



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2621

Introduced 1/21/2010, 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 2010. 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 develop or operate one or more transportation facilities may result in the development or operation of such transportation facilities to the public in a more timely, more efficient, or less costly fashion, thereby serving the public safety and welfare. Provides that a private entity may enter into 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 18328 AJT 33705 b

FISCAL NOTE ACT
MAY APPLY

STATE DEBT
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning transportation.

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

4 Section 1. Short title. This Act may be cited as the
5 Public-Private Transportation Act of 2010.

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. 96-736)

8 Sec. 7. Exemptions.

9 (1) When a request is made to inspect or copy a public
10 record that contains information that is exempt from disclosure
11 under this Section, but also contains information that is not
12 exempt from disclosure, the public body may elect to redact the
13 information that is exempt. The public body shall make the
14 remaining information available for inspection and copying.
15 Subject to this requirement, the following shall be exempt from
16 inspection and copying:

17 (a) Information specifically prohibited from
18 disclosure by federal or State law or rules and regulations
19 implementing federal or State law.

20 (b) Private information, unless disclosure is required
21 by another provision of this Act, a State or federal law or
22 a court order.

23 (b-5) Files, documents, and other data or databases
24 maintained by one or more law enforcement agencies and

1 specifically designed to provide information to one or more
2 law enforcement agencies regarding the physical or mental
3 status of one or more individual subjects.

4 (c) Personal information contained within public
5 records, the disclosure of which would constitute a clearly
6 unwarranted invasion of personal privacy, unless the
7 disclosure is consented to in writing by the individual
8 subjects of the information. "Unwarranted invasion of
9 personal privacy" means the disclosure of information that
10 is highly personal or objectionable to a reasonable person
11 and in which the subject's right to privacy outweighs any
12 legitimate public interest in obtaining the information.
13 The disclosure of information that bears on the public
14 duties of public employees and officials shall not be
15 considered an invasion of personal privacy.

16 (d) Records in the possession of any public body
17 created in the course of administrative enforcement
18 proceedings, and any law enforcement or correctional
19 agency for law enforcement purposes, but only to the extent
20 that disclosure would:

21 (i) interfere with pending or actually and
22 reasonably contemplated law enforcement proceedings
23 conducted by any law enforcement or correctional
24 agency that is the recipient of the request;

25 (ii) interfere with active administrative
26 enforcement proceedings conducted by the public body

1 that is the recipient of the request;

2 (iii) create a substantial likelihood that a
3 person will be deprived of a fair trial or an impartial
4 hearing;

5 (iv) unavoidably disclose the identity of a
6 confidential source, confidential information
7 furnished only by the confidential source, or persons
8 who file complaints with or provide information to
9 administrative, investigative, law enforcement, or
10 penal agencies; except that the identities of
11 witnesses to traffic accidents, traffic accident
12 reports, and rescue reports shall be provided by
13 agencies of local government, except when disclosure
14 would interfere with an active criminal investigation
15 conducted by the agency that is the recipient of the
16 request;

17 (v) disclose unique or specialized investigative
18 techniques other than those generally used and known or
19 disclose internal documents of correctional agencies
20 related to detection, observation or investigation of
21 incidents of crime or misconduct, and disclosure would
22 result in demonstrable harm to the agency or public
23 body that is the recipient of the request;

24 (vi) endanger the life or physical safety of law
25 enforcement personnel or any other person; or

26 (vii) obstruct an ongoing criminal investigation

1 by the agency that is the recipient of the request.

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

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

13 (g) Trade secrets and commercial or financial
14 information obtained from a person or business where the
15 trade secrets or commercial or financial information are
16 furnished under a claim that they are proprietary,
17 privileged or confidential, and that disclosure of the
18 trade secrets or commercial or financial information would
19 cause competitive harm to the person or business, and only
20 insofar as the claim directly applies to the records
21 requested.

22 The information included under this exemption includes
23 all ~~(i) All~~ trade secrets and commercial or financial
24 information obtained by a public body, including a public
25 pension fund, from a private equity fund or a privately
26 held company within the investment portfolio of a private

1 equity fund as a result of either investing or evaluating a
2 potential investment of public funds in a private equity
3 fund. The exemption contained in this item does not apply
4 to the aggregate financial performance information of a
5 private equity fund, nor to the identity of the fund's
6 managers or general partners. The exemption contained in
7 this item does not apply to the identity of a privately
8 held company within the investment portfolio of a private
9 equity fund, unless the disclosure of the identity of a
10 privately held company may cause competitive harm.

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

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

22 (i) Valuable formulae, computer geographic systems,
23 designs, drawings and research data obtained or produced by
24 any public body when disclosure could reasonably be
25 expected to produce private gain or public loss. The
26 exemption for "computer geographic systems" provided in

1 this paragraph (i) does not extend to requests made by news
2 media as defined in Section 2 of this Act when the
3 requested information is not otherwise exempt and the only
4 purpose of the request is to access and disseminate
5 information regarding the health, safety, welfare, or
6 legal rights of the general public.

7 (j) The following information pertaining to
8 educational matters:

9 (i) test questions, scoring keys and other
10 examination data used to administer an academic
11 examination;

12 (ii) information received by a primary or
13 secondary school, college, or university under its
14 procedures for the evaluation of faculty members by
15 their academic peers;

16 (iii) information concerning a school or
17 university's adjudication of student disciplinary
18 cases, but only to the extent that disclosure would
19 unavoidably reveal the identity of the student; and

20 (iv) course materials or research materials used
21 by faculty members.

22 (k) Architects' plans, engineers' technical
23 submissions, and other construction related technical
24 documents for projects not constructed or developed in
25 whole or in part with public funds and the same for
26 projects constructed or developed with public funds,

1 including but not limited to power generating and
2 distribution stations and other transmission and
3 distribution facilities, water treatment facilities,
4 airport facilities, sport stadiums, convention centers,
5 and all government owned, operated, or occupied buildings,
6 but only to the extent that disclosure would compromise
7 security.

8 (l) Minutes of meetings of public bodies closed to the
9 public as provided in the Open Meetings Act until the
10 public body makes the minutes available to the public under
11 Section 2.06 of the Open Meetings Act.

12 (m) Communications between a public body and an
13 attorney or auditor representing the public body that would
14 not be subject to discovery in litigation, and materials
15 prepared or compiled by or for a public body in
16 anticipation of a criminal, civil or administrative
17 proceeding upon the request of an attorney advising the
18 public body, and materials prepared or compiled with
19 respect to internal audits of public bodies.

20 (n) Records relating to a public body's adjudication of
21 employee grievances or disciplinary cases; however, this
22 exemption shall not extend to the final outcome of cases in
23 which discipline is imposed.

24 (o) Administrative or technical information associated
25 with automated data processing operations, including but
26 not limited to software, operating protocols, computer

1 program abstracts, file layouts, source listings, object
2 modules, load modules, user guides, documentation
3 pertaining to all logical and physical design of
4 computerized systems, employee manuals, and any other
5 information that, if disclosed, would jeopardize the
6 security of the system or its data or the security of
7 materials exempt under this Section.

8 (p) Records relating to collective negotiating matters
9 between public bodies and their employees or
10 representatives, except that any final contract or
11 agreement shall be subject to inspection and copying.

12 (q) Test questions, scoring keys, and other
13 examination data used to determine the qualifications of an
14 applicant for a license or employment.

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

26 (s) Any and all proprietary information and records

1 related to the operation of an intergovernmental risk
2 management association or self-insurance pool or jointly
3 self-administered health and accident cooperative or pool.
4 Insurance or self insurance (including any
5 intergovernmental risk management association or self
6 insurance pool) claims, loss or risk management
7 information, records, data, advice or communications.

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

14 (u) Information that would disclose or might lead to
15 the disclosure of secret or confidential information,
16 codes, algorithms, programs, or private keys intended to be
17 used to create electronic or digital signatures under the
18 Electronic Commerce Security Act.

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

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

7 (w) (Blank).

8 (x) Maps and other records regarding the location or
9 security of generation, transmission, distribution,
10 storage, gathering, treatment, or switching facilities
11 owned by a utility, by a power generator, or by the
12 Illinois Power Agency.

13 (y) Information contained in or related to proposals,
14 bids, or negotiations related to electric power
15 procurement under Section 1-75 of the Illinois Power Agency
16 Act and Section 16-111.5 of the Public Utilities Act that
17 is determined to be confidential and proprietary by the
18 Illinois Power Agency or by the Illinois Commerce
19 Commission.

20 (z) ~~(tt)~~ Information about students exempted from
21 disclosure under Sections 10-20.38 or 34-18.29 of the
22 School Code, and information about undergraduate students
23 enrolled at an institution of higher education exempted
24 from disclosure under Section 25 of the Illinois Credit
25 Card Marketing Act of 2009.

26 (aa) Certain information related to the Public-Private

1 Transportation Act of 2010, including:

2 (1) Memoranda, staff evaluations, or other records
3 prepared by the responsible public entity, its staff,
4 outside advisors, or consultants exclusively for the
5 evaluation and negotiation of proposals filed under
6 the Public-Private Transportation Act of 2010 where
7 (i) if such records were made public prior to or after
8 the execution of an interim or a comprehensive
9 agreement, Section 105 of the Public-Private
10 Transportation Act of 2010 notwithstanding, the
11 financial interest or bargaining position of the
12 public entity would be adversely affected, and (ii) the
13 basis for the determination required in clause (i) is
14 documented in writing by the responsible public
15 entity.

16 (2) Records provided by a private entity to a
17 responsible public entity, affected jurisdiction, or
18 affected local jurisdiction pursuant to the provisions
19 of the Public-Private Transportation Act of 2010 to the
20 extent that such records contain (i) trade secrets of
21 the private entity as defined in subsection (d) of
22 Section 2 of the Illinois Trade Secrets Act, (ii)
23 financial records of the private entity, including
24 balance sheets and financial statements, that are not
25 generally available to the public through regulatory
26 disclosure or otherwise, or (iii) other information

1 submitted by the private entity, where, if the records
2 were made public prior to the execution of an interim
3 agreement or a comprehensive agreement, the financial
4 interest or bargaining position of the public or
5 private entity would be adversely affected. In order
6 for the records specified in clauses (i), (ii) and
7 (iii) to be excluded from the provisions of this
8 chapter, the private entity must make a written request
9 to the responsible public entity:

10 (A) Invoking such exclusion upon submission of
11 the data or other materials for which protection
12 from disclosure is sought;

13 (B) Identifying with specificity the data or
14 other materials for which protection is sought;
15 and

16 (C) Stating the reasons why protection is
17 necessary.

18 (3) The responsible public entity in subdivision
19 (1)(tt)(2) must determine whether the requested
20 exclusion from disclosure is necessary to protect the
21 trade secrets or financial records of the private
22 entity. To protect other records submitted by the
23 private entity from disclosure, the responsible public
24 entity must determine whether public disclosure prior
25 to the execution of an interim agreement or a
26 comprehensive agreement would adversely affect the

1 financial interest or bargaining position of the
2 public or private entity. The responsible public
3 entity must make a written determination of the nature
4 and scope of the protection to be afforded by the
5 responsible public entity under paragraph (tt). Once a
6 written determination is made by the responsible
7 public entity, the records afforded protection under
8 paragraph (tt) must continue to be protected from
9 disclosure when in the possession of any affected
10 jurisdiction or affected local jurisdiction.

11 (4) Except as specifically provided in subdivision
12 (1)(tt)(1), nothing in subdivision (1)(tt) shall be
13 construed to authorize the withholding of (i)
14 procurement records as required by Section 105 of the
15 Public-Private Transportation Act of 2010, (ii)
16 information concerning the terms and conditions of any
17 interim or comprehensive agreement, service contract,
18 lease, partnership, or any agreement of any kind
19 entered into by the responsible public entity and the
20 private entity, (iii) information concerning the terms
21 and conditions of any financing arrangement that
22 involves the use of any public funds, or (iv)
23 information concerning the performance of any private
24 entity developing or operating a qualifying
25 transportation facility or a qualifying project.

26 (5) For the purposes of subdivision (1)(tt), the

1 terms "affected jurisdiction," "affected local
2 jurisdiction," "comprehensive agreement," "interim
3 agreement," "qualifying project," "qualifying
4 transportation facility," "responsible public entity,"
5 and "private entity" mean the same as those terms are
6 defined in the Public-Private Transportation Act of
7 2010.

8 (2) A public record that is not in the possession of a
9 public body but is in the possession of a party with whom the
10 agency has contracted to perform a governmental function on
11 behalf of the public body, and that directly relates to the
12 governmental function and is not otherwise exempt under this
13 Act, shall be considered a public record of the public body,
14 for purposes of this Act.

15 (3) This Section does not authorize withholding of
16 information or limit the availability of records to the public,
17 except as stated in this Section or otherwise provided in this
18 Act.

19 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
20 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;
21 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;
22 revised 9-25-09.)

23 (Text of Section after amendment by P.A. 96-736)

24 Sec. 7. Exemptions.

25 (1) When a request is made to inspect or copy a public

1 record that contains information that is exempt from disclosure
2 under this Section, but also contains information that is not
3 exempt from disclosure, the public body may elect to redact the
4 information that is exempt. The public body shall make the
5 remaining information available for inspection and copying.
6 Subject to this requirement, the following shall be exempt from
7 inspection and copying:

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

11 (b) Private information, unless disclosure is required
12 by another provision of this Act, a State or federal law or
13 a court order.

14 (b-5) Files, documents, and other data or databases
15 maintained by one or more law enforcement agencies and
16 specifically designed to provide information to one or more
17 law enforcement agencies regarding the physical or mental
18 status of one or more individual subjects.

19 (c) Personal information contained within public
20 records, the disclosure of which would constitute a clearly
21 unwarranted invasion of personal privacy, unless the
22 disclosure is consented to in writing by the individual
23 subjects of the information. "Unwarranted invasion of
24 personal privacy" means the disclosure of information that
25 is highly personal or objectionable to a reasonable person
26 and in which the subject's right to privacy outweighs any

1 legitimate public interest in obtaining the information.
2 The disclosure of information that bears on the public
3 duties of public employees and officials shall not be
4 considered an invasion of personal privacy.

5 (d) Records in the possession of any public body
6 created in the course of administrative enforcement
7 proceedings, and any law enforcement or correctional
8 agency for law enforcement purposes, but only to the extent
9 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 that is the recipient of the request;

14 (ii) interfere with active administrative
15 enforcement proceedings conducted by the public body
16 that is the recipient of the request;

17 (iii) create a substantial likelihood that a
18 person will be deprived of a fair trial or an impartial
19 hearing;

20 (iv) unavoidably disclose the identity of a
21 confidential source, confidential information
22 furnished only by the confidential source, or persons
23 who file complaints with or provide information to
24 administrative, investigative, law enforcement, or
25 penal agencies; except that the identities of
26 witnesses to traffic accidents, traffic accident

1 reports, and rescue reports shall be provided by
2 agencies of local government, except when disclosure
3 would interfere with an active criminal investigation
4 conducted by the agency that is the recipient of the
5 request;

6 (v) disclose unique or specialized investigative
7 techniques other than those generally used and known or
8 disclose internal documents of correctional agencies
9 related to detection, observation or investigation of
10 incidents of crime or misconduct, and disclosure would
11 result in demonstrable harm to the agency or public
12 body that is the recipient of the request;

13 (vi) endanger the life or physical safety of law
14 enforcement personnel or any other person; or

15 (vii) obstruct an ongoing criminal investigation
16 by the agency that is the recipient of the request.

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

19 (f) Preliminary drafts, notes, recommendations,
20 memoranda and other records in which opinions are
21 expressed, or policies or actions are formulated, except
22 that a specific record or relevant portion of a record
23 shall not be exempt when the record is publicly cited and
24 identified by the head of the public body. The exemption
25 provided in this paragraph (f) extends to all those records
26 of officers and agencies of the General Assembly that

1 pertain to the preparation of legislative documents.

2 (g) Trade secrets and commercial or financial
3 information obtained from a person or business where the
4 trade secrets or commercial or financial information are
5 furnished under a claim that they are proprietary,
6 privileged or confidential, and that disclosure of the
7 trade secrets or commercial or financial information would
8 cause competitive harm to the person or business, and only
9 insofar as the claim directly applies to the records
10 requested.

11 The information included under this exemption includes
12 all ~~(i) All~~ trade secrets and commercial or financial
13 information obtained by a public body, including a public
14 pension fund, from a private equity fund or a privately
15 held company within the investment portfolio of a private
16 equity fund as a result of either investing or evaluating a
17 potential investment of public funds in a private equity
18 fund. The exemption contained in this item does not apply
19 to the aggregate financial performance information of a
20 private equity fund, nor to the identity of the fund's
21 managers or general partners. The exemption contained in
22 this item does not apply to the identity of a privately
23 held company within the investment portfolio of a private
24 equity fund, unless the disclosure of the identity of a
25 privately held company may cause competitive harm.

26 Nothing contained in this paragraph (g) shall be

1 construed to prevent a person or business from consenting
2 to disclosure.

3 (h) Proposals and bids for any contract, grant, or
4 agreement, including information which if it were
5 disclosed would frustrate procurement or give an advantage
6 to any person proposing to enter into a contractor
7 agreement with the body, until an award or final selection
8 is made. Information prepared by or for the body in
9 preparation of a bid solicitation shall be exempt until an
10 award or final selection is made.

11 (i) Valuable formulae, computer geographic systems,
12 designs, drawings and research data obtained or produced by
13 any public body when disclosure could reasonably be
14 expected to produce private gain or public loss. The
15 exemption for "computer geographic systems" provided in
16 this paragraph (i) does not extend to requests made by news
17 media as defined in Section 2 of this Act when the
18 requested information is not otherwise exempt and the only
19 purpose of the request is to access and disseminate
20 information regarding the health, safety, welfare, or
21 legal rights of the general public.

22 (j) The following information pertaining to
23 educational matters:

24 (i) test questions, scoring keys and other
25 examination data used to administer an academic
26 examination;

1 (ii) information received by a primary or
2 secondary school, college, or university under its
3 procedures for the evaluation of faculty members by
4 their academic peers;

5 (iii) information concerning a school or
6 university's adjudication of student disciplinary
7 cases, but only to the extent that disclosure would
8 unavoidably reveal the identity of the student; and

9 (iv) course materials or research materials used
10 by faculty members.

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

23 (1) Minutes of meetings of public bodies closed to the
24 public as provided in the Open Meetings Act until the
25 public body makes the minutes available to the public under
26 Section 2.06 of the Open Meetings Act.

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

9 (n) Records relating to a public body's adjudication of
10 employee grievances or disciplinary cases; however, this
11 exemption shall not extend to the final outcome of cases in
12 which discipline is imposed.

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

23 (p) Records relating to collective negotiating matters
24 between public bodies and their employees or
25 representatives, except that any final contract or
26 agreement shall be subject to inspection and copying.

1 (q) Test questions, scoring keys, and other
2 examination data used to determine the qualifications of an
3 applicant for a license or employment.

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

15 (s) Any and all proprietary information and records
16 related to the operation of an intergovernmental risk
17 management association or self-insurance pool or jointly
18 self-administered health and accident cooperative or pool.
19 Insurance or self insurance (including any
20 intergovernmental risk management association or self
21 insurance pool) claims, loss or risk management
22 information, records, data, advice or communications.

23 (t) Information contained in or related to
24 examination, operating, or condition reports prepared by,
25 on behalf of, or for the use of a public body responsible
26 for the regulation or supervision of financial

1 institutions or insurance companies, unless disclosure is
2 otherwise required by State law.

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

8 (v) Vulnerability assessments, security measures, and
9 response policies or plans that are designed to identify,
10 prevent, or respond to potential attacks upon a community's
11 population or systems, facilities, or installations, the
12 destruction or contamination of which would constitute a
13 clear and present danger to the health or safety of the
14 community, but only to the extent that disclosure could
15 reasonably be expected to jeopardize the effectiveness of
16 the measures or the safety of the personnel who implement
17 them or the public. Information exempt under this item may
18 include such things as details pertaining to the
19 mobilization or deployment of personnel or equipment, to
20 the operation of communication systems or protocols, or to
21 tactical operations.

22 (w) (Blank).

23 (x) Maps and other records regarding the location or
24 security of generation, transmission, distribution,
25 storage, gathering, treatment, or switching facilities
26 owned by a utility, by a power generator, or by the

1 Illinois Power Agency.

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

9 (z) ~~(tt)~~ Information about students exempted from
10 disclosure under Sections 10-20.38 or 34-18.29 of the
11 School Code, and information about undergraduate students
12 enrolled at an institution of higher education exempted
13 from disclosure under Section 25 of the Illinois Credit
14 Card Marketing Act of 2009.

15 (aa) ~~(tt)~~ Information the disclosure of which is
16 exempted under the Viatical Settlements Act of 2009.

17 (bb) Certain information related to the Public-Private
18 Transportation Act of 2010, including:

19 (1) Memoranda, staff evaluations, or other records
20 prepared by the responsible public entity, its staff,
21 outside advisors, or consultants exclusively for the
22 evaluation and negotiation of proposals filed under
23 the Public-Private Transportation Act of 2010 where
24 (i) if such records were made public prior to or after
25 the execution of an interim or a comprehensive
26 agreement, Section 105 of the Public-Private

1 Transportation Act of 2010 notwithstanding, the
2 financial interest or bargaining position of the
3 public entity would be adversely affected, and (ii) the
4 basis for the determination required in clause (i) is
5 documented in writing by the responsible public
6 entity.

7 (2) Records provided by a private entity to a
8 responsible public entity, affected jurisdiction, or
9 affected local jurisdiction pursuant to the provisions
10 of the Public-Private Transportation Act of 2010 to the
11 extent that such records contain (i) trade secrets of
12 the private entity as defined in subsection (d) of
13 Section 2 of the Illinois Trade Secrets Act, (ii)
14 financial records of the private entity, including
15 balance sheets and financial statements, that are not
16 generally available to the public through regulatory
17 disclosure or otherwise, or (iii) other information
18 submitted by the private entity, where, if the records
19 were made public prior to the execution of an interim
20 agreement or a comprehensive agreement, the financial
21 interest or bargaining position of the public or
22 private entity would be adversely affected. In order
23 for the records specified in clauses (i), (ii) and
24 (iii) to be excluded from the provisions of this
25 chapter, the private entity must make a written request
26 to the responsible public entity:

1 (A) Invoking such exclusion upon submission of
2 the data or other materials for which protection
3 from disclosure is sought;

4 (B) Identifying with specificity the data or
5 other materials for which protection is sought;
6 and

7 (C) Stating the reasons why protection is
8 necessary.

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

1 jurisdiction or affected local jurisdiction.

2 (4) Except as specifically provided in subdivision
3 (1)(tt)(1), nothing in subdivision (1)(tt) shall be
4 construed to authorize the withholding of (i)
5 procurement records as required by Section 105 of the
6 Public-Private Transportation Act of 2010, (ii)
7 information concerning the terms and conditions of any
8 interim or comprehensive agreement, service contract,
9 lease, partnership, or any agreement of any kind
10 entered into by the responsible public entity and the
11 private entity, (iii) information concerning the terms
12 and conditions of any financing arrangement that
13 involves the use of any public funds, or (iv)
14 information concerning the performance of any private
15 entity developing or operating a qualifying
16 transportation facility or a qualifying project.

17 (5) For the purposes of subdivision (1)(tt), the
18 terms "affected jurisdiction," "affected local
19 jurisdiction," "comprehensive agreement," "interim
20 agreement," "qualifying project," "qualifying
21 transportation facility," "responsible public entity,"
22 and "private entity" mean the same as those terms are
23 defined in the Public-Private Transportation Act of
24 2010.

25 (2) A public record that is not in the possession of a
26 public body but is in the possession of a party with whom the

1 agency has contracted to perform a governmental function on
2 behalf of the public body, and that directly relates to the
3 governmental function and is not otherwise exempt under this
4 Act, shall be considered a public record of the public body,
5 for purposes of this Act.

6 (3) This Section does not authorize withholding of
7 information or limit the availability of records to the public,
8 except as stated in this Section or otherwise provided in this
9 Act.

10 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
11 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;
12 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;
13 96-736, eff. 7-1-10; revised 9-25-09.)

14 Section 950. No acceleration or delay. Where this Act makes
15 changes in a statute that is represented in this Act by text
16 that is not yet or no longer in effect (for example, a Section
17 represented by multiple versions), the use of that text does
18 not accelerate or delay the taking effect of (i) the changes
19 made by this Act or (ii) provisions derived from any other
20 Public Act.

21 Section 999. Effective date. This Act takes effect upon
22 becoming law.