



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB4502

Introduced 1/31/2012, by Rep. Elaine Nekritz

#### SYNOPSIS AS INTRODUCED:

630 ILCS 5/10  
630 ILCS 5/15  
630 ILCS 5/20  
630 ILCS 5/25  
630 ILCS 5/35  
630 ILCS 5/40  
630 ILCS 5/45  
630 ILCS 5/65

Amends the Public-Private Partnerships for Transportation Act. Defines "design-build agreement" and "shortlist". Provides that the net proceeds, if any, arising out of a transportation project or public-private agreement undertaken by the Department of Transportation under the Act shall be deposited into the Road (instead of the State Construction Account) Fund. Removes language providing that the Toll Highway Authority shall not enter into a public-private agreement for the purpose of making roadway improvements. Provides hearing requirements to address potential projects submitted to the General Assembly under the Act. Makes other changes in the Section concerning formation of public-private agreements and project planning. Replaces provisions concerning the selection of design work contractors and procurement procedure provisions for public agencies. Replaces prequalification provisions with provisions concerning shortlisting. Re-letters the subsections of a Section concerning procurement process and makes other changes to that Section. Makes changes in a Section concerning design-build procurement. Replaces "construction" with "development" and adds design-build-finance agreements to the list of acceptable forms of agreement. Removes language making a transportation agency taking over a project subject to liens on revenues which had been previously granted by the contractor. Provides that public and private entities shall have an equal opportunity to contract with the Authority. Makes a change in the Section concerning financial arrangements. Provides that a public-private agreement may not exceed 65 (instead of 99) years. Effective immediately.

LRB097 19290 HEP 64536 b

1 AN ACT concerning State government.

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

4 Section 5. The Public-Private Partnerships for  
5 Transportation Act is amended by changing Sections 10, 15, 20,  
6 25, 35, 40, 45, and 65 as follows:

7 (630 ILCS 5/10)

8 Sec. 10. Definitions. As used in this Act:

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

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

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

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

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

21 "Design-build agreement" means the agreement between the  
22 selected private entity and the transportation agency under  
23 which the selected private entity agrees to furnish design,

1 construction, and related services for a transportation  
2 facility under this Act.

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

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

10 "Metropolitan planning organization" means a metropolitan  
11 planning organization designated under 23 U.S.C. Section 134  
12 whose metropolitan planning area boundaries are partially or  
13 completely within the State.

14 "Operate" or "operation" means to do one or more of the  
15 following: maintain, improve, equip, modify, or otherwise  
16 operate.

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

1           "Proposal" means all materials and documents prepared by or  
2 on behalf of a private entity relating to the proposed  
3 development, financing, or operation of a transportation  
4 facility as a transportation project.

5           "Proposer" means a private entity that has submitted a  
6 proposal or statement of qualifications for a public-private  
7 agreement in response to a request for proposals or a request  
8 for qualifications issued by a transportation agency under this  
9 Act.

10          "Public-private agreement" means the public-private  
11 agreement between the contractor and the transportation agency  
12 relating to one or more of the development, financing, or  
13 operation of a transportation project that is entered into  
14 under this Act.

15          "Request for information" means all materials and  
16 documents prepared by or on behalf of the transportation agency  
17 to solicit information from private entities with respect to  
18 transportation projects.

19          "Request for proposals" means all materials and documents  
20 prepared by or on behalf of the transportation agency to  
21 solicit proposals from private entities to enter into a  
22 public-private agreement.

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

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

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

22 "Transportation agency" means (i) the Department or (ii)  
23 the Authority.

24 "Transportation facility" means any new or existing road,  
25 highway, toll highway, bridge, tunnel, intermodal facility,  
26 intercity or high-speed passenger rail, or other

1 transportation facility or infrastructure, excluding airports,  
2 under the jurisdiction of the Department or the Authority. The  
3 term "transportation facility" may refer to one or more  
4 transportation facilities that are proposed to be developed or  
5 operated as part of a single transportation project.

6 "Transportation project" or "project" means any or the  
7 combination of the development, financing, or operation with  
8 respect to all or a portion of any transportation facility  
9 under the jurisdiction of the transportation agency,  
10 undertaken pursuant to this Act.

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

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

19 (Source: P.A. 97-502, eff. 8-23-11.)

20 (630 ILCS 5/15)

21 Sec. 15. Formation of public-private agreements; project  
22 planning.

23 (a) Each transportation agency may exercise the powers  
24 granted by this Act to do some or all to develop, finance, and  
25 operate any part of one or more transportation projects through

1 public-private agreements with one or more private entities.  
2 The net proceeds, if any, arising out of a transportation  
3 project or public-private agreement undertaken by the  
4 Department pursuant to this Act shall be deposited into the  
5 ~~Road State Construction Account~~ Fund. The net proceeds arising  
6 out of a transportation project or public-private agreement  
7 undertaken by the Authority pursuant to this Act shall be  
8 deposited into the Illinois State Toll Highway Authority Fund  
9 and shall be used only as authorized by Section 23 of the Toll  
10 Highway Act.

11 (b) The Authority shall not enter into a public-private  
12 agreement involving a lease or other transfer of any toll  
13 highway, or portions thereof, under the Authority's  
14 jurisdiction which were open to vehicular traffic on the  
15 effective date of this Act. ~~The Authority shall not enter into  
16 a public private agreement for the purpose of making roadway  
17 improvements, including but not limited to reconstruction,  
18 adding lanes, and adding ramps, to any toll highway, or  
19 portions thereof, under the Authority's jurisdiction which  
20 were open to vehicular traffic on the effective date of this  
21 Act.~~ The Authority shall not use any revenue generated by any  
22 toll highway, or portions thereof, under the Authority's  
23 jurisdiction which were open to vehicular traffic on the  
24 effective date of this Act to enter into or provide funding for  
25 a public-private agreement. The Authority shall not use any  
26 asset, or the proceeds from the sale or lease of any such

1 asset, which was owned by the Authority on the effective date  
2 of this Act to enter into or provide funding for a  
3 public-private agreement. The Authority may enter into a  
4 public-private partnership to develop, finance, and operate  
5 new toll highways authorized by the Governor and the General  
6 Assembly pursuant to Section 14.1 of the Toll Highway Act,  
7 non-highway transportation projects on the toll highway system  
8 such as commuter rail or high-speed rail lines, and intelligent  
9 transportation infrastructure that will enhance the safety,  
10 efficiency, and environmental quality of the toll highway  
11 system. The Authority may operate or provide operational  
12 services such as toll collection on highways which are  
13 developed or financed, or both, through a public-private  
14 agreement entered into by another public entity, under an  
15 agreement with the public entity or contractor responsible for  
16 the transportation project.

17 (c) A contractor has:

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

21 (2) the power to develop, finance, and operate the  
22 transportation facility and to impose user fees in  
23 connection with the use of the transportation facility,  
24 subject to the terms of the public-private agreement.

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



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

16 (e) Each year, at least 30 days prior to the beginning of  
17 the transportation agency's fiscal year, the transportation  
18 agency shall submit a description of potential projects that  
19 the transportation agency is considering undertaking under  
20 this Act to each county, municipality, and metropolitan  
21 planning organization, with respect to each project located  
22 within its boundaries.

23 (f) Any project undertaken under this Act shall be subject  
24 to all applicable planning requirements otherwise required by  
25 law, including land use planning, regional planning,  
26 transportation planning, and environmental compliance

1 requirements.

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

6 (h) The transportation agency shall hold one or more public  
7 hearings within 30 days of each of its submittals to the  
8 General Assembly under subsection (d) of this Section. These  
9 public hearings shall address potential projects that the  
10 transportation agency submitted to the General Assembly for  
11 review under subsection (d). The transportation agency shall  
12 publish a notice of the hearing or hearings at least 7 days  
13 before a hearing takes place, and shall include the following  
14 in the notice: (i) the date, time, and place of the hearing and  
15 the address of the transportation agency; (ii) a brief  
16 description of the potential projects that the transportation  
17 agency is considering undertaking; and (iii) a statement that  
18 the public may comment on the potential projects.

19 (Source: P.A. 97-502, eff. 8-23-11.)

20 (630 ILCS 5/20)

21 Sec. 20. Procurement process.

22 (a) A transportation agency seeking to enter into a  
23 public-private partnership with a private entity for the  
24 development, finance, and operation of a transportation  
25 facility as a transportation project shall determine and set

1     forth the criteria for the selection process. The  
2     transportation agency shall use (i) a competitive sealed  
3     bidding process, (ii) a competitive sealed proposal process, or  
4     (iii) a design-build procurement process in accordance with  
5     Section 25 of this Act. Before using one of these processes the  
6     transportation agency may use a request for information to  
7     obtain information relating to possible public-private  
8     partnerships.

9     (b) If a transportation project will require the  
10    performance of design work, the transportation agency must use  
11    a selection process for the contractor that includes a request  
12    for qualifications phase to evaluate and shortlist private  
13    entities based on qualifications, including but not limited to  
14    design qualifications.

15    (c) Prior to commencing a procurement for a transportation  
16    project under this Act, the transportation agency shall notify  
17    any other applicable public agency, including the Authority in  
18    all cases involving toll facilities where the Department would  
19    commence the procurement, of its interest in undertaking the  
20    procurement and shall provide the other public agency or  
21    agencies with an opportunity to offer to develop and implement  
22    the transportation project. The transportation agency shall  
23    supply the other public agency or agencies with no less than  
24    the same level and type of information concerning the project  
25    that the transportation agency would supply to private entities  
26    in the procurement, unless that information is not then

1 available, in which case the transportation agency shall supply  
2 the other public agency or agencies with the maximum amount of  
3 relevant information about the project as is then reasonably  
4 available. The transportation agency shall make available to  
5 the other public agencies the same subsidies, benefits,  
6 concessions, and other consideration that it intends to make  
7 available to the private entities in the procurement.

8 The public agencies shall have a maximum period of 60 days  
9 to review the information about the proposed transportation  
10 project and to respond to the transportation agency in writing  
11 to accept or reject the opportunity to develop and implement  
12 the transportation project. If a public agency rejects the  
13 opportunity during the 60-day period, then the public agency  
14 may not participate in the procurement for the proposed  
15 transportation project by submitting a proposal on their own.  
16 If a public agency fails to accept or reject this opportunity  
17 in writing within the 60-day period, it shall be deemed to have  
18 rejected the opportunity.

19 If a public agency accepts the opportunity within the  
20 60-day period, then the public agency shall have up to 120 days  
21 (or a longer period, if extended by the transportation agency),  
22 to (i) submit to the transportation agency a reasonable plan  
23 for development of the transportation project; (ii) if  
24 applicable, make an offer of reasonable consideration for the  
25 opportunity to undertake the transportation project; and (iii)  
26 negotiate a mutually acceptable intergovernmental agreement or

1 make other arrangements with the transportation agency to  
2 facilitate the development of the transportation project. In  
3 considering whether a public agency's plan for developing and  
4 implementing the project is reasonable, the transportation  
5 agency shall consider the public agency's history of developing  
6 and implementing similar projects, the public agency's current  
7 capacity to develop and implement the proposed project, the  
8 user charges, if any, contemplated by the public agency's plan  
9 and how these user charges compare with user charges that would  
10 be imposed by a private entity developing and implementing the  
11 same project, the project delivery schedule proposed by the  
12 public agency and such other reasonable factors that are  
13 necessary, including consideration of risks as well as whether  
14 subsidy costs may be reduced, to determine whether development  
15 and implementation of the project by the public agency is in  
16 the best interest of the people of this State.

17 (d) If the transportation agency rejects or fails to  
18 negotiate mutually acceptable terms regarding a public  
19 agency's plan for developing and implementing the  
20 transportation project during the 120-day period described in  
21 subsection (c), then the public agency may not participate in  
22 the procurement for the proposed transportation project by  
23 submitting a proposal of its own. Following a rejection or  
24 failure to reach agreement regarding a public agency's plan, if  
25 the transportation agency later proceeds with a procurement in  
26 which it materially changes (i) the nature or scope of the

1 project; (ii) any subsidies, benefits, concessions, or other  
2 significant project-related considerations made available to  
3 the bidders; or (iii) any other terms of the project, as  
4 compared to when the transportation agency supplied  
5 information about the project to public agencies under  
6 subsection (c), then the transportation agency shall give  
7 public agencies another opportunity in accordance with  
8 subsection (c) to provide proposals for developing and  
9 implementing the project.

10 (e) Nothing in this Section 20 requires a transportation  
11 agency to go through a procurement process prior to developing  
12 and implementing a project through a public agency as described  
13 in subsection (c).

14 ~~The selection of professional design firms by a~~  
15 ~~transportation agency or private entity shall comply with the~~  
16 ~~Architectural, Engineering, and Land Surveying Qualifications~~  
17 ~~Based Selection Act or Section 25 of this Act.~~

18 ~~Nothing in this Act shall preclude a public agency,~~  
19 ~~including the Department or the Authority, from submitting a~~  
20 ~~proposal to develop or operate, or to develop and operate, a~~  
21 ~~transportation facility as a transportation project. The~~  
22 ~~transportation agency shall give a proposal submitted by a~~  
23 ~~public agency equal consideration as it gives proposals~~  
24 ~~submitted by private entities, and, for that purpose, treat the~~  
25 ~~public agency as a private entity.~~

26 (f) All procurement processes shall incorporate

1 requirements and set forth goals for participation by  
2 disadvantaged business enterprises as allowed under State and  
3 federal law.

4 (g) ~~(b)~~ The transportation agency shall establish a process  
5 to shortlist ~~for prequalification of all~~ potential private  
6 entities. The transportation agency shall: (i) provide a public  
7 notice of the shortlisting ~~prequalification~~ process for such  
8 period as deemed appropriate by the agency; (ii) set forth  
9 requirements and evaluation criteria in a request for  
10 qualifications ~~order to become prequalified~~; (iii) develop a  
11 shortlist by determining ~~determine~~ which private entities that  
12 have submitted statements of qualification ~~prequalification~~  
13 ~~applications~~, if any, meet the minimum requirements and best  
14 satisfy the evaluation criteria set forth in the request for  
15 qualifications; and (iv) allow only those entities, or groups  
16 of entities such as unincorporated joint ventures, that have  
17 been shortlisted ~~prequalified~~ to submit proposals or bids.  
18 Throughout the procurement period and as necessary following  
19 the award of a contract, the ~~The~~ transportation agency shall  
20 make publicly available on its website ~~during the request for~~  
21 ~~qualifications period~~ information regarding firms that are  
22 prequalified by the transportation agency pursuant to Section  
23 20 of the Architectural, Engineering, and Land Surveying  
24 Qualifications Based Selection Act to provide architectural,  
25 engineering, and land surveying services. The transportation  
26 agencies ~~and~~ shall require private entities to use firms

1 prequalified under this Act to provide architectural,  
2 engineering, and land surveying services. Firms identified to  
3 provide architectural, engineering, and land surveying  
4 services in a statement of qualifications shall be prequalified  
5 under the Act to provide the identified services prior to the  
6 transportation agency's award of the contract ~~the use of such~~  
7 ~~firms for such services.~~

8 (h) ~~(e)~~ Competitive sealed bidding requirements:

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

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

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

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



1 the contract, the winning bid and the record of each  
2 unsuccessful bid shall be open to public inspection.

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

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

24 (7) The contract shall be awarded with reasonable  
25 promptness by written notice to the lowest responsible and  
26 responsive bidder whose bid meets the requirements and

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

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

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

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

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

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

22 (i) ~~(d)~~ Competitive sealed proposal requirements:

23 (1) When the transportation agency determines in  
24 writing that the use of competitive sealed bidding or  
25 design-build procurement is either not practicable or not  
26 advantageous to the State, a contract may be entered into

1 by competitive sealed proposals.

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

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

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

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

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

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

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

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

24 (1) submit the proposal or proposals to the Commission  
25 on Government Forecasting and Accountability, which,  
26 within 20 days of submission by the transportation agency,

1 shall complete a review of the proposal or proposals and  
2 report on the value of the proposal or proposals to the  
3 State;

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

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

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

25 (k) ~~(f)~~ In addition to any other rights under this Act, in  
26 connection with any procurement under this Act, the following

1 rights are reserved to each transportation agency:

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

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

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

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

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

19 (6) to interview proposers; and

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

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

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

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

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

26 (Source: P.A. 97-502, eff. 8-23-11.)

1 (630 ILCS 5/25)

2 Sec. 25. Design-build procurement.

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

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

20 (2) The request for qualifications shall be prepared for  
21 each project and must contain, without limitation, the  
22 following information: (i) the name of the transportation  
23 agency; (ii) a preliminary schedule for the completion of the  
24 contract; (iii) the proposed budget for the project and the  
25 source of funds, to the extent not already reflected in the



1 ~~Department's Multi-Year Highway Improvement Program and the~~  
2 ~~currently available funds at the time the request for proposal~~  
3 ~~is submitted;~~ (iv) the shortlisting process ~~prequalification~~  
4 ~~criteria~~ for ~~design-build~~ entities or groups of entities such  
5 as unincorporated joint ventures wishing to submit proposals  
6 (the transportation agency shall include, at a minimum, its  
7 normal prequalification, licensing, registration, and other  
8 requirements, but nothing contained herein precludes the use of  
9 additional ~~prequalification~~ criteria by the transportation  
10 agency); (v) a summary of anticipated material requirements of  
11 the contract, including but not limited to, the proposed terms  
12 and conditions, required performance and payment bonds,  
13 insurance, and the ~~entity's plan to comply with the~~ utilization  
14 goals established by the ~~corporate authorities of the~~  
15 transportation agency for minority and women business  
16 enterprises and compliance to comply with Section 2-105 of the  
17 Illinois Human Rights Act; and (vi) ~~the performance criteria;~~  
18 ~~(vii) the evaluation criteria for each phase of the~~  
19 ~~solicitation; and (viii) the~~ anticipated number of entities  
20 that will be shortlisted ~~considered~~ for the request for  
21 proposals phase.

22 (3) The transportation agency may include any other  
23 relevant information in the request for qualifications that it  
24 chooses to supply. The private entity shall be entitled to rely  
25 upon the accuracy of this documentation in the development of  
26 its statement of qualifications and its proposal only to the

1 extent expressly warranted by the transportation agency.

2 (4) The date that statements of qualifications are due must  
3 be at least 21 calendar days after the date of the issuance of  
4 the request for qualifications. In the event the cost of the  
5 project is estimated to exceed \$12,000,000, then the statement  
6 of qualifications due date must be at least 28 calendar days  
7 after the date of the issuance of the request for  
8 qualifications. The transportation agency shall include in the  
9 request for proposals a minimum of 30 days to develop the  
10 proposals after the selection of entities from the evaluation  
11 of the statements of qualifications is completed.

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

22 (2) Each request for qualifications and request for  
23 proposals shall also include a description of the level of  
24 design to be provided in the proposals. This description must  
25 include the scope and type of renderings, drawings, and  
26 specifications that, at a minimum, will be required by the

1 transportation agency to be produced by the private entities.

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

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

11 (d)(1) The transportation agency must use a two phase  
12 procedure for the selection of the successful design-build  
13 entity. The request for qualifications phase will evaluate and  
14 shortlist the private entities based on qualifications, and the  
15 request for proposals will evaluate the technical and cost  
16 proposals.

17 (2) The transportation agency shall include in the request  
18 for qualifications the evaluating factors to be used in the  
19 request for qualifications phase. These factors are in addition  
20 to any prequalification requirements of private entities that  
21 the transportation agency has set forth. Each request for  
22 qualifications shall establish the relative importance  
23 assigned to each evaluation factor ~~and subfactor~~, including any  
24 weighting of criteria to be employed by the transportation  
25 agency. The transportation agency must maintain a record of the  
26 evaluation scoring to be disclosed in event of a protest

1 regarding the solicitation.

2 The transportation agency shall include the following  
3 criteria in every request for qualifications phase evaluation  
4 of private entities: (i) experience of personnel; (ii)  
5 successful experience with similar project types; (iii)  
6 financial capability; (iv) timeliness of past performance; (v)  
7 experience with similarly sized projects; (vi) successful  
8 reference checks of the firm; (vii) commitment to assign  
9 personnel for the duration of the project and qualifications of  
10 the entity's consultants; and (viii) ability or past  
11 performance in meeting or exhausting good faith efforts to meet  
12 the utilization goals for business enterprises established in  
13 the Business Enterprise for Minorities, Females, and Persons  
14 with Disabilities Act and in complying with Section 2-105 of  
15 the Illinois Human Rights Act. No proposal shall be considered  
16 that does not include an entity's plan to comply with the  
17 requirements regarding ~~established in the~~ minority and women  
18 business enterprises and economically disadvantaged firms  
19 established by ~~the corporate authorities of~~ the transportation  
20 agency and with Section 2-105 of the Illinois Human Rights Act.  
21 The transportation agency may include any additional relevant  
22 criteria in the request for qualifications phase that it deems  
23 necessary for a proper qualification review.

24 Upon completion of the qualifications evaluation, the  
25 transportation agency shall create a shortlist of the most  
26 highly qualified private entities.

1           The transportation agency shall notify the entities  
2 selected for the shortlist in writing. This notification shall  
3 commence the period for the preparation of the request for  
4 proposals phase technical and cost evaluations. The  
5 transportation agency must allow sufficient time for the  
6 shortlist entities to prepare their proposals considering the  
7 scope and detail requested by the transportation agency.

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

18           The transportation agency shall include the following  
19 criteria in every request for proposals phase technical  
20 evaluation of private entities: (i) compliance with objectives  
21 of the project; (ii) compliance of proposed services to the  
22 request for proposal requirements; (iii) compliance with the  
23 request for proposal requirements ~~quality~~ of products or  
24 materials proposed; (iv) quality of design parameters; and (v)  
25 design concepts; ~~(vi) innovation in meeting the scope and~~  
26 ~~performance criteria; and (vii) constructability of the~~

1 ~~proposed project~~. The transportation agency may include any  
2 additional relevant technical evaluation factors it deems  
3 necessary for proper selection.

4 The transportation agency shall include the following  
5 criteria in every request for proposals phase cost evaluation:  
6 the total project cost and the time of completion. The  
7 transportation agency may include any additional relevant  
8 technical evaluation factors it deems necessary for proper  
9 selection. The guaranteed maximum project cost criteria  
10 weighing factor shall not exceed 30%.

11 The transportation agency shall directly employ or retain a  
12 licensed design professional to evaluate the technical and cost  
13 submissions to determine if the technical submissions are in  
14 accordance with generally accepted industry standards.

15 (e) Statements of qualifications and proposals must be  
16 properly identified and sealed. Statements of qualifications  
17 and proposals may not be reviewed until after the deadline for  
18 submission has passed as set forth in the request for  
19 qualifications or the request for proposals. All private  
20 entities submitting statements of qualifications or proposals  
21 shall be disclosed after the deadline for submission, and all  
22 private entities who are selected for request for proposals  
23 phase evaluation shall also be disclosed at the time of that  
24 determination.

25 Design-build ~~Phase II design-build~~ proposals shall include  
26 a bid bond in the form and security as designated in the

1 request for proposals. Proposals shall also contain a separate  
2 sealed envelope with the cost information within the overall  
3 proposal submission. Proposals shall include a list of all  
4 design professionals and other entities to which any work  
5 identified in Section 30-30 of the Illinois Procurement Code as  
6 a subdivision of construction work may be subcontracted during  
7 the performance of the contract to the extent known at the time  
8 of proposal. If the information is not known at the time of  
9 proposal, then the design-build agreement shall require such  
10 identification prior to a previously unlisted subcontractor  
11 commencing work on the transportation project.

12 Statements of qualifications and proposals must meet all  
13 material requirements of the request for qualifications or  
14 request for proposals, or else they may be rejected as  
15 non-responsive. The transportation agency shall have the right  
16 to reject any and all statements of qualifications and  
17 proposals.

18 The private entity's proprietary intellectual property  
19 contained in the drawings and specifications of any  
20 unsuccessful statement of qualifications or proposal shall  
21 remain the property of the private entity.

22 The transportation agency shall review the statements of  
23 qualifications and the proposals for compliance with the  
24 performance criteria and evaluation factors.

25 Statements of qualifications and proposals may be  
26 withdrawn prior to the due date and time for submissions for

1 any cause. After evaluation begins by the transportation  
2 agency, clear and convincing evidence of error is required for  
3 withdrawal.

4 (Source: P.A. 97-502, eff. 8-23-11.)

5 (630 ILCS 5/35)

6 Sec. 35. Public-private agreements.

7 (a) Unless undertaking actions otherwise permitted in an  
8 interim agreement entered into under Section 30 of this Act,  
9 before developing, financing, or operating the transportation  
10 project, the approved proposer shall enter into a  
11 public-private agreement with the transportation agency.  
12 Subject to the requirements of this Act, a public-private  
13 agreement may provide that the approved proposer, acting on  
14 behalf of the transportation agency, is partially or entirely  
15 responsible for any combination of developing, financing, or  
16 operating the transportation project under terms set forth in  
17 the public-private agreement.

18 (b) The public-private agreement may, as determined  
19 appropriate by the transportation agency for the particular  
20 transportation project, provide for some or all of the  
21 following:

22 (1) Development ~~Construction~~, financing, and operation  
23 of the transportation project under terms set forth in the  
24 public-private agreement, in any form as deemed  
25 appropriate by the transportation agency, including, but



1 not limited to, a long-term concession and lease, a  
2 design-bid-build agreement, a design-build agreement, a  
3 design-build-maintain agreement, a design-build-finance  
4 agreement, a design-build-operate-maintain agreement and a  
5 design-build-finance-operate-maintain agreement.

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

23 (3) Review of plans for any development or operation,  
24 or both, of the transportation project by the  
25 transportation agency.

26 (4) Inspection of any construction of or improvements

1 to the transportation project by the transportation agency  
2 or another entity designated by the transportation agency  
3 or under the public-private agreement to ensure that the  
4 construction or improvements conform to the standards set  
5 forth in the public-private agreement or are otherwise  
6 acceptable to the transportation agency.

7 (5) Maintenance of:

8 (A) one or more policies of public liability  
9 insurance (copies of which shall be filed with the  
10 transportation agency accompanied by proofs of  
11 coverage); or

12 (B) self-insurance;

13 each in form and amount as set forth in the public-private  
14 agreement or otherwise satisfactory to the transportation  
15 agency as reasonably sufficient to insure coverage of tort  
16 liability to the public and employees and to enable the  
17 continued operation of the transportation project.

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

26 (7) Reimbursement to be paid to the transportation

1 agency as set forth in the public-private agreement for  
2 services provided by the transportation agency.

3 (8) Filing of appropriate financial statements and  
4 reports as set forth in the public-private agreement or as  
5 otherwise in a form acceptable to the transportation agency  
6 on a periodic basis.

7 (9) Compensation or payments to the contractor.  
8 Compensation or payments may include any or a combination  
9 of the following:

10 (A) a base fee and additional fee for project  
11 savings as the design-builder of a construction  
12 project;

13 (B) a development fee, payable on a lump-sum basis,  
14 progress payment basis, time and materials basis, or  
15 another basis deemed appropriate by the transportation  
16 agency;

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

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

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

24 (F) in-kind services, materials, property,  
25 equipment, or other items;

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

1           (H) availability payments or similar arrangements  
2           whereby payments are made to the contractor pursuant to  
3           the terms set forth in the public-private agreement or  
4           related agreements; or

5           (I) other compensation set forth in the  
6           public-private agreement or otherwise deemed  
7           appropriate by the transportation agency.

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

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

15           (B) sharing of revenues, if any, from the operation  
16           of the transportation project;

17           (C) sharing of project savings from the  
18           construction of the transportation project;

19           (D) payment for any services, materials,  
20           equipment, personnel, or other items provided by the  
21           transportation agency to the contractor under the  
22           public-private agreement or in connection with the  
23           transportation project; or

24           (E) other compensation set forth in the  
25           public-private agreement or otherwise deemed  
26           appropriate by the transportation agency.

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

6           (12) Reversion of the transportation project to the  
7 transportation agency at the termination or expiration of  
8 the public-private agreement.

9           (13) Rights and remedies of the transportation agency  
10 in the event that the contractor defaults or otherwise  
11 fails to comply with the terms of the public-private  
12 agreement.

13           (14) Procedures for the selection of professional  
14 design firms and subcontractors, which shall include  
15 procedures consistent with the Architectural, Engineering,  
16 and Land Surveying Qualifications Based Selection Act for  
17 the selection of professional design firms and may include,  
18 in the discretion of the transportation agency, procedures  
19 consistent with the low bid procurement procedures  
20 outlined in the Illinois Procurement Code for the selection  
21 of construction companies.

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

24           (c) The transportation agency may fix and revise the  
25 amounts of user fees that a contractor may charge and collect  
26 for the use of any part of a transportation project in

1 accordance with the public-private agreement. In fixing the  
2 amounts, the transportation agency may establish maximum  
3 amounts for the user fees and may provide that the maximums and  
4 any increases or decreases of those maximums shall be based  
5 upon the indices, methodologies, or other factors the  
6 transportation agency considers appropriate.

7 (d) A public-private agreement may:

8 (1) authorize the imposition of tolls in any manner  
9 determined appropriate by the transportation agency for  
10 the transportation project;

11 (2) authorize the contractor to adjust the user fees  
12 for the use of the transportation project, so long as the  
13 amounts charged and collected by the contractor do not  
14 exceed the maximum amounts established by the  
15 transportation agency under the public-private agreement  
16 ~~this Act~~;

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

22 (4) authorize the contractor to charge and collect user  
23 fees through methods, including, but not limited to,  
24 automatic vehicle identification systems, electronic toll  
25 collection systems, and, to the extent permitted by law,  
26 global positioning system-based, photo-based, or

1 video-based toll collection enforcement, provided that to  
2 the maximum extent feasible the contractor will (i) utilize  
3 open road tolling methods that allow payment of tolls at  
4 highway speeds and (ii) comply with United States  
5 Department of Transportation requirements and best  
6 practices with respect to tolling methods; and

7 (5) authorize the collection of user fees by a third  
8 party.

9 (e) In the public-private agreement, the transportation  
10 agency may agree to make grants or loans for the development or  
11 operation, or both, of the transportation project from time to  
12 time from amounts received from the federal government or any  
13 agency or instrumentality of the federal government or from any  
14 State or local agency.

15 (f) Upon the termination or expiration of the  
16 public-private agreement, including a termination for default,  
17 the transportation agency shall have the right to take over the  
18 transportation project and to succeed to all of the right,  
19 title, and interest in the transportation project, ~~subject to~~  
20 ~~any liens on revenues previously granted by the contractor to~~  
21 ~~any person providing financing for the transportation project.~~

22 Upon termination or expiration of the public-private agreement  
23 relating to a transportation project undertaken by the  
24 Department, all real property acquired as a part of the  
25 transportation project shall be held in the name of the State  
26 of Illinois. Upon termination or expiration of the

1 public-private agreement relating to a transportation project  
2 undertaken by the Authority, all real property acquired as a  
3 part of the transportation project shall be held in the name of  
4 the Authority.

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

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

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

13 (h) If a transportation agency elects to take over a  
14 transportation project as provided in subsection (f) of this  
15 Section, the transportation agency may use the revenues, if  
16 any, for any lawful purpose, including to:

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

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

24 (3) pay development costs of the project;

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



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

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

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

14          (j) The transportation agency may enter into a  
15          public-private agreement with multiple approved proposers if  
16          the transportation agency determines in writing that it is in  
17          the public interest to do so.

18          (k) A public-private agreement shall not include any  
19          provision under which the transportation agency agrees to  
20          restrict or to provide compensation to the private entity for  
21          the construction or operation of a competing transportation  
22          facility during the term of the public-private agreement.

23          (l) With respect to a public-private agreement entered into  
24          by the Department, the Department shall certify in its State  
25          budget request to the Governor each year the amount required by  
26          the Department during the next State fiscal year to enable the

1 Department to make any payment obligated to be made by the  
2 Department pursuant to that public-private agreement, and the  
3 Governor shall include that amount in the State budget  
4 submitted to the General Assembly.

5 (Source: P.A. 97-502, eff. 8-23-11.)

6 (630 ILCS 5/40)

7 Sec. 40. Development and operations standards for  
8 transportation projects.

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

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

14 (2) the Professional Engineering Practice Act of 1989,  
15 the Structural Engineering Practice Act of 1989, the  
16 Illinois Architecture Practice Act of 1989, the  
17 requirements of Section 30-22 of the Illinois Procurement  
18 Code as they apply to responsible bidders, and the Illinois  
19 Professional Land Surveyor Act of 1989; and

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

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

23 (1) the State highway system for purposes of  
24 identification, maintenance standards, and enforcement of  
25 traffic laws if the highway project is under the

1 jurisdiction of the Department; or

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

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

9 (d) Any electronic toll collection system used on a toll  
10 highway, bridge, or tunnel as part of a transportation project  
11 must be compatible with the electronic toll collection system  
12 used by the Authority. The Authority is authorized to  
13 construct, operate, and maintain any electronic toll  
14 collection system used on a toll highway, bridge, or tunnel as  
15 part of a transportation project pursuant to an agreement with  
16 the transportation agency or the contractor responsible for the  
17 transportation project. All private entities and public  
18 agencies shall have an equal opportunity to contract with the  
19 Authority to provide construction, operation, and maintenance  
20 services. In addition, during the procurement of a  
21 public-private agreement, these construction, operation, and  
22 maintenance services shall be available under identical terms  
23 to each private entity participating in the procurement. To the  
24 extent that a public-private agreement or an agreement with a  
25 public agency under subsection (c) of Section 20 of this Act  
26 authorizes tolling, the transportation agencies and any

1 contractor under a public-private partnership or a public  
2 agency under an agreement pursuant to subsection (c) of Section  
3 20 of this Act shall comply with subsection (a-5) of Section 10  
4 of the Toll Highway Act as it relates to toll enforcement.

5 (Source: P.A. 97-502, eff. 8-23-11.)

6 (630 ILCS 5/45)

7 Sec. 45. Financial arrangements.

8 (a) The transportation agency may do any combination of  
9 applying for, executing, or endorsing applications submitted  
10 by private entities to obtain federal, State, or local credit  
11 assistance for transportation projects developed, financed, or  
12 operated under this Act, including loans, lines of credit, and  
13 guarantees.

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

1 Transportation Infrastructure Finance and Innovation Act  
2 (TIFIA).

3 (c) The transportation agency may agree to make grants or  
4 loans for the development, financing, or operation of a  
5 transportation project from time to time, from amounts received  
6 from the federal, State, or local government or any agency or  
7 instrumentality of the federal, State, or local government.

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

11 (e) For the purpose of financing a transportation project,  
12 the contractor and the transportation agency may do the  
13 following:

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

16 (2) enter into grant agreements;

17 (3) access any other funds available to the  
18 transportation agency; and

19 (4) accept grants from the transportation agency or  
20 other public or private agency or entity.

21 (f) For the purpose of financing a transportation project,  
22 public funds may be used and mixed and aggregated with funds  
23 provided by or on behalf of the contractor or other private  
24 entities.

25 (g) For the purpose of financing a transportation project,  
26 each transportation agency is authorized to do any combination

1 of applying for, executing, or endorsing applications for an  
2 allocation of tax-exempt bond financing authorization provided  
3 by Section 142(m) of the United States Internal Revenue Code,  
4 as well as financing available under any other federal law or  
5 program.

6 (h) Any bonds, debt, or other securities or other financing  
7 issued by or on behalf of a contractor for the purposes of a  
8 project undertaken under this Act shall not be deemed to  
9 constitute a debt of the State or any political subdivision of  
10 the State or a pledge of the faith and credit of the State or  
11 any political subdivision of the State.

12 (Source: P.A. 97-502, eff. 8-23-11.)

13 (630 ILCS 5/65)

14 Sec. 65. Term of agreement; reversion of property to  
15 transportation agency.

16 (a) The term of a public-private agreement, including all  
17 extensions, may not exceed 65 ~~99~~ years.

18 (b) The transportation agency shall terminate the  
19 contractor's authority and duties under the public-private  
20 agreement on the date set forth in the public-private  
21 agreement.

22 (c) Upon termination of the public-private agreement, the  
23 authority and duties of the contractor under this Act cease,  
24 except for those duties and obligations that extend beyond the  
25 termination, as set forth in the public-private agreement, and

1 all interests in the transportation facility shall revert to  
2 the transportation agency.

3 (Source: P.A. 97-502, eff. 8-23-11.)

4 Section 99. Effective date. This Act takes effect upon  
5 becoming law.