



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB1647

Introduced 2/13/2013, by Sen. Kwame Raoul

#### SYNOPSIS AS INTRODUCED:

New Act

20 ILCS 2705/2705-233 new

20 ILCS 3501/825-108 new

30 ILCS 500/1-10

30 ILCS 535/85 new

30 ILCS 570/2.8 new

30 ILCS 575/2.8 new

735 ILCS 30/15-5-47 new

820 ILCS 130/2

from Ch. 48, par. 39s-2

Creates the Design-Build and Construction Manager/General Contractor Transportation Infrastructure Act. Provides that the Department of Transportation is authorized to use the design-build project delivery method or the construction manager/general contractor delivery method for up to 5 transportation facilities for each delivery method. Contains provisions concerning the procurement process and terms of the contract. Provides that the Department of Transportation has eminent domain and quick take powers under the Act. Amends various other Acts to make conforming changes. Effective immediately.

LRB098 08041 HLH 38132 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 ARTICLE 1. DESIGN-BUILD AND CONSTRUCTION MANAGER/GENERAL  
5 CONTRACTOR TRANSPORTATION INFRASTRUCTURE ACT

6 Section 1-1. Short title. This Act may be cited as the  
7 Design-Build and Construction Manager/General Contractor  
8 Transportation Infrastructure Act.

9 Section 1-5. Legislative policy; procedures.

10 (a) It is the public policy of the State of Illinois to  
11 promote the development of infrastructure projects that serve  
12 the needs of the public.

13 (b) The design-build and construction manager/general  
14 contractor project delivery methods have the potential to  
15 safely deliver infrastructure projects on guaranteed or  
16 accelerated schedules, for guaranteed prices, potentially  
17 lower costs, and with the ability to shift risks to the private  
18 sector that are generally retained by the public in the  
19 conventional design-bid-build project delivery method.

20 (c) It is the intent of the General Assembly that the  
21 Illinois Department of Transportation be allowed to carry out a  
22 demonstration program related to the design-build and

1 construction manager/general contractor project delivery  
2 methods.

3 (d) The powers granted in this Act are in addition to any  
4 other powers authorized under applicable law.

5 Section 1-10. Definitions. As used in this Act:

6 "Construction manager/general contractor" means a proposer  
7 that has entered into a construction manager/general  
8 contractor contract under this Act.

9 "Construction manager/general contractor contract" means  
10 the two-phase contract between the Department and a  
11 construction manager/general contractor, which includes a  
12 first phase addressing preconstruction services and a second  
13 phase addressing the construction of the transportation  
14 facility.

15 "Construction manager/general contractor delivery method"  
16 means a method of procurement and contracting that makes a  
17 construction manager/general contractor who enters in to a  
18 contract with the Department responsible for certain  
19 preconstruction services and then, if the parties reach  
20 agreement on key terms, responsible for construction of the  
21 transportation facility.

22 "Department" means the Illinois Department of  
23 Transportation.

24 "Design-bid-build project delivery method" means the  
25 traditional method of procuring and contracting for design and

1 construction services used in this State, which incorporates  
2 the Architectural, Engineering, and Land Surveying  
3 Qualifications Based Selection Act and the principles of  
4 competitive bidding set forth in the Illinois Procurement Code.

5 "Design-build project delivery method" means a method of  
6 procurement and contracting that provides responsibility  
7 within a single contract between the Department and a  
8 design-builder for the furnishing of architectural,  
9 engineering, construction, and related services for a  
10 transportation facility, and may also include responsibility  
11 for financing of that facility, procured on the basis of a  
12 combination of price and non-price factors.

13 "Design-build contract" means a contract between the  
14 Department and a design-builder under which the design-builder  
15 agrees to furnish architectural, engineering, construction,  
16 and related services for a transportation facility.

17 "Design-builder" means a proposer that has entered into a  
18 design-build contract under this Act.

19 "Evaluation criteria" means the standards and requirements  
20 established by the Department, in its sole discretion, against  
21 which the qualifications and proposals of a proposer will be  
22 assessed during the procurement of a design-build contract or  
23 construction manager/general contractor contract, as  
24 applicable.

25 "Metropolitan Planning Organization" means a metropolitan  
26 planning organization designated under 23 U.S.C. Section 134

1 whose metropolitan planning area boundaries are partially or  
2 completely within the State.

3 "Preconstruction services" means all  
4 non-construction-related services that a construction  
5 manager/general contractor is allowed to perform during the  
6 first phase of a construction manager/general contractor  
7 contract, which includes giving advice to the Department  
8 regarding scheduling, work sequencing, cost engineering,  
9 constructability, cost estimating, and risk identification.

10 "Proposal" means a proposal submitted by a proposer in  
11 response to a request for proposals.

12 "Proposer" means any individual, sole proprietorship,  
13 firm, partnership, joint venture, corporation, professional  
14 corporation, or other entity that proposes to be the  
15 design-builder or construction manager/general contractor for  
16 any transportation facility under this Act. A proposer and its  
17 members shall conduct themselves in accordance with the laws of  
18 this State and the related provisions of the Illinois  
19 Administrative Code, as referenced by the licensed design  
20 professionals Acts of this State.

21 "Qualifications" means a statement of qualifications  
22 submitted by a proposer in response to a request for  
23 qualifications.

24 "Request for proposals" means the document issued by the  
25 Department to solicit proposals for a design-build contract or  
26 construction manager/general contractor contract in accordance

1 with the design-build project delivery method or the  
2 construction manager/general contractor delivery method, as  
3 applicable.

4 "Request for qualifications" means the document issued by  
5 the Department in the first phase of a two-phase procurement to  
6 solicit qualifications from proposers in accordance with the  
7 design-build project delivery method or the construction  
8 manager/general contractor delivery method, as applicable.

9 "Scope and performance requirements" means the preferred  
10 constructed elements, activities, and standards of performance  
11 required by the Department to be complied with in the  
12 development of the transportation facility, which may include  
13 but not be limited to, the intended usage, capacity, size,  
14 scope, quality and performance standards, life-cycle costs,  
15 preliminary engineering, design and other requirements as  
16 developed and determined by the Department.

17 "Transportation facility" means any new or existing  
18 facility or group of facilities that are the subject of a  
19 design-build contract or construction manager/general  
20 contractor contract, and which may include highways, roads,  
21 bridges, tunnels, overpasses, ferries, airports or other  
22 aviation facilities, public transportation facilities, vehicle  
23 parking facilities, seaport facilities, rail facilities,  
24 intermodal facilities, transit facilities or similar  
25 facilities used for the transportation of persons or goods.

1 Section 1-15. Authorized Project Delivery Methods.

2 (a) Notwithstanding any other law, and as authority  
3 supplemental to its existing powers, the Department, in  
4 accordance with this Act, is authorized to use the design-build  
5 project delivery method or the construction manager/general  
6 contractor delivery method for up to 5 transportation  
7 facilities for each delivery method; provided that, prior to  
8 commencing a procurement under this Act for either a  
9 design-build contract or a construction manager/general  
10 contractor contract, the Department has first undertaken an  
11 analysis and made a written determination that it is in the  
12 best interests of this State to utilize the selected delivery  
13 method for that transportation facility. The best interests of  
14 the State analysis shall be made available to the public.

15 (b) The Department shall report to the General Assembly  
16 every 2 years on the progress of procurements and  
17 transportation facilities procured under this Act. The  
18 Department's obligation to submit a progress report for a  
19 particular transportation facility shall, as applicable, end  
20 two years after (i) the Department's termination of the  
21 procurement, (ii) early termination of the design-build  
22 contract or construction manager/general contractor contract,  
23 or (iii) completion of the transportation facility.

24 (c) Any transportation facility developed pursuant to this  
25 Act must be consistent with the regional plan then in existence  
26 of any metropolitan planning organization in whose boundaries

1 the transportation facility is located.

2 Section 1-20. Preconditions to commencement of  
3 procurement. If the Department determines to use either the  
4 design-build project delivery method or construction  
5 manager/general contractor delivery method for a particular  
6 transportation facility, the Department may not commence a  
7 procurement for the transportation facility unless one of the  
8 following requirements is satisfied: (1) the transportation  
9 facility is included in the State's Multi-Year Highway  
10 Improvement Program, (2) the Department has issued a notice of  
11 intent to receive qualifications at least 14 days prior to the  
12 issuance of the request for qualifications, or (3) for a single  
13 phase procurement authorized pursuant to subsection (a) of  
14 Section 25, the Department has issued a notice of intent to  
15 receive proposals at least 14 days prior to the issuance of the  
16 request for proposals. If the Department issues one of the  
17 notices of intent described above, the Department shall publish  
18 the notice of intent in either the official procurement  
19 bulletin of the State or the professional services bulletin of  
20 the Department. The Department shall include a brief  
21 description of the proposed procurement in any notice of  
22 intent.

23 Section 1-25. Procurement process.

24 (a) The Department may solicit a proposer with which to



1 enter into a design-build contract or construction  
2 manager/general contractor contract, as applicable, by using,  
3 without limitation, requests for qualifications, short-listing  
4 of qualified proposers, requests for proposals, negotiations,  
5 and best and final offers. The Department shall use a two-phase  
6 procurement to select the successful proposer; provided that  
7 the Department may use a single phase procurement if the  
8 transportation facility is estimated to cost less than  
9 \$10,000,000 or the Secretary of Transportation makes a written  
10 determination that the Department may use a single phase  
11 procurement for a particular transportation facility. In a  
12 two-phase procurement, the Department shall use the first phase  
13 to evaluate and short-list proposers based on qualifications,  
14 and then use the second phase to evaluate and select a proposer  
15 based on proposals submitted by the short-listed proposers. In  
16 a single phase procurement, the Department shall solicit  
17 proposers with a request for proposals, and shall evaluate and  
18 select a proposer based on proposals.

19 (b) The request for qualifications may contain any  
20 information deemed appropriate by the Department, in its  
21 discretion, including, without limitation, the following  
22 information:

23 (1) the anticipated scope of work for the  
24 transportation facility;

25 (2) a requirement that the proposer identify certain  
26 key personnel and certain key firms, and the experience of

1 such personnel and firms;

2 (3) the evaluation criteria for the qualifications and  
3 the relative importance of those criteria; the evaluation  
4 criteria for qualifications shall, at a minimum, address  
5 the proposer's ability and past performance in meeting or  
6 exhausting good faith efforts to meet the utilization goals  
7 for business enterprises established in the Business  
8 Enterprise for Minorities, Females, and Persons with  
9 Disabilities Act and in complying with Section 2-105 of the  
10 Illinois Human Rights Act; the evaluation criteria for  
11 qualifications may also address, without limitation, the  
12 proposer's technical qualifications, such as specialized  
13 experience, technical competence, capability to perform,  
14 and past performance, including the proposer's safety  
15 record;

16 (4) the Department's normal prequalification,  
17 licensing and registration requirements to the extent  
18 deemed applicable by the Department, provided that nothing  
19 contained herein precludes the Department's use of  
20 additional prequalification criteria or pass/fail  
21 evaluation factors addressing minimum levels of technical  
22 experience or financial capabilities;

23 (5) the maximum number of proposers the Department will  
24 short-list to submit proposals; and

25 (6) any other relevant information.

26 (c) Upon completion of the qualifications evaluation, the

1 Department shall, based on the evaluation criteria set forth in  
2 the request for qualifications, create a short-list of  
3 proposers. The Department shall short-list no fewer than 2  
4 proposers unless (i) fewer than 2 proposers submit  
5 qualifications, (ii) fewer than 2 proposers meet the applicable  
6 prequalification and pass/fail requirements, or (iii) the  
7 Secretary of Transportation makes a finding that the Department  
8 may short-list fewer than 2 proposers.

9 (d) The request for proposals may contain any information  
10 deemed appropriate by the Department, in its discretion,  
11 including, without limitation, the following information:

12 (1) the scheduled date for completion of the  
13 transportation facility;

14 (2) the form and amount of required bid security;

15 (3) the material terms of the design-build contract or  
16 construction manager/general contractor contract, as  
17 applicable, including, but not limited to, scope and  
18 performance requirements, payment and performance security  
19 requirements, insurance requirements and the entity's plan  
20 to comply with disadvantaged business enterprises  
21 requirements and with Section 2-105 of the Illinois Human  
22 Rights Act;

23 (4) the proposed budget for the project;

24 (5) the requirements for the technical component of the  
25 proposal, including a description of the level of design,  
26 scope and type of renderings, drawings, and specifications

1 to be provided in the proposals;

2 (6) the requirements for the price component of the  
3 proposal, which for construction manager/general  
4 contractor contracts may include a requirement for the  
5 proposer to submit a lump sum price for the direct costs to  
6 perform the required preconstruction services and a  
7 percentage mark-up on those direct costs;

8 (7) the evaluation criteria for the proposals and the  
9 relative importance of those criteria, including any  
10 formulas to be employed by the Department; as the  
11 Department deems appropriate, the technical proposal  
12 evaluation criteria may, without limitation, include  
13 compliance with the Department's stated objectives for the  
14 project, the proposal's compliance with the request for  
15 proposal requirements, the level of quality of proposed  
16 products or materials, and the quality of the proposed  
17 design;

18 (8) in the case of a single phase procurement,  
19 requirements regarding the proposer's qualifications; or

20 (9) any other relevant information.

21 (e) The Department shall have the right to reject any and  
22 all qualifications or proposals, including, but not limited to  
23 the right to reject any proposal as non-responsive if the  
24 proposal does not meet all material requirements of the request  
25 for proposals. The Department shall not consider a proposal  
26 that does not include: (i) the proposer's plan to comply with

1 requirements regarding utilization of minority and women  
2 business enterprises and economically disadvantaged firms  
3 established by the Department; or (ii) bid security in the form  
4 and amount designated in the request for proposals.

5 (f) The Department may offer to pay a stipend in an amount  
6 and on the terms and conditions determined by the Department to  
7 (i) all short-listed proposers if the Department cancels the  
8 procurement before the due date for proposals or (ii) each  
9 unsuccessful proposer that submits a responsive proposal. The  
10 Department may pay a stipend only to those proposers who agree  
11 that their proposal and other proposal-related submissions  
12 will become the property of the Department.

13 (g) The Department shall directly employ or retain a  
14 professional engineer licensed in the State to assist in the  
15 evaluation of the proposals' technical submissions under a  
16 design-build project delivery method and determine if the  
17 submissions are in accordance with generally accepted industry  
18 standards

19 (h) The date proposals are due must be at least 21 calendar  
20 days after the date of the issuance of the request for  
21 proposals. In the event the cost of the project is estimated to  
22 exceed \$10,000,000, the proposal due date must be at least 28  
23 calendar days after the date of the issuance of the request for  
24 proposals.

25 Section 1-30. Procedures for selection. Upon completion of

1 the evaluation of proposals, if the Department decides to award  
2 a design-build contract or construction manager/general  
3 contractor contract, as applicable, the Department shall award  
4 the contract to the proposer whose proposal is determined to  
5 offer the best value to the public based on the evaluation  
6 criteria set forth in the request for proposals.  
7 Notwithstanding the above, if, for any reason, the proposer  
8 submitting the best value proposal is unable or unwilling to  
9 execute the contract, including the failure of the proposer and  
10 the Department to successfully complete negotiations of the  
11 contract, the Department may award the contract to the proposer  
12 whose proposal offers the public the next best value.

13 Section 1-35. Project records, confidentiality, and public  
14 disclosure.

15 (a) The Department shall maintain all written decisions,  
16 evaluations, scoring documents, selection evaluations,  
17 proposals and procurement documents in a contract file  
18 maintained by the Department.

19 (b) A proposer may identify those portions of a proposal or  
20 other submission that the proposer considers to be trade  
21 secrets or confidential commercial, financial, or proprietary  
22 information. In order for the Department to consider  
23 confidential and proprietary information and trade secrets to  
24 be exempt from disclosure, the proposer shall do all of the  
25 following:

1           (1) request exclusion from disclosure upon submission  
2           of the information or other materials for which protection  
3           is sought;

4           (2) identify the data or other materials for which  
5           protection is sought;

6           (3) state the reasons why protection is necessary; and

7           (4) fully comply with the federal Freedom of  
8           Information Act and any other applicable provisions of  
9           State law with respect to information the proposer contends  
10          should be exempt from disclosure.

11          (c) Notwithstanding any other provision of law, in order to  
12          properly balance the need to maximize competition under this  
13          Act with the need to create a transparent procurement process,  
14          qualifications, proposals, other information and documents  
15          submitted by proposers and the Department's evaluation records  
16          shall not be subject to release or disclosure by the Department  
17          until execution of the design-build contract or construction  
18          manager/general contractor contract, as applicable. If the  
19          Department rejects all qualifications submitted in response to  
20          a request for qualifications, or rejects all proposals  
21          submitted in response to a request for proposals, the exemption  
22          from release or disclosure under this section shall remain in  
23          place until the Department re-procures the transportation  
24          facility and has entered into a design-build contract or  
25          construction manager/general contractor contract, as  
26          applicable. However, this exemption shall lapse if the

1 Department does not commence the re-procurement of the  
2 transportation facility within one year of its rejection of the  
3 responses to the request for qualifications or request for  
4 proposals.

5 Section 1-40. Design-build contract. A design-build  
6 contract may include any provisions the Department determines  
7 are necessary or appropriate, including but not limited to  
8 provisions regarding the following:

9 (1) compensation or payments to the design-builder;

10 (2) grounds for termination of the design-build  
11 contract, including the Department's right to terminate  
12 for convenience;

13 (3) liability for damages and nonperformance;

14 (4) events of default and the rights and remedies  
15 available to the design-builder and the Department in the  
16 event of a default or delay;

17 (5) terms for the design-builder's compliance with  
18 disadvantaged business enterprises requirements and with  
19 Section 2-105 of the Illinois Human Rights Act;

20 (6) the identification of any technical specifications  
21 that the design-builder must comply with when developing  
22 plans or performing construction work;

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

25 (8) required performance and payment security;



1 (9) the terms and conditions of indemnification and  
2 minimum insurance requirements; or

3 (10) any other terms and conditions.

4 Section 1-45. Construction Manager/General Contractor  
5 Contract.

6 (a) The construction manager/general contractor contract  
7 shall divide the construction manager/general contractor's  
8 services into two phases. The first phase shall address  
9 preconstruction services and the procedures the parties will  
10 follow to finalize the contract terms for the second phase. The  
11 second phase shall address the construction manager/general  
12 contractor's construction of the transportation facility for a  
13 lump sum or a guaranteed maximum price.

14 (b) A construction manager/general contractor contract  
15 shall include provisions regarding the following:

16 (1) the construction manager/general contractor's  
17 provision of preconstruction services during the first  
18 phase of the contract, including the construction  
19 manager/general contractor's compensation for those  
20 services;

21 (2) a requirement that, during the first phase of the  
22 contract, the construction manager/general contractor use  
23 a competitive bidding process to procure subcontracts for  
24 at least 70% of the construction work, provided that (i)  
25 compliance with this requirement will be based on an

1 estimated cost for the construction work approved by the  
2 Department prior to the start of the competitive bidding  
3 process and (ii) the construction manager/general  
4 contractor may not use subcontracts with wholly or  
5 partially owned subsidiaries, parent companies or  
6 affiliates to satisfy this obligation;

7 (3) the process the Department and construction  
8 manager/general contractor will use to determine a lump sum  
9 or guaranteed maximum price for the construction work,  
10 which shall include a requirement that the Department  
11 conduct an independent cost estimate for the construction  
12 work; and

13 (4) grounds for termination of the construction  
14 manager/general contractor contract, including the  
15 Department's right to terminate the contract and not  
16 proceed with the construction phase of the project if the  
17 Department and construction manager/general contractor are  
18 unable to negotiate a guaranteed maximum price for the  
19 construction work.

20 (c) In addition to the provisions set forth in subsection  
21 (b), a construction manager/general contractor contract may  
22 include any other provisions the Department determines are  
23 necessary or appropriate, including, but not limited to,  
24 provisions regarding the following:

25 (1) liability for damages and nonperformance;

26 (2) events of default and the rights and remedies

1 available to the construction manager/general contractor  
2 and the Department in the event of a default or delay;

3 (3) terms for the construction manager/general  
4 contractor's compliance with disadvantaged business  
5 enterprises requirements and with Section 2-105 of the  
6 Illinois Human Rights Act for any construction work  
7 performed under the construction manager/general  
8 contractor contract;

9 (4) the identification of any technical specifications  
10 that the construction manager/general contractor must  
11 comply with when aiding the Department with developing  
12 plans or performing construction work;

13 (5) required performance and payment security for the  
14 construction phase of the contract;

15 (6) the terms and conditions of indemnification and  
16 minimum insurance requirements; and

17 (7) any other terms and conditions.

18 (d) If the construction manager/general contractor  
19 contract is terminated for any reason, the Department may, in  
20 its sole discretion, re-advertise the construction  
21 manager/general contractor contract under this Act or use any  
22 other authorized procurement method to complete the  
23 transportation facility or any portion of the transportation  
24 facility. Once the contract is terminated, the Department may  
25 use any work product developed by the construction  
26 manager/general contractor to complete the transportation

1 facility. The construction manager/general contractor whose  
2 contract was terminated may not bid on or join a team that is  
3 bidding on the subsequent contract or contracts for the  
4 transportation facility.

5 Section 1-50. Labor.

6 (a) The design-builder and construction manager/general  
7 contractor, and all subcontractors to them, shall comply with  
8 the requirements of the Prevailing Wage Act, the Equal Pay Act  
9 of 2003, the Public Works Employment Discrimination Act, the  
10 Employment of Illinois Workers on Public Works Act, Section  
11 2-105 of the Illinois Human Rights Act, and federal equal  
12 employment laws and practices, unless the application of those  
13 requirements would jeopardize the receipt or use of federal  
14 funds for a transportation facility.

15 (b) The design-builder and construction manager/general  
16 contractor, and all subcontractors to them, shall comply with  
17 the requirements of federal disadvantaged business laws and  
18 practices or the Business Enterprise for Minorities, Females,  
19 and Persons with Disabilities Act. Disadvantaged business  
20 enterprise program compliance, enforcement, and monitoring  
21 shall be as established by federal law.

22 (c) The Department shall consider requiring the use of a  
23 project labor agreement in connection with the development of a  
24 transportation facility under this Act.

1 Section 1-55. Funding and financing.

2 (a) The Department may utilize any lawful source of funding  
3 and financing to compensate a design-builder and construction  
4 manager/general contractor for work and services performed  
5 under a design-build contract or construction manager/general  
6 contractor contract, as applicable, and the Department may  
7 combine federal, State, local, and private funds to finance a  
8 transportation facility.

9 (b) The Department may impose financing obligations and  
10 other financial responsibilities on a design-builder or  
11 construction manager/general contractor in order to finance a  
12 portion of the costs of a transportation facility.

13 (c) Subject to appropriation by the General Assembly of the  
14 required amounts, the Department may obligate and make  
15 expenditures of funds as and when needed to satisfy its payment  
16 obligations under a design-build contract or construction  
17 manager/general contractor contract.

18 Section 1-60. Acquisition of property and related  
19 agreements. The Department may exercise any and all powers of  
20 condemnation or eminent domain, including quick-take powers,  
21 to acquire lands or estates or interests in land for a  
22 transportation facility under this Act or to the extent the  
23 Department finds that the action serves the public purpose of  
24 this Act and deems the action appropriate in the exercise of  
25 its powers under this Act. In addition, the Department and a

1 design-builder or construction manager/general contractor may  
2 enter into leases, licenses, easements, and other grants of  
3 property interests that the Department determines necessary to  
4 carry out this Act.

5 Section 1-65. Administrative Procedure Act. The Illinois  
6 Administrative Procedure Act applies to all administrative  
7 rules and procedures of the Department under this Act except  
8 that nothing herein shall be construed to render any  
9 prequalification or other responsibility criteria as a  
10 "license" or "licensing" under that Act.

11 Section 1-70. Federal requirements. In the procurement of  
12 design-build contracts and construction manager/general  
13 contractor contracts, the Department shall comply with federal  
14 law and regulations and take all necessary steps to adapt its  
15 rules, policies, and procedures to remain eligible for federal  
16 aid.

17 Section 1-75. Powers. The powers granted to the Department  
18 under this Act shall be liberally construed to accomplish its  
19 purpose, are in addition to any existing powers of the  
20 Department, and shall not affect or impair any other powers  
21 authorized under applicable law. This includes powers to  
22 procure and enter into design-build contracts and construction  
23 manager/general contractor contracts under this Act.

1 Section 1-80. Rules. The Department may adopt rules to  
2 carry out the provisions of this Act.

3 Section 1-85. Repealer. This Act is repealed on the date  
4 that is 5 years after the effective date of this Act; provided  
5 that any design-build contracts and construction  
6 manager/general contractor contracts entered into before such  
7 date or any procurement of a transportation facility under this  
8 Act commenced before such date, and the contracts resulting  
9 from those procurements, shall remain effective.

10 ARTICLE 5. AMENDATORY PROVISIONS

11 Section 5-5. The Department of Transportation Law of the  
12 Civil Administrative Code of Illinois is amended by adding  
13 Section 2705-233 as follows:

14 (20 ILCS 2705/2705-233 new)

15 Sec. 2705-233. Design-build and construction  
16 manager/general contractor for transportation infrastructure.  
17 The Department may exercise all powers granted to it under the  
18 Design-Build and Construction Manager/General Contractor  
19 Transportation Infrastructure Act, including the power to  
20 enter into all contracts or agreements necessary or incidental  
21 to the performance of its powers under the Act, and powers

1 related to any transportation facility implemented pursuant to  
2 that Act.

3 Section 5-10. The Illinois Finance Authority Act is amended  
4 by adding Section 825-108 as follows:

5 (20 ILCS 3501/825-108 new)

6 Sec. 825-108. Transportation project financing. For the  
7 purpose of financing a transportation facility undertaken  
8 under the Design-Build and Construction Manager/General  
9 Contractor Transportation Infrastructure Act, the Authority is  
10 authorized to apply for an allocation of tax-exempt bond  
11 financing authorization provided by Section 142(m) of the  
12 United States Internal Revenue Code, as well as financing  
13 available under any other federal law or program.

14 Section 5-15. The Illinois Procurement Code is amended by  
15 changing Section 1-10 as follows:

16 (30 ILCS 500/1-10)

17 Sec. 1-10. Application.

18 (a) This Code applies only to procurements for which  
19 contractors were first solicited on or after July 1, 1998. This  
20 Code shall not be construed to affect or impair any contract,  
21 or any provision of a contract, entered into based on a  
22 solicitation prior to the implementation date of this Code as



1 described in Article 99, including but not limited to any  
2 covenant entered into with respect to any revenue bonds or  
3 similar instruments. All procurements for which contracts are  
4 solicited between the effective date of Articles 50 and 99 and  
5 July 1, 1998 shall be substantially in accordance with this  
6 Code and its intent.

7 (b) This Code shall apply regardless of the source of the  
8 funds with which the contracts are paid, including federal  
9 assistance moneys. This Code shall not apply to:

10 (1) Contracts between the State and its political  
11 subdivisions or other governments, or between State  
12 governmental bodies except as specifically provided in  
13 this Code.

14 (2) Grants, except for the filing requirements of  
15 Section 20-80.

16 (3) Purchase of care.

17 (4) Hiring of an individual as employee and not as an  
18 independent contractor, whether pursuant to an employment  
19 code or policy or by contract directly with that  
20 individual.

21 (5) Collective bargaining contracts.

22 (6) Purchase of real estate, except that notice of this  
23 type of contract with a value of more than \$25,000 must be  
24 published in the Procurement Bulletin within 7 days after  
25 the deed is recorded in the county of jurisdiction. The  
26 notice shall identify the real estate purchased, the names

1 of all parties to the contract, the value of the contract,  
2 and the effective date of the contract.

3 (7) Contracts necessary to prepare for anticipated  
4 litigation, enforcement actions, or investigations,  
5 provided that the chief legal counsel to the Governor shall  
6 give his or her prior approval when the procuring agency is  
7 one subject to the jurisdiction of the Governor, and  
8 provided that the chief legal counsel of any other  
9 procuring entity subject to this Code shall give his or her  
10 prior approval when the procuring entity is not one subject  
11 to the jurisdiction of the Governor.

12 (8) Contracts for services to Northern Illinois  
13 University by a person, acting as an independent  
14 contractor, who is qualified by education, experience, and  
15 technical ability and is selected by negotiation for the  
16 purpose of providing non-credit educational service  
17 activities or products by means of specialized programs  
18 offered by the university.

19 (9) Procurement expenditures by the Illinois  
20 Conservation Foundation when only private funds are used.

21 (10) Procurement expenditures by the Illinois Health  
22 Information Exchange Authority involving private funds  
23 from the Health Information Exchange Fund. "Private funds"  
24 means gifts, donations, and private grants.

25 (11) Public-private agreements entered into according  
26 to the procurement requirements of Section 20 of the

1 Public-Private Partnerships for Transportation Act and  
2 design-build agreements entered into according to the  
3 procurement requirements of Section 25 of the  
4 Public-Private Partnerships for Transportation Act.

5 (c) This Code does not apply to the electric power  
6 procurement process provided for under Section 1-75 of the  
7 Illinois Power Agency Act and Section 16-111.5 of the Public  
8 Utilities Act.

9 (d) Except for Section 20-160 and Article 50 of this Code,  
10 and as expressly required by Section 9.1 of the Illinois  
11 Lottery Law, the provisions of this Code do not apply to the  
12 procurement process provided for under Section 9.1 of the  
13 Illinois Lottery Law.

14 (e) This Code does not apply to the process used by the  
15 Capital Development Board to retain a person or entity to  
16 assist the Capital Development Board with its duties related to  
17 the determination of costs of a clean coal SNG brownfield  
18 facility, as defined by Section 1-10 of the Illinois Power  
19 Agency Act, as required in subsection (h-3) of Section 9-220 of  
20 the Public Utilities Act, including calculating the range of  
21 capital costs, the range of operating and maintenance costs, or  
22 the sequestration costs or monitoring the construction of clean  
23 coal SNG brownfield facility for the full duration of  
24 construction.

25 (f) This Code does not apply to the process used by the  
26 Illinois Power Agency to retain a mediator to mediate sourcing

1 agreement disputes between gas utilities and the clean coal SNG  
2 brownfield facility, as defined in Section 1-10 of the Illinois  
3 Power Agency Act, as required under subsection (h-1) of Section  
4 9-220 of the Public Utilities Act.

5 (g) This Code does not apply to the processes used by the  
6 Illinois Power Agency to retain a mediator to mediate contract  
7 disputes between gas utilities and the clean coal SNG facility  
8 and to retain an expert to assist in the review of contracts  
9 under subsection (h) of Section 9-220 of the Public Utilities  
10 Act. This Code does not apply to the process used by the  
11 Illinois Commerce Commission to retain an expert to assist in  
12 determining the actual incurred costs of the clean coal SNG  
13 facility and the reasonableness of those costs as required  
14 under subsection (h) of Section 9-220 of the Public Utilities  
15 Act.

16 (h) This Code does not apply to the process to procure or  
17 contracts entered into in accordance with Sections 11-5.2 and  
18 11-5.3 of the Illinois Public Aid Code.

19 (i) ~~(h)~~ Each chief procurement officer may access records  
20 necessary to review whether a contract, purchase, or other  
21 expenditure is or is not subject to the provisions of this  
22 Code, unless such records would be subject to attorney-client  
23 privilege.

24 (j) Except for Section 20-160 and Article 50 of this Code,  
25 the provisions of this Code do not apply to design-build  
26 contracts or construction manager/general contractor contracts

1 entered into according to the procurement requirements of the  
2 Design-Build and Construction Manager/General Contractor  
3 Transportation Infrastructure Act.

4 (Source: P.A. 96-840, eff. 12-23-09; 96-1331, eff. 7-27-10;  
5 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-502, eff. 8-23-11;  
6 97-689, eff. 6-14-12; 97-813, eff. 7-13-12; 97-895, eff.  
7 8-3-12; revised 8-23-12.)

8 Section 5-20. The Architectural, Engineering, and Land  
9 Surveying Qualifications Based Selection Act is amended by  
10 adding Section 85 as follows:

11 (30 ILCS 535/85 new)

12 Sec. 85. Design-Build and Construction Manager/General  
13 Contractor Contracts. This Act shall not apply to the  
14 procurement of or contracting for transportation facilities  
15 pursuant to design-build contracts or construction  
16 manager/general contractor contracts under the Design-Build  
17 and Construction Manager/General Contractor Transportation  
18 Infrastructure Act.

19 Section 5-25. The Employment of Illinois Workers on Public  
20 Works Act is amended by adding Section 2.8 as follows:

21 (30 ILCS 570/2.8 new)

22 Sec. 2.8. Design-build and construction manager/general

1 contractor contracts. This Act applies to any construction work  
2 undertaken pursuant to design-build contracts and construction  
3 manager/general contractor contracts entered into under the  
4 Design-Build and Construction Manager/General Contractor  
5 Transportation Infrastructure Act.

6 Section 5-26. The Business Enterprise for Minorities,  
7 Females, and Persons with Disabilities Act is amended by adding  
8 Section 2.8 as follows:

9 (30 ILCS 575/2.8 new)

10 Sec. 2.8. Design-build and construction manager/general  
11 contractor contracts. This Act applies to any design-build  
12 contracts and construction manager/general contractor  
13 contracts entered into under the Design-Build and Construction  
14 Manager/General Contractor Transportation Infrastructure Act.

15 Section 5-27. The Eminent Domain Act is amended by adding  
16 Section 15-5-47 as follows:

17 (735 ILCS 30/15-5-47 new)

18 Sec. 15-5-47. Eminent domain powers in new Acts. The  
19 following provisions of law may include express grants of the  
20 power to acquire property by condemnation or eminent domain:

21 The Design-Build and Construction Manager/General Contractor

1       Transportation Infrastructure Act; Department of  
2       Transportation; for the purposes of constructing a  
3       transportation facility under the Act and to serve the  
4       public purpose of the Act.

5       Section 5-30. The Prevailing Wage Act is amended by  
6       changing Section 2 as follows:

7       (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

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

14      As used in this Act, unless the context indicates  
15      otherwise:

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

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



1 designated as a High Impact Business under Section 5.5(a)(3)(E)  
2 of the Illinois Enterprise Zone Act. "Public works" does not  
3 include work done directly by any public utility company,  
4 whether or not done under public supervision or direction, or  
5 paid for wholly or in part out of public funds. "Public works"  
6 does not include projects undertaken by the owner at an  
7 owner-occupied single-family residence or at an owner-occupied  
8 unit of a multi-family residence.

9 "Construction" means all work on public works involving  
10 laborers, workers or mechanics. This includes any maintenance,  
11 repair, assembly, or disassembly work performed on equipment  
12 whether owned, leased, or rented.

13 "Locality" means the county where the physical work upon  
14 public works is performed, except (1) that if there is not  
15 available in the county a sufficient number of competent  
16 skilled laborers, workers and mechanics to construct the public  
17 works efficiently and properly, "locality" includes any other  
18 county nearest the one in which the work or construction is to  
19 be performed and from which such persons may be obtained in  
20 sufficient numbers to perform the work and (2) that, with  
21 respect to contracts for highway work with the Department of  
22 Transportation of this State, "locality" may at the discretion  
23 of the Secretary of the Department of Transportation be  
24 construed to include two or more adjacent counties from which  
25 workers may be accessible for work on such construction.

26 "Public body" means the State or any officer, board or

1 commission of the State or any political subdivision or  
2 department thereof, or any institution supported in whole or in  
3 part by public funds, and includes every county, city, town,  
4 village, township, school district, irrigation, utility,  
5 reclamation improvement or other district and every other  
6 political subdivision, district or municipality of the state  
7 whether such political subdivision, municipality or district  
8 operates under a special charter or not.

9 The terms "general prevailing rate of hourly wages",  
10 "general prevailing rate of wages" or "prevailing rate of  
11 wages" when used in this Act mean the hourly cash wages plus  
12 fringe benefits for training and apprenticeship programs  
13 approved by the U.S. Department of Labor, Bureau of  
14 Apprenticeship and Training, health and welfare, insurance,  
15 vacations and pensions paid generally, in the locality in which  
16 the work is being performed, to employees engaged in work of a  
17 similar character on public works.

18 (Source: P.A. 96-28, eff. 7-1-09; 96-58, eff. 1-1-10; 96-186,  
19 eff. 1-1-10; 96-913, eff. 6-9-10; 96-1000, eff. 7-2-10; 97-502,  
20 eff. 8-23-11.)

21 ARTICLE 99. EFFECTIVE DATE AND SEVERABILITY

22 Section 99-97. Severability. The provisions of this Act are  
23 severable under Section 1.31 of the Statute on Statutes.

24 Section 99-99. Effective date. This Act takes effect upon

1 becoming law.