



Sen. John F. Curran

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1 AMENDMENT TO SENATE BILL 1900

2 AMENDMENT NO. _____. Amend Senate Bill 1900 by replacing
3 everything after the enacting clause with the following:

4 "Article 1. Purpose; Authority

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

7 Section 1-5. Legislative findings and declarations.

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

12 (b) It is hereby found and declared that there are
13 inadequate public resources to develop, modernize, refurbish
14 and maintain Illinois public infrastructure and services in a
15 timely and cost-effective manner, and that such need is

1 impeded by existing methods of procurement and funding.

2 (c) It is hereby found and declared that authorizing
3 private entities to do all or part of the development,
4 planning, design, construction, maintenance, repair,
5 rehabilitation, expansion, financing, and operation of one or
6 more facilities, and provide services, can result in the
7 availability of facilities and services to the public in a
8 more timely, more efficient, or less costly fashion, thereby
9 serving the public safety and welfare. When properly planned
10 and structured, public-private partnerships and unsolicited
11 proposals can help meet such needs by improving the schedule
12 for delivery, lowering cost, and providing additional funding.
13 Obtaining private sector financing using a P3 model leverages
14 resources to meet the demand for new infrastructure and
15 services in the State of Illinois. Pension funds, private
16 investors, developers, contractors and other private entities
17 through a public-private partnership can use long-term
18 financing to invest in public infrastructure and services and
19 further use their private expertise in construction,
20 design-build, management and oversight, project life-cycle
21 planning and other areas of expertise not employed by public
22 entities. Private capital invested in infrastructure and
23 service investments have the potential to generate stable
24 long-term returns while ensuring public infrastructure and
25 services are progressively maintained to benefit Illinois
26 residents. Pension funds and insurance companies seek

1 investments to match their long-term liabilities.

2 (d) It is hereby found and declared that citizens have a
3 right to transparency and public accountability, including
4 dissemination of information about the public benefits of P3
5 projects, and open, equitable, transparent, proactive and
6 effective communications with the public achieved through
7 consistent communication activities that recognize the
8 respective contributions of the responsible public entity and
9 the partnering private entity.

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

13 (1) transparency, oversight, and public information
14 sharing;

15 (2) compliance with all State of Illinois and federal
16 environmental laws;

17 (3) fairness for local jurisdictions when negotiating
18 the public-private agreements;

19 (4) public-sector access to new revenue sources;

20 (5) new service delivery capacity;

21 (6) optimal sharing of risk based upon P3 best
22 practice, industry feedback, relevant project precedents
23 and prevailing market conditions;

24 (7) cost and schedule certainty; and

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

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

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

8 (a) authorize responsible public entities to develop and
9 enter into public-private partnership agreements for
10 qualifying projects which result in the availability of such
11 projects to the public in a timely and less costly fashion,
12 thereby serving the public safety, benefit, and welfare;

13 (b) permit responsible public entities to receive and
14 consider unsolicited proposals from private sector parties in
15 a manner that eliminates the perception of bias; ensures
16 transparency, fairness, and best value for the responsible
17 public entity; and brings innovative concepts and ideas to
18 benefit responsible public entities;

19 (c) grant public and private entities the greatest
20 possible flexibility in contracting with each other for the
21 provision of infrastructure and public services;

22 (d) encourage investment in the State of Illinois by
23 private entities that facilitates services and the
24 development, planning, design, construction, maintenance,

1 repair, rehabilitation, expansion, financing, and operation of
2 facilities;

3 (e) establish an Infrastructure Investment Commission that
4 focuses on supporting and promoting P3 procurement models and
5 unsolicited proposals that result in the construction, renewal
6 or material enhancement of public services and infrastructure;

7 (f) provide responsible public entities with:

8 (i) best-in-class project tools, expertise, and
9 resources to develop predictable procedures for developing
10 P3 projects and unsolicited proposals; and

11 (ii) a process to submit unsolicited proposals to
12 responsible public entities that protects their
13 proprietary trade information;

14 (g) provide responsible public entities and private
15 entities with:

16 (i) clarity on the intake process, evaluation, and
17 procedural aspects of unsolicited proposals; and

18 (ii) a process that is short and stable resulting in a
19 competitive market and lower costs;

20 (h) develop a steady flow of P3 projects to benefit both
21 private entities and responsible public entities;

22 (i) establish transparency and accountability guidelines
23 for P3 projects and unsolicited proposals;

24 (j) support the use of Illinois design professionals,
25 construction companies, and workers to the greatest extent
26 possible by offering the right to compete for work;

1 (k) ensure open, equitable, transparent, proactive and
2 effective communication with the public;

3 (l) improve upon project development due diligence
4 practices;

5 (m) support the use of local, minority, women business
6 enterprises and economically disadvantaged firms to the
7 greatest extent possible;

8 (n) create jobs and provide training for those jobs for
9 minorities, women, and veterans to the greatest extent
10 possible;

11 (o) facilitate and encourage the use of pension funds to
12 develop qualifying projects;

13 (p) leverage private sector expertise and capital in
14 support of efficient, innovative and timely P3 investments;

15 (q) serve as a catalyst for the development of
16 public-private Partnerships and unsolicited proposals in the
17 State of Illinois;

18 (r) authorize public-private agreements that optimally
19 distribute the risk between the private and public-sector
20 partners; and

21 (s) support economic growth, clean air and water, a
22 healthy environment and stronger communities.

23 Section 1-20. Construction; authority.

24 (a) The powers conferred by this Act shall be liberally
25 construed to accomplish their purposes and are in addition and

1 supplemental to the powers conferred by any other law. If any
2 other law or rule is inconsistent with this Act, this Act is
3 controlling as to any public-private agreement and financing
4 of any project subject to a public-private agreement entered
5 into under this Act.

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

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

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

1 governmental entities in carrying out qualifying projects
2 under this Act.

3 (e) A unit of local government may not take any action that
4 would have the effect of impairing a public-private agreement
5 under this Act, except that this Section shall not diminish
6 any existing police power or other power provided by law to a
7 unit of local government.

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

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

18 "Affected jurisdiction" means the following:

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

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

25 "Authority" means the Illinois State Toll Highway

1 Authority.

2 "Commercially Confidential Meetings" means bilateral
3 meetings prior to the execution of a project agreement between
4 the responsible public entity and private sector entities,
5 along with their respective advisors, to discuss matters such
6 as the project agreement and proponent's suggested amendments
7 to the project agreement, project design matters, and
8 innovation submissions.

9 "Contractor" means a private entity that has entered into
10 a public-private agreement with the responsible public entity
11 to provide services to or on behalf of the responsible public
12 entity.

13 "Department" means the Illinois Department of
14 Transportation.

15 "Design-build agreement" means the agreement between the
16 selected private entity and the responsible public entity
17 under which the selected private entity agrees to furnish
18 design, construction, and related services for a facility
19 under this Act.

20 "Develop" or "development" means to do one or more of the
21 following: plan, design, develop, lease, acquire, install,
22 construct, reconstruct, rehabilitate, extend, or expand, or
23 provide any other service.

24 "Employees employed in classifications within the craft
25 jurisdiction" means all maintenance employees, including, but
26 not limited to, stationary engineers, building engineers,

1 maintenance engineers, maintenance technicians, maintenance
2 mechanics, mechanics, operating engineers, operators, domestic
3 water operators, wastewater operators, water treatment
4 technicians, and other related jobs.

5 "Facility" means:

6 (1) a facility or project that serves a public
7 purpose, including, but not limited to, any new or
8 existing local, county or State road, highway, toll
9 highway, bridge, tunnel, intermodal facility; intercity or
10 high-speed passenger rail; rail project or facility; ferry
11 or mass transit facility; vehicle parking facility;
12 regional or local airport; seaport or waterway facility;
13 intelligent-transport system infrastructure or other
14 transportation technology project such as transit priority
15 signaling, fare collection, etc.; or other transportation
16 facility or infrastructure; any administrative facility
17 broadband-related project or facility; correctional
18 institution or facility; disaster mitigation facility;
19 green-energy related project or facility; energy-related
20 project or facility; fuel supply facility, oil or gas
21 pipeline; medical or nursing care facility; recreational
22 facility; tourism facility; solid waste management
23 facility or energy-from-waste facility; sporting or
24 cultural facility; or educational facility or other
25 building or facility that is used or will be used by a
26 public educational institution, or any other public

1 facility or infrastructure or service that is used or will
2 be used by the public at large or in support of an accepted
3 public purpose or activity;

4 (2) an improvement, including on equipment, of a
5 structure that will be principally used by a public entity
6 or the public at large or that supports a service delivery
7 system in the public sector; or

8 (3) a sanitation, water, potable water, underground
9 water, wastewater, or surface water facility or other
10 related infrastructure; or infrastructure in support of an
11 accepted public purpose or activity.

12 "Labor Peace Agreement" means an agreement between a
13 licensee and any bona fide labor organization recognized under
14 the National Labor Relations Act as a bona fide labor
15 organization that, at a minimum, protects the State's
16 proprietary interests by prohibiting labor organizations and
17 members from engaging in picketing, work stoppages, boycotts,
18 and any other economic interference with the applicant's
19 business. This agreement means that the applicant has agreed
20 not to disrupt efforts by the bona fide labor organization to
21 communicate with, and attempt to organize and represent, the
22 applicant's employees. The agreement shall provide a bona fide
23 labor organization access at reasonable times to areas in
24 which the applicant's employees work, for the purpose of
25 meeting with employees to discuss their right to
26 representation, employment rights under State law, and terms

1 and conditions of employment. This type of agreement shall not
2 mandate a particular method of election or certification of
3 the bona fide labor organization.

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

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

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

21 "Project Development Fund" means a fund to assist
22 responsible public entities with public-private partnership
23 projects and unsolicited proposals.

24 "Project Labor Agreement" means a pre-hire collective
25 bargaining agreement with one or more labor organizations that
26 establishes the terms and conditions of employment for a

1 specific project.

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

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

13 "Public-private agreement" means the agreement between the
14 private contractor and the responsible public entity relating
15 to the development, financing, or operation of a qualifying
16 project.

17 "Public-private partnership" or "P3" means
18 performance-based contractual relationships between one or
19 more private entities and one or more responsible public
20 entities related to one or more qualifying projects.

21 "Qualifying project" or "Project" means one or more
22 services or projects serving a public purpose that is owned,
23 financed, controlled, or operated by a private entity in whole
24 or in part.

25 "Request for information" means all materials and
26 documents prepared by or on behalf of a responsible public

1 entity to solicit information from private entities with
2 respect to qualifying projects.

3 "Request for proposals" means all materials and documents
4 prepared by or on behalf of a responsible public entity to
5 solicit proposals from private entities to enter into a
6 public-private agreement.

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

11 "Responsible public entity" means a county, municipality,
12 school district, special district, or any other political
13 subdivision of the State or unit of local government; a public
14 body corporate and politic; or a regional entity that serves a
15 public purpose and is authorized to develop or operate a
16 qualifying project. "Responsible public entity" does not
17 include economic development or tourism partnerships,
18 councils, commissions or entities.

19 "Revenues" means all revenues, including any combination
20 of income; earnings and interest; user fees; lease payments;
21 allocations; federal, State, and local appropriations, grants,
22 loans, lines of credit, and credit guarantees; bond proceeds;
23 equity investments; service payments; or other receipts,
24 arising out of or in connection with a qualifying project,
25 including the development, financing, and operation of a
26 qualifying project. The term includes money received as

1 grants, loans, lines of credit, credit guarantees, rebates or
2 other forms of aid for a qualifying project from the federal
3 government, the State, a unit of local government, or any
4 agency or instrumentality of the federal government, the
5 State, or a unit of local government.

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

9 "Shortlist" means the process by which a responsible
10 public entity reviews, evaluates, and ranks statements of
11 qualifications submitted in response to a request for
12 qualifications and then identifies the proposers who are
13 eligible to submit a detailed proposal in response to a
14 request for proposals. The identified proposers constitute the
15 shortlist for the qualifying project to which the request for
16 proposals relates.

17 "Unit of local government" has the meaning ascribed to
18 that term in Section 1 of Article VII of the Constitution of
19 the State of Illinois and also means any unit designated as a
20 municipal corporation, or school district.

21 "Unsolicited Proposal" means a written proposal that is
22 submitted to one or more responsible public entities on the
23 initiative of the private sector entity or entities for the
24 purpose of developing a partnership, and that is not in
25 response to a formal or informal request issued by the
26 responsible public entity or entities.

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

4 Article 2. Infrastructure Investment Commission

5 Section 2-1. Establishment. The Governor shall establish
6 the Infrastructure Investment Commission, which shall report
7 to and be funded by the Illinois Finance Authority and shall be
8 independent of other agencies and departments of the State.

9 Section 2-5. Duties of the Commission. The Commission
10 shall:

11 (a) assist responsible public entities with identifying
12 projects, including opportunities for project aggregation, for
13 which a public-private partnership may be appropriate;

14 (b) provide technical assistance and expertise to
15 responsible public entities on using public-private
16 partnerships to develop or operate qualifying projects,
17 including providing assistance with analyzing benefits and
18 costs and information on available innovative financing
19 options;

20 (c) supply template contracts;

21 (d) track proposed, ongoing, and completed private-public
22 partnerships;

23 (e) provide technical assistance in applying for federal

1 funding grants and financing (e.g., Transportation
2 Infrastructure Finance and Innovation Act (TIFIA), TIFIA Lite,
3 TIFIA Rural Project Initiative, Regional Infrastructure
4 Accelerators, Capital Investment Grant, etc.)

5 (f) identify methods of encouraging competition for the
6 development or operation of qualifying projects;

7 (g) serve as a liaison to State or federal government
8 officials charged with promoting public-private infrastructure
9 partnerships, State executive directors of other
10 infrastructure investment commissions and regional or
11 metropolitan public-private partnership offices;

12 (h) conduct public and stakeholder engagement and
13 outreach, including efforts to encourage transparency and
14 information sharing regarding public-private partnerships;

15 (i) issue regular updates on the future pipeline of P3
16 projects;

17 (j) promote best practices, including standardized
18 methodologies and processes;

19 (k) attract private investment to the State;

20 (l) develop a project development fund to:

21 (1) assist responsible public entities with assessing
22 the usefulness of the P3 model and unsolicited proposals
23 for capital procurement and service needs for specific
24 projects;

25 (2) assist responsible public entities with managing a
26 P3 procurement project or unsolicited proposal;

1 (3) assist responsible public entities that are not
2 experienced with P3 procurement or unsolicited proposals;

3 (4) assist responsible public entities that are
4 undertaking new approaches or documenting P3 and
5 unsolicited proposal practices in a way that will assist
6 the Infrastructure Investment Commission and other
7 responsible public entities in future projects;

8 (5) assist with training costs for key staff of a
9 responsible public entity which is integral to the
10 successful development and implementation of a project;

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

17 (7) assist with the engagement of external and
18 accredited P3 advisors and analysts; and

19 (m) approve all expenditures from the project development
20 fund.

21 Section 2-10. Governance of the Commission.

22 (a) The Commission shall be headed by a Chairman and a
23 6-member board of directors.

24 (b) The board is responsible for the overall governance of
25 the Commission and shall adopt a 5-year corporate plan and

1 annual report. The board shall meet at least quarterly to
2 review the Commission's overall operation, receive committee
3 reports, discuss the Investment Infrastructure Commission's
4 performance and approve expenditures. The board shall review
5 the performance of the Executive Director annually.

6 (c) The Board of Directors shall establish committees to
7 support the board as needed, including:

8 (1) an audit committee to oversee the Commission's
9 standards of integrity and behavior; the Commission's
10 reporting of financial information and expenditures of the
11 Project Development Fund; and the Commission's internal
12 control systems, including the Commission's compliance
13 with all applicable legal and regulatory requirements; to
14 review the qualifications, independence and performance of
15 the Commission's external auditors; and to oversee the
16 Commission's enterprise risk management plan; and

17 (2) a budget committee, which shall develop an annual
18 revenue and expenditure plan, submit the plan to the IFA
19 for approval and funding, and monitor revenues and
20 expenditures during the course of the budget cycle.

21 Section 2-15. Board Appointments.

22 (a) The membership of the Commission established pursuant
23 to this Article shall be appointed in accordance with the
24 following:

25 (1) Seven members shall be appointed by the Governor

1 with the advice and consent of the Senate having
2 expertise, knowledge, or experience in infrastructure
3 development or operation, capital market and finance,
4 public-sector planning, or P3 procurement. No more than 4
5 members of any one political party may serve as members of
6 the Commission at the same time.

7 (2) Members of the Commission shall represent to a
8 reasonable extent geographically diverse regions of the
9 State as well as diversity in race, ethnicity, and gender.

10 (3) Vacancies shall be filled for the unexpired term
11 in the same manner as original appointments. All
12 appointments shall be in writing and filed with the
13 Secretary of State as a public record.

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

20 (c) Of the original members, other than the chairperson, 3
21 shall hold office for 2 years and 3 shall hold office for 4
22 years from the date of appointment and until each respective
23 successor is duly appointed and qualified but shall be subject
24 to removal by the Executive Director of the Illinois Finance
25 Authority for incompetency, neglect of duty, or malfeasance.

26 In the case of vacancies in such offices during the recess of

1 the Senate, the Governor shall make a temporary appointment
2 until the next meeting of the Senate when the Governor shall
3 nominate a person to fill such office, and any person so
4 nominated, who is confirmed by the Senate, shall hold office
5 during the remainder of the term and until a successor shall be
6 appointed and qualified. The respective term of the first
7 members appointed shall be designated by the Governor at the
8 time of appointment, but their successors shall each be
9 appointed for a term of 4 years, except that any person
10 appointed to fill a vacancy shall serve only for the unexpired
11 term. Members shall be eligible for reappointment. Members
12 shall serve until their respective successors are duly
13 appointed and qualified.

14 (d) Each such member shall receive an annual salary of
15 \$10,000, or as set by the Compensation Review Board, whichever
16 is greater, payable in monthly installments, and shall be
17 reimbursed for necessary expenses incurred in the performance
18 of duties under this Act.

19 Section 2-20. Duties of the Chairperson of the Commission.
20 The chairperson shall preside at all meetings of the
21 Commission; shall exercise general supervision over all
22 powers, duties, obligations and functions of the Commission;
23 and shall approve or disapprove all resolutions, bylaws,
24 rules, rates, and regulations made and established by the
25 Commission, and if the chairperson approves, the chairperson

1 shall sign the same, and such as the chairperson shall not
2 approve, the chairperson shall return to the Commission with
3 objections thereto in writing at the next regular meeting of
4 the Commission occurring after the passage thereof. Such veto
5 may extend to any one or more items contained in such
6 resolution, bylaw, rule, rate, or regulation, or to its
7 entirety; and in case the veto extends to a part of such
8 resolution, bylaw, rule, rate, or regulation, the residue
9 thereof shall take effect and be in force, but in case the
10 chairperson shall fail to return any resolution, bylaw, rule,
11 rate, or regulation with objections thereto by the time
12 aforesaid, the chairperson shall be deemed to have approved
13 the same, and the same shall take effect accordingly. Upon the
14 return of any resolution, bylaw, rule, rate, or regulation by
15 the chairperson, the vote by which the same was passed shall be
16 reconsidered by the Commission, and if upon such
17 reconsideration two-thirds of all the members agree by yeas
18 and nays to pass the same, it shall go into effect
19 notwithstanding the chairperson's refusal to approve thereof.
20 The process of approving or disapproving all resolutions,
21 bylaws, rules, rates, and regulations, as well as the ability
22 of the members to override the disapproval of the chairperson,
23 under this Section shall be set forth in the Commission's
24 bylaws. Nothing in the Commission's bylaws, rules, or
25 regulations may be contrary to this Section.

1 Section 2-25. Duties of the Executive Director of the
2 Commission.

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

5 (b) The Executive Director shall have demonstrated
6 knowledge, training, or experience in 2 or more of the
7 following areas:

8 (1) infrastructure development or operation;

9 (2) capital markets and finance, including municipal
10 finance;

11 (3) public-sector planning; or

12 (4) P3 procurement.

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

18 (1) lists those public-private partnerships that:

19 (i) are expected to solicit bids within the next
20 fiscal year;

21 (ii) are in progress;

22 (iii) were completed during the prior fiscal year;

23 or

24 (iv) were removed from consideration during the
25 prior fiscal year; and

26 (2) summarizes actions taken by the Commission to

1 fulfill its duties pursuant to Section 2-5 of this
2 Article.

3 (d) The Executive Director shall be responsible to the
4 Commission for the proper administration of the affairs of the
5 Commission and policies adopted by the chairperson and members
6 of the Commission.

7 (e) All employees, as are necessary to the proper
8 functioning of the Commission, shall be appointed by and
9 report to the Executive Director with the consent of the
10 Commission.

11 (f) The Executive Director shall hold office for 4 years
12 from the date of appointment but shall be subject to removal by
13 the Commission for incompetency, neglect of duty or
14 malfeasance.

15 (g) The Executive Director shall receive a salary of
16 \$15,000 per annum, or as set by a Compensation Review Board,
17 whichever is greater, payable in monthly installments,
18 together with reimbursement for necessary expenses incurred in
19 the performance of the duties of the Executive Director. The
20 Executive Director shall be eligible for reappointment.

21 Section 2-30. Compliance with State records laws. The
22 Commission shall adhere to the Freedom of Information Act and
23 the State Records Act.

24 Article 3. Qualification and Process

1 Section 3-1. Unsolicited proposals.

2 (a) A responsible public entity may receive unsolicited
3 proposals for a project and may thereafter enter into a
4 public-private agreement with a private entity, or a
5 consortium of private entities, for the building, upgrading,
6 providing of services, operating, ownership, or financing of
7 facilities.

8 (b) A responsible public entity may consider, evaluate and
9 accept an unsolicited proposal for a public-private
10 partnership project from a private entity if the proposal: (i)
11 is independently developed and drafted by the proposer without
12 responsible public entity supervision; (ii) shows that the
13 proposed project could benefit the people served by the
14 responsible public entity; (iii) includes a financing plan to
15 allow the project to move forward pursuant to the applicable
16 responsible public entity's budget and finance requirements;
17 and (iv) includes sufficient detail and information for the
18 responsible entity to evaluate the proposal in an objective
19 and timely manner and permit a determination of project
20 feasibility and cost-effectiveness.

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

22 (1) an executive summary covering the major elements
23 of the proposal;

24 (2) a summary of qualifications concerning the
25 experience, expertise, technical competence and

1 qualifications of the private entity, and of each member
2 of its management team and other key employees,
3 consultants and subcontractors, including the name,
4 address and professional designation;

5 (3) a facilities project description, including, where
6 applicable:

7 (A) the limits, scope, and location of the
8 proposed project;

9 (B) right-of-way requirements;

10 (C) connections with other facilities and
11 improvements to those facilities necessary if the
12 project is developed;

13 (D) a conceptual project design;

14 (E) a statement of the project's relationship and
15 impact upon relevant existing plans of the responsible
16 public entity;

17 (4) a facilities project schedule, including where
18 applicable, estimates of:

19 (A) dates of contract award;

20 (B) start of construction;

21 (C) completion of construction;

22 (D) start of operations; and

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

25 (5) an operating plan describing the operation of a
26 completed facility, if operation of a facility is part of

1 the proposal, describing the management structure and
2 approach, the proposed period of operations, enforcement,
3 emergency response and other relevant information;

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

8 (7) the legal basis for the project, including
9 verification that a private entity has the licenses and
10 certificates necessary to complete the project.

11 (d) Within 120 days after receiving an unsolicited
12 proposal, the responsible public entity shall complete a
13 preliminary evaluation of the unsolicited proposal and shall
14 either:

15 (1) if the preliminary evaluation is unfavorable,
16 return the proposal without further action; or

17 (2) if the preliminary evaluation is favorable, notify
18 the proposer that the responsible public entity will
19 further evaluate the proposal; or

20 (3) request amendments, clarification or modification
21 of the unsolicited proposal.

22 (e) (1) If the responsible public entity chooses to further
23 evaluate an unsolicited proposal with the intent to enter into
24 a public-private agreement for the proposed project, the
25 responsible public entity shall publish notice in a newspaper
26 of general circulation covering the location of the project at

1 least once a week for 2 weeks stating that the responsible
2 public entity has received a proposal and will accept other
3 proposals for the same project. The timeframe within which the
4 responsible public entity may accept other proposals shall be
5 determined by the responsible public entity on a
6 project-by-project basis based upon the complexity of the
7 qualifying project and the public benefit to be gained by
8 allowing a longer or shorter period of time within which other
9 proposals may be received; however, the timeframe for allowing
10 other proposals must be at least 21 days, but no more than 120
11 days, after the initial date of publication.

12 (2) A copy of the notice must be mailed to each local
13 government in the affected jurisdiction. The responsible
14 public entity shall provide reasonably sufficient information
15 and the identity of its contact person to enable other private
16 entities to make proposals.

17 (3) If after no less than 120 days, no counter-proposal is
18 received, or if a counter-proposal is evaluated and found to
19 be equal to or inferior to the original unsolicited proposal,
20 the responsible public entity may proceed to negotiate a
21 contract with the original proposer.

22 (4) If after no less than 120 days one or more
23 counter-proposals meeting unsolicited proposal standards are
24 received, and if, in the opinion of the responsible public
25 entity, the counter-proposal is evaluated and found to be
26 superior to the original unsolicited proposal, the responsible

1 public entity shall proceed to determine the successful
2 participant through a final procurement phase known as "Best
3 and Final Offer" (BAFO). The responsible public entity shall
4 invite the original private sector party and the proponent
5 submitting the superior counter-proposal to engage in a BAFO
6 phase. The invitation to participate in the BAFO phase will
7 provide to each participating proposer:

8 (i) the general concepts that were considered superior
9 to the original proposal, while keeping proprietary
10 information contained in the proposals confidential to the
11 extent possible; and

12 (ii) the pre-established evaluation criteria or the
13 "basis of award" to be used to determine the successful
14 proponent.

15 (5) Offers received in response to the BAFO invitation
16 will be reviewed by the responsible public entity and scored
17 in accordance with a pre-established criterion, or
18 alternatively, in accordance with the "basis of award"
19 provision identified through the BAFO process.

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

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

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

3 (2) the proposal is duplicative of existing
4 infrastructure project or services;

5 (3) the alternative proposal closely resembles a
6 pending competitive proposal for a public-private
7 partnership or other procurement;

8 (4) the proposal demonstrates a unique method,
9 approach, or concept;

10 (5) the facts and circumstances preclude or warrant
11 additional competition;

12 (6) the State has available any funds, debts, or
13 assets to contribute to the project;

14 (7) whether the facts and circumstances demonstrate
15 that the project will likely have a significant adverse
16 impact on State bond ratings; and

17 (8) whether indemnifications included in the proposal
18 are acceptable.

19 Section 3-5. Competitive public-private partnership
20 procurements.

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

23 (b) After the public notification period has expired, the
24 responsible public entity shall rank the proposals received in
25 terms of "best value". In ranking the proposals, the

1 responsible public entity may consider factors that include,
2 but are not limited to, public benefit; minority, women and
3 veteran participation; professional qualifications; general
4 business terms; innovative design techniques or cost-reduction
5 terms; and finance plans. The responsible public entity may
6 then begin negotiations for a public-private agreement with
7 the highest-ranked firm. If the responsible public entity is
8 not satisfied with the results of the negotiations, the
9 responsible public entity may terminate negotiations with the
10 proposer and negotiate with the second-ranked or
11 subsequent-ranked firms, in the order consistent with this
12 procedure. If only one proposal is received, the responsible
13 public entity may negotiate in good faith, and if the
14 responsible public entity is not satisfied with the results of
15 the negotiations, the responsible public entity may terminate
16 negotiations with the proposer.

17 Section 3-10. Additional rights of responsible public
18 entity. In addition to any other rights under this Act, in
19 connection with any procurement under this Article, the
20 responsible public entity may:

21 (a) withdraw a request for information, a request for
22 qualifications, or a request for proposals at any time and, in
23 its discretion, publish a new request for qualifications or
24 request for proposals;

25 (b) decline to approve a proposal;

1 (c) decline to award a public-private agreement;

2 (d) request clarifications to any statement of
3 information, qualifications, or proposal received, seek one or
4 more revised proposals or one or more best and final offers, or
5 conduct negotiations with one or more private entities that
6 have submitted proposals;

7 (e) modify the terms, provisions, and conditions of a
8 request for qualification, request for proposals, technical
9 specifications, or form of public-private agreement during the
10 pendency of a procurement;

11 (f) interview proposers; and

12 (g) exercise any other rights available to the responsible
13 public entity under this Act, applicable law, and
14 administrative rule.

15 Section 3-15. Confidentiality of P3 proposals; disclosure.

16 (a) Except as provided in paragraph (2) of subsection (e)
17 of Section 3-1, the responsible public entity may not disclose
18 the contents of proposals during discussions or negotiations
19 with potential proposers.

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

1 (c) Notwithstanding subsections (a) and (b), and with the
2 exception of portions that are confidential under the Freedom
3 of Information Act, the terms of the selected offer negotiated
4 under this Act shall be available for inspection and copying
5 under the Freedom of Information Act after negotiations with
6 the proposers have been completed.

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

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

15 (1) the request for proposal process is withdrawn
16 under Section 3-10; or

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

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

1 discretionary with the parties. An interim agreement may:

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

10 (2) establish the process and timing of the
11 negotiation of the public-private agreement.

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

16 Section 3-25. Payment of stipulated amount for work
17 product of unsuccessful proposer; rights; liability. The
18 responsible public entity may pay a stipulated amount to an
19 unsuccessful proposer that submits a responsive proposal in
20 response to a proposal under this Article, in exchange for the
21 work product contained in that proposal. Upon payment of the
22 stipulated amount, and unless agreed otherwise by the parties:

23 (1) the responsible public entity and the unsuccessful
24 proposer jointly own the rights to, and may make use of,
25 any work product contained in the proposal, including the

1 technologies, techniques, methods, processes, ideas, and
2 information contained in the proposal, project design, and
3 project financial plan; and

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

8 Section 3-30. Project awards.

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

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

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

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

23 (3) the private entity's plans will result in the
24 timely acquisition, design, construction, improvement,
25 renovation, expansion, equipping, maintenance, or

1 operation of the qualifying project;

2 (4) the proposed project or service is in the public's
3 best interest.

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

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

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

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

20 (g) Before signing a public-private agreement, the
21 responsible public entity must consider a reasonable funding,
22 financing and affordability plan considering the project cost;
23 revenues by source; available financing; major assumptions;
24 internal rate of return on private investments, if
25 governmental funds are assumed to deliver a cost-feasible
26 project; and a total cash-flow analysis beginning with the

1 implementation of the project and extending for the term of
2 the public-private agreement except no longer than the life of
3 the project or 75 years, whichever is earlier.

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

11 (i) Each facility project awarded by a responsible public
12 entity shall:

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

22 (2) Ensure the performance and payment of
23 subcontractors.

24 (3) Ensure that the public-private agreement addresses
25 termination upon a material default of the public-private
26 agreement.

1 (4) Pay wages pursuant to prevailing wage standards.

2 Article 4. Formation of Agreement

3 Section 4-1. Exercise of powers.

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

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

18 Section 4-5. Powers of contractor; user fees. A contractor
19 has:

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

23 (b) the power to develop, own, control, finance, and

1 operate the qualifying project, and to impose and collect user
2 fees, subject to the terms of the public-private agreement. No
3 tolls or user fees may be imposed by the contractor except as
4 set forth in a public-private agreement.

5 Section 4-10. Powers of contractor; property interests.
6 The contractor may own, lease, or acquire any property
7 interest or other right to develop, finance, or operate the
8 qualifying project, provided the qualifying project retains a
9 public purpose.

10 Section 4-15. Powers of contractor; user classifications
11 and enforcement of rules. In operating the qualifying project,
12 the contractor may do the following:

13 (a) make user classifications as permitted in the
14 public-private agreement.

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

20 Article 5. Public-Private Agreements

21 Section 5-1. Provisions of agreement.

22 (a) Before beginning the development, financing,

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

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

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

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

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

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

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

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

4 (5) Maintenance of (i) one or more policies of public
5 liability insurance, copies of which shall be filed with
6 the responsible public entity accompanied by proofs of
7 coverage or (ii) self-insurance, each of which shall be in
8 the form and amount as set forth by the public-private
9 agreement or otherwise satisfactory to the responsible
10 public entity as reasonably sufficient to insure coverage
11 of tort liability to the public and employees and to
12 enable the continued operation of the qualifying project.

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

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

24 (8) Filing of appropriate financial statements and
25 reports as set forth in the public-private agreement or as
26 otherwise in a form acceptable to the responsible public

1 entity on a periodic basis.

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

5 (i) a base fee and additional fee for project
6 savings as the design-builder of a construction
7 project;

8 (ii) a development fee, payable on a lump sum
9 basis, progress payment basis, project milestone
10 basis, time and materials basis, or any other basis
11 considered appropriate by the responsible public
12 entity;

13 (iii) an operations fee, payable on a lump sum
14 basis, time and material basis, periodic basis, or any
15 other basis considered appropriate by the responsible
16 public entity;

17 (iv) some or all of the revenues, if any, arising
18 out of operation of the qualifying project;

19 (v) a maximum rate of return on investment or
20 return on equity or a combination of the 2;

21 (vi) in-kind services, materials, property,
22 equipment, or other items;

23 (vii) compensation in the event of any
24 termination;

25 (viii) availability payments or similar
26 arrangements whereby payments are made to the

1 contractor pursuant to the terms set forth in the
2 public-private agreements or related agreements;

3 (ix) other compensation set forth in the
4 public-private agreement or otherwise considered
5 appropriate by the responsible public entity.

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

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

14 (ii) sharing of revenues, if any, from the
15 operation of the qualifying project;

16 (iii) sharing of project savings from the
17 construction or services of the qualifying project;

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

23 (v) other compensation set forth in the
24 public-private agreement or otherwise considered
25 appropriate by the parties.

26 (11) the date and terms of termination of the

1 contractor's authority and duties under the public-private
2 agreement and the circumstances under which the
3 contractor's authority and duties may be terminated before
4 that date;

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

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

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

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

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

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

3 (c) A project labor agreement shall be required by all
4 private entities performing construction of public
5 infrastructure for qualifying projects.

6 Section 5-5. Additional requirements.

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

15 (b) A public-private agreement may:

16 (1) authorize the imposition of tolls;

17 (2) authorize the contractor to adjust the user fees for
18 the use of the qualifying project, so long as the amounts
19 charged and collected by the contractor do not exceed amounts
20 established by the responsible public entity under the
21 public-private agreement;

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

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

11 (5) authorize the collection of user fees by a third
12 party.

13 Section 5-10. Loans for qualifying project. In the
14 public-private agreement, the responsible public entity may
15 agree to make loans for the development or operation, or both,
16 of the qualifying project from time to time from amounts
17 received from the federal government or any agency or
18 instrumentality of the federal government or from any State or
19 local agency. No loan shall extend beyond the life of the
20 qualifying project as the parties determine.

21 Section 5-15. Terms and conditions in agreement. The
22 public-private agreement must incorporate the duties of the
23 contractor under this Act and may contain the other terms and
24 conditions that the responsible public entity determines serve

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

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

17 (a) Upon the termination or expiration of the
18 public-private agreement, including a termination for default,
19 the responsible public entity shall have the right to take
20 over the qualifying project, and all of the right, title, and
21 interest in the qualifying project and all real property
22 acquired as a part of the project shall be held in the name of
23 the responsible public entity.

24 (b) If a responsible public entity elects to take over a
25 qualifying project as provided in subsection (a), the

1 responsible public entity may do the following:

2 (1) develop, finance, or operate the project,
3 including through a public-private agreement entered in
4 accordance with this Act;

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

7 (c) If a responsible public entity elects to take over a
8 qualifying project as provided in subsection (a), the
9 responsible public entity may use the revenues, if any, for
10 any lawful purpose, including to:

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

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

18 (3) pay development costs of the project;

19 (4) pay current operation costs of the project or
20 facilities;

21 (5) pay the contractor for any compensation or payment
22 owing upon termination;

23 (6) pay for the development, financing, or operation
24 of any other project or projects the responsible public
25 entity deems appropriate.

26 (d) The full faith and credit of the State or any political

1 subdivision of the State or the responsible public entity is
2 not pledged to secure any financing of the contractor by the
3 election to take over the qualifying project. Assumption of
4 development or operation, or both, of the qualifying project
5 does not obligate the State or any political subdivision of
6 the State or the responsible public entity to pay any
7 obligation of the contractor.

8 Section 5-25. Changes added by written amendment. Any
9 changes in the terms of the public-private agreement agreed to
10 by the parties shall be added to the public-private agreement
11 by written amendment.

12 Section 5-30. Agreements with multiple private entities.
13 Notwithstanding any other provision of this Act, the
14 responsible public entity may enter into a public-private
15 agreement with multiple private entities if the responsible
16 public entity determines in writing that it is in the public
17 interest to do so.

18 Section 5-35. Agreement provisions for qualifying project.
19 The public-private agreement may provide for all or part of
20 the development, financing, or operation of phases or segments
21 of the qualifying project.

22 Article 6. Development and Operations Standards for Projects

1 Section 6-1. Standards of compliance for plans and
2 specifications. The plans and specifications, if any, for each
3 project developed under this Act must comply with:

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

7 (2) the Professional Engineering Practice Act of 1989,
8 the Structural Engineering Practice Act of 1989, the
9 Illinois Architecture Practice Act of 1989, the
10 requirements of Section 30-22 of the Illinois Procurement
11 Code as applicable to responsible bidders, and the
12 Illinois Professional Land Surveyor Act of 1989; and

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

14 Section 6-5. Highway projects; jurisdiction. Each highway
15 project constructed or operated under this Act is considered
16 to be part of:

17 (1) the State highway system for purposes of
18 identification, maintenance standards, and enforcement of
19 traffic laws if the highway project is under the
20 jurisdiction of the Department;

21 (2) the toll highway system for purposes of
22 identification, maintenance standards, and enforcement of
23 traffic laws if the highway project is under the
24 jurisdiction of the Authority; or

1 (3) a country or municipal road system for purposes of
2 identification, maintenance standards and enforcement of
3 traffic laws if the highway or road project is under the
4 jurisdiction of a county or municipality.

5 Section 6-10. Service agreements. Any unit of local
6 government or State agency may enter into agreements with the
7 contractor for maintenance or other services under this Act.

8 Section 6-15. Cooperation with federal and local agencies.
9 The responsible public entity shall seek the cooperation of
10 federal and local agencies to expedite all necessary federal
11 and local permits, licenses, and approvals necessary for
12 projects under this Act.

13 Article 7. Taxation of Contractors

14 Section 7-1. Exemptions from property taxes. A project
15 under this Act and tangible personal property used exclusively
16 in connection with a project that are (a) owned by the
17 responsible public entity and leased, licensed, financed, or
18 otherwise conveyed to a contractor or (b) acquired,
19 constructed, or otherwise provided by a contractor on behalf
20 of the responsible public entity under the terms of a
21 public-private agreement are considered to be public property
22 devoted to an essential public and governmental function and

1 purpose. The property, and a contractor's leasehold estate or
2 interests in the property, are exempt from all ad valorem
3 property taxes and special assessments levied against property
4 by the State or any political subdivision of the State.

5 Section 7-5. Exemptions from retail and use taxes. A
6 contractor or any other person purchasing tangible personal
7 property for incorporation into or improvement of a structure
8 or facility constituting or becoming part of the land included
9 in a project is entitled to the exemption from retail tax and
10 use tax provided under the Retailers' Occupation Tax Act and
11 Use Tax Act, respectively, with respect to that tangible
12 personal property.

13 Section 7-10. Taxation of income. Income received by a
14 contractor under the terms of a public-private agreement is
15 subject to taxation in the same manner as income received by
16 other private entities.

17 Article 8. Financial Arrangements

18 Section 8-1. Actions to obtain credit assistance. The
19 responsible public entity may do any combination of applying
20 for, executing, or endorsing applications submitted by private
21 entities to obtain federal, State, or local credit assistance
22 for qualifying projects developed, financed, or operated under

1 this Act, including loans, lines of credit, and guarantees.

2 Section 8-5. Actions to obtain assistance. The responsible
3 public entity may take any action to obtain federal, State, or
4 local assistance for a qualifying project that serves the
5 public purpose of this Act and may enter into any contracts
6 required to receive federal assistance. The responsible public
7 entity may determine that it serves the public purpose of this
8 Act for all or any portion of the costs of a qualifying project
9 to be paid, directly or indirectly, from the proceeds of a
10 grant or loan, line of credit, or loan guarantee made by a
11 local, State, or federal government or any agency or
12 instrumentality of a local, State, or federal government. Such
13 assistance may include, but not be limited to, federal credit
14 assistance pursuant to the Transportation Infrastructure
15 Finance and Innovation Act and the Water Infrastructure and
16 Finance and Innovation Act.

17 Section 8-10. Grants or loans from amounts received from
18 governments. The responsible public entity may agree to make
19 grants or loans for the development, financing, or operation
20 of a qualifying project from time to time, from amounts
21 received from the federal, State, or local government or any
22 agency or instrumentality of the federal, State, or local
23 government.

1 Section 8-15. Terms and conditions of financing. Any
2 financing of a qualifying project may be in the amounts for the
3 term, and upon other terms and conditions that are determined
4 by the parties to the public-private agreement, and the
5 financing shall not exceed the life of the qualifying project,
6 not to exceed 75 years.

7 Section 8-20. General powers for the purpose of financing.
8 For the purpose of financing a qualifying project, the
9 contractor and the responsible public entity may do the
10 following:

11 (1) propose to use any and all of the revenues
12 generated by a qualifying project to pay principal,
13 interest, costs of operation and maintenance of a
14 qualifying project;

15 (2) enter into grant agreements;

16 (3) access any other funds for design, construction,
17 operation or maintenance of a qualifying project available
18 to the responsible public entity or private entity,
19 including public or private pension funds;

20 (4) accept grants from the responsible public entity
21 or other public or private agency or entity;

22 (5) enter into a lease with a private entity for a
23 qualifying project and may lease a qualifying project to a
24 contractor under a public-private agreement;

25 (6) pay lease rentals for leases that the responsible

1 public entity has entered into under this Act that secure
2 bonds or debts issued or approved under this Article from
3 any legally available revenues, including:

4 (A) payments received from a contractor;

5 (B) federal highway revenues;

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

7 (D) other funds available to the responsible
8 public entity for such purpose.

9 Section 8-25. Debt.

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

14 (i) issue, sell, and refund bonds, notes of the
15 responsible public entity, debt, or other debt
16 obligations;

17 (ii) enter into loan agreements or other credit
18 facilities; and

19 (iii) secure any financing with a pledge of revenues,
20 security interest in, or lien on all or part of a property
21 subject to the agreement, including all of the party's
22 property interests in the qualifying project.

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

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

3 (i) constitute the corporate obligations of the
4 responsible public entity;

5 (ii) do not constitute an indebtedness of the State
6 within the meaning or application of any constitutional
7 provision or limitation; and

8 (iii) are payable solely as to both principal and
9 interest and other associated fees from:

10 (1) the revenues from a lease to the responsible
11 public entity, if any;

12 (2) proceeds of bonds or notes, if any;

13 (3) investment earnings on proceeds of bonds or
14 notes; or

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

17 Section 8-30. Use of public funds for financing. For the
18 purpose of financing a qualifying project, public funds,
19 including public or private pension funds, may be used and
20 aggregated with funds provided by or on behalf of the
21 contractor or other private entities. The use of public funds
22 to finance all or a portion of qualifying projects authorized
23 under this Article constitutes authorized investments as
24 provided in Section 2 of the Public Funds Investment Act.

1 Section 8-35. Private activity bonds for purpose of
2 financing. For the purpose of financing a qualifying project,
3 a responsible public entity is authorized to do any
4 combination of applying for, executing, or endorsing
5 applications for an allocation of tax-exempt bond financing
6 authorization provided by the United States Internal Revenue
7 Code, as well as financing available under any other federal
8 law or program.

9 Section 8-40. Characterization of financing. Any bonds,
10 debt, or other securities or other financing issued by or on
11 behalf of a contractor for the purposes of a project
12 undertaken under this Act shall not be deemed to constitute a
13 debt of the responsible public entity, the State, or any
14 political subdivision of the State or a pledge of the faith and
15 credit of the responsible public entity, the State, or any
16 political subdivision of the State, for purposes of debt
17 limitation.

18 Article 9. Acquisition of Property

19 Section 9-1. General. The responsible public entity may
20 exercise any power of condemnation or eminent domain,
21 including quick-take powers, that it has under law, for the
22 purpose of acquiring any lands or estates or interests in land
23 for a qualifying project to the extent provided in the

1 public-private agreement or otherwise to the extent that the
2 responsible public entity finds that the action serves the
3 public purpose of this Act and deems it appropriate in the
4 exercise of its powers under this Act.

5 Section 9-5. Entering into grants of property interests.
6 The responsible public entity and a private entity may enter
7 into the leases, licenses, easements, and other grants of
8 property that the responsible public entity determines
9 necessary to carry out this Act.

10 Article 10. Law Enforcement

11 Section 10-1. Powers and jurisdiction within limits of
12 qualifying project.

13 (a) All law enforcement officers of the State and of each
14 affected jurisdiction have the same powers and jurisdiction
15 within the limits of the qualifying project as they have in
16 their respective areas of jurisdiction.

17 (b) Law enforcement officers shall have access to the
18 qualifying project at any time for the purpose of exercising
19 their powers and jurisdiction.

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

22 (a) The traffic and motor vehicle laws of the State of

1 Illinois or, if applicable, any local jurisdiction shall be
2 the same as those applying to conduct on similar projects in
3 the State of Illinois or the local jurisdiction.

4 (b) Punishment for infractions and offenses shall be as
5 prescribed by law for conduct occurring on similar projects in
6 the State of Illinois or the local jurisdiction.

7 Section 10-10. Law enforcement assistance.

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

15 (b) Each responsible public entity is authorized to enter
16 into arrangements with the appropriate policing unit related
17 to costs incurred in providing law enforcement assistance
18 under this Act.

19 Article 11. Additional Powers of Responsible Public Entity
20 with Respect to Qualifying Projects

21 Section 11-5. Contracts and agreements necessary to
22 performance of duties and execution of powers. Each
23 responsible public entity may make and enter into all

1 contracts and agreements necessary or incidental to the
2 performance of the responsible public entity's duties and the
3 execution of the responsible public entity's powers under this
4 Act. Except as otherwise required by law, these contracts or
5 agreements are not subject to any appropriation or approvals
6 other than the approval of the responsible public entity and
7 may be for any term of years and contain any terms that are
8 considered reasonable by the responsible public entity.

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

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

18 Article 90. Amendatory Changes

19 Section 90-5. The Freedom of Information Act is amended by
20 changing Section 7.5 as follows:

21 (5 ILCS 140/7.5)

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

4 (a) All information determined to be confidential
5 under Section 4002 of the Technology Advancement and
6 Development Act.

7 (b) Library circulation and order records identifying
8 library users with specific materials under the Library
9 Records Confidentiality Act.

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

16 (d) Information and records held by the Department of
17 Public Health and its authorized representatives relating
18 to known or suspected cases of sexually transmissible
19 disease or any information the disclosure of which is
20 restricted under the Illinois Sexually Transmissible
21 Disease Control Act.

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

24 (f) Firm performance evaluations under Section 55 of
25 the Architectural, Engineering, and Land Surveying
26 Qualifications Based Selection Act.

1 (g) Information the disclosure of which is restricted
2 and exempted under Section 50 of the Illinois Prepaid
3 Tuition Act.

4 (h) Information the disclosure of which is exempted
5 under the State Officials and Employees Ethics Act, and
6 records of any lawfully created State or local inspector
7 general's office that would be exempt if created or
8 obtained by an Executive Inspector General's office under
9 that Act.

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

14 (j) Information and data concerning the distribution
15 of surcharge moneys collected and remitted by carriers
16 under the Emergency Telephone System Act.

17 (k) Law enforcement officer identification information
18 or driver identification information compiled by a law
19 enforcement agency or the Department of Transportation
20 under Section 11-212 of the Illinois Vehicle Code.

21 (l) Records and information provided to a residential
22 health care facility resident sexual assault and death
23 review team or the Executive Council under the Abuse
24 Prevention Review Team Act.

25 (m) Information provided to the predatory lending
26 database created pursuant to Article 3 of the Residential

1 Real Property Disclosure Act, except to the extent
2 authorized under that Article.

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

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

13 (p) Security portions of system safety program plans,
14 investigation reports, surveys, schedules, lists, data, or
15 information compiled, collected, or prepared by or for the
16 Department of Transportation under Sections 2705-300 and
17 2705-616 of the Department of Transportation Law of the
18 Civil Administrative Code of Illinois, the Regional
19 Transportation Authority under Section 2.11 of the
20 Regional Transportation Authority Act, or the St. Clair
21 County Transit District under the Bi-State Transit Safety
22 Act.

23 (q) Information prohibited from being disclosed by the
24 Personnel Record Review Act.

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

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

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

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

20 (v) Names and information of people who have applied
21 for or received Firearm Owner's Identification Cards under
22 the Firearm Owners Identification Card Act or applied for
23 or received a concealed carry license under the Firearm
24 Concealed Carry Act, unless otherwise authorized by the
25 Firearm Concealed Carry Act; and databases under the
26 Firearm Concealed Carry Act, records of the Concealed

1 Carry Licensing Review Board under the Firearm Concealed
2 Carry Act, and law enforcement agency objections under the
3 Firearm Concealed Carry Act.

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

7 (w) Personally identifiable information which is
8 exempted from disclosure under subsection (g) of Section
9 19.1 of the Toll Highway Act.

10 (x) Information which is exempted from disclosure
11 under Section 5-1014.3 of the Counties Code or Section
12 8-11-21 of the Illinois Municipal Code.

13 (y) Confidential information under the Adult
14 Protective Services Act and its predecessor enabling
15 statute, the Elder Abuse and Neglect Act, including
16 information about the identity and administrative finding
17 against any caregiver of a verified and substantiated
18 decision of abuse, neglect, or financial exploitation of
19 an eligible adult maintained in the Registry established
20 under Section 7.5 of the Adult Protective Services Act.

21 (z) Records and information provided to a fatality
22 review team or the Illinois Fatality Review Team Advisory
23 Council under Section 15 of the Adult Protective Services
24 Act.

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

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

3 (cc) Recordings made under the Law Enforcement
4 Officer-Worn Body Camera Act, except to the extent
5 authorized under that Act.

6 (dd) Information that is prohibited from being
7 disclosed under Section 45 of the Condominium and Common
8 Interest Community Ombudsperson Act.

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

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

13 (gg) Information that is prohibited from being
14 disclosed under Section 7-603.5 of the Illinois Vehicle
15 Code.

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

18 (ii) Information which is exempted from disclosure
19 under Section 2505-800 of the Department of Revenue Law of
20 the Civil Administrative Code of Illinois.

21 (jj) Information and reports that are required to be
22 submitted to the Department of Labor by registering day
23 and temporary labor service agencies but are exempt from
24 disclosure under subsection (a-1) of Section 45 of the Day
25 and Temporary Labor Services Act.

26 (kk) Information prohibited from disclosure under the

1 Seizure and Forfeiture Reporting Act.

2 (ll) Information the disclosure of which is restricted
3 and exempted under Section 5-30.8 of the Illinois Public
4 Aid Code.

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

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

9 (oo) Communications, notes, records, and reports
10 arising out of a peer support counseling session
11 prohibited from disclosure under the First Responders
12 Suicide Prevention Act.

13 (pp) Names and all identifying information relating to
14 an employee of an emergency services provider or law
15 enforcement agency under the First Responders Suicide
16 Prevention Act.

17 (qq) Information and records held by the Department of
18 Public Health and its authorized representatives collected
19 under the Reproductive Health Act.

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

22 (ss) Data reported by an employer to the Department of
23 Human Rights pursuant to Section 2-108 of the Illinois
24 Human Rights Act.

25 (tt) Recordings made under the Children's Advocacy
26 Center Act, except to the extent authorized under that

1 Act.

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

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

7 (ww) Information that is exempt from disclosure under
8 Section 16.8 of the State Treasurer Act.

9 (xx) Information that is exempt from disclosure or
10 information that shall not be made public under the
11 Illinois Insurance Code.

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

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

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

18 (bbb) ~~(ccc)~~ Information that is prohibited from
19 disclosure by the Illinois Police Training Act and the
20 Illinois State Police Act.

21 (ccc) ~~(ddd)~~ Records exempt from disclosure under
22 Section 2605-304 of the Illinois ~~Department of~~ State
23 Police Law of the Civil Administrative Code of Illinois.

24 (ddd) ~~(eee)~~ Information prohibited from being
25 disclosed under Section 35 of the Address Confidentiality
26 for Victims of Domestic Violence, Sexual Assault, Human

1 Trafficking, or Stalking Act.

2 (eee) ~~(ddd)~~ Information prohibited from being
3 disclosed under subsection (b) of Section 75 of the
4 Domestic Violence Fatality Review Act.

5 (fff) Information that is exempt from disclosure under
6 Section 3-15 of the Public-Private Partnership Act.

7 (Source: P.A. 101-13, eff. 6-12-19; 101-27, eff. 6-25-19;
8 101-81, eff. 7-12-19; 101-221, eff. 1-1-20; 101-236, eff.
9 1-1-20; 101-375, eff. 8-16-19; 101-377, eff. 8-16-19; 101-452,
10 eff. 1-1-20; 101-466, eff. 1-1-20; 101-600, eff. 12-6-19;
11 101-620, eff. 12-20-19; 101-649, eff. 7-7-20; 101-652, eff.
12 1-1-22; 101-656, eff. 3-23-21; 102-36, eff. 6-25-21; 102-237,
13 eff. 1-1-22; 102-292, eff. 1-1-22; 102-520, eff. 8-20-21;
14 102-559, eff. 8-20-21; revised 10-5-21.)

15 Section 90-10. The Public Funds Investment Act is amended
16 by changing Section 2 as follows:

17 (30 ILCS 235/2) (from Ch. 85, par. 902)

18 Sec. 2. Authorized investments.

19 (a) Any public agency may invest any public funds as
20 follows:

21 (1) in bonds, notes, certificates of indebtedness,
22 treasury bills or other securities now or hereafter
23 issued, which are guaranteed by the full faith and credit
24 of the United States of America as to principal and

1 interest;

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

5 (3) in interest-bearing savings accounts,
6 interest-bearing certificates of deposit or
7 interest-bearing time deposits or any other investments
8 constituting direct obligations of any bank as defined by
9 the Illinois Banking Act;

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

21 (4.5) in obligations of corporations organized in the
22 United States with assets exceeding \$500,000,000 if (i)
23 such obligations are rated at the time of purchase at one
24 of the 3 highest classifications established by at least 2
25 standard rating services and which mature more than 270
26 days but less than 3 years from the date of purchase, (ii)

1 such purchases do not exceed 10% of the corporation's
2 outstanding obligations, and (iii) no more than one-third
3 of the public agency's funds may be invested in
4 obligations of corporations under this paragraph (4.5); or

5 (5) in money market mutual funds registered under the
6 Investment Company Act of 1940, provided that the
7 portfolio of any such money market mutual fund is limited
8 to obligations described in paragraph (1) or (2) of this
9 subsection and to agreements to repurchase such
10 obligations.

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

1 political subdivisions.

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

1 Illinois. Investments may be made only in those credit unions
2 the accounts of which are insured by applicable law.

3 (c) For purposes of this Section, the term "agencies of
4 the United States of America" includes: (i) the federal land
5 banks, federal intermediate credit banks, banks for
6 cooperative, federal farm credit banks, or any other entity
7 authorized to issue debt obligations under the Farm Credit Act
8 of 1971 (12 U.S.C. 2001 et seq.) and Acts amendatory thereto;
9 (ii) the federal home loan banks and the federal home loan
10 mortgage corporation; and (iii) any other agency created by
11 Act of Congress.

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

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

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

22 (3) receive, in any manner, compensation of any kind
23 from any investments in which the agency is authorized to
24 invest.

25 (e) Any public agency may also invest any public funds in a
26 Public Treasurers' Investment Pool created under Section 17 of

1 the State Treasurer Act. Any public agency may also invest any
2 public funds in a fund managed, operated, and administered by
3 a bank, subsidiary of a bank, or subsidiary of a bank holding
4 company or use the services of such an entity to hold and
5 invest or advise regarding the investment of any public funds.

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

20 (g) A public agency may purchase or invest in repurchase
21 agreements of government securities having the meaning set out
22 in the Government Securities Act of 1986, as now or hereafter
23 amended or succeeded, subject to the provisions of said Act
24 and the regulations issued thereunder. The government
25 securities, unless registered or inscribed in the name of the
26 public agency, shall be purchased through banks or trust

1 companies authorized to do business in the State of Illinois.

2 (h) Except for repurchase agreements of government
3 securities which are subject to the Government Securities Act
4 of 1986, as now or hereafter amended or succeeded, no public
5 agency may purchase or invest in instruments which constitute
6 repurchase agreements, and no financial institution may enter
7 into such an agreement with or on behalf of any public agency
8 unless the instrument and the transaction meet the following
9 requirements:

10 (1) The securities, unless registered or inscribed in
11 the name of the public agency, are purchased through banks
12 or trust companies authorized to do business in the State
13 of Illinois.

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

1 (3) A custodial bank must be a member bank of the
2 Federal Reserve System or maintain accounts with member
3 banks. All transfers of book-entry securities must be
4 accomplished on a Reserve Bank's computer records through
5 a member bank of the Federal Reserve System. These
6 securities must be credited to the public agency on the
7 records of the custodial bank and the transaction must be
8 confirmed in writing to the public agency by the custodial
9 bank.

10 (4) Trading partners shall be limited to banks or
11 trust companies authorized to do business in the State of
12 Illinois or to registered primary reporting dealers.

13 (5) The security interest must be perfected.

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

17 (7) Agreements shall be for periods of 330 days or
18 less.

19 (8) The authorized public officer of the public agency
20 informs the custodial bank in writing of the maturity
21 details of the repurchase agreement.

22 (9) The custodial bank must take delivery of and
23 maintain the securities in its custody for the account of
24 the public agency and confirm the transaction in writing
25 to the public agency. The Custodial Undertaking shall
26 provide that the custodian takes possession of the

1 securities exclusively for the public agency; that the
2 securities are free of any claims against the trading
3 partner; and any claims by the custodian are subordinate
4 to the public agency's claims to rights to those
5 securities.

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

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

15 (i) Notwithstanding the foregoing restrictions on
16 investment in instruments constituting repurchase agreements
17 the Illinois Housing Development Authority may invest in, and
18 any financial institution with capital of at least
19 \$250,000,000 may act as custodian for, instruments that
20 constitute repurchase agreements, provided that the Illinois
21 Housing Development Authority, in making each such investment,
22 complies with the safety and soundness guidelines for engaging
23 in repurchase transactions applicable to federally insured
24 banks, savings banks, savings and loan associations or other
25 depository institutions as set forth in the Federal Financial
26 Institutions Examination Council Policy Statement Regarding

1 Repurchase Agreements and any regulations issued, or which may
2 be issued by the supervisory federal authority pertaining
3 thereto and any amendments thereto; provided further that the
4 securities shall be either (i) direct general obligations of,
5 or obligations the payment of the principal of and/or interest
6 on which are unconditionally guaranteed by, the United States
7 of America or (ii) any obligations of any agency, corporation
8 or subsidiary thereof controlled or supervised by and acting
9 as an instrumentality of the United States Government pursuant
10 to authority granted by the Congress of the United States and
11 provided further that the security interest must be perfected
12 by either the Illinois Housing Development Authority, its
13 custodian or its agent receiving possession of the securities
14 either physically or transferred through a nationally
15 recognized book entry system.

16 (i-5) In addition to all other investments authorized
17 under this Section, a public agency may invest in a financial
18 arrangement that finances a qualifying project authorized
19 under Article 8 of the Public-Private Partnership Act.

20 (j) In addition to all other investments authorized under
21 this Section, a community college district may invest public
22 funds in any mutual funds that invest primarily in corporate
23 investment grade or global government short term bonds.
24 Purchases of mutual funds that invest primarily in global
25 government short term bonds shall be limited to funds with
26 assets of at least \$100 million and that are rated at the time

1 of purchase as one of the 10 highest classifications
2 established by a recognized rating service. The investments
3 shall be subject to approval by the local community college
4 board of trustees. Each community college board of trustees
5 shall develop a policy regarding the percentage of the
6 college's investment portfolio that can be invested in such
7 funds.

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

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