



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0305

Introduced 2/6/2009, by Sen. Dale E. Risinger

SYNOPSIS AS INTRODUCED:

New Act
5 ILCS 140/7

from Ch. 116, par. 207

Creates the Public-Private Transportation Act of 2009. Finds that the public need for timely development and operation of transportation facilities may not be wholly satisfied by the existing methods of delivering those services, and authorizing private entities to deliver those services to the public may more timely, more efficient, or less costly. Provides that a private entity may enter into a comprehensive agreements with the State and any agency or authority thereof, any city, village, incorporated town, or county and any other political subdivision of any of the foregoing for the development or operation of transportation facilities. Allows for the comprehensive agreement between the public and private entities to include a maximum rate of return for the private entity on the development or operation of the transportation facility, and provides for the allowable methods of compensation for both the public and private parties. Provides detailed rules and procedures for: the dedication of public property as a transportation facility, the powers and duties of the private entity, interim and service agreements, financing, material default and remedies, condemnation, crossing of utility lines, sovereign immunity, public disclosure, and procurement, among others. Amends the Freedom of Information Act to provide exemptions for certain proprietary information related to the new Act. Effective immediately.

LRB096 03732 AJT 13761 b

FISCAL NOTE ACT
MAY APPLY

STATE DEBT
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning transportation.

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

4 Section 1. Short title. This Act may be cited as the
5 Public-Private Transportation Act of 2009.

6 Section 5. Definitions. As used in this Act:

7 "Affected jurisdiction" means any city, village,
8 incorporated town, or county in which all or a portion of a
9 qualifying transportation facility is located and any other
10 responsible public entity directly affected by the qualifying
11 transportation facility.

12 "Asset management" means a systematic process of operating
13 and maintaining the State highway system by combining
14 engineering practices and analyses with sound business
15 practices and economic theory to achieve cost-effective
16 outcomes.

17 "Comprehensive agreement" means the comprehensive
18 agreement between the private entity and the responsible public
19 entity required by Section 45 of this Act.

20 "Concession" means any lease, license, franchise,
21 easement, or other binding agreement transferring rights for
22 the use or control, in whole or in part, of a qualifying
23 transportation facility by a responsible public entity to a

1 private entity for a definite term during which the private
2 entity will provide transportation-related services including,
3 but not limited to, operations and maintenance, revenue
4 collection, toll-collection enforcement, design, construction,
5 and other activities that enhance throughput, reduce
6 congestion, or otherwise manage the facility in return for the
7 right to receive all or a portion of the revenues of the
8 qualifying transportation facility.

9 "Concession payment" means a payment from a private entity
10 to a responsible public entity in connection with the
11 development and/or operation of a qualifying transportation
12 facility pursuant to a concession.

13 "Develop" or "development" means to plan, design, develop,
14 finance, lease, acquire, install, construct, or expand.

15 "Interim agreement" means an agreement, including a
16 memorandum of understanding or binding preliminary agreement,
17 between the private entity and the responsible public entity
18 that provides for completion of studies and any other
19 activities to advance the development and/or operation of a
20 qualifying transportation facility.

21 "Maintenance" has the meaning ascribed to that term in
22 Section 2-214 of the Illinois Highway Code.

23 "Material default" means any default by the private entity
24 in the performance of its duties under subsection (e) of
25 Section 40 of this Act that jeopardizes adequate service to the
26 public from a qualifying transportation facility and remains

1 unremedied after the responsible public entity has provided
2 notice to the private entity and a reasonable cure period has
3 elapsed.

4 "Multimodal transportation facility" means a
5 transportation facility consisting of multiple modes of
6 transportation.

7 "Operate" or "operation" means to finance, maintain,
8 improve, equip, modify, repair, or operate.

9 "Private entity" means any natural person, corporation,
10 general partnership, limited liability company, limited
11 partnership, joint venture, business trust, public benefit
12 corporation, non-profit entity, or other business entity.

13 "Public entity" means the State and any agency or authority
14 thereof, any city, village, incorporated town, or county and
15 any other political subdivision of any of the foregoing.

16 "Public utility" has the meaning ascribed to it in Section
17 3-105 of the Public Utilities Act.

18 "Qualifying transportation facility" means one or more
19 transportation facilities developed and/or operated by a
20 private entity pursuant to this Act.

21 "Responsible public entity" means a public entity,
22 including local governments and regional authorities, that has
23 the power to develop and/or operate the qualifying
24 transportation facility.

25 "Revenues" means all revenues, including, but not limited
26 to, income, earnings, user fees, lease payments, allocations,

1 federal, State, regional, and local appropriations or the
2 appropriations or other funds available to any political
3 subdivision, authority, or instrumentality thereof, bond
4 proceeds, equity investments, and/or service payments arising
5 out of or in connection with supporting the development and/or
6 operation of a qualifying transportation facility, including
7 without limitation, money received as grants or otherwise from
8 the United States of America, from any public entity, or from
9 any agency or instrumentality of the foregoing in aid of such
10 facility.

11 "Service contract" means a contract entered into between a
12 public entity and the private entity pursuant to Section 25 of
13 this Act.

14 "Service payments" means payments to the private entity in
15 connection with the development and/or operation of a
16 qualifying transportation facility pursuant to a service
17 contract.

18 "Transportation facility" means any road, bridge, tunnel,
19 overpass, ferry, airport, mass transit facility, vehicle
20 parking facility, port facility, or similar commercial
21 facility used for the transportation of persons or goods,
22 together with any buildings, structures, parking areas,
23 appurtenances, and other property needed to operate such
24 facility; however, a commercial or retail use or enterprise not
25 essential to the transportation of persons or goods is not a
26 "transportation facility".

1 "User fees" mean the rates, tolls, fees, or other charges
2 imposed by the private entity for use of all or a portion of a
3 qualifying transportation facility pursuant to the interim or
4 comprehensive agreement.

5 Section 10. Findings and policy.

6 (a) There is a public need for timely development and/or
7 operation of transportation facilities within the State that
8 address the needs identified by the appropriate State,
9 regional, or local transportation plan by improving safety,
10 reducing congestion, increasing capacity, and/or enhancing
11 economic efficiency and that such public need may not be wholly
12 satisfied by existing methods of procurement in which
13 qualifying transportation facilities are developed and/or
14 operated;

15 (b) The public need may not be wholly satisfied by existing
16 ways in which transportation facilities are developed and/or
17 operated; and

18 (c) Authorizing private entities to develop and/or operate
19 one or more transportation facilities may result in the
20 development and/or operation of such transportation facilities
21 to the public in a more timely, more efficient, or less costly
22 fashion, thereby serving the public safety and welfare.

23 (1) An action, other than the approval of the
24 responsible public entity under Section 20 of this Act,
25 must serve the public purpose of this Act if such action,

1 including undertaking a concession, facilitates the timely
2 development and/or operation of a qualifying
3 transportation facility.

4 (2) It is the intent of this Act, among other things,
5 to encourage investment in the State by private entities
6 that facilitates the development and/or operation of
7 transportation facilities. Accordingly, public and private
8 entities may have the greatest possible flexibility in
9 contracting with each other for the provision of the public
10 services which are the subject of this Act.

11 (3) This Act shall be liberally construed in conformity
12 with the purposes hereof.

13 Section 15. Prerequisite for operation. Any private entity
14 seeking authorization under this Act to develop and/or operate
15 a transportation facility must first obtain approval of the
16 responsible public entity under Section 20. Such private entity
17 may initiate the approval process by requesting approval
18 pursuant to subsection (a) of Section 20 or the responsible
19 public entity may request proposals pursuant to subsection (b)
20 of Section 20.

21 Section 20. Approval by the responsible public entity.

22 (a) The private entity may request approval by the
23 responsible public entity. Any such request must be accompanied
24 by the following material and information unless waived by the

1 responsible public entity in its guidelines or other
2 instructions given, in writing, to the private entity with
3 respect to the transportation facility or facilities that the
4 private entity proposes to develop and/or operate as a
5 qualifying transportation facility:

6 (1) A topographic map (1:2,000 or other appropriate
7 scale) indicating the location of the transportation
8 facility or facilities;

9 (2) A description of the transportation facility or
10 facilities, including the conceptual design of such
11 facility or facilities and all proposed interconnections
12 with other transportation facilities;

13 (3) The proposed date for development and/or operation
14 of the transportation facility or facilities along with an
15 estimate of the life-cycle cost of the transportation
16 facility as proposed;

17 (4) A statement setting forth the method by which the
18 private entity proposes to secure any property interests
19 required for the transportation facility or facilities;

20 (5) Information relating to the current transportation
21 plans, if any, of each affected jurisdiction;

22 (6) A list of all permits and approvals required for
23 developing and/or operating improvements to the
24 transportation facility or facilities from local, State,
25 or federal agencies and a projected schedule for obtaining
26 such permits and approvals;

1 (7) A list of public utility facilities, if any, that
2 will be crossed by the transportation facility or
3 facilities and a statement of the plans of the private
4 entity to accommodate such crossings;

5 (8) A statement setting forth the private entity's
6 general plans for developing and/or operating the
7 transportation facility or facilities, including
8 identification of any revenue, public or private, or
9 proposed debt or equity investment or concession proposed
10 by the private entity;

11 (9) The names and addresses of the persons who may be
12 contacted for further information concerning the request;

13 (10) Information on how the private entity's proposal
14 will address the needs identified in the appropriate State,
15 regional, or local transportation plan by improving
16 safety, reducing congestion, increasing capacity, and/or
17 enhancing economic efficiency; and

18 (11) Such additional material and information as the
19 responsible public entity may reasonably request pursuant
20 to its guidelines or other written instructions.

21 (b) The responsible public entity may request proposals
22 from private entities for the development and/or operation of
23 transportation facilities. The responsible public entity may
24 not charge a fee to cover the costs of processing, reviewing,
25 and evaluating proposals received in response to such requests.

26 (c) The responsible public entity may grant approval of the

1 development and/or operation of the transportation facility or
2 facilities as a qualifying transportation facility if the
3 responsible public entity determines that it serves the public
4 purpose of this Act. The responsible public entity may
5 determine that the development and/or operation of the
6 transportation facility or facilities as a qualifying
7 transportation facility serves such public purpose if:

8 (1) There is a public need for the transportation
9 facility or facilities the private entity proposes to
10 develop and/or operate as a qualifying transportation
11 facility;

12 (2) The transportation facility or facilities and the
13 proposed interconnections with existing transportation
14 facilities, and the private entity's plans for development
15 and/or operation of the qualifying transportation facility
16 or facilities, are, in the opinion of the responsible
17 public entity, reasonable and will address the needs
18 identified in the appropriate State, regional, or local
19 transportation plan by improving safety, reducing
20 congestion, increasing capacity, and/or enhancing economic
21 efficiency;

22 (3) The estimated cost of developing and/or operating
23 the transportation facility or facilities is reasonable in
24 relation to similar facilities; and

25 (4) The private entity's plans will result in the
26 timely development and/or operation of the transportation

1 facility or facilities or their more efficient operation.
2 In evaluating any request, the responsible public entity
3 may rely upon internal staff reports prepared by personnel
4 familiar with the operation of similar facilities or the
5 advice of outside advisors or consultants having relevant
6 experience.

7 (d) The responsible public entity may charge a reasonable
8 fee to cover the costs of processing, reviewing, and evaluating
9 the request submitted by a private entity pursuant to
10 subsection (a), including without limitation, reasonable
11 attorney's fees and fees for financial and other necessary
12 advisors or consultants. The responsible public entity must
13 also develop guidelines that establish the process for the
14 acceptance and review of a proposal from a private entity
15 pursuant to subsections (a) and (b). Such guidelines must
16 establish a specific schedule for review of the proposal by the
17 responsible public entity, a process for alteration of that
18 schedule by the responsible public entity if it deems that
19 changes are necessary because of the scope or complexity of
20 proposals it receives, the process for receipt and review of
21 competing proposals, and the type and amount of information
22 that is necessary for adequate review of proposals in each
23 stage of review. For qualifying transportation facilities that
24 have approved or pending State and federal environmental
25 clearances, secured significant right of way, have previously
26 allocated significant State or federal funding, or exhibit

1 other circumstances that could reasonably reduce the amount of
2 time to develop and/or operate the qualifying transportation
3 facility in accordance with the purpose of this Act, the
4 guidelines must provide for a prioritized documentation,
5 review, and selection process.

6 (e) The approval of the responsible public entity is
7 subject to the private entity's entering into an interim
8 agreement or a comprehensive agreement with the responsible
9 public entity. For any project with an estimated construction
10 cost of over \$50,000,000, the responsible public entity must
11 also require the private entity to pay the costs for an
12 independent audit of any and all traffic and cost estimates
13 associated with the private entity's proposal, as well as a
14 review of all public costs and potential liabilities to which
15 taxpayers could be exposed (including improvements to other
16 transportation facilities that may be needed as a result of the
17 proposal, failure by the private entity to reimburse the
18 responsible public entity for services provided, and potential
19 risk and liability in the event the private entity defaults on
20 the comprehensive agreement or on bonds issued for the
21 project). This independent audit must be conducted by an
22 independent consultant selected by the responsible public
23 entity, and all such information from such review must be fully
24 disclosed.

25 (f) In connection with its approval of the development
26 and/or operation of the transportation facility or facilities

1 as a qualifying transportation facility, the responsible
2 public entity must establish a date for the acquisition of or
3 the beginning of construction of or improvements to the
4 qualifying transportation facility. The responsible public
5 entity may extend such date from time to time.

6 (g) The responsible public entity must take appropriate
7 action, as more specifically set forth in its guidelines, to
8 protect confidential and proprietary information provided by
9 the private entity pursuant to an agreement under paragraph
10 (tt) of subsection (1) of Section 7 of the Freedom of
11 Information Act.

12 (h) The responsible public entity may also apply for,
13 execute, and/or endorse applications submitted by private
14 entities to obtain federal credit assistance for qualifying
15 projects developed and/or operated pursuant to this Act.

16 Section 25. Service contracts. In addition to any authority
17 otherwise conferred by law, any public entity may contract with
18 a private entity for transportation services to be provided by
19 a qualifying transportation facility in exchange for such
20 service payments and other consideration as such public entity
21 may deem appropriate.

22 Section 30. Affected jurisdictions.

23 (a) Any private entity requesting approval from, or
24 submitting a proposal to, a responsible public entity under

1 Section 20 must notify each affected jurisdiction by furnishing
2 a copy of its request or proposal to each affected
3 jurisdiction.

4 (b) Each affected jurisdiction that is not a responsible
5 public entity for the respective qualifying transportation
6 facility must, within 60 days after receiving a request for
7 comments from the responsible public entity, submit any
8 comments it may have in writing on the proposed qualifying
9 transportation facility to the responsible public entity and
10 indicating whether the facility will address the needs
11 identified in the appropriate State, regional, or local
12 transportation plan by improving safety, reducing congestion,
13 increasing capacity, and/or enhancing economic efficiency.

14 Section 35. Dedication of public property. Any public
15 entity may dedicate any property interest that it has for
16 public use as a qualified transportation facility if it finds
17 that so doing will serve the public purpose of this Act. In
18 connection with such dedication, a public entity may convey any
19 property interest that it has, subject to the conditions
20 imposed by general law governing such conveyances, to the
21 private entity, subject to the provisions of this Act, for such
22 consideration as such public entity may determine. The
23 aforementioned consideration may include, without limitation,
24 the agreement of the private entity to develop and/or operate
25 the qualifying transportation facility. The property interests

1 that the public entity may convey to the private entity in
2 connection with a dedication under this Section may include
3 licenses, franchises, easements, concessions, or any other
4 right or interest the public entity deems appropriate. Such
5 property interest including, but not limited to, a leasehold
6 interest in and/or rights to use real property constituting a
7 qualifying transportation facility is considered property
8 indirectly owned by a government if described in Section 15-55
9 of the Property Tax Code.

10 Section 40. Powers and duties of the private entity.

11 (a) The private entity has all power allowed by law
12 generally to a private entity having the same form of
13 organization as the private entity and has the power to develop
14 and/or operate the qualifying transportation facility and
15 impose user fees and/or enter into service contracts in
16 connection with the use thereof.

17 (b) The private entity may own, lease or acquire any other
18 right to use or develop and/or operate the qualifying
19 transportation facility.

20 (c) Subject to applicable permit requirements, the private
21 entity has the authority to cross any canal or navigable
22 watercourse so long as the crossing does not unreasonably
23 interfere with then current navigation and use of the waterway.

24 (d) In operating the qualifying transportation facility,
25 the private entity may:

1 (1) Make classifications according to reasonable
2 categories for assessment of user fees; and

3 (2) With the consent of the responsible public entity,
4 make and enforce reasonable rules to the same extent that
5 the responsible public entity may make and enforce rules
6 with respect to a similar transportation facility.

7 (e) The private entity must:

8 (1) Develop and/or operate the qualifying
9 transportation facility in a manner that meets the
10 standards of the responsible public entity for
11 transportation facilities operated and maintained by such
12 responsible public entity, all in accordance with the
13 provisions of the interim agreement or the comprehensive
14 agreement;

15 (2) Keep the qualifying transportation facility open
16 for use by the members of the public in accordance with the
17 terms and conditions of the interim or comprehensive
18 agreement after its initial opening upon payment of the
19 applicable user fees, and/or service payments; provided
20 that the qualifying transportation facility may be
21 temporarily closed because of emergencies or, with the
22 consent of the responsible public entity, to protect the
23 safety of the public or for reasonable construction or
24 maintenance procedures;

25 (3) Maintain, or provide by contract for the
26 maintenance of, the qualifying transportation facility;

1 (4) Cooperate with the responsible public entity in
2 establishing any interconnection with the qualifying
3 transportation facility requested by the responsible
4 public entity; and

5 (5) Comply with the provisions of the interim or
6 comprehensive agreement and any service contract.

7 Section 45. Comprehensive agreement.

8 (a) Prior to developing and/or operating the qualifying
9 transportation facility, the private entity must enter into a
10 comprehensive agreement with the responsible public entity.
11 The comprehensive agreement must, as appropriate, provide for:

12 (1) Delivery of performance and payment bonds in
13 connection with the development and/or operation of the
14 qualifying transportation facility, in the forms and
15 amounts satisfactory to the responsible public entity;

16 (2) Review of plans for the development and/or
17 operation of the qualifying transportation facility by the
18 responsible public entity and approval by the responsible
19 public entity if the plans conform to standards acceptable
20 to the responsible public entity;

21 (3) Inspection of construction of or improvements to
22 the qualifying transportation facility by the responsible
23 public entity to ensure that they conform to the standards
24 acceptable to the responsible public entity;

25 (4) Maintenance of a policy or policies of public

1 liability insurance (copies of which must be filed with the
2 responsible public entity accompanied by proofs of
3 coverage) or self-insurance, each in form and amount
4 satisfactory to the responsible public entity and
5 reasonably sufficient to insure coverage of tort liability
6 to the public and employees and to enable the continued
7 operation of the qualifying transportation facility;

8 (5) Monitoring of the maintenance practices of the
9 private entity by the responsible public entity and the
10 taking of such actions as the responsible public entity
11 finds appropriate to ensure that the qualifying
12 transportation facility is properly maintained;

13 (6) Reimbursement to be paid to the responsible public
14 entity for services provided by the responsible public
15 entity;

16 (7) Filing of appropriate financial statements in a
17 form acceptable to the responsible public entity on a
18 periodic basis;

19 (8) Compensation to the private entity which may
20 include a reasonable development fee, a reasonable maximum
21 rate of return on investment, and/or reimbursement of
22 development expenses in the event of termination for
23 convenience by the responsible public entity as agreed upon
24 between the responsible public entity and the private
25 entity;

26 (9) The date of termination of the private entity's

1 authority and duties under this Act and dedication to the
2 appropriate public entity; and

3 (10) Guaranteed cost and completion guarantees related
4 to the development and/or operation of the qualified
5 transportation facility and payment of damages for failure
6 to meet the completion guarantee.

7 (b) The comprehensive agreement must provide for such user
8 fees as may be established from time to time by agreement of
9 the parties. Any user fees must be set at a level that takes
10 into account any lease payments, service payments, and
11 compensation to the private entity or as specified in the
12 comprehensive agreement. A copy of any service contract must be
13 filed with the responsible public entity. A schedule of the
14 current user fees must be made available by the private entity
15 to any member of the public on request. In negotiating user
16 fees under this Section, the parties must establish fees that
17 are the same for persons using the facility under like
18 conditions except as required by agreement between the parties
19 to preserve capacity and prevent congestion on the qualifying
20 transportation facility. The execution of the comprehensive
21 agreement or any amendment thereto constitutes conclusive
22 evidence that the user fees provided for therein comply with
23 this Act. User fees established in the comprehensive agreement
24 as a source of revenues may be in addition to, or in lieu of,
25 service payments.

26 (c) In the comprehensive agreement, the responsible public

1 entity may agree to make grants or loans for the development
2 and/or operation of the qualifying transportation facility
3 from time to time from amounts received from the federal
4 government or any agency or instrumentality thereof.

5 (d) The comprehensive agreement must incorporate the
6 duties of the private entity under this Act and may contain
7 such other terms and conditions that the responsible public
8 entity determines serve the public purpose of this Act. Without
9 limitation, the comprehensive agreement may contain provisions
10 under which the responsible public entity agrees to provide
11 notice of default and cure rights for the benefit of the
12 private entity and the persons specified therein as providing
13 financing for the qualifying transportation facility. The
14 comprehensive agreement may contain such other lawful terms and
15 conditions to which the private entity and the responsible
16 public entity mutually agree, including, without limitation,
17 provisions regarding unavoidable delays or provisions
18 providing for a loan of public funds for the development and/or
19 operation of one or more qualifying transportation facilities.

20 (e) The comprehensive agreement must provide for the
21 distribution of any earnings in excess of the maximum rate of
22 return as negotiated in the comprehensive agreement. Without
23 limitation, excess earnings may be distributed to the State's
24 Road Fund, to the responsible public entity, or to the private
25 entity for debt reduction or they may be shared with
26 appropriate public entities. Any payments under a concession

1 arrangement for which the State is the responsible public
2 entity must be paid into the Road Fund.

3 (f) Any changes in the terms of the comprehensive
4 agreement, as may be agreed upon by the parties from time to
5 time, must be added to the comprehensive agreement by written
6 amendment.

7 (g) Notwithstanding any contrary provision of this Act, a
8 responsible public entity may enter into a comprehensive
9 agreement with multiple private entities if the responsible
10 public entity determines in writing that it is in the public
11 interest to do so.

12 (h) The comprehensive agreement may provide for the
13 development and/or operation of phases or segments of the
14 qualifying transportation facility.

15 Section 50. Interim agreement.

16 (a) Prior to or in connection with the negotiation of the
17 comprehensive agreement, the responsible public entity may
18 enter into an interim agreement with the private entity
19 proposing the development and/or operation of the facility or
20 facilities. Such interim agreement may: (i) permit the private
21 entity to commence activities for which it may be compensated
22 relating to the proposed qualifying transportation facility,
23 including project planning and development, advance
24 right-of-way acquisition, design and engineering,
25 environmental analysis and mitigation, survey, conducting

1 transportation and revenue studies, and ascertaining the
2 availability of financing for the proposed facility or
3 facilities; (ii) establish the process and timing of the
4 negotiation of the comprehensive agreement; and (iii) contain
5 any other provisions related to any aspect of the development
6 and/or operation of a qualifying transportation facility that
7 the parties may deem appropriate.

8 (b) Notwithstanding anything to the contrary in this Act, a
9 responsible public entity may enter in to an interim agreement
10 with multiple private entities if the responsible public entity
11 determines in writing that it is in the public interest to do
12 so.

13 Section 55. Multiple public entities.

14 (a) If a private entity submits a proposal pursuant to
15 subsection (a) of Section 20 of this Act to develop and/or
16 operate a qualifying transportation facility or a multimodal
17 transportation facility that may require approval by more than
18 one public entity, representatives of each of the affected
19 public entities must, prior to acceptance of such proposal,
20 convene and determine which public entity will serve as the
21 coordinating responsible public entity. Such determination
22 must occur within 60 days of the receipt of a proposal by the
23 respective public entities.

24 (b) If public entities request proposals from private
25 entities for the development and/or operation of a qualifying

1 transportation facility or a multimodal transportation
2 facility pursuant to subsection (b) of Section 20, the
3 determination of which public entity will serve as the
4 coordinating responsible public entity must be made prior to
5 any request for proposals.

6 (c) Once a determination has been made in accordance with
7 subsections (a) or (b), the coordinating responsible public
8 entity and the private entity must proceed in accordance with
9 this Act.

10 Section 60. Federal, State and local assistance.

11 (a) The responsible public entity may take any action to
12 obtain federal, State, or local assistance for a qualifying
13 transportation facility that serves the public purpose of this
14 Act and may enter into any contracts required to receive such
15 federal assistance. If the responsible public entity is a State
16 agency, any funds received from the State or federal government
17 or any agency or instrumentality thereof are subject to
18 appropriation by the General Assembly. The responsible public
19 entity may determine that it serves the public purpose of this
20 Act for all or any portion of the costs of a qualifying
21 transportation facility to be paid, directly or indirectly,
22 from the proceeds of a grant or loan made by the local, State,
23 or federal government or any agency or instrumentality thereof.

24 (b) The responsible public entity may agree to make grants
25 or loans for the development and/or operation of the qualifying

1 transportation facility from time to time from amounts received
2 from the federal, State, or local government, or any agency or
3 instrumentality thereof.

4 (c) Nothing in this Act or in an interim or comprehensive
5 agreement entered into pursuant to this Act may be deemed to
6 enlarge, diminish, or affect the authority, if any, otherwise
7 possessed by the responsible public entity to take action that
8 would impact the debt capacity of the State or the affected
9 jurisdictions.

10 Section 65. Financing. Any financing of a qualifying
11 transportation facility may be in such amounts and upon such
12 terms and conditions as may be determined by the parties to the
13 interim or comprehensive agreement. Without limiting the
14 generality of the foregoing, the private entity and the
15 responsible public entity may propose to utilize any and all
16 revenues that may be available to them and may, to the fullest
17 extent permitted by applicable law, issue debt, equity, or
18 other securities or obligations, enter into leases,
19 concessions, and grant and loan agreements, access any
20 designated transportation trust funds, borrow or accept grants
21 from any State infrastructure bank and secure any financing
22 with a pledge of, security interest in, or lien on, any or all
23 of its property, including all of its property interests in the
24 qualifying transportation facility.

1 Section 70. Material default; remedies.

2 (a) Upon the occurrence and during the continuation of
3 material default, the responsible public entity may exercise
4 any or all of the following remedies:

5 (1) The responsible public entity may elect to take
6 over the transportation facility or facilities and in such
7 case it must succeed to all of the right, title and
8 interest in such transportation facility or facilities,
9 subject to any liens on revenues previously granted by the
10 private entity to any person providing financing therefor;

11 (2) The responsible public entity may terminate the
12 interim or comprehensive agreement and exercise any other
13 rights and remedies which may be available to it at law or
14 in equity; or

15 (3) The responsible public entity may make or cause to
16 be made any appropriate claims under the performance and/or
17 payment bonds required by Section 45.

18 (b) In the event the responsible public entity elects to
19 take over a qualifying transportation facility pursuant to
20 subsection (a), the responsible public entity may develop
21 and/or operate the transportation facility, impose user fees
22 for the use thereof and comply with any service contracts as if
23 it were the private entity. Any revenues that are subject to a
24 lien must be collected for the benefit of, and paid to, secured
25 parties, as their interests may appear, to the extent necessary
26 to satisfy the private entity's obligations to secured parties,

1 including the maintenance of reserves and such liens must be
2 correspondingly reduced and, when paid off, released. Before
3 any payments to, or for the benefit of, secured parties, the
4 responsible public entity may use revenues to pay current
5 operation and maintenance costs of the transportation facility
6 or facilities, including compensation to the responsible
7 public entity for its services in operating and maintaining the
8 qualifying transportation facility. Remaining revenues, if
9 any, after all payments for operation and maintenance of the
10 transportation facility or facilities, and to, or for the
11 benefit of, secured parties, have been made, must be paid to
12 the private entity, subject to the negotiated maximum rate of
13 return. The right to receive such payment, if any, must be
14 considered just compensation for the transportation facility
15 or facilities. The full faith and credit of the responsible
16 public entity may not be pledged to secure any financing of the
17 private entity by the election to take over the qualifying
18 transportation facility. Assumption of operation of the
19 qualifying transportation facility does not obligate the
20 responsible public entity to pay any obligation of the private
21 entity from sources other than revenues.

22 Section 75. Condemnation.

23 (a) At the request of the private entity, the responsible
24 public entity may exercise any power of condemnation that it
25 has under law for the purpose of acquiring any lands or estates

1 or interests therein to the extent that the responsible public
2 entity finds that such action serves the public purpose of this
3 Act. Any amounts to be paid in any such condemnation proceeding
4 must be paid by the private entity.

5 (b) Except as provided in subsection (a), until the
6 Secretary of State, after notice to the private entity and the
7 secured parties, as may appear in the private entity's records,
8 and an opportunity for hearing, has entered a final declaratory
9 judgment that a material default has occurred and is
10 continuing, the power of condemnation may not be exercised
11 against a qualifying transportation facility.

12 (c) After the entry of such final order by the Secretary of
13 State, any responsible public entity having the power of
14 condemnation under State law may exercise such power of
15 condemnation in lieu of, or at any time after taking over the
16 transportation facility pursuant to paragraph (1) of Section 70
17 of this Act, to acquire the qualifying transportation facility
18 or facilities. Nothing in this Act may be construed to limit
19 the exercise of the power of condemnation by any responsible
20 public entity against a qualifying transportation facility
21 after the entry by the Secretary of State of a final
22 declaratory judgment order pursuant to subsection (b). Any
23 person that has provided financing for the qualifying
24 transportation facility and the private entity, to the extent
25 of its capital investment, may participate in the condemnation
26 proceedings with the standing of a property owner.

1 Section 80. Utility crossings. The private entity and each
2 public utility, railroad, and cable television provider, whose
3 facilities are to be crossed or affected must cooperate fully
4 with the other in planning and arranging the manner of the
5 crossing or relocation of the facilities. Any such entity
6 possessing the power of condemnation is hereby expressly
7 granted such powers in connection with the moving or relocation
8 of facilities to be crossed by the qualifying transportation
9 facility or that must be relocated to the extent that such
10 moving or relocation is made necessary or desirable by
11 construction of or improvements to the qualifying
12 transportation facility, which will be construed to include
13 construction of or improvements to temporary facilities for the
14 purpose of providing service during the period of construction
15 or improvement. Should the private entity and any such public
16 utility, railroad, and cable television provider not be able to
17 agree upon a plan for the crossing or relocation, the Illinois
18 Commerce Commission may determine the manner in which the
19 crossing or relocation is to be accomplished and any damages
20 due arising out of the crossing or relocation. The Illinois
21 Commerce Commission may employ expert engineers who will
22 examine the location and plans for such crossing or relocation,
23 hear any objections and consider modifications, and make a
24 recommendation to the Illinois Commerce Commission. In such a
25 case, the cost of the experts is to be borne by the private

1 entity. Any amount to be paid for such crossing, construction,
2 moving or relocating of facilities must be paid for by the
3 private entity or any other person contractually responsible
4 therefor under the interim or comprehensive agreement or under
5 any other contract, license or permit. The Illinois Commerce
6 Commission must make a determination within 90 days of
7 notification by the private entity that the qualifying
8 transportation facility will cross utilities subject to the
9 Illinois Commerce Commission's jurisdiction.

10 Section 85. Police powers; violations of law.

11 (a) All police officers of the State and of each affected
12 local jurisdiction, have the same powers and jurisdiction
13 within the limits of such qualifying transportation facility as
14 they have in their respective areas of jurisdiction and such
15 police officers will have access to the qualifying
16 transportation facility at any time for the purpose of
17 exercising such powers and jurisdiction. This authority does
18 not extend to the private offices, buildings, garages, and
19 other improvements of the private entity to any greater degree
20 than the police power extends to any other private buildings
21 and improvements.

22 (b) To the extent the transportation facility is a road,
23 bridge, tunnel, overpass, or similar transportation facility
24 for motor vehicles, the traffic and motor vehicle laws of the
25 State or, if applicable, any local jurisdiction must be the

1 same as those applying to conduct on similar transportation
2 facilities in the State or such local jurisdiction. Punishment
3 for offenses shall be as prescribed by law for conduct
4 occurring on similar transportation facilities in the State or
5 such local jurisdiction.

6 Section 90. Dedication of assets. The responsible public
7 entity must terminate the private entity's authority and duties
8 under this Act on the date set forth in the interim or
9 comprehensive agreement. Upon termination, the authority and
10 duties of the private entity under this Act will cease, and the
11 qualifying transportation facility will be dedicated to the
12 responsible public entity or, if the qualifying transportation
13 facility was initially dedicated by an affected jurisdiction,
14 to such affected local jurisdiction for public use.

15 Section 95. Sovereign immunity. Nothing in this Act may be
16 construed as or deemed a waiver of the sovereign immunity of
17 the State, any responsible public entity or any affected local
18 jurisdiction or any officer or employee thereof with respect to
19 the participation in, or approval of all or any part of the
20 qualifying transportation facility or its operation, including
21 but not limited to interconnection of the qualifying
22 transportation facility with any other transportation
23 facility. A city, village, incorporated town, or county in
24 which a qualifying transportation facility is located has

1 sovereign immunity with respect to its construction and
2 operation.

3 Section 100. Procurement.

4 (a) The Illinois Procurement Code does not apply to this
5 Act; however, a responsible public entity may enter into an
6 interim or a comprehensive agreement only in accordance with
7 guidelines adopted by it as follows:

8 (1) A responsible public entity may enter into an
9 interim or a comprehensive agreement in accordance with
10 guidelines adopted by it that are consistent with
11 procurement through "competitive sealed bidding" as
12 provided in Section 20-10 of the Illinois Procurement Code.

13 (2) A responsible public entity may enter into an
14 interim or a comprehensive agreement in accordance with
15 guidelines adopted by it that are consistent with the
16 procurement of "other than professional services" through
17 competitive sealed bidding as provided in Sections 20-10
18 and 30-15 of the Illinois Procurement Code. Such
19 responsible public entity may not be required to select the
20 proposal with the lowest price offer, but may consider
21 price as one factor in evaluating the proposals received.
22 Other factors that may be considered include (i) the
23 proposed cost of the qualifying transportation facility;
24 (ii) the general reputation, qualifications, industry
25 experience, and financial capacity of the private entity;

1 (iii) the proposed design, operation, and feasibility of
2 the qualifying transportation facility; (iv) the
3 eligibility of the facility for priority selection,
4 review, and documentation timelines under the responsible
5 public entity's guidelines; (v) local citizen and public
6 entity comments; (vi) benefits to the public; (vii) the
7 private entity's compliance with a minority business
8 enterprise participation plan or good faith effort to
9 comply with the goals of such plan; (viii) the private
10 entity's plans to employ local contractors and residents;
11 (ix) the safety record of the private entity; (x) the
12 ability of the facility to address the needs identified in
13 the appropriate State, regional or local transportation
14 plan by improving safety, reducing congestion, increasing
15 capacity, and/or enhancing economic efficiency; and (xi)
16 other criteria that the responsible public entity deems
17 appropriate.

18 A responsible public entity must proceed in accordance
19 with the guidelines adopted by it pursuant to paragraph (1)
20 of this subsection unless it determines that proceeding in
21 accordance with the guidelines adopted by it pursuant to
22 this paragraph is likely to be advantageous to the
23 responsible public entity and the public, based on: (i) the
24 probable scope, complexity, or urgency of a project; (ii)
25 risk sharing including guaranteed cost or completion
26 guarantees, added value, or debt or equity investments

1 proposed by the private entity; or (iii) an increase in
2 funding, dedicated revenue source or other economic
3 benefit that would not otherwise be available. When the
4 responsible public entity determines to proceed according
5 to the guidelines adopted by it pursuant to this paragraph,
6 it must state the reasons for its determination in writing.
7 If a State agency is the responsible public entity, the
8 approval of the Secretary of the Illinois Department of
9 Transportation may be required as more specifically set
10 forth in the guidelines before the comprehensive agreement
11 is signed.

12 (3) Interim or comprehensive agreements for
13 maintenance or asset management services for a
14 transportation facility that is a highway, bridge, tunnel,
15 or overpass, and any amendment or change order thereto that
16 increases the highway lane-miles receiving services under
17 such an agreement, must be procured in accordance with
18 guidelines that are consistent with procurement through
19 "competitive sealed bidding" as provided in Section 20-10
20 of the Illinois Procurement Code. Furthermore, such
21 contracts must be of a size and scope to encourage maximum
22 competition and participation by agency prequalified
23 contractors and otherwise qualified contractors.

24 (4) The provisions of paragraph (3) do not apply to
25 maintenance or asset management services agreed to as part
26 of the initial provisions of any interim or comprehensive

1 agreement entered into for the original construction,
2 reconstruction, or improvement of any highway pursuant to
3 this Act and do not apply to any concession that, at a
4 minimum, provides for (i) the construction,
5 reconstruction, or improvement of any transportation
6 facility or (ii) the operation and maintenance of any
7 transportation facility with existing toll facilities.

8 (5) Nothing in this Section requires professional
9 services be procured by any method other than competitive
10 sealed bidding in accordance with the Illinois Procurement
11 Code.

12 Section 105. Posting of conceptual proposals; public
13 comment; public access to procurement records.

14 (a) Conceptual proposals submitted in accordance with
15 subsection (a) or (b) of Section 20 of this Act to a
16 responsible public entity must be posted by the responsible
17 public entity within 10 working days after acceptance of such
18 proposals as follows:

19 (1) For responsible public entities that are State
20 agencies, departments, and institutions, posting must be
21 in accordance with the Department of Central Management
22 Services requirements; and

23 (2) For responsible public entities that are local
24 public bodies, posting must be on the responsible public
25 entity's website or by publication, in a newspaper of

1 general circulation in the area in which the contract is to
2 be performed, of a summary of the proposals and the
3 location where copies of the proposals are available for
4 public inspection.

5 In addition to the posting requirements, at least one
6 copy of the proposals must be made available for public
7 inspection. Nothing in this Section may be construed to
8 prohibit the posting of the conceptual proposals by
9 additional means deemed appropriate by the responsible
10 public entity so as to provide maximum notice to the public
11 of the opportunity to inspect the proposals. Trade secrets,
12 financial records, or other records of the private entity
13 excluded from disclosure under the provisions of paragraph
14 (tt) of subsection (1) of Section 7 of the Freedom of
15 Information Act are not be required to be posted, except as
16 otherwise agreed to by the responsible public entity and
17 the private entity.

18 (b) In addition to the posting requirements of subsection
19 (a), for 30 days prior to entering into an interim or
20 comprehensive agreement, a responsible public entity must
21 provide an opportunity for public comment on the proposals. The
22 public comment period required by this subsection may include a
23 public hearing in the sole discretion of the responsible public
24 entity. After the end of the public comment period, no
25 additional posting is required.

26 (c) Once the negotiation phase for the development of an

1 interim or a comprehensive agreement is complete and a decision
2 to award has been made by a responsible public entity, the
3 responsible public entity must present the major business
4 points of the interim or comprehensive agreement, including the
5 use of any public funds, to its oversight board at a regularly
6 scheduled meeting of the board that is open to the public.

7 (d) Once an interim agreement or a comprehensive agreement
8 has been entered into, a responsible public entity must make
9 procurement records available for public inspection, in
10 accordance with the Freedom of Information Act. For the
11 purposes of this subsection, procurement records may not be
12 interpreted to include (i) trade secrets of the person as
13 provided in the Illinois Trade Secrets Act or (ii) financial
14 records, including balance sheets or financial statements of
15 the private entity that are not generally available to the
16 public through regulatory disclosure or otherwise.

17 (e) Cost estimates relating to a proposed procurement
18 transaction prepared by or for a responsible public entity must
19 not be open to public inspection.

20 (f) Any inspection of procurement transaction records
21 under this Section is subject to reasonable restrictions to
22 ensure the security and integrity of the records.

23 (g) The provisions of this Section apply to accepted
24 proposals regardless of whether the process of bargaining will
25 result in an interim or a comprehensive agreement.

1 Section 110. Jurisdiction. The Illinois Commerce
2 Commission has exclusive jurisdiction to adjudicate all
3 matters specifically committed to its jurisdiction by this Act.

4 Section 905. The Freedom of Information Act is amended by
5 changing Section 7 as follows:

6 (5 ILCS 140/7) (from Ch. 116, par. 207)

7 (Text of Section before amendment by P.A. 95-988)

8 Sec. 7. Exemptions.

9 (1) The following shall be exempt from inspection and
10 copying:

11 (a) Information specifically prohibited from
12 disclosure by federal or State law or rules and regulations
13 adopted under federal or State law.

14 (b) Information that, if disclosed, would constitute a
15 clearly unwarranted invasion of personal privacy, unless
16 the disclosure is consented to in writing by the individual
17 subjects of the information. The disclosure of information
18 that bears on the public duties of public employees and
19 officials shall not be considered an invasion of personal
20 privacy. Information exempted under this subsection (b)
21 shall include but is not limited to:

22 (i) files and personal information maintained with
23 respect to clients, patients, residents, students or
24 other individuals receiving social, medical,

1 educational, vocational, financial, supervisory or
2 custodial care or services directly or indirectly from
3 federal agencies or public bodies;

4 (ii) personnel files and personal information
5 maintained with respect to employees, appointees or
6 elected officials of any public body or applicants for
7 those positions;

8 (iii) files and personal information maintained
9 with respect to any applicant, registrant or licensee
10 by any public body cooperating with or engaged in
11 professional or occupational registration, licensure
12 or discipline;

13 (iv) information required of any taxpayer in
14 connection with the assessment or collection of any tax
15 unless disclosure is otherwise required by State
16 statute;

17 (v) information revealing the identity of persons
18 who file complaints with or provide information to
19 administrative, investigative, law enforcement or
20 penal agencies; provided, however, that identification
21 of witnesses to traffic accidents, traffic accident
22 reports, and rescue reports may be provided by agencies
23 of local government, except in a case for which a
24 criminal investigation is ongoing, without
25 constituting a clearly unwarranted per se invasion of
26 personal privacy under this subsection; and

1 (vi) the names, addresses, or other personal
2 information of participants and registrants in park
3 district, forest preserve district, and conservation
4 district programs.

5 (c) Records compiled by any public body for
6 administrative enforcement proceedings and any law
7 enforcement or correctional agency for law enforcement
8 purposes or for internal matters of a public body, but only
9 to the extent that disclosure would:

10 (i) interfere with pending or actually and
11 reasonably contemplated law enforcement proceedings
12 conducted by any law enforcement or correctional
13 agency;

14 (ii) interfere with pending administrative
15 enforcement proceedings conducted by any public body;

16 (iii) deprive a person of a fair trial or an
17 impartial hearing;

18 (iv) unavoidably disclose the identity of a
19 confidential source or confidential information
20 furnished only by the confidential source;

21 (v) disclose unique or specialized investigative
22 techniques other than those generally used and known or
23 disclose internal documents of correctional agencies
24 related to detection, observation or investigation of
25 incidents of crime or misconduct;

26 (vi) constitute an invasion of personal privacy

1 under subsection (b) of this Section;

2 (vii) endanger the life or physical safety of law
3 enforcement personnel or any other person; or

4 (viii) obstruct an ongoing criminal investigation.

5 (d) Criminal history record information maintained by
6 State or local criminal justice agencies, except the
7 following which shall be open for public inspection and
8 copying:

9 (i) chronologically maintained arrest information,
10 such as traditional arrest logs or blotters;

11 (ii) the name of a person in the custody of a law
12 enforcement agency and the charges for which that
13 person is being held;

14 (iii) court records that are public;

15 (iv) records that are otherwise available under
16 State or local law; or

17 (v) records in which the requesting party is the
18 individual identified, except as provided under part
19 (vii) of paragraph (c) of subsection (1) of this
20 Section.

21 "Criminal history record information" means data
22 identifiable to an individual and consisting of
23 descriptions or notations of arrests, detentions,
24 indictments, informations, pre-trial proceedings, trials,
25 or other formal events in the criminal justice system or
26 descriptions or notations of criminal charges (including

1 criminal violations of local municipal ordinances) and the
2 nature of any disposition arising therefrom, including
3 sentencing, court or correctional supervision,
4 rehabilitation and release. The term does not apply to
5 statistical records and reports in which individuals are
6 not identified and from which their identities are not
7 ascertainable, or to information that is for criminal
8 investigative or intelligence purposes.

9 (e) Records that relate to or affect the security of
10 correctional institutions and detention facilities.

11 (f) Preliminary drafts, notes, recommendations,
12 memoranda and other records in which opinions are
13 expressed, or policies or actions are formulated, except
14 that a specific record or relevant portion of a record
15 shall not be exempt when the record is publicly cited and
16 identified by the head of the public body. The exemption
17 provided in this paragraph (f) extends to all those records
18 of officers and agencies of the General Assembly that
19 pertain to the preparation of legislative documents.

20 (g) Trade secrets and commercial or financial
21 information obtained from a person or business where the
22 trade secrets or information are proprietary, privileged
23 or confidential, or where disclosure of the trade secrets
24 or information may cause competitive harm, including:

25 (i) All information determined to be confidential
26 under Section 4002 of the Technology Advancement and

1 Development Act.

2 (ii) All trade secrets and commercial or financial
3 information obtained by a public body, including a
4 public pension fund, from a private equity fund or a
5 privately held company within the investment portfolio
6 of a private equity fund as a result of either
7 investing or evaluating a potential investment of
8 public funds in a private equity fund. The exemption
9 contained in this item does not apply to the aggregate
10 financial performance information of a private equity
11 fund, nor to the identity of the fund's managers or
12 general partners. The exemption contained in this item
13 does not apply to the identity of a privately held
14 company within the investment portfolio of a private
15 equity fund, unless the disclosure of the identity of a
16 privately held company may cause competitive harm.

17 Nothing contained in this paragraph (g) shall be construed
18 to prevent a person or business from consenting to disclosure.

19 (h) Proposals and bids for any contract, grant, or
20 agreement, including information which if it were
21 disclosed would frustrate procurement or give an advantage
22 to any person proposing to enter into a contractor
23 agreement with the body, until an award or final selection
24 is made. Information prepared by or for the body in
25 preparation of a bid solicitation shall be exempt until an
26 award or final selection is made.

1 (i) Valuable formulae, computer geographic systems,
2 designs, drawings and research data obtained or produced by
3 any public body when disclosure could reasonably be
4 expected to produce private gain or public loss. The
5 exemption for "computer geographic systems" provided in
6 this paragraph (i) does not extend to requests made by news
7 media as defined in Section 2 of this Act when the
8 requested information is not otherwise exempt and the only
9 purpose of the request is to access and disseminate
10 information regarding the health, safety, welfare, or
11 legal rights of the general public.

12 (j) Test questions, scoring keys and other examination
13 data used to administer an academic examination or
14 determined the qualifications of an applicant for a license
15 or employment.

16 (k) Architects' plans, engineers' technical
17 submissions, and other construction related technical
18 documents for projects not constructed or developed in
19 whole or in part with public funds and the same for
20 projects constructed or developed with public funds, but
21 only to the extent that disclosure would compromise
22 security, including but not limited to water treatment
23 facilities, airport facilities, sport stadiums, convention
24 centers, and all government owned, operated, or occupied
25 buildings.

26 (1) Library circulation and order records identifying

1 library users with specific materials.

2 (m) Minutes of meetings of public bodies closed to the
3 public as provided in the Open Meetings Act until the
4 public body makes the minutes available to the public under
5 Section 2.06 of the Open Meetings Act.

6 (n) Communications between a public body and an
7 attorney or auditor representing the public body that would
8 not be subject to discovery in litigation, and materials
9 prepared or compiled by or for a public body in
10 anticipation of a criminal, civil or administrative
11 proceeding upon the request of an attorney advising the
12 public body, and materials prepared or compiled with
13 respect to internal audits of public bodies.

14 (o) Information received by a primary or secondary
15 school, college or university under its procedures for the
16 evaluation of faculty members by their academic peers.

17 (p) Administrative or technical information associated
18 with automated data processing operations, including but
19 not limited to software, operating protocols, computer
20 program abstracts, file layouts, source listings, object
21 modules, load modules, user guides, documentation
22 pertaining to all logical and physical design of
23 computerized systems, employee manuals, and any other
24 information that, if disclosed, would jeopardize the
25 security of the system or its data or the security of
26 materials exempt under this Section.

1 (q) Documents or materials relating to collective
2 negotiating matters between public bodies and their
3 employees or representatives, except that any final
4 contract or agreement shall be subject to inspection and
5 copying.

6 (r) Drafts, notes, recommendations and memoranda
7 pertaining to the financing and marketing transactions of
8 the public body. The records of ownership, registration,
9 transfer, and exchange of municipal debt obligations, and
10 of persons to whom payment with respect to these
11 obligations is made.

12 (s) The records, documents and information relating to
13 real estate purchase negotiations until those negotiations
14 have been completed or otherwise terminated. With regard to
15 a parcel involved in a pending or actually and reasonably
16 contemplated eminent domain proceeding under the Eminent
17 Domain Act, records, documents and information relating to
18 that parcel shall be exempt except as may be allowed under
19 discovery rules adopted by the Illinois Supreme Court. The
20 records, documents and information relating to a real
21 estate sale shall be exempt until a sale is consummated.

22 (t) Any and all proprietary information and records
23 related to the operation of an intergovernmental risk
24 management association or self-insurance pool or jointly
25 self-administered health and accident cooperative or pool.

26 (u) Information concerning a university's adjudication

1 of student or employee grievance or disciplinary cases, to
2 the extent that disclosure would reveal the identity of the
3 student or employee and information concerning any public
4 body's adjudication of student or employee grievances or
5 disciplinary cases, except for the final outcome of the
6 cases.

7 (v) Course materials or research materials used by
8 faculty members.

9 (w) Information related solely to the internal
10 personnel rules and practices of a public body.

11 (x) Information contained in or related to
12 examination, operating, or condition reports prepared by,
13 on behalf of, or for the use of a public body responsible
14 for the regulation or supervision of financial
15 institutions or insurance companies, unless disclosure is
16 otherwise required by State law.

17 (y) Information the disclosure of which is restricted
18 under Section 5-108 of the Public Utilities Act.

19 (z) Manuals or instruction to staff that relate to
20 establishment or collection of liability for any State tax
21 or that relate to investigations by a public body to
22 determine violation of any criminal law.

23 (aa) Applications, related documents, and medical
24 records received by the Experimental Organ Transplantation
25 Procedures Board and any and all documents or other records
26 prepared by the Experimental Organ Transplantation

1 Procedures Board or its staff relating to applications it
2 has received.

3 (bb) Insurance or self insurance (including any
4 intergovernmental risk management association or self
5 insurance pool) claims, loss or risk management
6 information, records, data, advice or communications.

7 (cc) Information and records held by the Department of
8 Public Health and its authorized representatives relating
9 to known or suspected cases of sexually transmissible
10 disease or any information the disclosure of which is
11 restricted under the Illinois Sexually Transmissible
12 Disease Control Act.

13 (dd) Information the disclosure of which is exempted
14 under Section 30 of the Radon Industry Licensing Act.

15 (ee) Firm performance evaluations under Section 55 of
16 the Architectural, Engineering, and Land Surveying
17 Qualifications Based Selection Act.

18 (ff) Security portions of system safety program plans,
19 investigation reports, surveys, schedules, lists, data, or
20 information compiled, collected, or prepared by or for the
21 Regional Transportation Authority under Section 2.11 of
22 the Regional Transportation Authority Act or the St. Clair
23 County Transit District under the Bi-State Transit Safety
24 Act.

25 (gg) Information the disclosure of which is restricted
26 and exempted under Section 50 of the Illinois Prepaid

1 Tuition Act.

2 (hh) Information the disclosure of which is exempted
3 under the State Officials and Employees Ethics Act.

4 (ii) Beginning July 1, 1999, information that would
5 disclose or might lead to the disclosure of secret or
6 confidential information, codes, algorithms, programs, or
7 private keys intended to be used to create electronic or
8 digital signatures under the Electronic Commerce Security
9 Act.

10 (jj) Information contained in a local emergency energy
11 plan submitted to a municipality in accordance with a local
12 emergency energy plan ordinance that is adopted under
13 Section 11-21.5-5 of the Illinois Municipal Code.

14 (kk) Information and data concerning the distribution
15 of surcharge moneys collected and remitted by wireless
16 carriers under the Wireless Emergency Telephone Safety
17 Act.

18 (ll) Vulnerability assessments, security measures, and
19 response policies or plans that are designed to identify,
20 prevent, or respond to potential attacks upon a community's
21 population or systems, facilities, or installations, the
22 destruction or contamination of which would constitute a
23 clear and present danger to the health or safety of the
24 community, but only to the extent that disclosure could
25 reasonably be expected to jeopardize the effectiveness of
26 the measures or the safety of the personnel who implement

1 them or the public. Information exempt under this item may
2 include such things as details pertaining to the
3 mobilization or deployment of personnel or equipment, to
4 the operation of communication systems or protocols, or to
5 tactical operations.

6 (mm) Maps and other records regarding the location or
7 security of generation, transmission, distribution,
8 storage, gathering, treatment, or switching facilities
9 owned by a utility or by the Illinois Power Agency.

10 (nn) Law enforcement officer identification
11 information or driver identification information compiled
12 by a law enforcement agency or the Department of
13 Transportation under Section 11-212 of the Illinois
14 Vehicle Code.

15 (oo) Records and information provided to a residential
16 health care facility resident sexual assault and death
17 review team or the Executive Council under the Abuse
18 Prevention Review Team Act.

19 (pp) Information provided to the predatory lending
20 database created pursuant to Article 3 of the Residential
21 Real Property Disclosure Act, except to the extent
22 authorized under that Article.

23 (qq) Defense budgets and petitions for certification
24 of compensation and expenses for court appointed trial
25 counsel as provided under Sections 10 and 15 of the Capital
26 Crimes Litigation Act. This subsection (qq) shall apply

1 until the conclusion of the trial of the case, even if the
2 prosecution chooses not to pursue the death penalty prior
3 to trial or sentencing.

4 (rr) Information contained in or related to proposals,
5 bids, or negotiations related to electric power
6 procurement under Section 1-75 of the Illinois Power Agency
7 Act and Section 16-111.5 of the Public Utilities Act that
8 is determined to be confidential and proprietary by the
9 Illinois Power Agency or by the Illinois Commerce
10 Commission.

11 (ss) Information that is prohibited from being
12 disclosed under Section 4 of the Illinois Health and
13 Hazardous Substances Registry Act.

14 (tt) Certain information related to the Public-Private
15 Transportation Act of 2009, including:

16 (1) Memoranda, staff evaluations, or other records
17 prepared by the responsible public entity, its staff,
18 outside advisors, or consultants exclusively for the
19 evaluation and negotiation of proposals filed under
20 the Public-Private Transportation Act of 2009 where
21 (i) if such records were made public prior to or after
22 the execution of an interim or a comprehensive
23 agreement, Section 105 of the Public-Private
24 Transportation Act of 2009 notwithstanding, the
25 financial interest or bargaining position of the
26 public entity would be adversely affected, and (ii) the

1 basis for the determination required in clause (i) is
2 documented in writing by the responsible public
3 entity.

4 (2) Records provided by a private entity to a
5 responsible public entity, affected jurisdiction, or
6 affected local jurisdiction pursuant to the provisions
7 of the Public-Private Transportation Act of 2009 to the
8 extent that such records contain (i) trade secrets of
9 the private entity as defined in subsection (d) of
10 Section 2 of the Illinois Trade Secrets Act, (ii)
11 financial records of the private entity, including
12 balance sheets and financial statements, that are not
13 generally available to the public through regulatory
14 disclosure or otherwise, or (iii) other information
15 submitted by the private entity, where, if the records
16 were made public prior to the execution of an interim
17 agreement or a comprehensive agreement, the financial
18 interest or bargaining position of the public or
19 private entity would be adversely affected. In order
20 for the records specified in clauses (i), (ii) and
21 (iii) to be excluded from the provisions of this
22 chapter, the private entity must make a written request
23 to the responsible public entity:

24 (A) Invoking such exclusion upon submission of
25 the data or other materials for which protection
26 from disclosure is sought;

1 (B) Identifying with specificity the data or
2 other materials for which protection is sought;
3 and

4 (C) Stating the reasons why protection is
5 necessary.

6 (3) The responsible public entity in subdivision
7 (1)(tt)(2) must determine whether the requested
8 exclusion from disclosure is necessary to protect the
9 trade secrets or financial records of the private
10 entity. To protect other records submitted by the
11 private entity from disclosure, the responsible public
12 entity must determine whether public disclosure prior
13 to the execution of an interim agreement or a
14 comprehensive agreement would adversely affect the
15 financial interest or bargaining position of the
16 public or private entity. The responsible public
17 entity must make a written determination of the nature
18 and scope of the protection to be afforded by the
19 responsible public entity under paragraph (tt). Once a
20 written determination is made by the responsible
21 public entity, the records afforded protection under
22 paragraph (tt) must continue to be protected from
23 disclosure when in the possession of any affected
24 jurisdiction or affected local jurisdiction.

25 (4) Except as specifically provided in subdivision
26 (1)(tt)(1), nothing in subdivision (1)(tt) shall be

1 construed to authorize the withholding of (i)
2 procurement records as required by Section 105 of the
3 Public-Private Transportation Act of 2009, (ii)
4 information concerning the terms and conditions of any
5 interim or comprehensive agreement, service contract,
6 lease, partnership, or any agreement of any kind
7 entered into by the responsible public entity and the
8 private entity, (iii) information concerning the terms
9 and conditions of any financing arrangement that
10 involves the use of any public funds, or (iv)
11 information concerning the performance of any private
12 entity developing or operating a qualifying
13 transportation facility or a qualifying project.

14 (5) For the purposes of subdivision (1)(tt), the
15 terms "affected jurisdiction," "affected local
16 jurisdiction," "comprehensive agreement," "interim
17 agreement," "qualifying project," "qualifying
18 transportation facility," "responsible public entity,"
19 and "private entity" mean the same as those terms are
20 defined in the Public-Private Transportation Act of
21 2009.

22 (2) This Section does not authorize withholding of
23 information or limit the availability of records to the public,
24 except as stated in this Section or otherwise provided in this
25 Act.

26 (Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664,

1 eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06;
2 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07; 95-481, eff.
3 8-28-07; 95-941, eff. 8-29-08.)

4 (Text of Section after amendment by P.A. 95-988)

5 Sec. 7. Exemptions.

6 (1) The following shall be exempt from inspection and
7 copying:

8 (a) Information specifically prohibited from
9 disclosure by federal or State law or rules and regulations
10 adopted under federal or State law.

11 (b) Information that, if disclosed, would constitute a
12 clearly unwarranted invasion of personal privacy, unless
13 the disclosure is consented to in writing by the individual
14 subjects of the information. The disclosure of information
15 that bears on the public duties of public employees and
16 officials shall not be considered an invasion of personal
17 privacy. Information exempted under this subsection (b)
18 shall include but is not limited to:

19 (i) files and personal information maintained with
20 respect to clients, patients, residents, students or
21 other individuals receiving social, medical,
22 educational, vocational, financial, supervisory or
23 custodial care or services directly or indirectly from
24 federal agencies or public bodies;

25 (ii) personnel files and personal information

1 maintained with respect to employees, appointees or
2 elected officials of any public body or applicants for
3 those positions;

4 (iii) files and personal information maintained
5 with respect to any applicant, registrant or licensee
6 by any public body cooperating with or engaged in
7 professional or occupational registration, licensure
8 or discipline;

9 (iv) information required of any taxpayer in
10 connection with the assessment or collection of any tax
11 unless disclosure is otherwise required by State
12 statute;

13 (v) information revealing the identity of persons
14 who file complaints with or provide information to
15 administrative, investigative, law enforcement or
16 penal agencies; provided, however, that identification
17 of witnesses to traffic accidents, traffic accident
18 reports, and rescue reports may be provided by agencies
19 of local government, except in a case for which a
20 criminal investigation is ongoing, without
21 constituting a clearly unwarranted per se invasion of
22 personal privacy under this subsection;

23 (vi) the names, addresses, or other personal
24 information of participants and registrants in park
25 district, forest preserve district, and conservation
26 district programs; and

1 (vii) the Notarial Record or other medium
2 containing the thumbprint or fingerprint required by
3 Section 3-102(c)(6) of the Illinois Notary Public Act.

4 (c) Records compiled by any public body for
5 administrative enforcement proceedings and any law
6 enforcement or correctional agency for law enforcement
7 purposes or for internal matters of a public body, but only
8 to the extent that disclosure would:

9 (i) interfere with pending or actually and
10 reasonably contemplated law enforcement proceedings
11 conducted by any law enforcement or correctional
12 agency;

13 (ii) interfere with pending administrative
14 enforcement proceedings conducted by any public body;

15 (iii) deprive a person of a fair trial or an
16 impartial hearing;

17 (iv) unavoidably disclose the identity of a
18 confidential source or confidential information
19 furnished only by the confidential source;

20 (v) disclose unique or specialized investigative
21 techniques other than those generally used and known or
22 disclose internal documents of correctional agencies
23 related to detection, observation or investigation of
24 incidents of crime or misconduct;

25 (vi) constitute an invasion of personal privacy
26 under subsection (b) of this Section;

1 (vii) endanger the life or physical safety of law
2 enforcement personnel or any other person; or

3 (viii) obstruct an ongoing criminal investigation.

4 (d) Criminal history record information maintained by
5 State or local criminal justice agencies, except the
6 following which shall be open for public inspection and
7 copying:

8 (i) chronologically maintained arrest information,
9 such as traditional arrest logs or blotters;

10 (ii) the name of a person in the custody of a law
11 enforcement agency and the charges for which that
12 person is being held;

13 (iii) court records that are public;

14 (iv) records that are otherwise available under
15 State or local law; or

16 (v) records in which the requesting party is the
17 individual identified, except as provided under part
18 (vii) of paragraph (c) of subsection (1) of this
19 Section.

20 "Criminal history record information" means data
21 identifiable to an individual and consisting of
22 descriptions or notations of arrests, detentions,
23 indictments, informations, pre-trial proceedings, trials,
24 or other formal events in the criminal justice system or
25 descriptions or notations of criminal charges (including
26 criminal violations of local municipal ordinances) and the

1 nature of any disposition arising therefrom, including
2 sentencing, court or correctional supervision,
3 rehabilitation and release. The term does not apply to
4 statistical records and reports in which individuals are
5 not identified and from which their identities are not
6 ascertainable, or to information that is for criminal
7 investigative or intelligence purposes.

8 (e) Records that relate to or affect the security of
9 correctional institutions and detention facilities.

10 (f) Preliminary drafts, notes, recommendations,
11 memoranda and other records in which opinions are
12 expressed, or policies or actions are formulated, except
13 that a specific record or relevant portion of a record
14 shall not be exempt when the record is publicly cited and
15 identified by the head of the public body. The exemption
16 provided in this paragraph (f) extends to all those records
17 of officers and agencies of the General Assembly that
18 pertain to the preparation of legislative documents.

19 (g) Trade secrets and commercial or financial
20 information obtained from a person or business where the
21 trade secrets or information are proprietary, privileged
22 or confidential, or where disclosure of the trade secrets
23 or information may cause competitive harm, including:

24 (i) All information determined to be confidential
25 under Section 4002 of the Technology Advancement and
26 Development Act.

1 (ii) All trade secrets and commercial or financial
2 information obtained by a public body, including a
3 public pension fund, from a private equity fund or a
4 privately held company within the investment portfolio
5 of a private equity fund as a result of either
6 investing or evaluating a potential investment of
7 public funds in a private equity fund. The exemption
8 contained in this item does not apply to the aggregate
9 financial performance information of a private equity
10 fund, nor to the identity of the fund's managers or
11 general partners. The exemption contained in this item
12 does not apply to the identity of a privately held
13 company within the investment portfolio of a private
14 equity fund, unless the disclosure of the identity of a
15 privately held company may cause competitive harm.

16 Nothing contained in this paragraph (g) shall be construed
17 to prevent a person or business from consenting to disclosure.

18 (h) Proposals and bids for any contract, grant, or
19 agreement, including information which if it were
20 disclosed would frustrate procurement or give an advantage
21 to any person proposing to enter into a contractor
22 agreement with the body, until an award or final selection
23 is made. Information prepared by or for the body in
24 preparation of a bid solicitation shall be exempt until an
25 award or final selection is made.

26 (i) Valuable formulae, computer geographic systems,

1 designs, drawings and research data obtained or produced by
2 any public body when disclosure could reasonably be
3 expected to produce private gain or public loss. The
4 exemption for "computer geographic systems" provided in
5 this paragraph (i) does not extend to requests made by news
6 media as defined in Section 2 of this Act when the
7 requested information is not otherwise exempt and the only
8 purpose of the request is to access and disseminate
9 information regarding the health, safety, welfare, or
10 legal rights of the general public.

11 (j) Test questions, scoring keys and other examination
12 data used to administer an academic examination or
13 determined the qualifications of an applicant for a license
14 or employment.

15 (k) Architects' plans, engineers' technical
16 submissions, and other construction related technical
17 documents for projects not constructed or developed in
18 whole or in part with public funds and the same for
19 projects constructed or developed with public funds, but
20 only to the extent that disclosure would compromise
21 security, including but not limited to water treatment
22 facilities, airport facilities, sport stadiums, convention
23 centers, and all government owned, operated, or occupied
24 buildings.

25 (l) Library circulation and order records identifying
26 library users with specific materials.

1 (m) Minutes of meetings of public bodies closed to the
2 public as provided in the Open Meetings Act until the
3 public body makes the minutes available to the public under
4 Section 2.06 of the Open Meetings Act.

5 (n) Communications between a public body and an
6 attorney or auditor representing the public body that would
7 not be subject to discovery in litigation, and materials
8 prepared or compiled by or for a public body in
9 anticipation of a criminal, civil or administrative
10 proceeding upon the request of an attorney advising the
11 public body, and materials prepared or compiled with
12 respect to internal audits of public bodies.

13 (o) Information received by a primary or secondary
14 school, college or university under its procedures for the
15 evaluation of faculty members by their academic peers.

16 (p) Administrative or technical information associated
17 with automated data processing operations, including but
18 not limited to software, operating protocols, computer
19 program abstracts, file layouts, source listings, object
20 modules, load modules, user guides, documentation
21 pertaining to all logical and physical design of
22 computerized systems, employee manuals, and any other
23 information that, if disclosed, would jeopardize the
24 security of the system or its data or the security of
25 materials exempt under this Section.

26 (q) Documents or materials relating to collective

1 negotiating matters between public bodies and their
2 employees or representatives, except that any final
3 contract or agreement shall be subject to inspection and
4 copying.

5 (r) Drafts, notes, recommendations and memoranda
6 pertaining to the financing and marketing transactions of
7 the public body. The records of ownership, registration,
8 transfer, and exchange of municipal debt obligations, and
9 of persons to whom payment with respect to these
10 obligations is made.

11 (s) The records, documents and information relating to
12 real estate purchase negotiations until those negotiations
13 have been completed or otherwise terminated. With regard to
14 a parcel involved in a pending or actually and reasonably
15 contemplated eminent domain proceeding under the Eminent
16 Domain Act, records, documents and information relating to
17 that parcel shall be exempt except as may be allowed under
18 discovery rules adopted by the Illinois Supreme Court. The
19 records, documents and information relating to a real
20 estate sale shall be exempt until a sale is consummated.

21 (t) Any and all proprietary information and records
22 related to the operation of an intergovernmental risk
23 management association or self-insurance pool or jointly
24 self-administered health and accident cooperative or pool.

25 (u) Information concerning a university's adjudication
26 of student or employee grievance or disciplinary cases, to

1 the extent that disclosure would reveal the identity of the
2 student or employee and information concerning any public
3 body's adjudication of student or employee grievances or
4 disciplinary cases, except for the final outcome of the
5 cases.

6 (v) Course materials or research materials used by
7 faculty members.

8 (w) Information related solely to the internal
9 personnel rules and practices of a public body.

10 (x) Information contained in or related to
11 examination, operating, or condition reports prepared by,
12 on behalf of, or for the use of a public body responsible
13 for the regulation or supervision of financial
14 institutions or insurance companies, unless disclosure is
15 otherwise required by State law.

16 (y) Information the disclosure of which is restricted
17 under Section 5-108 of the Public Utilities Act.

18 (z) Manuals or instruction to staff that relate to
19 establishment or collection of liability for any State tax
20 or that relate to investigations by a public body to
21 determine violation of any criminal law.

22 (aa) Applications, related documents, and medical
23 records received by the Experimental Organ Transplantation
24 Procedures Board and any and all documents or other records
25 prepared by the Experimental Organ Transplantation
26 Procedures Board or its staff relating to applications it

1 has received.

2 (bb) Insurance or self insurance (including any
3 intergovernmental risk management association or self
4 insurance pool) claims, loss or risk management
5 information, records, data, advice or communications.

6 (cc) Information and records held by the Department of
7 Public Health and its authorized representatives relating
8 to known or suspected cases of sexually transmissible
9 disease or any information the disclosure of which is
10 restricted under the Illinois Sexually Transmissible
11 Disease Control Act.

12 (dd) Information the disclosure of which is exempted
13 under Section 30 of the Radon Industry Licensing Act.

14 (ee) Firm performance evaluations under Section 55 of
15 the Architectural, Engineering, and Land Surveying
16 Qualifications Based Selection Act.

17 (ff) Security portions of system safety program plans,
18 investigation reports, surveys, schedules, lists, data, or
19 information compiled, collected, or prepared by or for the
20 Regional Transportation Authority under Section 2.11 of
21 the Regional Transportation Authority Act or the St. Clair
22 County Transit District under the Bi-State Transit Safety
23 Act.

24 (gg) Information the disclosure of which is restricted
25 and exempted under Section 50 of the Illinois Prepaid
26 Tuition Act.

1 (hh) Information the disclosure of which is exempted
2 under the State Officials and Employees Ethics Act.

3 (ii) Beginning July 1, 1999, information that would
4 disclose or might lead to the disclosure of secret or
5 confidential information, codes, algorithms, programs, or
6 private keys intended to be used to create electronic or
7 digital signatures under the Electronic Commerce Security
8 Act.

9 (jj) Information contained in a local emergency energy
10 plan submitted to a municipality in accordance with a local
11 emergency energy plan ordinance that is adopted under
12 Section 11-21.5-5 of the Illinois Municipal Code.

13 (kk) Information and data concerning the distribution
14 of surcharge moneys collected and remitted by wireless
15 carriers under the Wireless Emergency Telephone Safety
16 Act.

17 (ll) Vulnerability assessments, security measures, and
18 response policies or plans that are designed to identify,
19 prevent, or respond to potential attacks upon a community's
20 population or systems, facilities, or installations, the
21 destruction or contamination of which would constitute a
22 clear and present danger to the health or safety of the
23 community, but only to the extent that disclosure could
24 reasonably be expected to jeopardize the effectiveness of
25 the measures or the safety of the personnel who implement
26 them or the public. Information exempt under this item may

1 include such things as details pertaining to the
2 mobilization or deployment of personnel or equipment, to
3 the operation of communication systems or protocols, or to
4 tactical operations.

5 (mm) Maps and other records regarding the location or
6 security of generation, transmission, distribution,
7 storage, gathering, treatment, or switching facilities
8 owned by a utility or by the Illinois Power Agency.

9 (nn) Law enforcement officer identification
10 information or driver identification information compiled
11 by a law enforcement agency or the Department of
12 Transportation under Section 11-212 of the Illinois
13 Vehicle Code.

14 (oo) Records and information provided to a residential
15 health care facility resident sexual assault and death
16 review team or the Executive Council under the Abuse
17 Prevention Review Team Act.

18 (pp) Information provided to the predatory lending
19 database created pursuant to Article 3 of the Residential
20 Real Property Disclosure Act, except to the extent
21 authorized under that Article.

22 (qq) Defense budgets and petitions for certification
23 of compensation and expenses for court appointed trial
24 counsel as provided under Sections 10 and 15 of the Capital
25 Crimes Litigation Act. This subsection (qq) shall apply
26 until the conclusion of the trial of the case, even if the

1 prosecution chooses not to pursue the death penalty prior
2 to trial or sentencing.

3 (rr) Information contained in or related to proposals,
4 bids, or negotiations related to electric power
5 procurement under Section 1-75 of the Illinois Power Agency
6 Act and Section 16-111.5 of the Public Utilities Act that
7 is determined to be confidential and proprietary by the
8 Illinois Power Agency or by the Illinois Commerce
9 Commission.

10 (ss) Information that is prohibited from being
11 disclosed under Section 4 of the Illinois Health and
12 Hazardous Substances Registry Act.

13 (tt) Certain information related to the Public-Private
14 Transportation Act of 2009, including:

15 (1) Memoranda, staff evaluations, or other records
16 prepared by the responsible public entity, its staff,
17 outside advisors, or consultants exclusively for the
18 evaluation and negotiation of proposals filed under
19 the Public-Private Transportation Act of 2009 where
20 (i) if such records were made public prior to or after
21 the execution of an interim or a comprehensive
22 agreement, Section 105 of the Public-Private
23 Transportation Act of 2009 notwithstanding, the
24 financial interest or bargaining position of the
25 public entity would be adversely affected, and (ii) the
26 basis for the determination required in clause (i) is

1 documented in writing by the responsible public
2 entity.

3 (2) Records provided by a private entity to a
4 responsible public entity, affected jurisdiction, or
5 affected local jurisdiction pursuant to the provisions
6 of the Public-Private Transportation Act of 2009 to the
7 extent that such records contain (i) trade secrets of
8 the private entity as defined in subsection (d) of
9 Section 2 of the Illinois Trade Secrets Act, (ii)
10 financial records of the private entity, including
11 balance sheets and financial statements, that are not
12 generally available to the public through regulatory
13 disclosure or otherwise, or (iii) other information
14 submitted by the private entity, where, if the records
15 were made public prior to the execution of an interim
16 agreement or a comprehensive agreement, the financial
17 interest or bargaining position of the public or
18 private entity would be adversely affected. In order
19 for the records specified in clauses (i), (ii) and
20 (iii) to be excluded from the provisions of this
21 chapter, the private entity must make a written request
22 to the responsible public entity:

23 (A) Invoking such exclusion upon submission of
24 the data or other materials for which protection
25 from disclosure is sought;

26 (B) Identifying with specificity the data or

1 other materials for which protection is sought;

2 and

3 (C) Stating the reasons why protection is
4 necessary.

5 (3) The responsible public entity in subdivision
6 (1)(tt)(2) must determine whether the requested
7 exclusion from disclosure is necessary to protect the
8 trade secrets or financial records of the private
9 entity. To protect other records submitted by the
10 private entity from disclosure, the responsible public
11 entity must determine whether public disclosure prior
12 to the execution of an interim agreement or a
13 comprehensive agreement would adversely affect the
14 financial interest or bargaining position of the
15 public or private entity. The responsible public
16 entity must make a written determination of the nature
17 and scope of the protection to be afforded by the
18 responsible public entity under paragraph (tt). Once a
19 written determination is made by the responsible
20 public entity, the records afforded protection under
21 paragraph (tt) must continue to be protected from
22 disclosure when in the possession of any affected
23 jurisdiction or affected local jurisdiction.

24 (4) Except as specifically provided in subdivision
25 (1)(tt)(1), nothing in subdivision (1)(tt) shall be
26 construed to authorize the withholding of (i)

1 procurement records as required by Section 105 of the
2 Public-Private Transportation Act of 2009, (ii)
3 information concerning the terms and conditions of any
4 interim or comprehensive agreement, service contract,
5 lease, partnership, or any agreement of any kind
6 entered into by the responsible public entity and the
7 private entity, (iii) information concerning the terms
8 and conditions of any financing arrangement that
9 involves the use of any public funds, or (iv)
10 information concerning the performance of any private
11 entity developing or operating a qualifying
12 transportation facility or a qualifying project.

13 (5) For the purposes of subdivision (1)(tt), the
14 terms "affected jurisdiction," "affected local
15 jurisdiction," "comprehensive agreement," "interim
16 agreement," "qualifying project," "qualifying
17 transportation facility," "responsible public entity,"
18 and "private entity" mean the same as those terms are
19 defined in the Public-Private Transportation Act of
20 2009.

21 (2) This Section does not authorize withholding of
22 information or limit the availability of records to the public,
23 except as stated in this Section or otherwise provided in this
24 Act.

25 (Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664,
26 eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06;

1 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07; 95-481, eff.
2 8-28-07; 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; revised
3 10-20-08.)

4 Section 950. No acceleration or delay. Where this Act makes
5 changes in a statute that is represented in this Act by text
6 that is not yet or no longer in effect (for example, a Section
7 represented by multiple versions), the use of that text does
8 not accelerate or delay the taking effect of (i) the changes
9 made by this Act or (ii) provisions derived from any other
10 Public Act.

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