



Sen. Heather Steans

Filed: 4/29/2010

09600SB3802sam001

LRB096 20628 AJT 40911 a

1 AMENDMENT TO SENATE BILL 3802

2 AMENDMENT NO. _____. Amend Senate Bill 3802 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Public-Private Partnerships for Transportation Act.

6 Section 5. Public policy and legislative intent.

7 (a) It is the public policy of the State of Illinois to
8 promote the development, financing, and operation of
9 transportation facilities that serve the needs of the public.

10 (b) Existing methods of procurement and financing of
11 transportation facilities by transportation agencies impose
12 limitations on the methods by which transportation facilities
13 may be developed and operated within the State.

14 (c) Authorizing transportation agencies to enter into
15 public-private partnerships, whereby private entities may
16 develop, operate, and finance transportation facilities, has

1 the potential to promote the development of transportation
2 facilities in the State as well as investment in the State.

3 (d) It is the intent of this Act to promote public-private
4 partnerships for transportation by authorizing transportation
5 agencies to enter into public-private agreements related to the
6 development, operation, and financing of transportation
7 facilities.

8 (e) It is the intent of this Act to encourage the practice
9 of congestion pricing in connection with toll highways,
10 pursuant to which higher toll rates are charged during times or
11 in locations of most congestion.

12 (f) It is the intent of this Act to use Illinois design
13 professionals, construction companies, and workers to the
14 greatest extent possible by offering them the right to compete
15 for this work.

16 Section 10. Definitions. As used in this Act:

17 "Approved proposal" means the proposal that is approved by
18 the transportation agency pursuant to subsection (e) of Section
19 20 of this Act.

20 "Approved proposer" means the private entity whose
21 proposal is the approved proposal.

22 "Authority" means the Illinois State Toll Highway
23 Authority.

24 "Contractor" means a private entity that has entered into a
25 public-private agreement with the transportation agency to

1 provide services to or on behalf of the transportation agency.

2 "Department" means the Illinois Department of
3 Transportation.

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

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

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

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

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

1 public-private agreement.

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

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

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

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

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

24 "Request for qualifications" means all materials and
25 documents prepared by or on behalf of the transportation agency
26 to solicit statements of qualification from private entities to

1 enter into a public-private agreement.

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

15 "Transportation agency" means (i) the Department, (ii) the
16 Authority, or (iii), with respect to an existing airport, an
17 airport authority created and established under the Airport
18 Authorities Act owning and operating the airport.

19 "Transportation facility" means (i) any new or existing
20 road, highway, toll highway, bridge, tunnel, intermodal
21 facility, intercity or high-speed passenger rail, or other
22 transportation facility or infrastructure, excluding airports,
23 under the jurisdiction of the Department or the Authority, or
24 (ii) any existing airport owned and operated by an airport
25 authority created and established under the Airport
26 Authorities Act. The term "transportation facility" may refer

1 to one or more transportation facilities that are proposed to
2 be developed or operated as part of a single transportation
3 project.

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

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

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

17 Section 15. Formation of public-private agreements;
18 project planning.

19 (a) Each transportation agency may exercise the powers
20 granted by this Act to do some or all of develop, finance, and
21 operate any part of one or more transportation projects through
22 public-private agreements with one or more private entities.
23 The net proceeds arising out of a transportation project or
24 public-private agreement undertaken by the Department pursuant
25 to this Act shall be deposited into the State Construction

1 Account Fund. The net proceeds arising out of a transportation
2 project or public-private agreement undertaken by the
3 Authority pursuant to this Act shall be deposited into the
4 Illinois State Toll Highway Authority Fund and shall be used
5 only as authorized by Section 23 of the Toll Highway Act.

6 (b) The Authority shall not enter into a public-private
7 agreement involving a lease or other transfer of any toll
8 highway, or portions thereof, under the Authority's
9 jurisdiction which were open to vehicular traffic on the
10 effective date of this Act. The Authority shall not enter into
11 a public-private agreement for the purpose of making roadway
12 improvements, including but not limited to reconstruction,
13 adding lanes, and adding ramps, to any toll highway, or
14 portions thereof, under the Authority's jurisdiction which
15 were open to vehicular traffic on the effective date of this
16 Act. The Authority may enter into a public-private partnership
17 to develop, finance, and operate new toll highways authorized
18 by the Governor and the General Assembly pursuant to Section
19 14.1 of the Toll Highway Act, non-highway transportation
20 projects on the toll highway system such as commuter rail or
21 high-speed rail lines, and intelligent transportation
22 infrastructure that will enhance the safety, efficiency, and
23 environmental quality of the toll highway system.

24 (c) A contractor has:

25 (1) all powers allowed by law generally to a private
26 entity having the same form of organization as the

1 contractor; and

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

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

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

23 (e) Each year, at least 30 days prior to the beginning of
24 the transportation agency's fiscal year, the transportation
25 agency shall submit a description of potential projects that
26 the transportation agency is considering undertaking under

1 this Act to each county, municipality, and metropolitan
2 planning organization, with respect to each project located
3 within its boundaries.

4 (f) Any project undertaken under this Act shall be subject
5 to all applicable planning requirements otherwise required by
6 law, including land use planning, regional planning,
7 transportation planning, and environmental compliance
8 requirements.

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

13 Section 20. Procurement process.

14 (a) A transportation agency seeking to enter into a
15 public-private partnership with a private entity for the
16 development, finance, and operation of a transportation
17 facility as a transportation project shall determine and set
18 forth the criteria for the selection process. The
19 transportation agency shall use (i) a competitive sealed
20 bidding process, (ii) a competitive sealed proposal process, or
21 (iii) a design-build procurement process in accordance with
22 Section 25 of this Act. Before using one of these processes the
23 transportation agency may use a request for information to
24 obtain information relating to possible public-private
25 partnerships.

1 The selection of professional design firms by a
2 transportation agency or private entity shall comply with the
3 Architectural, Engineering, and Land Surveying Qualifications
4 Based Selection Act or Section 25 of this Act.

5 Nothing in this Act shall preclude a public agency,
6 including the Department or the Authority, from submitting a
7 proposal to develop or operate, or to develop and operate, a
8 transportation facility as a transportation project. The
9 transportation agency shall give a proposal submitted by a
10 public agency equal consideration as it gives proposals
11 submitted by private entities, and, for that purpose, treat the
12 public agency as a private entity.

13 All procurement processes shall incorporate requirements
14 and set forth goals for participation by disadvantaged business
15 enterprises as allowed under State and federal law.

16 (b) The transportation agency shall establish a process for
17 prequalification of all potential private entities. The
18 transportation agency shall: (i) provide a public notice of the
19 prequalification process for such period as deemed appropriate
20 by the agency; (ii) set forth requirements and evaluation
21 criteria in order to become prequalified; (iii) determine which
22 private entities that have submitted prequalification
23 applications, if any, meet the requirements and evaluation
24 criteria; and (iv) allow only those entities that have been
25 prequalified to submit proposals or bids. The transportation
26 agency shall make publicly available on its website during the

1 request for qualifications period information regarding firms
2 that are prequalified by the transportation agency pursuant to
3 Section 20 of the Architectural, Engineering, and Land
4 Surveying Qualifications Based Selection Act to provide
5 architectural, engineering, and land surveying services and
6 shall require the use of such firms for such services.

7 (c) Competitive sealed bidding requirements:

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

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

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

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

1 unsuccessful bid shall be open to public inspection.

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

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

23 (7) The contract shall be awarded with reasonable
24 promptness by written notice to the lowest responsible and
25 responsive bidder whose bid meets the requirements and
26 criteria set forth in the invitation for bids, except when

1 the transportation agency determines it is not in the best
2 interest of the State and by written explanation determines
3 another bidder shall receive the award. The explanation
4 shall appear in the appropriate volume of the State of
5 Illinois Procurement Bulletin. The written explanation
6 must include:

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

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

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

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

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

21 (d) Competitive sealed proposal requirements:

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

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

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

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

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

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

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

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

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

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

1 report on the value of the proposal or proposals to the
2 State;

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

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

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

24 (f) In addition to any other rights under this Act, in
25 connection with any procurement under this Act, the following
26 rights are reserved to each transportation agency:

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

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

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

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

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

18 (6) to interview proposers; and

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

21 (g) If a proposal is approved, the transportation agency
22 shall execute the public-private agreement, publish notice of
23 the execution of the public-private agreement on its website
24 and in a newspaper or newspapers of general circulation within
25 the county or counties in which the transportation project is
26 to be located, and publish the entire agreement on its website.

1 Any action to contest the validity of a public-private
2 agreement entered into under this Act must be brought no later
3 than 60 days after the date of publication of the notice of
4 execution of the public-private agreement.

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

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

25 Section 25. Design-build procurement.

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

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

18 (2) The request for qualifications shall be prepared for
19 each project and must contain, without limitation, the
20 following information: (i) the name of the transportation
21 agency; (ii) a preliminary schedule for the completion of the
22 contract; (iii) the proposed budget for the project, the source
23 of funds, and the currently available funds at the time the
24 request for proposal is submitted; (iv) prequalification
25 criteria for design-build entities wishing to submit proposals
26 (the transportation agency shall include, at a minimum, its

1 normal prequalification, licensing, registration, and other
2 requirements, but nothing contained herein precludes the use of
3 additional prequalification criteria by the transportation
4 agency); (v) material requirements of the contract, including
5 but not limited to, the proposed terms and conditions, required
6 performance and payment bonds, insurance, and the entity's plan
7 to comply with the utilization goals established by the
8 corporate authorities of the transportation agency for
9 minority and women business enterprises and to comply with
10 Section 2-105 of the Illinois Human Rights Act; (vi) the
11 performance criteria; (vii) the evaluation criteria for each
12 phase of the solicitation; and (viii) the number of entities
13 that will be considered for the request for proposals phase.

14 (3) The transportation agency may include any other
15 relevant information in the request for qualifications that it
16 chooses to supply. The private entity shall be entitled to rely
17 upon the accuracy of this documentation in the development of
18 its statement of qualifications and its proposal.

19 (4) The date that statements of qualifications are due must
20 be at least 21 calendar days after the date of the issuance of
21 the request for qualifications. In the event the cost of the
22 project is estimated to exceed \$12,000,000, then the statement
23 of qualifications due date must be at least 28 calendar days
24 after the date of the issuance of the request for
25 qualifications. The transportation agency shall include in the
26 request for proposals a minimum of 30 days to develop the

1 proposals after the selection of entities from the evaluation
2 of the statements of qualifications is completed.

3 (c)(1) The transportation agency shall develop, with the
4 assistance of a licensed design professional, the request for
5 qualifications and the request for proposals, which shall
6 include scope and performance criteria. The scope and
7 performance criteria must be in sufficient detail and contain
8 adequate information to reasonably apprise the private
9 entities of the transportation agency's overall programmatic
10 needs and goals, including criteria and preliminary design
11 plans, general budget parameters, schedule, and delivery
12 requirements.

13 (2) Each request for qualifications and request for
14 proposals shall also include a description of the level of
15 design to be provided in the proposals. This description must
16 include the scope and type of renderings, drawings, and
17 specifications that, at a minimum, will be required by the
18 transportation agency to be produced by the private entities.

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

25 (4) The design professional that prepares the scope and
26 performance criteria is prohibited from participating in any

1 private entity proposal for the project.

2 (d) (1) The transportation agency must use a two phase
3 procedure for the selection of the successful design-build
4 entity. The request for qualifications phase will evaluate and
5 shortlist the private entities based on qualifications, and the
6 request for proposals will evaluate the technical and cost
7 proposals.

8 (2) The transportation agency shall include in the request
9 for qualifications the evaluating factors to be used in the
10 request for qualifications phase. These factors are in addition
11 to any prequalification requirements of private entities that
12 the transportation agency has set forth. Each request for
13 qualifications shall establish the relative importance
14 assigned to each evaluation factor and subfactor, including any
15 weighting of criteria to be employed by the transportation
16 agency. The transportation agency must maintain a record of the
17 evaluation scoring to be disclosed in event of a protest
18 regarding the solicitation.

19 The transportation agency shall include the following
20 criteria in every request for qualifications phase evaluation
21 of private entities: (i) experience of personnel; (ii)
22 successful experience with similar project types; (iii)
23 financial capability; (iv) timeliness of past performance; (v)
24 experience with similarly sized projects; (vi) successful
25 reference checks of the firm; (vii) commitment to assign
26 personnel for the duration of the project and qualifications of

1 the entity's consultants; and (viii) ability or past
2 performance in meeting or exhausting good faith efforts to meet
3 the utilization goals for business enterprises established in
4 the Business Enterprise for Minorities, Females, and Persons
5 with Disabilities Act and in complying with Section 2-105 of
6 the Illinois Human Rights Act. No proposal shall be considered
7 that does not include an entity's plan to comply with the
8 requirements established in the minority and women business
9 enterprises and economically disadvantaged firms established
10 by the corporate authorities of the transportation agency and
11 with Section 2-105 of the Illinois Human Rights Act. The
12 transportation agency may include any additional relevant
13 criteria in the request for qualifications phase that it deems
14 necessary for a proper qualification review.

15 Upon completion of the qualifications evaluation, the
16 transportation agency shall create a shortlist of the most
17 highly qualified private entities.

18 The transportation agency shall notify the entities
19 selected for the shortlist in writing. This notification shall
20 commence the period for the preparation of the request for
21 proposals phase technical and cost evaluations. The
22 transportation agency must allow sufficient time for the
23 shortlist entities to prepare their proposals considering the
24 scope and detail requested by the transportation agency.

25 (3) The transportation agency shall include in the request
26 for proposals the evaluating factors to be used in the

1 technical and cost submission components. Each request for
2 proposals shall establish, for both the technical and cost
3 submission components, the relative importance assigned to
4 each evaluation factor and subfactor, including any weighting
5 of criteria to be employed by the transportation agency. The
6 transportation agency must maintain a record of the evaluation
7 scoring to be disclosed in event of a protest regarding the
8 solicitation.

9 The transportation agency shall include the following
10 criteria in every request for proposals phase technical
11 evaluation of private entities: (i) compliance with objectives
12 of the project; (ii) compliance of proposed services to the
13 request for proposal requirements; (iii) quality of products or
14 materials proposed; (iv) quality of design parameters; (v)
15 design concepts; (vi) innovation in meeting the scope and
16 performance criteria; and (vii) constructability of the
17 proposed project. The transportation agency may include any
18 additional relevant technical evaluation factors it deems
19 necessary for proper selection.

20 The transportation agency shall include the following
21 criteria in every request for proposals phase cost evaluation:
22 the total project cost and the time of completion. The
23 transportation agency may include any additional relevant
24 technical evaluation factors it deems necessary for proper
25 selection. The guaranteed maximum project cost criteria
26 weighing factor shall not exceed 30%.

1 The transportation agency shall directly employ or retain a
2 licensed design professional to evaluate the technical and cost
3 submissions to determine if the technical submissions are in
4 accordance with generally accepted industry standards.

5 (e) Statements of qualifications and proposals must be
6 properly identified and sealed. Statements of qualifications
7 and proposals may not be reviewed until after the deadline for
8 submission has passed as set forth in the request for
9 qualifications or the request for proposals. All private
10 entities submitting statements of qualifications or proposals
11 shall be disclosed after the deadline for submission, and all
12 private entities who are selected for request for proposals
13 phase evaluation shall also be disclosed at the time of that
14 determination.

15 Phase II design-build proposals shall include a bid bond in
16 the form and security as designated in the request for
17 proposals. Proposals shall also contain a separate sealed
18 envelope with the cost information within the overall proposal
19 submission. Proposals shall include a list of all design
20 professionals and other entities to which any work identified
21 in Section 30-30 of the Illinois Procurement Code as a
22 subdivision of construction work may be subcontracted during
23 the performance of the contract.

24 Statements of qualifications and proposals must meet all
25 material requirements of the request for qualifications or
26 request for proposals, or else they may be rejected as

1 non-responsive. The transportation agency shall have the right
2 to reject any and all statements of qualifications and
3 proposals.

4 The drawings and specifications of any unsuccessful
5 statement of qualifications or proposal shall remain the
6 property of the private entity.

7 The transportation agency shall review the statements of
8 qualifications and the proposals for compliance with the
9 performance criteria and evaluation factors.

10 Statements of qualifications and proposals may be
11 withdrawn prior to the due date and time for submissions for
12 any cause. After evaluation begins by the transportation
13 agency, clear and convincing evidence of error is required for
14 withdrawal.

15 Section 30. Interim agreements.

16 (a) Prior to or in connection with the negotiation of the
17 public-private agreement, the transportation agency may enter
18 into an interim agreement with the approved proposer. Such
19 interim agreement may:

20 (1) permit the approved proposer to commence
21 activities relating to a proposed project as the
22 transportation agency and the approved proposer shall
23 agree to and for which the approved proposer may be
24 compensated, including, but not limited to, project
25 planning, advance right-of-way acquisition, design and

1 engineering, environmental analysis and mitigation,
2 survey, conducting transportation and revenue studies, and
3 ascertaining the availability of financing for the
4 proposed facility or facilities;

5 (2) establish the process and timing of the exclusive
6 negotiation of a public-private agreement with an approved
7 proposer;

8 (3) require that in the event the transportation agency
9 determines not to proceed with a project after the approved
10 proposer and the transportation agency have executed an
11 interim agreement, and thereby terminates the interim
12 agreement or declines to proceed with negotiation of a
13 public-private agreement with an approved proposer, the
14 transportation agency shall pay to the approved proposer
15 certain fees and costs incurred by the approved proposer;

16 (4) establish the ownership in the State or in the
17 Authority of the concepts and designs in the event of
18 termination of the interim agreement;

19 (5) establish procedures for the selection of
20 professional design firms and subcontractors, which shall
21 include procedures consistent with the Architectural,
22 Engineering, and Land Surveying Qualifications Based
23 Selection Act for the selection of design professional
24 firms and may include, in the discretion of the
25 transportation agency, procedures consistent with the low
26 bid procurement procedures outlined in the Illinois

1 Procurement Code for the selection of construction
2 companies; and

3 (6) contain any other provisions related to any aspect
4 of the transportation project that the parties may deem
5 appropriate.

6 (b) A transportation agency may enter into an interim
7 agreement with multiple approved proposers if the
8 transportation agency determines in writing that it is in the
9 public interest to do so.

10 (c) The approved proposer shall select firms that are
11 prequalified by the transportation agency pursuant to Section
12 20 of the Architectural, Engineering, and Land Surveying
13 Qualifications Based Selection Act to provide architectural,
14 engineering, and land surveying services to undertake
15 activities related to the transportation project.

16 Section 35. Public-private agreements.

17 (a) Unless undertaking actions otherwise permitted in an
18 interim agreement entered into under Section 30 of this Act,
19 before developing, financing, or operating the transportation
20 project, the approved proposer shall enter into a
21 public-private agreement with the transportation agency.
22 Subject to the requirements of this Act, a public-private
23 agreement may provide that the approved proposer, acting on
24 behalf of the transportation agency, is partially or entirely
25 responsible for any combination of developing, financing, or

1 operating the transportation project under terms set forth in
2 the public-private agreement.

3 (b) The public-private agreement may, as determined
4 appropriate by the transportation agency for the particular
5 transportation project, provide for some or all of the
6 following:

7 (1) Construction, financing, and operation of the
8 transportation project under terms set forth in the
9 public-private agreement, in any form as deemed
10 appropriate by the transportation agency, including, but
11 not limited to, a long-term concession and lease, a
12 design-bid-build agreement, a design-build agreement, a
13 design-build-maintain agreement, a
14 design-build-operate-maintain agreement and a
15 design-build-finance-operate-maintain agreement.

16 (2) Delivery of performance and payment bonds or other
17 performance security determined suitable by the
18 transportation agency, including letters of credit, United
19 States bonds and notes, parent guaranties, and cash
20 collateral, in connection with the development, financing,
21 or operation of the transportation project, in the forms
22 and amounts set forth in the public-private agreement or
23 otherwise determined as satisfactory by the transportation
24 agency to protect the transportation agency and payment
25 bond beneficiaries who have a direct contractual
26 relationship with the contractor or a subcontractor of the

1 contractor to supply labor or material. The payment or
2 performance bond or alternative form of performance
3 security is not required for the portion of a
4 public-private agreement that includes only design,
5 planning, or financing services, the performance of
6 preliminary studies, or the acquisition of real property.

7 (3) Review of plans for any development or operation,
8 or both, of the transportation project by the
9 transportation agency.

10 (4) Inspection of any construction of or improvements
11 to the transportation project by the transportation agency
12 or another entity designated by the transportation agency
13 or under the public-private agreement to ensure that the
14 construction or improvements conform to the standards set
15 forth in the public-private agreement or are otherwise
16 acceptable to the transportation agency.

17 (5) Maintenance of:

18 (A) one or more policies of public liability
19 insurance (copies of which shall be filed with the
20 transportation agency accompanied by proofs of
21 coverage); or

22 (B) self-insurance;

23 each in form and amount as set forth in the public-private
24 agreement or otherwise satisfactory to the transportation
25 agency as reasonably sufficient to insure coverage of tort
26 liability to the public and employees and to enable the

1 continued operation of the transportation project.

2 (6) Where operations are included within the
3 contractor's obligations under the public-private
4 agreement, monitoring of the maintenance practices of the
5 contractor by the transportation agency or another entity
6 designated by the transportation agency or under the
7 public-private agreement and the taking of the actions the
8 transportation agency finds appropriate to ensure that the
9 transportation project is properly maintained.

10 (7) Reimbursement to be paid to the transportation
11 agency as set forth in the public-private agreement for
12 services provided by the transportation agency.

13 (8) Filing of appropriate financial statements and
14 reports as set forth in the public-private agreement or as
15 otherwise in a form acceptable to the transportation agency
16 on a periodic basis.

17 (9) Compensation or payments to the contractor.
18 Compensation or payments may include any or a combination
19 of the following:

20 (A) a base fee and additional fee for project
21 savings as the design-builder of a construction
22 project;

23 (B) a development fee, payable on a lump-sum basis,
24 progress payment basis, time and materials basis, or
25 another basis deemed appropriate by the transportation
26 agency;

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

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

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

8 (F) in-kind services, materials, property,
9 equipment, or other items;

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

11 (H) availability payments or similar arrangements
12 whereby payments are made to the contractor pursuant to
13 the terms set forth in the public-private agreement or
14 related agreements; or

15 (I) other compensation set forth in the
16 public-private agreement or otherwise deemed
17 appropriate by the transportation agency.

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

21 (A) a concession or lease payment or other fee,
22 which may be payable upfront or on a periodic basis or
23 on another basis deemed appropriate by the
24 transportation agency;

25 (B) sharing of revenues, if any, from the operation
26 of the transportation project;

1 (C) sharing of project savings from the
2 construction of the transportation project;

3 (D) payment for any services, materials,
4 equipment, personnel, or other items provided by the
5 transportation agency to the contractor under the
6 public-private agreement or in connection with the
7 transportation project; or

8 (E) other compensation set forth in the
9 public-private agreement or otherwise deemed
10 appropriate by the transportation agency.

11 (11) The date and terms of termination of the
12 contractor's authority and duties under the public-private
13 agreement and the circumstances under which the
14 contractor's authority and duties may be terminated prior
15 to that date.

16 (12) Reversion of the transportation project to the
17 transportation agency at the termination or expiration of
18 the public-private agreement.

19 (13) Rights and remedies of the transportation agency
20 in the event that the contractor defaults or otherwise
21 fails to comply with the terms of the public-private
22 agreement.

23 (14) Procedures for the selection of professional
24 design firms and subcontractors, which shall include
25 procedures consistent with the Architectural, Engineering,
26 and Land Surveying Qualifications Based Selection Act for

1 the selection of professional design firms and may include,
2 in the discretion of the transportation agency, procedures
3 consistent with the low bid procurement procedures
4 outlined in the Illinois Procurement Code for the selection
5 of construction companies.

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

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

17 (d) A public-private agreement may:

18 (1) authorize the imposition of tolls in any manner
19 determined appropriate by the transportation agency for
20 the transportation project;

21 (2) authorize the contractor to adjust the user fees
22 for the use of the transportation project, so long as the
23 amounts charged and collected by the contractor do not
24 exceed the maximum amounts established by the
25 transportation agency under this Act;

26 (3) provide that any adjustment by the contractor

1 permitted under paragraph (2) of this subsection (d) may be
2 based on the indices, methodologies, or other factors
3 described in the public-private agreement or approved by
4 the transportation agency;

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

16 (5) authorize the collection of user fees by a third
17 party.

18 (e) In the public-private agreement, the transportation
19 agency may agree to make grants or loans for the development or
20 operation, or both, of the transportation project from time to
21 time from amounts received from the federal government or any
22 agency or instrumentality of the federal government or from any
23 State or local agency.

24 (f) Upon the termination or expiration of the
25 public-private agreement, including a termination for default,
26 the transportation agency shall have the right to take over the

1 transportation project and to succeed to all of the right,
2 title, and interest in the transportation project, subject to
3 any liens on revenues previously granted by the contractor to
4 any person providing financing for the transportation project.
5 Upon termination or expiration of the public-private agreement
6 relating to a transportation project undertaken by the
7 Department, all real property acquired as a part of the
8 transportation project shall be held in the name of the State
9 of Illinois. Upon termination or expiration of the
10 public-private agreement relating to a transportation project
11 undertaken by the Authority, all real property acquired as a
12 part of the transportation project shall be held in the name of
13 the Authority.

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

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

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

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

26 (1) make payments to individuals or entities in

1 connection with any financing of the transportation
2 project, including through a public-private agreement
3 entered into in accordance with this Act;

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

7 (3) pay development costs of the project;

8 (4) pay current operation costs of the project or
9 facilities;

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

12 (6) pay for the development, financing, or operation of
13 any other project or projects the transportation agency
14 deems appropriate.

15 (i) The full faith and credit of the State or any political
16 subdivision of the State or the transportation agency is not
17 pledged to secure any financing of the contractor by the
18 election to take over the transportation project. Assumption of
19 development or operation, or both, of the transportation
20 project does not obligate the State or any political
21 subdivision of the State or the transportation agency to pay
22 any obligation of the contractor.

23 (j) The transportation agency may enter into a
24 public-private agreement with multiple approved proposers if
25 the transportation agency determines in writing that it is in
26 the public interest to do so.

1 (k) A public-private agreement shall not include any
2 provision under which the transportation agency agrees to
3 restrict or to provide compensation to the private entity for
4 the construction or operation of a competing transportation
5 facility during the term of the public-private agreement.

6 (1) With respect to a public-private agreement entered into
7 by the Department, the Department shall certify in its State
8 budget request to the Governor each year the amount required by
9 the Department during the next State fiscal year to enable the
10 Department to make any payment obligated to be made by the
11 Department pursuant to that public-private agreement, and the
12 Governor shall include that amount in the State budget
13 submitted to the General Assembly.

14 Section 40. Development and operations standards for
15 transportation projects.

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

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

21 (2) the Professional Engineering Practice Act of 1989,
22 the Structural Engineering Practice Act of 1989, the
23 Illinois Architecture Practice Act of 1989, the
24 requirements of Section 30-22 of the Illinois Procurement
25 Code as they apply to responsible bidders, and the Illinois

1 Professional Land Surveyor Act of 1989; and

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

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

5 (1) the State highway system for purposes of
6 identification, maintenance standards, and enforcement of
7 traffic laws if the highway project is under the
8 jurisdiction of the Department; or

9 (2) the toll highway system for purposes of
10 identification, maintenance standards, and enforcement of
11 traffic laws if the highway project is under the
12 jurisdiction of the Authority.

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

16 (d) Any electronic toll collection system used on a toll
17 highway, bridge, or tunnel as part of a transportation project
18 must be compatible with the electronic toll collection system
19 used by the Authority. The Authority is authorized to
20 construct, operate, and maintain any electronic toll
21 collection system used on a toll highway, bridge, or tunnel as
22 part of a transportation project pursuant to an agreement with
23 the transportation agency or the contractor responsible for the
24 transportation project.

25 Section 45. Financial arrangements.

1 (a) The transportation agency may do any combination of
2 applying for, executing, or endorsing applications submitted
3 by private entities to obtain federal, State, or local credit
4 assistance for transportation projects developed, financed, or
5 operated under this Act, including loans, lines of credit, and
6 guarantees.

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

21 (c) The transportation agency may agree to make grants or
22 loans for the development, financing, or operation of a
23 transportation project from time to time, from amounts received
24 from the federal, State, or local government or any agency or
25 instrumentality of the federal, State, or local government.

26 (d) Any financing of a transportation project may be in the

1 amounts and upon the terms and conditions that are determined
2 by the parties to the public-private agreement.

3 (e) For the purpose of financing a transportation project,
4 the contractor and the transportation agency may do the
5 following:

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

8 (2) enter into grant agreements;

9 (3) access any other funds available to the
10 transportation agency; and

11 (4) accept grants from the transportation agency or
12 other public or private agency or entity.

13 (f) For the purpose of financing a transportation project,
14 public funds may be used and mixed and aggregated with funds
15 provided by or on behalf of the contractor or other private
16 entities.

17 (g) For the purpose of financing a transportation project,
18 each transportation agency is authorized to do any combination
19 of applying for, executing, or endorsing applications for an
20 allocation of tax-exempt bond financing authorization provided
21 by Section 142(m) of the United States Internal Revenue Code,
22 as well as financing available under any other federal law or
23 program.

24 (h) Any bonds, debt, or other securities or other financing
25 issued for the purposes of this Act shall not be deemed to
26 constitute a debt of the State or any political subdivision of

1 the State or a pledge of the faith and credit of the State or
2 any political subdivision of the State.

3 Section 50. Acquisition of property.

4 (a) The transportation agency may exercise any power of
5 condemnation or eminent domain, including quick-take powers,
6 that it has under law, including, in the case of the
7 Department, all powers for acquisition of property rights
8 granted it in the Illinois Highway Code, for the purpose of
9 acquiring any lands or estates or interests in land for a
10 transportation project to the extent provided in the
11 public-private agreement or otherwise to the extent that the
12 transportation agency finds that the action serves the public
13 purpose of this Act and deems it appropriate in the exercise of
14 its powers under this Act.

15 (b) The transportation agency and a contractor may enter
16 into the leases, licenses, easements, and other grants of
17 property interests that the transportation agency determines
18 necessary to carry out this Act.

19 Section 55. Labor.

20 (a) Each contractor and sub-contractor participating in a
21 public-private agreement related to a transportation project
22 shall, with respect to employees assigned work related to the
23 transportation project and who are not otherwise members of an
24 existing bargaining unit cognizable under the National Labor

1 Relations Act of 1935, and where not otherwise prohibited by
2 applicable law, the contractor shall negotiate in good faith
3 with any union that seeks to represent its employees for a
4 labor neutrality and card check procedure agreement. The
5 agreement shall apply only to employees actually assigned work
6 related to the transportation project and shall have no
7 applicability to employees not so assigned. The agreement shall
8 contain provisions accomplishing the following objectives:
9 resolution by a third party neutral of disagreements regarding
10 bargaining unit scope, inclusions, and exclusions;
11 determination of the existence of majority support for a
12 bargaining agent by means of a card check procedure; and
13 prohibition of coercion or intimidation of employees by either
14 the employer or the union.

15 (b) In order to protect the wages, working conditions, and
16 job opportunities of employees employed by the contractor
17 participating in a public-private agreement related to a
18 transportation project, the contractor and any subcontractor
19 retained to perform such work shall be required to pay to
20 employees an amount not less than the economic equivalent of
21 the standard of wages and benefits enjoyed by the
22 transportation agency's employees who would have otherwise
23 performed that work. The contractor shall certify to the
24 transportation agency the amount of wages and benefits (or
25 their equivalent) as of the time of the public-private
26 agreement, and any changes to those amounts as they may occur

1 during the term of the agreement. All projects at the
2 transportation facility property shall be considered public
3 works for purposes of the Prevailing Wage Act.

4 (c) A public-private agreement related to a transportation
5 project pertaining to the building, altering, repairing,
6 maintaining, improving, or demolishing a transportation
7 facility shall require the contractor and all subcontractors to
8 comply with the requirements of Section 30-22 of the Illinois
9 Procurement Code as they apply to responsible bidders and to
10 present satisfactory evidence of that compliance to the
11 transportation agency, unless the transportation project is
12 federally funded and the application of those requirements
13 would jeopardize the receipt or use of federal funds in support
14 of the transportation project.

15 (d) A public-private agreement related to a transportation
16 project pertaining to a new transportation facility shall
17 require the contractor to enter into a project labor agreement
18 utilized by the Department.

19 Section 60. Law enforcement.

20 (a) All law enforcement officers of the State and of each
21 affected local jurisdiction have the same powers and
22 jurisdiction within the limits of the transportation facility
23 as they have in their respective areas of jurisdiction.

24 (b) Law enforcement officers shall have access to the
25 transportation facility at any time for the purpose of

1 exercising the law enforcement officers' powers and
2 jurisdiction.

3 (c) The traffic and motor vehicle laws of the State of
4 Illinois or, if applicable, any local jurisdiction shall be the
5 same as those applying to conduct on similar projects in the
6 State of Illinois or the local jurisdiction.

7 (d) Punishment for infractions and offenses shall be as
8 prescribed by law for conduct occurring on similar projects in
9 the State of Illinois or the local jurisdiction.

10 Section 65. Term of agreement; reversion of property to
11 transportation agency.

12 (a) The term of a public-private agreement, including all
13 extensions, may not exceed 99 years.

14 (b) The transportation agency shall terminate the
15 contractor's authority and duties under the public-private
16 agreement on the date set forth in the public-private
17 agreement.

18 (c) Upon termination of the public-private agreement, the
19 authority and duties of the contractor under this Act cease,
20 except for those duties and obligations that extend beyond the
21 termination, as set forth in the public-private agreement, and
22 all interests in the transportation facility shall revert to
23 the transportation agency.

24 Section 70. Additional powers of transportation agencies

1 with respect to transportation projects.

2 (a) Each transportation agency may exercise any powers
3 provided under this Act in participation or cooperation with
4 any governmental entity and enter into any contracts to
5 facilitate that participation or cooperation without
6 compliance with any other statute. Each transportation agency
7 shall cooperate with each other and with other governmental
8 entities in carrying out transportation projects under this
9 Act.

10 (b) Each transportation agency may make and enter into all
11 contracts and agreements necessary or incidental to the
12 performance of the transportation agency's duties and the
13 execution of the transportation agency's powers under this Act.
14 Except as otherwise required by law, these contracts or
15 agreements are not subject to any approvals other than the
16 approval of the transportation agency and may be for any term
17 of years and contain any terms that are considered reasonable
18 by the transportation agency.

19 (c) Each transportation agency may pay the costs incurred
20 under a public-private agreement entered into under this Act
21 from any funds available to the transportation agency under
22 this Act or any other statute.

23 (d) A transportation agency or other State agency may not
24 take any action that would impair a public-private agreement
25 entered into under this Act.

26 (e) Each transportation agency may enter into an agreement

1 between and among the contractor, the transportation agency,
2 and the Department of State Police concerning the provision of
3 law enforcement assistance with respect to a transportation
4 project that is the subject of a public-private agreement under
5 this Act.

6 (f) Each transportation agency is authorized to enter into
7 arrangements with the Department of State Police related to
8 costs incurred in providing law enforcement assistance under
9 this Act.

10 Section 75. Prohibited local action. A unit of local
11 government may not take any action that would have the effect
12 of impairing a public-private agreement under this Act,
13 provided that this Section 75 shall not diminish any existing
14 police power or other power provided by law to a unit of local
15 government.

16 Section 80. Powers liberally construed. The powers
17 conferred by this Act shall be liberally construed in order to
18 accomplish their purposes and shall be in addition and
19 supplemental to the powers conferred by any other law. If any
20 other law or rule is inconsistent with this Act, this Act is
21 controlling as to any public-private agreement entered into
22 under this Act.

23 Section 85. Full and complete authority. This Act contains

1 full and complete authority for agreements and leases with
2 private entities to carry out the activities described in this
3 Act. Except as otherwise required by law, no procedure,
4 proceedings, publications, notices, consents, approvals,
5 orders, or acts by the transportation agency or any other State
6 or local agency or official are required to enter into an
7 agreement or lease.

8 Section 905. The Department of Transportation Law of the
9 Civil Administrative Code of Illinois is amended by adding
10 Section 2705-220 as follows:

11 (20 ILCS 2705/2705-220 new)

12 Sec. 2705-220. Public-private partnerships for
13 transportation. The Department may exercise all powers granted
14 to it under the Public-Private Partnerships for Transportation
15 Act.

16 Section 910. The Illinois Finance Authority Act is amended
17 by adding Section 825-105 as follows:

18 (20 ILCS 3501/825-105 new)

19 Sec. 825-105. Transportation project financing. For the
20 purpose of financing a transportation project undertaken under
21 the Public-Private Partnerships for Transportation Act, the
22 Authority is authorized to apply for an allocation of

1 tax-exempt bond financing authorization provided by Section
2 142(m) of the United States Internal Revenue Code, as well as
3 financing available under any other federal law or program.

4 Section 915. The Illinois Procurement Code is amended by
5 changing Section 1-10 as follows:

6 (30 ILCS 500/1-10)

7 Sec. 1-10. Application.

8 (a) This Code applies only to procurements for which
9 contractors were first solicited on or after July 1, 1998. This
10 Code shall not be construed to affect or impair any contract,
11 or any provision of a contract, entered into based on a
12 solicitation prior to the implementation date of this Code as
13 described in Article 99, including but not limited to any
14 covenant entered into with respect to any revenue bonds or
15 similar instruments. All procurements for which contracts are
16 solicited between the effective date of Articles 50 and 99 and
17 July 1, 1998 shall be substantially in accordance with this
18 Code and its intent.

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

22 (1) Contracts between the State and its political
23 subdivisions or other governments, or between State
24 governmental bodies except as specifically provided in

1 this Code.

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

4 (3) Purchase of care.

5 (4) Hiring of an individual as employee and not as an
6 independent contractor, whether pursuant to an employment
7 code or policy or by contract directly with that
8 individual.

9 (5) Collective bargaining contracts.

10 (6) Purchase of real estate, except that notice of this
11 type of contract with a value of more than \$25,000 must be
12 published in the Procurement Bulletin within 7 days after
13 the deed is recorded in the county of jurisdiction. The
14 notice shall identify the real estate purchased, the names
15 of all parties to the contract, the value of the contract,
16 and the effective date of the contract.

17 (7) Contracts necessary to prepare for anticipated
18 litigation, enforcement actions, or investigations,
19 provided that the chief legal counsel to the Governor shall
20 give his or her prior approval when the procuring agency is
21 one subject to the jurisdiction of the Governor, and
22 provided that the chief legal counsel of any other
23 procuring entity subject to this Code shall give his or her
24 prior approval when the procuring entity is not one subject
25 to the jurisdiction of the Governor.

26 (8) Contracts for services to Northern Illinois

1 University by a person, acting as an independent
2 contractor, who is qualified by education, experience, and
3 technical ability and is selected by negotiation for the
4 purpose of providing non-credit educational service
5 activities or products by means of specialized programs
6 offered by the university.

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

9 (10) Public-private agreements entered into according
10 to the procurement requirements of Section 20 of the
11 Public-Private Partnerships for Transportation Act and
12 design-build agreements entered into according to the
13 procurement requirements of Section 25 of the
14 Public-Private Partnerships for Transportation Act.

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

19 (d) Except for Section 20-160 and Article 50 of this Code,
20 and as expressly required by Section 9.1 of the Illinois
21 Lottery Law, the provisions of this Code do not apply to the
22 procurement process provided for under Section 9.1 of the
23 Illinois Lottery Law.

24 (Source: P.A. 95-481, eff. 8-28-07; 95-615, eff. 9-11-07;
25 95-876, eff. 8-21-08; 96-840, eff. 12-23-09.)

1 Section 920. The Public Construction Bond Act is amended by
2 adding Section 1.5 as follows:

3 (30 ILCS 550/1.5 new)

4 Sec. 1.5. Public-private agreements. This Act applies to
5 any public-private agreement entered into under the
6 Public-Private Partnerships for Transportation Act.

7 Section 925. The Employment of Illinois Workers on Public
8 Works Act is amended by adding Section 2.5 as follows:

9 (30 ILCS 570/2.5 new)

10 Sec. 2.5. Public-private agreements. This Act applies to
11 any public-private agreement entered into under the
12 Public-Private Partnerships for Transportation Act.

13 Section 930. The Business Enterprise for Minorities,
14 Females, and Persons with Disabilities Act is amended by adding
15 Section 2.5 as follows:

16 (30 ILCS 575/2.5 new)

17 Sec. 2.5. Public-private agreements. This Act applies to
18 any public-private agreement entered into under the
19 Public-Private Partnerships for Transportation Act.

20 Section 935. The Retailers' Occupation Tax Act is amended

1 by adding Section 1q as follows:

2 (35 ILCS 120/1q new)

3 Sec. 1q. Building materials exemption; public-private
4 partnership transportation projects.

5 (a) Each retailer that makes a qualified sale of building
6 materials to be incorporated into a "project" as defined in the
7 Public-Private Partnerships for Transportation Act, by
8 remodeling, rehabilitating, or new construction, may deduct
9 receipts from those sales when calculating the tax imposed by
10 this Act.

11 (b) As used in this Section, "qualified sale" means a sale
12 of building materials that will be incorporated into a project
13 for which a Certificate of Eligibility for Sales Tax Exemption
14 has been issued by the agency having authority over the
15 project.

16 (c) To document the exemption allowed under this Section,
17 the retailer must obtain from the purchaser a copy of the
18 Certificate of Eligibility for Sales Tax Exemption issued by
19 the agency having jurisdiction over the project into which the
20 building materials will be incorporated is located. The
21 Certificate of Eligibility for Sales Tax Exemption must contain
22 all of the following:

23 (1) statement that the project identified in the
24 Certificate meets all the requirements of the agency having
25 authority over the project;

1 (2) the location or address of the project; and

2 (3) the signature of the director of the agency with
3 authority over the project or the director's delegate.

4 (d) In addition to meeting the requirements of subsection
5 (c) of this Act, the retailer must obtain a certificate from
6 the purchaser that contains all of the following:

7 (1) a statement that the building materials are being
8 purchased for incorporation into a project in accordance
9 with the Public-Private Partnerships for Transportation
10 Act;

11 (2) the location or address of the project into which
12 the building materials will be incorporated;

13 (3) the name of the project;

14 (4) a description of the building materials being
15 purchased; and

16 (5) the purchaser's signature and date of purchase.

17 (e) This Section is exempt from Section 2-70 of this Act.

18 Section 940. The Property Tax Code is amended by changing
19 Section 15-55 and by adding Section 15-195 as follows:

20 (35 ILCS 200/15-55)

21 Sec. 15-55. State property.

22 (a) All property belonging to the State of Illinois is
23 exempt. However, the State agency holding title shall file the
24 certificate of ownership and use required by Section 15-10,

1 together with a copy of any written lease or agreement, in
2 effect on March 30 of the assessment year, concerning parcels
3 of 1 acre or more, or an explanation of the terms of any oral
4 agreement under which the property is leased, subleased or
5 rented.

6 The leased property shall be assessed to the lessee and the
7 taxes thereon extended and billed to the lessee, and collected
8 in the same manner as for property which is not exempt. The
9 lessee shall be liable for the taxes and no lien shall attach
10 to the property of the State.

11 For the purposes of this Section, the word "leases"
12 includes licenses, franchises, operating agreements and other
13 arrangements under which private individuals, associations or
14 corporations are granted the right to use property of the
15 Illinois State Toll Highway Authority and includes all property
16 of the Authority used by others without regard to the size of
17 the leased parcel.

18 (b) However, all property of every kind belonging to the
19 State of Illinois, which is or may hereafter be leased to the
20 Illinois Prairie Path Corporation, shall be exempt from all
21 assessments, taxation or collection, despite the making of any
22 such lease, if it is used for:

23 (1) conservation, nature trail or any other
24 charitable, scientific, educational or recreational
25 purposes with public benefit, including the preserving and
26 aiding in the preservation of natural areas, objects,

1 flora, fauna or biotic communities;

2 (2) the establishment of footpaths, trails and other
3 protected areas;

4 (3) the conservation of the proper use of natural
5 resources or the promotion of the study of plant and animal
6 communities and of other phases of ecology, natural history
7 and conservation;

8 (4) the promotion of education in the fields of nature,
9 preservation and conservation; or

10 (5) similar public recreational activities conducted
11 by the Illinois Prairie Path Corporation.

12 No lien shall attach to the property of the State. No tax
13 liability shall become the obligation of or be enforceable
14 against Illinois Prairie Path Corporation.

15 (c) If the State sells the James R. Thompson Center or the
16 Elgin Mental Health Center and surrounding land located at 750
17 S. State Street, Elgin, Illinois, as provided in subdivision
18 (a) (2) of Section 7.4 of the State Property Control Act, to
19 another entity whose property is not exempt and immediately
20 thereafter enters into a leaseback or other agreement that
21 directly or indirectly gives the State a right to use, control,
22 and possess the property, that portion of the property leased
23 and occupied exclusively by the State shall remain exempt under
24 this Section. For the property to remain exempt under this
25 subsection (c), the State must retain an option to purchase the
26 property at a future date or, within the limitations period for

1 reverters, the property must revert back to the State.

2 If the property has been conveyed as described in this
3 subsection (c), the property is no longer exempt pursuant to
4 this Section as of the date when:

5 (1) the right of the State to use, control, and possess
6 the property has been terminated; or

7 (2) the State no longer has an option to purchase or
8 otherwise acquire the property and there is no provision
9 for a reverter of the property to the State within the
10 limitations period for reverters.

11 Pursuant to Sections 15-15 and 15-20 of this Code, the
12 State shall notify the chief county assessment officer of any
13 transaction under this subsection (c). The chief county
14 assessment officer shall determine initial and continuing
15 compliance with the requirements of this Section for tax
16 exemption. Failure to notify the chief county assessment
17 officer of a transaction under this subsection (c) or to
18 otherwise comply with the requirements of Sections 15-15 and
19 15-20 of this Code shall, in the discretion of the chief county
20 assessment officer, constitute cause to terminate the
21 exemption, notwithstanding any other provision of this Code.

22 (c-1) If the Illinois State Toll Highway Authority sells
23 the Illinois State Toll Highway Authority headquarters
24 building and surrounding land, located at 2700 Ogden Avenue,
25 Downers Grove, Illinois as provided in subdivision (a)(2) of
26 Section 7.5 of the State Property Control Act, to another

1 entity whose property is not exempt and immediately thereafter
2 enters into a leaseback or other agreement that directly or
3 indirectly gives the State or the Illinois State Toll Highway
4 Authority a right to use, control, and possess the property,
5 that portion of the property leased and occupied exclusively by
6 the State or the Authority shall remain exempt under this
7 Section. For the property to remain exempt under this
8 subsection (c), the Authority must retain an option to purchase
9 the property at a future date or, within the limitations period
10 for reverters, the property must revert back to the Authority.

11 If the property has been conveyed as described in this
12 subsection (c), the property is no longer exempt pursuant to
13 this Section as of the date when:

14 (1) the right of the State or the Authority to use,
15 control, and possess the property has been terminated; or

16 (2) the Authority no longer has an option to purchase
17 or otherwise acquire the property and there is no provision
18 for a reverter of the property to the Authority within the
19 limitations period for reverters.

20 Pursuant to Sections 15-15 and 15-20 of this Code, the
21 Authority shall notify the chief county assessment officer of
22 any transaction under this subsection (c). The chief county
23 assessment officer shall determine initial and continuing
24 compliance with the requirements of this Section for tax
25 exemption. Failure to notify the chief county assessment
26 officer of a transaction under this subsection (c) or to

1 otherwise comply with the requirements of Sections 15-15 and
2 15-20 of this Code shall, in the discretion of the chief county
3 assessment officer, constitute cause to terminate the
4 exemption, notwithstanding any other provision of this Code.

5 (d) The fair market rent of each parcel of real property in
6 Will County owned by the State of Illinois for the purpose of
7 developing an airport by the Department of Transportation shall
8 include the assessed value of leasehold tax. The lessee of each
9 parcel of real property in Will County owned by the State of
10 Illinois for the purpose of developing an airport by the
11 Department of Transportation shall not be liable for the taxes
12 thereon. In order for the State to compensate taxing districts
13 for the leasehold tax under this paragraph the Will County
14 Supervisor of Assessments shall certify, in writing, to the
15 Department of Transportation, the amount of leasehold taxes
16 extended for the 2002 property tax year for each such exempt
17 parcel. The Department of Transportation shall pay to the Will
18 County Treasurer, from the Tax Recovery Fund, on or before July
19 1 of each year, the amount of leasehold taxes for each such
20 exempt parcel as certified by the Will County Supervisor of
21 Assessments. The tax compensation shall terminate on December
22 31, 2020. It is the duty of the Department of Transportation to
23 file with the Office of the Will County Supervisor of
24 Assessments an affidavit stating the termination date for
25 rental of each such parcel due to airport construction. The
26 affidavit shall include the property identification number for

1 each such parcel. In no instance shall tax compensation for
2 property owned by the State be deemed delinquent or bear
3 interest. In no instance shall a lien attach to the property of
4 the State. In no instance shall the State be required to pay
5 leasehold tax compensation in excess of the Tax Recovery Fund's
6 balance.

7 (e) Public Act 81-1026 applies to all leases or agreements
8 entered into or renewed on or after September 24, 1979.

9 (f) Notwithstanding anything to the contrary in this
10 Section, all property owned by the State or the Illinois State
11 Toll Highway Authority that is defined as a transportation
12 project under the Public-Private Partnerships for
13 Transportation Act and that is used for transportation purposes
14 and that is leased for those purposes to another entity whose
15 property is not exempt shall remain exempt, and any leasehold
16 interest in the property shall not be subject to taxation under
17 Section 9-195 of this Act.

18 (Source: P.A. 95-331, eff. 8-21-07; 96-192, eff. 8-10-09.)

19 (35 ILCS 200/15-195 new)

20 Sec. 15-195. Exemption for qualified airport leased
21 property. Notwithstanding anything in this Code to the
22 contrary, all property owned by an airport authority created
23 and established under the Airport Authorities Act shall remain
24 exempt from taxation and any leasehold interest in that
25 property is not subject to taxation under Section 9-195 if that

1 property is used for transportation purposes as part of a
2 transportation project undertaken pursuant to the
3 Public-Private Partnerships for Transportation Act and is
4 leased to another entity whose property is not exempt.

5 Section 945. The Toll Highway Act is amended by adding
6 Section 11.1 as follows:

7 (605 ILCS 10/11.1 new)

8 Sec. 11.1. Public-private partnerships. The Authority may
9 exercise all powers granted to it under the Public-Private
10 Partnerships for Transportation Act.

11 Section 950. The Prevailing Wage Act is amended by changing
12 Section 2 as follows:

13 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

14 Sec. 2. This Act applies to the wages of laborers,
15 mechanics and other workers employed in any public works, as
16 hereinafter defined, by any public body and to anyone under
17 contracts for public works. This includes any maintenance,
18 repair, assembly, or disassembly work performed on equipment
19 whether owned, leased, or rented.

20 As used in this Act, unless the context indicates
21 otherwise:

22 "Public works" means all fixed works constructed or

1 demolished by any public body, or paid for wholly or in part
2 out of public funds. "Public works" as defined herein includes
3 all projects financed in whole or in part with bonds, grants,
4 loans, or other funds made available by or through the State or
5 any of its political subdivisions, including but not limited
6 to: bonds issued under the Industrial Project Revenue Bond Act
7 (Article 11, Division 74 of the Illinois Municipal Code), the
8 Industrial Building Revenue Bond Act, the Illinois Finance
9 Authority Act, the Illinois Sports Facilities Authority Act, or
10 the Build Illinois Bond Act; loans or other funds made
11 available pursuant to the Build Illinois Act; or funds from the
12 Fund for Illinois' Future under Section 6z-47 of the State
13 Finance Act, funds for school construction under Section 5 of
14 the General Obligation Bond Act, funds authorized under Section
15 3 of the School Construction Bond Act, funds for school
16 infrastructure under Section 6z-45 of the State Finance Act,
17 and funds for transportation purposes under Section 4 of the
18 General Obligation Bond Act. "Public works" also includes (i)
19 all projects financed in whole or in part with funds from the
20 Department of Commerce and Economic Opportunity under the
21 Illinois Renewable Fuels Development Program Act for which
22 there is no project labor agreement and (ii) all projects
23 undertaken under a public-private agreement under the
24 Public-Private Partnerships for Transportation Act. "Public
25 works" also includes all projects at leased facility property
26 used for airport purposes under Section 35 of the Local

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

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

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

1 workers may be accessible for work on such construction.

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

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

20 (Source: P.A. 95-341, eff. 8-21-07; 96-28, eff. 7-1-09; 96-58,
21 eff. 1-1-10; 96-186, eff. 1-1-10; revised 8-20-09.)

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