects the State's proprietary interests by
20 prohibiting labor organizations and members from engaging in
21 picketing, work stoppages, boycotts, and any other economic
22 interference with the applicant's business. This agreement
23 means that the vendor has agreed not to disrupt efforts by the
24 bona fide labor organization to communicate with and attempt
25 to organize and represent the private entity's employees. The
26 agreement shall provide a bona fide labor organization access

1 at reasonable times to areas in which the private entity's
2 employees work, for the purpose of meeting with employees to
3 discuss their right to representation, employment rights under
4 State and federal laws, and terms and conditions of
5 employment.

6 "Maintain" or "maintenance" includes ordinary maintenance,
7 repair, rehabilitation, capital maintenance, maintenance
8 replacement, and any other categories of maintenance that may
9 be designated by the responsible public entity.

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

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

23 "Project development fund" means a fund to assist
24 responsible public entities with public-private partnership
25 projects and unsolicited proposals. Approval for any
26 expenditure from this fund shall be approved by the

1 Infrastructure Investment Commission.

2 "Project labor agreement" means a prehire collective
3 bargaining agreement with one or more labor organizations that
4 establishes the terms and conditions of employment for a
5 specific project.

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

10 "Proposer" means a private entity that has submitted an
11 unsolicited proposal for a public-private agreement to a
12 responsible public entity under this Act or submitted a
13 proposal or statement of qualifications for a public-private
14 agreement in response to a request for proposals or a request
15 for qualifications for a project or services issued by a
16 responsible public entity under this Act.

17 "Public-private agreement" means the public-private
18 agreement between the private entity vendor and the
19 responsible public entity relating to one or more of the
20 proposed development, financing, or operation of a qualifying
21 project that is entered into under this Act.

22 "Public-private partnership" or "P3" means
23 performance-based contractual relationships between one or
24 more private entities and one or more responsible public
25 entities related to one or more qualifying projects.

26 "Qualifying project" or "project" means one or more

1 services or projects serving a public purpose, that is owned,
2 financed, controlled, or operated by a private entity in whole
3 or in part under this Act.

4 "Request for information" means all materials and
5 documents prepared by or on behalf of a responsible public
6 entity to solicit information from private entities with
7 respect to qualifying projects.

8 "Request for proposals" means all materials and documents
9 prepared by or on behalf of a responsible public entity to
10 solicit proposals from private entities to enter into a
11 public-private agreement.

12 "Request for qualifications" means all materials and
13 documents prepared by or on behalf of a responsible public
14 entity to solicit statements of qualification from private
15 entities to enter into a public-private agreement.

16 "Responsible public entity" means the State and any or all
17 of its departments, divisions, agencies, authorities, or other
18 subdivisions or parts of the State, any county, municipality,
19 school district, or special district, any other political
20 subdivision of the State, or any unit of local government; a
21 public body corporate and politic; or a regional entity that
22 serves a public purpose and is authorized to develop or
23 operate a qualifying project. "Responsible public entity" does
24 not include economic development or tourism partnerships,
25 councils, commissions, or entities.

26 "Revenues" means all revenues, including any combination

1 of: income; earnings and interest; user fees; lease payments;
2 allocations; federal, State, and local appropriations, grants,
3 loans, lines of credit, and credit guarantees; bond proceeds;
4 equity investments; service payments; or other receipts,
5 arising out of or in connection with a qualifying project,
6 including the development, financing, and operation of a
7 qualifying project. "Revenues" includes money received as
8 grants, loans, lines of credit, credit guarantees, rebate or
9 otherwise in aid of a qualifying project from the federal
10 government, State, unit of local government, or any agency or
11 instrumentality of the federal government, State, or unit of
12 local government.

13 "Services" means operations, such as, but not limited to,
14 parking, cable, broadband, accounting, human resources, health
15 care, data management, and technology.

16 "Shortlist" means the process by which a responsible
17 public entity will review, evaluate, and rank statements of
18 qualifications submitted in response to a request for
19 qualifications and then identify the proposers who are
20 eligible to submit a detailed proposal in response to a
21 request for proposals. The identified proposers constitute the
22 shortlist for the qualifying project to which the request for
23 proposals relates.

24 "Vendor" means a person that has been selected to enter or
25 has entered into a public-private partnership agreement with
26 the Department on behalf of the State for the financing,

1 management, or operation of the public-private partnership
2 agreement under this Act.

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

7 "Unsolicited proposal" means a written proposal that is
8 submitted to one or more responsible public entities on the
9 initiative of the private sector entity or entities for the
10 purpose of developing a partnership, and that is not in
11 response to a formal or informal request issued by the
12 responsible public entity.

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

17 Article 2. Infrastructure Investment Commission

18 Section 2-5. Establishment. Pursuant to this Act, the
19 Governor shall establish an Infrastructure Investment
20 Commission. The Infrastructure Investment Commission shall
21 report to and be funded by the Illinois Finance Authority, and
22 shall be independent of other agencies and departments of the
23 State.

1 Section 2-10. Duties of the Commission. The Commission
2 shall:

3 (1) Assist responsible public entities with
4 identifying projects, including opportunities for project
5 aggregation, for which a public-private partnership may be
6 appropriate.

7 (2) Provide technical assistance and expertise to
8 responsible public entities on using public-private
9 partnerships to develop or operate qualifying projects,
10 including analyzing their benefits and costs and the
11 innovative financing options available to support them.

12 (3) Supply template contracts.

13 (4) Track proposed, ongoing, and completed
14 private-public partnerships.

15 (5) Provide technical assistance in applying for
16 federal funding grants or financing (for example, the
17 Transportation Infrastructure Finance and Innovative Act
18 program, the Transportation Infrastructure Finance and
19 Innovative Act program Lite, the Transportation
20 Infrastructure Finance and Innovative Act program Rural
21 Project Initiative, the Regional Infrastructure
22 Accelerators Program, and the Capital Investment Grants
23 Program).

24 (6) Identify methods of encouraging competition for
25 the development or operation of qualifying projects.

26 (7) Serve as a liaison to State or federal government

1 officials charged with promoting public-private
2 infrastructure partnerships, other State executive
3 directors of infrastructure investment commissions, and
4 regional or metropolitan public-private partnership
5 offices.

6 (8) Conduct public and stakeholder engagement and
7 outreach, including efforts to encourage transparency and
8 information sharing regarding public-private
9 partnerships.

10 (9) Issue regular updates on the future pipeline of P3
11 projects.

12 (10) Promote best practices, including standardized
13 methodologies and processes.

14 (11) Attract private investment to the State.

15 (12) Develop a project development fund to:

16 (A) assist responsible public entities to assess
17 the usefulness of the P3 model and unsolicited
18 proposals for their capital procurement and service
19 needs for specific projects;

20 (B) assist responsible public entities to manage a
21 P3 procurement project or unsolicited proposal;

22 (C) assist responsible public entities, that are
23 not experienced with P3 procurement or unsolicited
24 proposals;

25 (D) assist responsible public entities that are
26 undertaking new approaches or documenting P3 and

1 unsolicited proposal practices in a way that will
2 assist the Infrastructure Investment Commission and
3 other responsible public entities in future projects;

4 (E) assist with training costs for key staff of a
5 responsible public entity who are integral to the
6 successful development and implementation of a
7 project;

8 (F) assist a public entity with P3 procurement or
9 an unsolicited proposal that may include, but may not
10 be limited to, a market analysis, qualitative
11 assessment report, procurement options analysis,
12 quantitative analysis, risk analysis, implementation
13 strategy, and procurement documents; and

14 (G) assist with the engagement of external and
15 accredited P3 advisors and analysts.

16 Section 2-15. Governance of the Commission.

17 (a) The Commission shall be headed by a Chairperson and a
18 6-member Board of Directors.

19 (b) The Board is responsible for the overall governance of
20 the Commission and shall adopt a 5-year corporate plan and
21 annual report. The Board shall meet at least quarterly to
22 review the Commission's overall operation, receive committee
23 reports, discuss the Investment Infrastructure Commission's
24 performance, and approve expenditures. The Board shall review
25 the performance of the Executive Director annually.

1 (c) The Board shall establish committees to support the
2 Board as needed, including:

3 (1) an Audit Committee to oversee the Commission's
4 standards of integrity and behavior, oversee the
5 Commission's reporting of financial information and
6 expenditures of the project development fund, oversee the
7 Commission's internal control systems, including the
8 Commission's compliance with all applicable legal and
9 regulatory requirements, review the qualifications,
10 independence and performance of the Commission's external
11 auditors, and oversee the Commission's enterprise risk
12 management plan; and

13 (2) a Budget Committee that shall develop an annual
14 revenue and expenditure plan, submit said plan to the
15 Illinois Finance Authority for approval and funding, and
16 monitor said revenues and expenditures during the course
17 of the budget cycle.

18 Section 2-20. Board appointments.

19 (a) The Commission established pursuant to this Article
20 shall be composed of 7 members, appointed by the Governor,
21 with the advice and consent of the Senate, having expertise,
22 knowledge, or experience in infrastructure development or
23 operation, capital market and finance, public-sector planning,
24 or P3 procurement. No more than 4 members of any one political
25 party may serve as members of the Commission at the same time.

1 Members of the Commission shall, to a reasonable extent,
2 represent geographically diverse regions of the State as well
3 as diversity in race, ethnicity, and gender.

4 Vacancies shall be filled for the unexpired term in the
5 same manner as original appointments. All appointments shall
6 be in writing and filed with the Secretary of State as a public
7 record.

8 (b) Of the members appointed by the Governor, one such
9 member shall be appointed by the Governor as chairperson and
10 shall hold office for 4 years from the date of appointment, and
11 until a successor shall be duly appointed and qualified, but
12 shall be subject to removal by the Executive Director of the
13 Illinois Finance Authority for incompetency, neglect of duty,
14 or malfeasance.

15 (c) Of the original members, other than the chairperson, 3
16 shall hold office for 2 years and 3 shall hold office for 4
17 years, from the date of appointment and until respective
18 successors are duly appointed and qualified, but shall be
19 subject to removal by the Executive Director of the Illinois
20 Finance Authority for incompetency, neglect of duty, or
21 malfeasance. In case of vacancies in such offices during the
22 recess of the Senate, the Governor shall make a temporary
23 appointment until the next meeting of the Senate when the
24 Governor shall nominate a person to fill such office and any
25 person so nominated, who is confirmed by the Senate, shall
26 hold office during the remainder of the term and until a

1 successor is appointed and qualified. The respective term of
2 the first members appointed shall be designated by the
3 Governor at the time of appointment, but successors shall each
4 be appointed for a term of 4 years, except that any person
5 appointed to fill a vacancy shall serve only for the unexpired
6 term. Members shall be eligible for reappointment. Members
7 shall serve until the respective successors are duly appointed
8 and qualified.

9 (d) Each such member shall receive an annual salary of
10 \$10,000, or as set by the Compensation Review Board, whichever
11 is greater, payable in monthly installments, and shall be
12 reimbursed for necessary expenses incurred in the performance
13 of duties under this Act.

14 Section 2-25. Duties of the Chairperson of the Commission.
15 The Chairperson shall preside at all meetings of the
16 Commission, exercise general supervision over all powers,
17 duties, obligations, and functions of the Commission, and
18 shall approve or disapprove all resolutions, bylaws, rules,
19 and rates made and established by the Commission, and if the
20 Chairperson approves, the Chairperson shall sign the same, and
21 such as the Chairperson shall not approve, the Chairperson
22 shall return to the Commission with objections thereto in
23 writing at the next regular meeting of the Commission
24 occurring after the passage thereof. Such veto may extend to
25 any one or more items contained in such resolution, bylaw,

1 rule, or rate, or to its entirety; in case the veto extends to
2 a part of such resolution, bylaw, rule, or rate, the residue
3 thereof shall take effect and be in force, but in case the
4 Chairperson shall fail to return any resolution, bylaw, rule,
5 or rate with objections thereto by the time aforesaid, the
6 Chairperson shall be deemed to have approved the same, and the
7 same shall take effect accordingly. Upon the return of any
8 resolution, bylaw, rule, or rate by the Chairperson, the vote
9 by which the same was passed shall be reconsidered by the
10 Commission, and if upon such reconsideration two-thirds of all
11 the members agree to pass the same, it shall go into effect
12 notwithstanding the Chairperson's refusal to approve thereof.
13 The process of approving or disapproving all resolutions,
14 bylaws, rules, or rates, as well as the ability of the members
15 to override the disapproval of the Chairperson, under this
16 Section shall be set forth in the Commission's bylaws. Nothing
17 in the Commission's bylaws or rules may be contrary to this
18 Section.

19 Section 2-30. Duties of the Executive Director of the
20 Commission.

21 (a) The Executive Director shall be appointed by a
22 majority vote of the Commission.

23 (b) The Executive Director shall have demonstrated
24 knowledge, training, or experience in 2 or more of the
25 following areas:

- 1 (1) infrastructure development or operation;
- 2 (2) capital markets and finance, including municipal
- 3 finance;
- 4 (3) public-sector planning; or
- 5 (4) P3 procurement.

6 (c) The Executive Director shall provide to the standing
7 committees of the House and Senate having jurisdiction over
8 services, transportation, or infrastructure and post online a
9 report annually within 6 weeks of the end of each fiscal year
10 that:

11 (1) lists those public-private partnerships that are
12 expected to be soliciting bids within the next fiscal
13 year, are in progress, were completed during the prior
14 fiscal year, or were removed from consideration during the
15 prior fiscal year; and

16 (2) summarizes actions taken by the Commission to
17 fulfill its duties under Section 2-10.

18 (d) The Executive Director shall be responsible to the
19 Commission for the proper administration of the affairs of the
20 Commission and policies adopted by the Chairperson and members
21 of the Commission.

22 (e) All employees, as are necessary to the proper
23 functioning of the Commission, shall be appointed by and
24 report to the Executive Director with the consent of the
25 Commission.

26 (f) The Executive Director shall hold office for 4 years

1 from the date of appointment, but shall be subject to removal
2 by the Commission for incompetency, neglect of duty, or
3 malfeasance.

4 (g) The Executive Director shall receive a salary of
5 \$15,000 per annum, or as set by a Compensation Review Board,
6 whichever is greater, payable in monthly installments,
7 together with reimbursement for necessary expenses incurred in
8 the performance of the duties of the Executive Director. The
9 Executive Director shall be eligible for reappointment.

10 Section 2-35. Report on compliance with legislative
11 requirements. The Commission shall adhere to the Freedom of
12 Information Act and the State Records Act.

13 Article 3. Qualification and Process

14 Section 3-5. Unsolicited proposals.

15 (a) A responsible public entity may receive unsolicited
16 proposals for a project and may thereafter enter into a
17 public-private agreement with a private entity, or a
18 consortium of private entities, for the building, upgrading,
19 providing of services, operating, ownership, or financing of
20 facilities.

21 (b) A responsible public entity may consider, evaluate,
22 and accept an unsolicited proposal for a public-private
23 partnership project from a private entity if the proposal:

1 (1) is independently developed and drafted by the
2 proposer without responsible public entity supervision;

3 (2) shows that the proposed project could benefit the
4 people served by the responsible public entity;

5 (3) includes a financing plan to allow the project to
6 move forward pursuant to the applicable responsible public
7 entity's budget and finance requirements; and

8 (4) includes sufficient detail and information for the
9 responsible entity to evaluate the proposal in an
10 objective and timely manner and permit a determination
11 that the project would be worthwhile.

12 (c) The unsolicited proposal shall include the following:

13 (1) an executive summary covering the major elements
14 of the proposal;

15 (2) qualifications concerning the experience,
16 expertise, technical competence, and qualifications of the
17 private entity and of each member of its management team
18 and of other key employees, consultants, and
19 subcontractors, including the name, address, and
20 professional designation;

21 (3) a facilities project description, including, when
22 applicable:

23 (A) the limits, scope, and location of the
24 proposed project;

25 (B) right-of-way requirements;

26 (C) connections with other facilities and

1 improvements to those facilities necessary if the
2 project is developed;

3 (D) a conceptual project design; and

4 (E) a statement of the project's relationship and
5 impact upon relevant existing plans of the responsible
6 public entity;

7 (4) a facilities project schedule, including when
8 applicable, estimates of:

9 (A) dates of contract award;

10 (B) start of construction;

11 (C) completion of construction;

12 (D) start of operations; and

13 (E) major maintenance or reconstruction activities
14 during the life of the proposed project agreement;

15 (5) an operating plan describing the operation of the
16 completed facility if operation of a facility is part of
17 the proposal, describing the management structure and
18 approach, proposed period of operations, enforcement,
19 emergency response, and other relevant information;

20 (6) a finance plan describing the proposed financing
21 of the project identifying the source of funds to, where
22 applicable, design, construct, maintain, and manage the
23 project during the term of the proposed contract; and

24 (7) the legal basis for the project and licenses and
25 certifications; the private entity must demonstrate it has
26 licenses and certificates necessary to complete the

1 project.

2 (d) Within 120 days after receiving an unsolicited
3 proposal, the responsible public entity shall complete a
4 preliminary evaluation of the unsolicited proposal and shall
5 either:

6 (1) if the preliminary evaluation is unfavorable,
7 return the proposal without further action;

8 (2) if the preliminary evaluation is favorable, notify
9 the proposer that the responsible public entity will
10 further evaluate the proposal; or

11 (3) request amendments clarification or modification
12 of the unsolicited proposal.

13 (e) The procurement process for unsolicited proposals
14 shall be as follows:

15 (1) If the responsible public entity chooses to
16 further evaluate an unsolicited proposal with the intent
17 to enter into a public-private agreement for the proposed
18 project the responsible public entity shall publish notice
19 in a newspaper of general circulation covering the
20 location of the project at least once a week for 2 weeks
21 stating that the responsible public entity has received a
22 proposal and will accept other proposals for the same
23 project. The timeframe within which the responsible public
24 entity may accept other proposals shall be determined by
25 the responsible public entity on a project-by-project
26 basis based upon the complexity of the qualifying project

1 and the public benefit to be gained by allowing a longer or
2 shorter period of time within which other proposals may be
3 received; however, the timeframe for allowing other
4 proposals must be at least 21 days, but no more than 120
5 days, after the initial date of publication.

6 (2) A copy of the notice must be mailed to each local
7 government in the affected jurisdiction. The responsible
8 public entity shall provide reasonably sufficient
9 information and the identity of its contact person to
10 enable other private entities to make proposals.

11 (3) If after no less than 120 days, no counterproposal
12 is received, or if the counterproposals are evaluated and
13 found to be equal to or inferior to the original
14 unsolicited proposal, the responsible public entity may
15 proceed to negotiate a contract with the original
16 proposer.

17 (4) If after no less than 120 days one or more
18 counterproposals meeting unsolicited proposal standards
19 are received, and if, in the opinion of the responsible
20 public entity, the counterproposals are evaluated and
21 found to be superior to the original unsolicited proposal,
22 the responsible public entity shall proceed to determine
23 the successful participant through a final procurement
24 phase known as "Best and Final Offer" (BAFO). The BAFO is a
25 process whereby the responsible public entity shall invite
26 the original private sector party and the proponent

1 submitting the superior counterproposal to engage in a
2 BAFO phase. The invitation to participate in the BAFO
3 phase will provide to each participating proposer:

4 (A) the general concepts that were considered
5 superior to the original proposal, while keeping
6 proprietary information contained in the proposals
7 confidential to the extent possible; and

8 (B) the preestablished evaluation criteria or the
9 "basis of award" to be used to determine the
10 successful proponent.

11 (5) Offers received in response to the BAFO invitation
12 will be reviewed by the responsible public entity and
13 scored in accordance with a preestablished criterion, or
14 alternatively, in accordance with the "basis of award"
15 provision identified through the BAFO process. The
16 successful proponent will be the proponent offering "best
17 value" to the responsible public entity.

18 (6) In all cases, the "basis of award" will be "best
19 value" to the responsible public entity, as determined by
20 the responsible public entity.

21 (f) After a comprehensive evaluation and acceptance of an
22 unsolicited proposal and any alternatives, the responsible
23 public entity may commence negotiations with a proposer,
24 considering:

25 (1) the proposal has received a favorable
26 comprehensive evaluation;

1 (2) the proposal is not duplicative of existing
2 infrastructure project or services;

3 (3) the alternative proposal does not closely resemble
4 a pending competitive proposal for a public-private
5 partnership or other procurement;

6 (4) the proposal demonstrates a unique method,
7 approach, or concept;

8 (5) facts and circumstances that preclude or warrant
9 additional competition;

10 (6) the availability of any funds, debts, or assets
11 that the State will contribute to the project;

12 (7) facts and circumstances demonstrating that the
13 project will likely have a significant adverse impact on
14 State bond ratings; and

15 (8) indemnifications included in the proposal.

16 Section 3-10. Competitive procurements; public-private
17 partnership.

18 (a) A responsible public entity may solicit proposals for
19 a qualifying project from private entities.

20 (b) After the public notification period has expired the
21 responsible public entity shall rank the proposals received in
22 terms of "best value". In ranking the proposals, the
23 responsible public entity may consider factors that include,
24 but are not limited to, public benefit, minority, women and
25 veteran participation, professional qualifications, general

1 business terms, innovative design techniques or cost-reduction
2 terms, and finance plans. The responsible public entity may
3 then begin negotiations for a public-private agreement with
4 the highest-ranked firm. If the responsible public entity is
5 not satisfied with the results of the negotiations, the
6 responsible public entity may terminate negotiations with the
7 proposer and negotiate with the second-ranked or
8 subsequent-ranked firms, in the order consistent with this
9 procedure. If only one proposal is received, the responsible
10 public entity may negotiate in good faith, and if the
11 responsible public entity is not satisfied with the results of
12 the negotiations, the responsible public entity may terminate
13 negotiations with the proposer.

14 Section 3-15. Additional rights of responsible public
15 entity. In addition to any other rights under this Act, in
16 connection with any procurement under this Article, the
17 responsible public entity may:

18 (1) terminate or modify by:

19 (A) withdrawing a request for information, request for
20 qualifications, or a request for proposals at any time
21 and, in its discretion, publishing a new request for
22 qualifications or request for proposals;

23 (B) declining to approve a proposal;

24 (C) declining to award a public-private agreement;

25 (D) requesting clarifications to any statement of

1 information, qualifications, or proposal received, to seek
2 one or more revised proposals or one or more best and final
3 offers, or to conduct negotiations with one or more
4 private entities that have submitted proposals; or

5 (E) modifying the terms, provisions, and conditions of
6 a request for qualification, request for proposals,
7 technical specifications, or form of public-private
8 agreement during the pendency of a procurement.

9 (2) Interview proposers.

10 (3) Exercise any other rights available to the responsible
11 public entity under this Act, applicable law, and
12 administrative rule.

13 Section 3-20. Confidentiality of P3 proposals; disclosure.

14 (a) Except as provided in paragraph (2) of subsection (e)
15 of Section 3-5, the responsible public entity may not disclose
16 the contents of proposals during discussions or negotiations
17 with potential proposers.

18 (b) The responsible public entity may, in its discretion
19 in accordance with the Freedom of Information Act, treat as
20 confidential all or some information relating to an
21 unsolicited proposal, including, but not limited to,
22 discussions or negotiations between the responsible public
23 entity and potential proposers.

24 (c) Notwithstanding subsections (a) and (b), and with the
25 exception of portions that are confidential under the Freedom

1 of Information Act, the terms of the selected offer negotiated
2 under this Act shall be available for inspection and copying
3 under the Freedom of Information Act after negotiations with
4 the proposers have been completed.

5 (d) When disclosing the terms of the selected offer under
6 subsection (c), the responsible public entity shall certify
7 that the information being disclosed accurately and completely
8 represents the terms of the selected offer.

9 (e) The responsible public entity shall disclose the
10 contents of all proposals, except the parts of the proposals
11 that may be treated as exempt in accordance with the Freedom of
12 Information Act, when either:

13 (1) the request for proposal process is withdrawn
14 under Section 3-5; or

15 (2) the public-private agreement has been executed and
16 the closing for each financing transaction required to
17 provide funding to carry out the agreement has been
18 conducted.

19 Section 3-25. Interim agreement. Before or in connection
20 with the negotiation of a public-private agreement, the
21 responsible public entity may enter into an interim agreement
22 with the private entity proposing the development or operation
23 of the qualifying project. An interim agreement is
24 discretionary with the parties. An interim agreement may:

25 (1) Authorize the private entity to commence

1 activities for which it may be compensated related to the
2 proposed qualifying project, including, but not limited
3 to, project planning and development, design,
4 environmental analysis and mitigation, survey, other
5 activities concerning any part of the proposed qualifying
6 project, and ascertaining the availability of financing
7 for the proposed facility or facilities.

8 (2) Establish the process and timing of the
9 negotiation of the public-private agreement.

10 (3) Contain such other provisions related to an aspect
11 of the development or operation of a qualifying project
12 that the responsible public entity and the private entity
13 deem appropriate.

14 Section 3-30. Payment of stipulated amount for work
15 product of unsuccessful proposer; rights; liability. The
16 responsible public entity may pay a stipulated amount to an
17 unsuccessful proposer that submits a responsive proposal in
18 response to a proposal under this Article, in exchange for the
19 work product contained in that proposal. Upon payment of the
20 stipulated amount, and unless agreed otherwise by the parties:

21 (1) the responsible public entity and the unsuccessful
22 proposer jointly own the rights to, and may make use of any
23 work product contained in the proposal, including the
24 technologies, techniques, methods, processes, ideas, and
25 information contained in the proposal, project design, and

1 project financial plan; and

2 (2) the use by an unsuccessful proposer of any part of
3 the work product contained in the proposal is at the sole
4 risk of the unsuccessful proposer and does not confer
5 liability on the responsible public entity.

6 Section 3-35. Project awards.

7 (a) The responsible public entity may perform an
8 independent analysis of the proposed public-private
9 partnership that demonstrates the cost-effectiveness and
10 overall public benefit before the procurement process is
11 initiated or before the contract is awarded.

12 (b) The responsible public entity may approve the
13 development or operation of a qualifying project, or the
14 design or equipping of a qualifying project that is developed
15 or operated, if:

16 (1) there is a public need for, or benefit derived
17 from a project of the type that the private entity
18 proposes as the qualifying project;

19 (2) the estimated cost of the qualifying project is
20 reasonable in relation to similar facilities;

21 (3) the private entity's plans will result in the
22 timely acquisition, design, construction, improvement,
23 renovation, expansion, equipping, maintenance, or
24 operation of the qualifying project; and

25 (4) the proposed project or service is in the public's

1 best interest.

2 (c) The responsible public entity may charge a reasonable
3 fee to cover the costs of processing, reviewing, and
4 evaluating the request, including, but not limited to,
5 reasonable attorney or other professional fees and fees for
6 financial and technical advisors or consultants and for other
7 necessary advisors or consultants.

8 (d) Upon approval of a qualifying project, the responsible
9 public entity shall establish a date for the commencement of
10 activities related to the qualifying project. The responsible
11 public entity may extend the commencement date.

12 (e) Approval of a qualifying project by the responsible
13 public entity is subject to entering into a public-private
14 agreement with the private entity.

15 (f) The responsible public entity shall provide
16 notification to the public of its intent to commence
17 negotiations with a proposer.

18 (g) Before signing a public-private agreement, the
19 responsible public entity must consider a reasonable funding,
20 financing and affordability plan considering the project cost,
21 revenues by source, available financing, major assumptions,
22 internal rate of return on private investments, if
23 governmental funds are assumed in order to deliver a
24 cost-feasible project, and a total cash-flow analysis
25 beginning with the implementation of the project and extending
26 for the term of the public-private agreement except no longer

1 than the life of the project or 75 years, whichever is earlier.

2 (h) If the responsible public entity chooses to evaluate a
3 detailed proposal involving architecture, engineering, or
4 landscape architecture, it may require a professional review
5 and evaluation of the design and construction proposed to
6 ensure material quality standards, interior space use, budget
7 estimates, design and construction schedules, and sustainable
8 design and construction standards.

9 (i) Each facility project awarded by a responsible public
10 entity shall:

11 (1) ensure that provision is made for the private
12 entity's performance and payment of subcontractors,
13 including, but not limited to, surety bonds, letters of
14 credit, parent company guarantees, and lender and equity
15 partner guarantees. Components of the qualifying project
16 that involve construction performance and payment bonds
17 are subject to the recordation, notice, suit limitation,
18 and other requirements of the Public Construction Bond
19 Act;

20 (2) ensure the performance and payment of
21 subcontractors;

22 (3) ensure that the public-private agreement addresses
23 termination upon a material default of the public-private
24 agreement; and

25 (4) pay wages pursuant to prevailing wage standards.

1 Article 4. Formation of an Agreement

2 Section 4-5. Exercise of powers.

3 (a) A responsible public entity may exercise the powers
4 granted by this Act to undertake qualifying projects through
5 public-private agreements with one or more private entities.

6 (b) The Authority may enter into a public-private
7 partnership for qualifying projects on the toll highway system
8 such as commuter rail or high-speed rail lines, and
9 intelligent transportation infrastructure that will enhance
10 the safety, efficiency, and environmental quality of the State
11 highway system. The Authority may operate or provide
12 operational services such as toll collection on highways that
13 are developed or financed, or both, through a public-private
14 agreement entered into by another public entity, under an
15 agreement with the public entity or contractor responsible for
16 the transportation project.

17 Section 4-10. Powers of contractor; user fees. A
18 contractor has:

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

22 (2) the power to develop, own, control, finance, and
23 operate the qualifying project, and to impose and collect
24 user fees, subject to the terms of the public-private

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

4 Section 4-15. Powers of contractor; property interests.
5 The contractor may own, lease, or acquire any property
6 interest or other right to develop, finance, or operate the
7 qualifying project, as long as the qualifying project retains
8 a public purpose.

9 Section 4-20. Powers of contractor; user classifications
10 and enforcement of rules. In operating the qualifying project,
11 the contractor may do the following:

12 (1) Make user classifications as permitted in the
13 public-private agreement.

14 (2) As permitted in the public-private agreement or
15 otherwise with the consent of the responsible public
16 entity, make and enforce reasonable rules to the same
17 extent that the responsible public entity may make and
18 enforce rules with respect to a similar project.

19 Article 5. Public-Private Agreements

20 Section 5-5. Provisions of agreement.

21 (a) Before beginning the development, financing,
22 operation, or any combination of the development, financing,

1 or operation of a qualifying project under this Act, the
2 contractor must enter into a public-private agreement with the
3 responsible public entity. Subject to the other provisions of
4 this Act, the responsible public entity and a private entity
5 may enter into a public-private agreement with respect to a
6 qualifying project. Subject to the requirements of this Act, a
7 public-private agreement may provide that the private entity,
8 acting on behalf of the responsible public entity, is
9 partially or entirely responsible for any combination of
10 developing, financing, or operating the qualifying project.

11 (b) The public-private agreement must be in writing and
12 may, as determined appropriate by the responsible public
13 entity for the particular qualifying project, provide for some
14 or all of the following:

15 (1) Development, planning, design, construction,
16 maintenance, repair, rehabilitation, expansion, providing
17 or services, financing, and operation of the qualifying
18 project under terms set forth in the public-private
19 agreement, in any form as deemed appropriate by the
20 responsible public entity, including, but not limited to,
21 a long-term concession or lease, or an agent to build,
22 finance, own, operate or maintain or any one or
23 combination of the same, as applicable and serving a
24 public purpose, a design-bid-build agreement, design-build
25 agreement, design-build-maintain agreement,
26 design-build-finance agreement,

1 design-build-operate-maintain agreement, and
2 design-build-finance-operate-maintain agreement.

3 (2) Delivery of performance and payment bonds or other
4 performance security determined suitable by the
5 responsible public entity, including letters of credit,
6 United States bonds and notes, parent guaranties, and cash
7 collateral, in connection with the development, financing,
8 or operation of the qualifying project, in the forms and
9 amounts set forth in the public-private agreement or
10 otherwise determined as satisfactory by the responsible
11 public entity to protect the responsible public entity and
12 payment bond beneficiaries who have a direct contractual
13 relationship with the contractor or a subcontractor of the
14 contractor to supply labor or material. The payment or
15 performance bond or alternative form of performance
16 security is not required for the portion of a
17 public-private agreement that includes only design,
18 planning, or financing services, the performance of
19 preliminary studies, or the acquisition of real property.

20 (3) Review of plans for any development or operation,
21 or both, of the qualifying project by the responsible
22 public entity.

23 (4) Inspection of any construction of or improvements
24 to the qualifying project by the responsible public entity
25 or another entity designated by the responsible public
26 entity or under the public-private agreement to ensure

1 that the construction or improvements conform to the
2 standards set forth in the public-private agreement or are
3 otherwise acceptable to the responsible public entity.

4 (5) Maintenance of:

5 (A) one or more policies of public liability
6 insurance (copies of which shall be filed with the
7 responsible public entity accompanied by proofs of
8 coverage); or

9 (B) self-insurance each in the form and amount as
10 set forth by the public-private agreement or otherwise
11 satisfactory to the responsible public entity as
12 reasonably sufficient to insure coverage of tort
13 liability to the public and employees and to enable
14 the continued operation of the qualifying project.

15 (6) Where operations are included within the
16 contractor's obligations under the public-private
17 agreement, monitoring of the maintenance practices of the
18 contractor by the responsible public entity or another
19 entity designated by the responsible public entity or
20 under the public-private agreement and the taking of the
21 actions the responsible public entity finds appropriate to
22 ensure that the qualifying project is properly maintained.

23 (7) Reimbursement to be paid to the responsible public
24 entity as set forth in the public-private agreement for
25 services provided by the responsible public entity.

26 (8) Filing of appropriate financial statements and

1 reports as set forth in the public-private agreement or as
2 otherwise in a form acceptable to the responsible public
3 entity on a periodic basis.

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

7 (A) A base fee and additional fee for project
8 savings as the design-builder of a construction
9 project.

10 (B) A development fee, payable on a lump sum
11 basis, progress payment basis, project milestone
12 basis, time and materials basis, or any other basis
13 considered appropriate by the responsible public
14 entity.

15 (C) An operations fee, payable on a lump sum
16 basis, time and material basis, periodic basis, or any
17 other basis considered appropriate by the responsible
18 public entity.

19 (D) Some or all of the revenues, if any, arising
20 out of operation of the qualifying project.

21 (E) A maximum rate of return on investment or
22 return on equity or a combination of the 2.

23 (F) In-kind services, materials, property,
24 equipment, or other items.

25 (G) Compensation in the event of any termination.

26 (H) Availability payments or similar arrangements

1 whereby payments are made to the contractor pursuant
2 to the terms set forth in the public-private
3 agreements or related agreements.

4 (I) Other compensation set forth in the
5 public-private agreement or otherwise considered
6 appropriate by the responsible public entity.

7 (10) Compensation or payments to the responsible
8 public entity, if any. Compensation or payments to the
9 responsible public entity may include any one or
10 combination of the following:

11 (A) A concession or lease payment or other fee,
12 which may be payable upfront or on a periodic basis or
13 on another basis deemed appropriate by the responsible
14 public entity.

15 (B) Sharing of revenues, if any, from the
16 operation of the qualifying project.

17 (C) Sharing of project savings from the
18 construction or services of the qualifying project.

19 (D) Payment for any services, materials,
20 equipment, personnel, or other items provided by the
21 responsible public entity to the contractor under the
22 public-private agreement or in connection with the
23 qualifying project.

24 (E) Other compensation set forth in the
25 public-private agreement or otherwise considered
26 appropriate by the parties.

1 (11) The date and terms of termination of the
2 contractor's authority and duties under the public-private
3 agreement and the circumstances under which the
4 contractor's authority and duties may be terminated before
5 that date.

6 (12) The term of a public-private agreement, including
7 all extensions, may not exceed 75 years.

8 (13) Upon termination of the public-private agreement,
9 the authority of the contractor under this Act ceases,
10 except for those duties and obligations that extend beyond
11 the termination, as set forth in the public-private
12 agreement, and all interests in the qualifying project
13 shall revert to the responsible public entity.

14 (14) Rights and remedies of the responsible public
15 entity if the contractor defaults or otherwise fails to
16 comply with the terms of the public-private agreement.

17 (15) Procedures for the selection of professional
18 design firms and subcontractors, which shall include
19 procedures consistent with the Architectural, Engineering,
20 and Land Surveying Qualifications Based Selection Act for
21 the selection of professional design firms and may
22 include, in the discretion of the responsible public
23 entity, procedures consistent with the low bid procurement
24 procedures outlined in the Illinois Procurement Code for
25 the selection of construction companies.

26 (16) Other terms, conditions, and provisions that the

1 responsible public entity finds are in the public's
2 interest.

3 (c) Notwithstanding any provision of law to the contrary,
4 any public-private agreement entered into under a
5 public-private partnership between a vendor and a responsible
6 public entity shall include a provision requiring the selected
7 vendor to enter into a labor peace agreement with any bona fide
8 labor organization, including any bona fide labor organization
9 that represents or is attempting to represent any of its
10 employees.

11 Section 5-10. Additional requirements.

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

20 (b) A public-private agreement may:

21 (1) authorize the imposition of tolls;

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

1 entity under the public-private agreement;

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

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

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

19 Section 5-15. Loans for qualifying project. In the
20 public-private agreement, the responsible public entity may
21 agree to make loans for the development or operation, or both,
22 of the qualifying project from time to time from amounts
23 received from the federal government or any agency or
24 instrumentality of the federal government or from any State or
25 local agency. No loan shall extend beyond the life of the

1 qualifying project as the parties determine.

2 Section 5-20. Terms and conditions in agreement. The
3 public-private agreement must incorporate the duties of the
4 contractor under this Act and may contain the other terms and
5 conditions that the responsible public entity determines serve
6 the public purpose of this Act. The public-private agreement
7 may contain provisions under which the responsible public
8 entity agrees to provide notice of default and cure rights for
9 the benefit of the contractor and the persons or entities
10 described in the public-private agreement that are providing
11 financing for the qualifying project. The public-private
12 agreement may contain any other lawful term or condition to
13 which the contractor and the responsible public entity
14 mutually agree, including provisions regarding change orders,
15 dispute resolution, required upgrades to the qualifying
16 project, tolling policies, changes and modifications to the
17 qualifying project, unavoidable delays, or provisions for a
18 loan or grant of public funds for the development or
19 operation, or both, of one or more qualifying projects.

20 Section 5-25. Responsible public entity takeover of
21 qualifying project after termination or expiration.

22 (a) Upon the termination or expiration of the
23 public-private agreement, including a termination for default,
24 the responsible public entity shall have the right to take

1 over the qualifying project and to succeed to all of the right,
2 title, and interest in the qualifying project and all real
3 property acquired as a part of the project shall be held in the
4 name of the responsible public entity.

5 (b) If a responsible public entity elects to take over a
6 qualifying project as provided in subsection (a), the
7 responsible public entity may do the following:

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

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

13 (c) If a responsible public entity elects to take over a
14 qualifying project as provided in subsection (a), the
15 responsible public entity may use the revenues, if any, for
16 any lawful purpose, including to:

17 (1) make payments to individuals or entities in
18 connection with any financing of the qualifying project,
19 including through a public-private agreement entered into
20 in accordance with this Act;

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

24 (3) pay development costs of the project;

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

1 (5) pay the contractor for any compensation or payment
2 owed upon termination; and

3 (6) pay for the development, financing, or operation
4 of any other project or projects the responsible public
5 entity deems appropriate.

6 (d) The full faith and credit of the State or any political
7 subdivision of the State or the responsible public entity is
8 not pledged to secure any financing of the contractor by the
9 election to take over the qualifying project. Assumption of
10 development or operation, or both, of the qualifying project
11 does not obligate the State or any political subdivision of
12 the State or the responsible public entity to pay any
13 obligation of the contractor.

14 Section 5-30. Changes added by written amendment. Any
15 changes in the terms of the public-private agreement agreed to
16 by the parties shall be added to the public-private agreement
17 by written amendment.

18 Section 5-35. Agreements with multiple private entities.
19 Notwithstanding any other provision of this Act, the
20 responsible public entity may enter into a public-private
21 agreement with multiple private entities if the responsible
22 public entity determines in writing that it is in the public
23 interest to do so.

1 Section 5-40. Agreement provisions for qualifying project.
2 The public-private agreement may provide for all or part of
3 the development, financing, or operation of phases or segments
4 of the qualifying project.

5 Article 6. Development and Operations Standards for Projects

6 Section 6-5. Standards of compliance for plans and
7 specifications. The plans and specifications, if any, for each
8 project developed under this Act must comply with:

9 (1) the responsible public entity's standards for
10 other projects of a similar nature or as otherwise
11 provided in the public-private agreement;

12 (2) the Professional Engineering Practice Act of 1989,
13 the Structural Engineering Practice Act of 1989, the
14 Illinois Architecture Practice Act of 1989, Section 30-22
15 of the Illinois Procurement Code as applicable as it
16 applies to responsible bidders, and the Illinois
17 Professional Land Surveyor Act of 1989; and

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

19 Section 6-10. Highway projects under Act considered part
20 of State highway system. Each highway project constructed or
21 operated under this Act is considered to be part of:

22 (1) the State highway system for purposes of
23 identification, maintenance standards, and enforcement of

1 traffic laws if the highway project is under the
2 jurisdiction of the Department;

3 (2) the toll highway system for purposes of
4 identification, maintenance standards, and enforcement of
5 traffic laws if the highway project is under the
6 jurisdiction of the Authority; or

7 (3) a county or municipal road system for purposes of
8 identification, maintenance standards, and enforcement of
9 traffic laws if the highway or road project is under the
10 jurisdiction of a county or municipality.

11 Section 6-15. Service agreements. Any unit of local
12 government or State agency may enter into agreements with the
13 contractor for maintenance or other services under this Act.

14 Section 6-20. Cooperation with federal and local agencies.
15 The responsible public entity shall seek the cooperation of
16 federal and local agencies to expedite all necessary federal
17 and local permits, licenses, and approvals necessary for
18 projects under this Act.

19 Article 7. Taxation of Contractors

20 Section 7-5. Exemptions from property taxes. A project
21 under this Act and tangible personal property used exclusively
22 in connection with a project that are:

1 (1) owned by the responsible public entity and leased,
2 licensed, financed, or otherwise conveyed to a contractor;
3 or

4 (2) acquired, constructed, or otherwise provided by a
5 contractor on behalf of the responsible public entity.

6 Under the terms of a public-private agreement are
7 considered to be public property devoted to an essential
8 public and governmental function and purpose. The property,
9 and a contractor's leasehold estate or interests in the
10 property, are exempt from all ad valorem property taxes and
11 special assessments levied against property by the State or
12 any political subdivision of the State.

13 Section 7-10. Exemptions from retail and use taxes. A
14 contractor or any other person purchasing tangible personal
15 property for incorporation into or improvement of a structure
16 or facility constituting or becoming part of the land included
17 in a project is entitled to the exemption from retail tax and
18 use tax provided under the Retailers' Occupation Tax Act and
19 Use Tax Act, respectively, with respect to that tangible
20 personal property.

21 Section 7-15. Taxation of income. Income received by a
22 contractor under the terms of a public-private agreement is
23 subject to taxation in the same manner as income received by
24 other private entities.

1 Article 8. Financial Arrangements

2 Section 8-5. Actions to obtain credit assistance. The
3 responsible public entity may do any combination of applying
4 for, executing, or endorsing applications submitted by private
5 entities to obtain federal, State, or local credit assistance
6 for qualifying projects developed, financed, or operated under
7 this Act, including loans, lines of credit, and guarantees.

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

1 Section 8-15. Grants or loans from amounts received from
2 governments. The responsible public entity may agree to make
3 grants or loans for the development, financing, or operation
4 of a qualifying project from time to time, from amounts
5 received from the federal, State, or local government or any
6 agency or instrumentality of the federal, State, or local
7 government.

8 Section 8-20. Terms and conditions of financing. Any
9 financing of a qualifying project may be in the amounts for the
10 term, and upon other terms and conditions that are determined
11 by the parties to the public-private agreement and the
12 financing shall not exceed the life of the qualifying project,
13 not to exceed 75 years.

14 Section 8-25. General powers for the purpose of financing.
15 For the purpose of financing a qualifying project, the
16 contractor and the responsible public entity may do the
17 following:

18 (1) Propose to use any and all of the revenues
19 generated by a qualifying project to pay principal,
20 interest, costs of operation and maintenance of a
21 qualifying project.

22 (2) Enter into grant agreements.

23 (3) Access any other funds for design, construction,
24 operation or maintenance of a qualifying project available

1 to the responsible public entity or private entity,
2 including public or private pension funds.

3 (4) Accept grants from the responsible public entity
4 or other public or private agency or entity.

5 (5) Enter into a lease with a private entity for a
6 qualifying project and may lease a qualifying project to a
7 contractor under a public-private agreement.

8 (6) Pay lease rentals for leases that the responsible
9 public entity has entered into under this Act that secure
10 bonds or debts issued or approved under this Article from
11 any legally available revenues, including:

12 (A) payments received from a contractor;

13 (B) federal highway revenues;

14 (C) distributions from the State highway fund; and

15 (D) other funds available to the responsible
16 public entity for such purpose.

17 Section 8-30. Debt.

18 (a) For the purpose of financing a qualifying project, the
19 responsible public entity may by resolution borrow money and
20 enter into agreements, leases, contracts or subleases with a
21 private entity, and do the following:

22 (1) Issue, sell, and refund bonds, notes of the
23 responsible public entity, debt, or other debt
24 obligations.

25 (2) Enter into loan agreements or other credit

1 facilities.

2 (3) Secure any financing with a pledge of revenues,
3 security interest in, or lien on all or part of a property
4 subject to the agreement, including all of the party's
5 property interests in the qualifying project.

6 (b) Any term of such debt shall not exceed the earlier of
7 the term of the public-private agreement, the life of the
8 qualifying project or 75 years.

9 (c) The bonds, notes, and other forms of debt issued under
10 this Article:

11 (1) constitute the corporate obligations of the
12 responsible public entity;

13 (2) do not constitute an indebtedness of the State
14 within the meaning or application of any constitutional
15 provision or limitation; and

16 (3) are payable solely as to both principal and
17 interest and other associated fees from:

18 (A) the revenues from a lease to the responsible
19 public entity, if any;

20 (B) proceeds of bonds or notes, if any;

21 (C) investment earnings on proceeds of bonds or
22 notes; or

23 (D) other funds available to the responsible
24 public entity for such purpose.

25 Section 8-35. Use of public funds for financing. For the

1 purpose of financing a qualifying project, public funds,
2 including public or private pension funds, may be used and
3 aggregated with funds provided by or on behalf of the
4 contractor or other private entities. The use of public funds
5 to finance all or a portion of qualifying projects authorized
6 under this Article 8 constitutes authorized investments as
7 provided in Section 2 of the Public Funds Investment Act.

8 Section 8-40. Private activity bonds for purpose of
9 financing. For the purpose of financing a qualifying project,
10 a responsible public entity is authorized to do any
11 combination of applying for, executing, or endorsing
12 applications for an allocation of tax-exempt bond financing
13 authorization provided by the United States Internal Revenue
14 Code, as well as financing available under any other federal
15 law or program.

16 Section 8-45. Debt limitations. Any bonds, debt, or other
17 securities or other financing issued by or on behalf of a
18 contractor for the purposes of a project undertaken under this
19 Act shall not be deemed to constitute a debt of the responsible
20 public entity, the State, or any political subdivision of the
21 State or a pledge of the faith and credit of the responsible
22 public entity, the State, or any political subdivision of the
23 State, for purposes of debt limitation.

1 Article 9. Acquisition of Property

2 Section 9-5. General. The responsible public entity may
3 exercise any power of condemnation or eminent domain,
4 including quick-take powers, that it has under law, for the
5 purpose of acquiring any lands or estates or interests in land
6 for a qualifying project to the extent provided in the
7 public-private agreement or otherwise to the extent that the
8 responsible public entity finds that the action serves the
9 public purpose of this Act and deems it appropriate in the
10 exercise of its powers under this Act.

11 Section 9-10. Entering into grants of property interests.
12 The responsible public entity and a private entity may enter
13 into the leases, licenses, easements, and other grants of
14 property that the responsible public entity determines
15 necessary to carry out this Act.

16 Article 10. Law Enforcement

17 Section 10-5. Powers and jurisdiction within limits of
18 qualifying project.

19 (a) All law enforcement officers of the State and of each
20 affected jurisdiction have the same powers and jurisdiction
21 within the limits of the qualifying project as they have in
22 their respective areas of jurisdiction.

1 (b) Law enforcement officers shall have access to the
2 qualifying project at any time for the purpose of exercising
3 the law enforcement officers' powers and jurisdiction.

4 Section 10-10. Application of traffic and motor vehicle
5 laws; punishment for infractions.

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

10 (b) Punishment for infractions and offenses shall be as
11 prescribed by law for conduct occurring on similar projects in
12 the State or the local jurisdiction.

13 Section 10-15. Law enforcement assistance.

14 (a) Each responsible public entity may enter into an
15 agreement between and among the private entity, the
16 responsible public entity, and the Illinois State Police or
17 other appropriate policing authority where the project is
18 located concerning the provision of law enforcement assistance
19 with respect to a qualifying project that is the subject of a
20 public-private agreement under this Act.

21 (b) Each responsible public entity is authorized to enter
22 into arrangements with the appropriate policing unit related
23 to costs incurred in providing law enforcement assistance
24 under this Act.

1 Article 11. Additional Powers of Responsible Public Entity
2 with Respect to Qualifying Projects

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

14 Section 11-10. Payment of costs. A responsible public
15 entity may pay the costs incurred under a public-private
16 agreement entered into under this Act from any funds available
17 to the responsible public entity under this Act or any other
18 statute.

19 Section 11-15. Action that would impair agreement
20 prohibited. A responsible public entity or other State or
21 local government may not take any action that would impair a
22 public-private agreement entered into under this Act.

1 Article 12. Amendatory Provisions

2 Section 12-5. The Freedom of Information Act is amended by
3 changing Section 7.5 as follows:

4 (5 ILCS 140/7.5)

5 Sec. 7.5. Statutory exemptions. To the extent provided for
6 by the statutes referenced below, the following shall be
7 exempt from inspection and copying:

8 (a) All information determined to be confidential
9 under Section 4002 of the Technology Advancement and
10 Development Act.

11 (b) Library circulation and order records identifying
12 library users with specific materials under the Library
13 Records Confidentiality Act.

14 (c) Applications, related documents, and medical
15 records received by the Experimental Organ Transplantation
16 Procedures Board and any and all documents or other
17 records prepared by the Experimental Organ Transplantation
18 Procedures Board or its staff relating to applications it
19 has received.

20 (d) Information and records held by the Department of
21 Public Health and its authorized representatives relating
22 to known or suspected cases of sexually transmissible
23 disease or any information the disclosure of which is

1 restricted under the Illinois Sexually Transmissible
2 Disease Control Act.

3 (e) Information the disclosure of which is exempted
4 under Section 30 of the Radon Industry Licensing Act.

5 (f) Firm performance evaluations under Section 55 of
6 the Architectural, Engineering, and Land Surveying
7 Qualifications Based Selection Act.

8 (g) Information the disclosure of which is restricted
9 and exempted under Section 50 of the Illinois Prepaid
10 Tuition Act.

11 (h) Information the disclosure of which is exempted
12 under the State Officials and Employees Ethics Act, and
13 records of any lawfully created State or local inspector
14 general's office that would be exempt if created or
15 obtained by an Executive Inspector General's office under
16 that Act.

17 (i) Information contained in a local emergency energy
18 plan submitted to a municipality in accordance with a
19 local emergency energy plan ordinance that is adopted
20 under Section 11-21.5-5 of the Illinois Municipal Code.

21 (j) Information and data concerning the distribution
22 of surcharge moneys collected and remitted by carriers
23 under the Emergency Telephone System Act.

24 (k) Law enforcement officer identification information
25 or driver identification information compiled by a law
26 enforcement agency or the Department of Transportation

1 under Section 11-212 of the Illinois Vehicle Code.

2 (l) Records and information provided to a residential
3 health care facility resident sexual assault and death
4 review team or the Executive Council under the Abuse
5 Prevention Review Team Act.

6 (m) Information provided to the predatory lending
7 database created pursuant to Article 3 of the Residential
8 Real Property Disclosure Act, except to the extent
9 authorized under that Article.

10 (n) Defense budgets and petitions for certification of
11 compensation and expenses for court appointed trial
12 counsel as provided under Sections 10 and 15 of the
13 Capital Crimes Litigation Act. This subsection (n) shall
14 apply until the conclusion of the trial of the case, even
15 if the prosecution chooses not to pursue the death penalty
16 prior to trial or sentencing.

17 (o) Information that is prohibited from being
18 disclosed under Section 4 of the Illinois Health and
19 Hazardous Substances Registry Act.

20 (p) Security portions of system safety program plans,
21 investigation reports, surveys, schedules, lists, data, or
22 information compiled, collected, or prepared by or for the
23 Department of Transportation under Sections 2705-300 and
24 2705-616 of the Department of Transportation Law of the
25 Civil Administrative Code of Illinois, the Regional
26 Transportation Authority under Section 2.11 of the

1 Regional Transportation Authority Act, or the St. Clair
2 County Transit District under the Bi-State Transit Safety
3 Act.

4 (q) Information prohibited from being disclosed by the
5 Personnel Record Review Act.

6 (r) Information prohibited from being disclosed by the
7 Illinois School Student Records Act.

8 (s) Information the disclosure of which is restricted
9 under Section 5-108 of the Public Utilities Act.

10 (t) All identified or deidentified health information
11 in the form of health data or medical records contained
12 in, stored in, submitted to, transferred by, or released
13 from the Illinois Health Information Exchange, and
14 identified or deidentified health information in the form
15 of health data and medical records of the Illinois Health
16 Information Exchange in the possession of the Illinois
17 Health Information Exchange Office due to its
18 administration of the Illinois Health Information
19 Exchange. The terms "identified" and "deidentified" shall
20 be given the same meaning as in the Health Insurance
21 Portability and Accountability Act of 1996, Public Law
22 104-191, or any subsequent amendments thereto, and any
23 regulations promulgated thereunder.

24 (u) Records and information provided to an independent
25 team of experts under the Developmental Disability and
26 Mental Health Safety Act (also known as Brian's Law).

1 (v) Names and information of people who have applied
2 for or received Firearm Owner's Identification Cards under
3 the Firearm Owners Identification Card Act or applied for
4 or received a concealed carry license under the Firearm
5 Concealed Carry Act, unless otherwise authorized by the
6 Firearm Concealed Carry Act; and databases under the
7 Firearm Concealed Carry Act, records of the Concealed
8 Carry Licensing Review Board under the Firearm Concealed
9 Carry Act, and law enforcement agency objections under the
10 Firearm Concealed Carry Act.

11 (v-5) Records of the Firearm Owner's Identification
12 Card Review Board that are exempted from disclosure under
13 Section 10 of the Firearm Owners Identification Card Act.

14 (w) Personally identifiable information which is
15 exempted from disclosure under subsection (g) of Section
16 19.1 of the Toll Highway Act.

17 (x) Information which is exempted from disclosure
18 under Section 5-1014.3 of the Counties Code or Section
19 8-11-21 of the Illinois Municipal Code.

20 (y) Confidential information under the Adult
21 Protective Services Act and its predecessor enabling
22 statute, the Elder Abuse and Neglect Act, including
23 information about the identity and administrative finding
24 against any caregiver of a verified and substantiated
25 decision of abuse, neglect, or financial exploitation of
26 an eligible adult maintained in the Registry established

1 under Section 7.5 of the Adult Protective Services Act.

2 (z) Records and information provided to a fatality
3 review team or the Illinois Fatality Review Team Advisory
4 Council under Section 15 of the Adult Protective Services
5 Act.

6 (aa) Information which is exempted from disclosure
7 under Section 2.37 of the Wildlife Code.

8 (bb) Information which is or was prohibited from
9 disclosure by the Juvenile Court Act of 1987.

10 (cc) Recordings made under the Law Enforcement
11 Officer-Worn Body Camera Act, except to the extent
12 authorized under that Act.

13 (dd) Information that is prohibited from being
14 disclosed under Section 45 of the Condominium and Common
15 Interest Community Ombudsperson Act.

16 (ee) Information that is exempted from disclosure
17 under Section 30.1 of the Pharmacy Practice Act.

18 (ff) Information that is exempted from disclosure
19 under the Revised Uniform Unclaimed Property Act.

20 (gg) Information that is prohibited from being
21 disclosed under Section 7-603.5 of the Illinois Vehicle
22 Code.

23 (hh) Records that are exempt from disclosure under
24 Section 1A-16.7 of the Election Code.

25 (ii) Information which is exempted from disclosure
26 under Section 2505-800 of the Department of Revenue Law of

1 the Civil Administrative Code of Illinois.

2 (jj) Information and reports that are required to be
3 submitted to the Department of Labor by registering day
4 and temporary labor service agencies but are exempt from
5 disclosure under subsection (a-1) of Section 45 of the Day
6 and Temporary Labor Services Act.

7 (kk) Information prohibited from disclosure under the
8 Seizure and Forfeiture Reporting Act.

9 (ll) Information the disclosure of which is restricted
10 and exempted under Section 5-30.8 of the Illinois Public
11 Aid Code.

12 (mm) Records that are exempt from disclosure under
13 Section 4.2 of the Crime Victims Compensation Act.

14 (nn) Information that is exempt from disclosure under
15 Section 70 of the Higher Education Student Assistance Act.

16 (oo) Communications, notes, records, and reports
17 arising out of a peer support counseling session
18 prohibited from disclosure under the First Responders
19 Suicide Prevention Act.

20 (pp) Names and all identifying information relating to
21 an employee of an emergency services provider or law
22 enforcement agency under the First Responders Suicide
23 Prevention Act.

24 (qq) Information and records held by the Department of
25 Public Health and its authorized representatives collected
26 under the Reproductive Health Act.

1 (rr) Information that is exempt from disclosure under
2 the Cannabis Regulation and Tax Act.

3 (ss) Data reported by an employer to the Department of
4 Human Rights pursuant to Section 2-108 of the Illinois
5 Human Rights Act.

6 (tt) Recordings made under the Children's Advocacy
7 Center Act, except to the extent authorized under that
8 Act.

9 (uu) Information that is exempt from disclosure under
10 Section 50 of the Sexual Assault Evidence Submission Act.

11 (vv) Information that is exempt from disclosure under
12 subsections (f) and (j) of Section 5-36 of the Illinois
13 Public Aid Code.

14 (wv) Information that is exempt from disclosure under
15 Section 16.8 of the State Treasurer Act.

16 (xx) Information that is exempt from disclosure or
17 information that shall not be made public under the
18 Illinois Insurance Code.

19 (yy) Information prohibited from being disclosed under
20 the Illinois Educational Labor Relations Act.

21 (zz) Information prohibited from being disclosed under
22 the Illinois Public Labor Relations Act.

23 (aaa) Information prohibited from being disclosed
24 under Section 1-167 of the Illinois Pension Code.

25 (bbb) Information that is prohibited from disclosure
26 by the Illinois Police Training Act and the Illinois State

1 Police Act.

2 (ccc) Records exempt from disclosure under Section
3 2605-304 of the Illinois State Police Law of the Civil
4 Administrative Code of Illinois.

5 (ddd) Information prohibited from being disclosed
6 under Section 35 of the Address Confidentiality for
7 Victims of Domestic Violence, Sexual Assault, Human
8 Trafficking, or Stalking Act.

9 (eee) Information prohibited from being disclosed
10 under subsection (b) of Section 75 of the Domestic
11 Violence Fatality Review Act.

12 (fff) Images from cameras under the Expressway Camera
13 Act. This subsection (fff) is inoperative on and after
14 July 1, 2023.

15 (ggg) Information prohibited from disclosure under
16 paragraph (3) of subsection (a) of Section 14 of the Nurse
17 Agency Licensing Act.

18 (hhh) Information submitted to the Illinois Department
19 ~~of~~ State Police in an affidavit or application for an
20 assault weapon endorsement, assault weapon attachment
21 endorsement, .50 caliber rifle endorsement, or .50 caliber
22 cartridge endorsement under the Firearm Owners
23 Identification Card Act.

24 (iii) Information that is exempt from disclosure under
25 Section 3-20 of the Public-Private Partnership Act.

26 (Source: P.A. 101-13, eff. 6-12-19; 101-27, eff. 6-25-19;

1 101-81, eff. 7-12-19; 101-221, eff. 1-1-20; 101-236, eff.
2 1-1-20; 101-375, eff. 8-16-19; 101-377, eff. 8-16-19; 101-452,
3 eff. 1-1-20; 101-466, eff. 1-1-20; 101-600, eff. 12-6-19;
4 101-620, eff. 12-20-19; 101-649, eff. 7-7-20; 101-652, eff.
5 1-1-22; 101-656, eff. 3-23-21; 102-36, eff. 6-25-21; 102-237,
6 eff. 1-1-22; 102-292, eff. 1-1-22; 102-520, eff. 8-20-21;
7 102-559, eff. 8-20-21; 102-813, eff. 5-13-22; 102-946, eff.
8 7-1-22; 102-1042, eff. 6-3-22; 102-1116, eff. 1-10-23; revised
9 2-13-23.)

10 Section 12-10. The Public Funds Investment Act is amended
11 by changing Section 2 as follows:

12 (30 ILCS 235/2) (from Ch. 85, par. 902)

13 Sec. 2. Authorized investments.

14 (a) Any public agency may invest any public funds as
15 follows:

16 (1) in bonds, notes, certificates of indebtedness,
17 treasury bills or other securities now or hereafter
18 issued, which are guaranteed by the full faith and credit
19 of the United States of America as to principal and
20 interest;

21 (2) in bonds, notes, debentures, or other similar
22 obligations of the United States of America, its agencies,
23 and its instrumentalities;

24 (3) in interest-bearing savings accounts,

1 interest-bearing certificates of deposit or
2 interest-bearing time deposits or any other investments
3 constituting direct obligations of any bank as defined by
4 the Illinois Banking Act;

5 (4) in short-term obligations of corporations
6 organized in the United States with assets exceeding
7 \$500,000,000 if (i) such obligations are rated at the time
8 of purchase at one of the 3 highest classifications
9 established by at least 2 standard rating services and
10 which mature not later than 270 days from the date of
11 purchase, (ii) such purchases do not exceed 10% of the
12 corporation's outstanding obligations, and (iii) no more
13 than one-third of the public agency's funds may be
14 invested in short-term obligations of corporations under
15 this paragraph (4);

16 (4.5) in obligations of corporations organized in the
17 United States with assets exceeding \$500,000,000 if (i)
18 such obligations are rated at the time of purchase at one
19 of the 3 highest classifications established by at least 2
20 standard rating services and which mature more than 270
21 days but less than 3 years from the date of purchase, (ii)
22 such purchases do not exceed 10% of the corporation's
23 outstanding obligations, and (iii) no more than one-third
24 of the public agency's funds may be invested in
25 obligations of corporations under this paragraph (4.5); or

26 (5) in money market mutual funds registered under the

1 Investment Company Act of 1940, provided that the
2 portfolio of any such money market mutual fund is limited
3 to obligations described in paragraph (1) or (2) of this
4 subsection and to agreements to repurchase such
5 obligations.

6 (a-1) In addition to any other investments authorized
7 under this Act, a municipality, park district, forest preserve
8 district, conservation district, county, or other governmental
9 unit may invest its public funds in interest bearing bonds of
10 any county, township, city, village, incorporated town,
11 municipal corporation, or school district, of the State of
12 Illinois, of any other state, or of any political subdivision
13 or agency of the State ~~of Illinois~~ or of any other state,
14 whether the interest earned thereon is taxable or tax-exempt
15 under federal law. The bonds shall be registered in the name of
16 the municipality, park district, forest preserve district,
17 conservation district, county, or other governmental unit, or
18 held under a custodial agreement at a bank. The bonds shall be
19 rated at the time of purchase within the 4 highest general
20 classifications established by a rating service of nationally
21 recognized expertise in rating bonds of states and their
22 political subdivisions.

23 (b) Investments may be made only in banks which are
24 insured by the Federal Deposit Insurance Corporation. Any
25 public agency may invest any public funds in short term
26 discount obligations of the Federal National Mortgage

1 Association or in shares or other forms of securities legally
2 issuable by savings banks or savings and loan associations
3 incorporated under the laws of this State or any other state or
4 under the laws of the United States. Investments may be made
5 only in those savings banks or savings and loan associations
6 the shares, or investment certificates of which are insured by
7 the Federal Deposit Insurance Corporation. Any such securities
8 may be purchased at the offering or market price thereof at the
9 time of such purchase. All such securities so purchased shall
10 mature or be redeemable on a date or dates prior to the time
11 when, in the judgment of such governing authority, the public
12 funds so invested will be required for expenditure by such
13 public agency or its governing authority. The expressed
14 judgment of any such governing authority as to the time when
15 any public funds will be required for expenditure or be
16 redeemable is final and conclusive. Any public agency may
17 invest any public funds in dividend-bearing share accounts,
18 share certificate accounts or class of share accounts of a
19 credit union chartered under the laws of this State or the laws
20 of the United States; provided, however, the principal office
21 of any such credit union must be located within the State of
22 Illinois. Investments may be made only in those credit unions
23 the accounts of which are insured by applicable law.

24 (c) For purposes of this Section, the term "agencies of
25 the United States of America" includes: (i) the federal land
26 banks, federal intermediate credit banks, banks for

1 cooperative, federal farm credit banks, or any other entity
2 authorized to issue debt obligations under the Farm Credit Act
3 of 1971 (12 U.S.C. 2001 et seq.) and Acts amendatory thereto;
4 (ii) the federal home loan banks and the federal home loan
5 mortgage corporation; and (iii) any other agency created by
6 Act of Congress.

7 (d) Except for pecuniary interests permitted under
8 subsection (f) of Section 3-14-4 of the Illinois Municipal
9 Code or under Section 3.2 of the Public Officer Prohibited
10 Practices Act, no person acting as treasurer or financial
11 officer or who is employed in any similar capacity by or for a
12 public agency may do any of the following:

13 (1) have any interest, directly or indirectly, in any
14 investments in which the agency is authorized to invest.

15 (2) have any interest, directly or indirectly, in the
16 sellers, sponsors, or managers of those investments.

17 (3) receive, in any manner, compensation of any kind
18 from any investments in which the agency is authorized to
19 invest.

20 (e) Any public agency may also invest any public funds in a
21 Public Treasurers' Investment Pool created under Section 17 of
22 the State Treasurer Act. Any public agency may also invest any
23 public funds in a fund managed, operated, and administered by
24 a bank, subsidiary of a bank, or subsidiary of a bank holding
25 company or use the services of such an entity to hold and
26 invest or advise regarding the investment of any public funds.

1 (f) To the extent a public agency has custody of funds not
2 owned by it or another public agency and does not otherwise
3 have authority to invest such funds, the public agency may
4 invest such funds as if they were its own. Such funds must be
5 released to the appropriate person at the earliest reasonable
6 time, but in no case exceeding 31 days, after the private
7 person becomes entitled to the receipt of them. All earnings
8 accruing on any investments or deposits made pursuant to the
9 provisions of this Act shall be credited to the public agency
10 by or for which such investments or deposits were made, except
11 as provided otherwise in Section 4.1 of the State Finance Act
12 or the Local Governmental Tax Collection Act, and except where
13 by specific statutory provisions such earnings are directed to
14 be credited to and paid to a particular fund.

15 (g) A public agency may purchase or invest in repurchase
16 agreements of government securities having the meaning set out
17 in the Government Securities Act of 1986, as now or hereafter
18 amended or succeeded, subject to the provisions of said Act
19 and the regulations issued thereunder. The government
20 securities, unless registered or inscribed in the name of the
21 public agency, shall be purchased through banks or trust
22 companies authorized to do business in the State of Illinois.

23 (h) Except for repurchase agreements of government
24 securities which are subject to the Government Securities Act
25 of 1986, as now or hereafter amended or succeeded, no public
26 agency may purchase or invest in instruments which constitute

1 repurchase agreements, and no financial institution may enter
2 into such an agreement with or on behalf of any public agency
3 unless the instrument and the transaction meet the following
4 requirements:

5 (1) The securities, unless registered or inscribed in
6 the name of the public agency, are purchased through banks
7 or trust companies authorized to do business in the State
8 ~~of Illinois.~~

9 (2) An authorized public officer after ascertaining
10 which firm will give the most favorable rate of interest,
11 directs the custodial bank to "purchase" specified
12 securities from a designated institution. The "custodial
13 bank" is the bank or trust company, or agency of
14 government, which acts for the public agency in connection
15 with repurchase agreements involving the investment of
16 funds by the public agency. The State Treasurer may act as
17 custodial bank for public agencies executing repurchase
18 agreements. To the extent the Treasurer acts in this
19 capacity, he is hereby authorized to pass through to such
20 public agencies any charges assessed by the Federal
21 Reserve Bank.

22 (3) A custodial bank must be a member bank of the
23 Federal Reserve System or maintain accounts with member
24 banks. All transfers of book-entry securities must be
25 accomplished on a Reserve Bank's computer records through
26 a member bank of the Federal Reserve System. These

1 securities must be credited to the public agency on the
2 records of the custodial bank and the transaction must be
3 confirmed in writing to the public agency by the custodial
4 bank.

5 (4) Trading partners shall be limited to banks or
6 trust companies authorized to do business in the State ~~of~~
7 ~~Illinois~~ or to registered primary reporting dealers.

8 (5) The security interest must be perfected.

9 (6) The public agency enters into a written master
10 repurchase agreement which outlines the basic
11 responsibilities and liabilities of both buyer and seller.

12 (7) Agreements shall be for periods of 330 days or
13 less.

14 (8) The authorized public officer of the public agency
15 informs the custodial bank in writing of the maturity
16 details of the repurchase agreement.

17 (9) The custodial bank must take delivery of and
18 maintain the securities in its custody for the account of
19 the public agency and confirm the transaction in writing
20 to the public agency. The Custodial Undertaking shall
21 provide that the custodian takes possession of the
22 securities exclusively for the public agency; that the
23 securities are free of any claims against the trading
24 partner; and any claims by the custodian are subordinate
25 to the public agency's claims to rights to those
26 securities.

1 (10) The obligations purchased by a public agency may
2 only be sold or presented for redemption or payment by the
3 fiscal agent bank or trust company holding the obligations
4 upon the written instruction of the public agency or
5 officer authorized to make such investments.

6 (11) The custodial bank shall be liable to the public
7 agency for any monetary loss suffered by the public agency
8 due to the failure of the custodial bank to take and
9 maintain possession of such securities.

10 (i) Notwithstanding the foregoing restrictions on
11 investment in instruments constituting repurchase agreements
12 the Illinois Housing Development Authority may invest in, and
13 any financial institution with capital of at least
14 \$250,000,000 may act as custodian for, instruments that
15 constitute repurchase agreements, provided that the Illinois
16 Housing Development Authority, in making each such investment,
17 complies with the safety and soundness guidelines for engaging
18 in repurchase transactions applicable to federally insured
19 banks, savings banks, savings and loan associations or other
20 depository institutions as set forth in the Federal Financial
21 Institutions Examination Council Policy Statement Regarding
22 Repurchase Agreements and any regulations issued, or which may
23 be issued by the supervisory federal authority pertaining
24 thereto and any amendments thereto; provided further that the
25 securities shall be either (i) direct general obligations of,
26 or obligations the payment of the principal of and/or interest

1 on which are unconditionally guaranteed by, the United States
2 of America or (ii) any obligations of any agency, corporation
3 or subsidiary thereof controlled or supervised by and acting
4 as an instrumentality of the United States Government pursuant
5 to authority granted by the Congress of the United States and
6 provided further that the security interest must be perfected
7 by either the Illinois Housing Development Authority, its
8 custodian or its agent receiving possession of the securities
9 either physically or transferred through a nationally
10 recognized book entry system.

11 (j) In addition to all other investments authorized under
12 this Section, a community college district may invest public
13 funds in any mutual funds that invest primarily in corporate
14 investment grade or global government short term bonds.
15 Purchases of mutual funds that invest primarily in global
16 government short term bonds shall be limited to funds with
17 assets of at least \$100 million and that are rated at the time
18 of purchase as one of the 10 highest classifications
19 established by a recognized rating service. The investments
20 shall be subject to approval by the local community college
21 board of trustees. Each community college board of trustees
22 shall develop a policy regarding the percentage of the
23 college's investment portfolio that can be invested in such
24 funds.

25 (k) In addition to all other investments authorized under
26 this Section, a public agency may invest in a financial

1 arrangement that finances a qualifying project authorized
2 under Article 8 of the Public-Private Partnership Act.

3 Nothing in this Section shall be construed to authorize an
4 intergovernmental risk management entity to accept the deposit
5 of public funds except for risk management purposes.

6 (Source: P.A. 102-285, eff. 8-6-21.)