



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB1312

Introduced 2/8/2011, by Sen. Jeffrey M. Schoenberg

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 500/30-45  
30 ILCS 535/85 new

Creates the Design-Build for Highway Construction Act. Allows the Department of Transportation to use the design-build delivery method for public projects if it is shown to be in the State's best interest. Requires the Department to prepare a request for qualifications and a request for proposal for each project. Requires the Department to issue a notice of intent to receive requests for qualifications or proposals. Provides for requirements for qualifications and proposals. Provides for a committee to evaluate and select the design-build entity. Provides procedures for the selection of the design-build entity. Amends the Illinois Procurement Code and the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act to make them subject to the Design-Build for Highway Construction Act. Effective immediately.

LRB097 05251 PJG 45302 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning finance.

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

4 Section 1. Short title. This Act may be cited as the  
5 Design-Build for Highway Construction Act.

6 Section 5. Legislative policy; procedures. It is the intent  
7 of the General Assembly that the Illinois Department of  
8 Transportation be allowed to use the design-build delivery  
9 method for public projects if it is shown to be in the State's  
10 best interest for that particular project. It shall be the  
11 policy of the Illinois Department of Transportation in the  
12 procurement of design-build services to publicly announce all  
13 requirements for design-build services and to procure these  
14 services on the basis of demonstrated competence and  
15 qualifications and with due regard for the principles of  
16 competitive selection.

17 The Illinois Department of Transportation shall, prior to  
18 issuing requests for proposals, promulgate and publish  
19 procedures for the solicitation and award of contracts pursuant  
20 to this Act.

21 The Illinois Department of Transportation shall, for each  
22 public project or projects permitted under this Act, make a  
23 written determination that it is in the best interests of this

1 State to enter into a design-build contract for the project or  
2 projects, including a description as to the particular  
3 advantages of the design-build procurement method. In making  
4 that determination, each of the following factors shall be  
5 considered:

6 (1) the probability that the design-build procurement  
7 method will be in the best interests of the State by  
8 providing a material savings of time or cost over the  
9 design-bid-build or other delivery system;

10 (2) the type and size of the project and its  
11 suitability to the design-build procurement method; and

12 (3) the ability of the Illinois Department of  
13 Transportation to define and provide comprehensive scope  
14 and performance criteria for the project.

15 The Illinois Department of Transportation may not use a  
16 design-build procurement method unless the Department  
17 determines in writing that the project will comply with the  
18 disadvantaged business and equal employment practices of the  
19 State as established by federal law and Section 2-105 of the  
20 Illinois Human Rights Act.

21 The Illinois Department of Transportation shall, within 15  
22 days after the initial determination, provide an advisory copy  
23 of the determination to the Procurement Policy Board. The  
24 Department shall maintain the full record of the determination  
25 for 5 years.

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

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

4 "Delivery system" means the design and construction  
5 approach used to develop and construct a project.

6 "Design-bid-build" means the traditional delivery system  
7 used on public projects in this State that incorporates the  
8 Architectural, Engineering, and Land Surveying Qualifications  
9 Based Selection Act and the principles of competitive bidding  
10 in the Illinois Procurement Code.

11 "Design-build" means a delivery system that provides  
12 responsibility within a single contract for the furnishing of  
13 architecture, engineering, land surveying, and related  
14 services as required, and the labor, materials, equipment, and  
15 other construction services for the project.

16 "Design-build contract" means a contract for a public  
17 project under this Act between the Department and a  
18 design-build entity to furnish architecture, engineering, land  
19 surveying, and related services as required, and to furnish the  
20 labor, materials, equipment, and other construction services  
21 for the project. The design-build contract may be conditioned  
22 upon subsequent refinements in scope and price and may allow  
23 the Department to make modifications in the project scope  
24 without invalidating the design-build contract.

25 "Design-build entity" means any individual, sole  
26 proprietorship, firm, partnership, joint venture, corporation,

1 professional corporation, or other entity that proposes to  
2 design and construct any public project under this Act. A  
3 design-build entity and associated design-build professionals  
4 shall conduct themselves in accordance with the laws of this  
5 State and the related provisions of the Illinois Administrative  
6 Code, as referenced by the licensed design professionals Acts  
7 of this State.

8 "Design professional" means any individual, sole  
9 proprietorship, firm, partnership, joint venture, corporation,  
10 professional corporation, or other entity that offers services  
11 under the Illinois Architecture Practice Act of 1989, the  
12 Professional Engineering Practice Act of 1989, the Structural  
13 Engineering Practice Act of 1989, or the Illinois Professional  
14 Land Surveyor Act of 1989.

15 "Evaluation criteria" means the requirements for the  
16 separate phases of the selection process as defined in this Act  
17 and may include the specialized experience, technical  
18 qualifications and competence, capacity to perform, past  
19 performance, experience with similar projects, assignment of  
20 personnel to the project, and other appropriate factors. Price  
21 may not be used as a factor in the evaluation of Phase I  
22 proposals.

23 "Proposal" means the offer to enter into a design-build  
24 contract as submitted by a design-build entity in accordance  
25 with this Act.

26 "Request for proposal" means the document used by the

1 Department to solicit proposals for a design-build contract.

2 "Request for qualifications" means the document issued by  
3 the Department in Phase I of a two-phased selection process. It  
4 typically describes the project in sufficient detail to let  
5 potential offerors determine if they wish to compete and forms  
6 the basis for requesting qualifications submissions from which  
7 the mostly highly qualified offerors can be identified.

8 "Scope and performance criteria" means the requirements  
9 for the public project, including but not limited to, the  
10 intended usage, capacity, size, scope, quality and performance  
11 standards, life-cycle costs, preliminary engineering, and  
12 other programmatic criteria that are expressed in  
13 performance-oriented and quantifiable specifications and  
14 drawings that can be reasonably inferred and are suited to  
15 allow a design-build entity to develop a proposal.

16 Section 15. Notice of intent. When the Department elects to  
17 use the design-build delivery method, it must issue a notice of  
18 intent to receive requests for qualifications or proposals for  
19 the project at least 14 days before issuing the request for the  
20 qualifications or proposal. The Department must publish the  
21 advance notice in the official procurement bulletin of the  
22 State or the professional services bulletin of the Department.  
23 The Department is encouraged to use publication of the notice  
24 in related construction industry service publications. A brief  
25 description of the proposed procurement must be included in the

1 notice. The Department must provide a copy of the request for  
2 qualifications or request for proposal to any party requesting  
3 a copy.

4 Section 20. Development of scope and performance criteria.

5 (a) The Department shall develop, with the assistance of a  
6 licensed design professional, a request for proposal, which  
7 shall include scope and performance criteria. The scope and  
8 performance criteria must be in sufficient detail and contain  
9 adequate information to reasonably apprise the qualified  
10 design-build entities of the Department's overall programmatic  
11 needs and goals, including criteria and preliminary design  
12 plans, general budget parameters, schedule, and delivery  
13 requirements.

14 (b) Each request for proposal shall also include a  
15 description of the level of design to be provided in the  
16 proposals. This description must include the scope and type of  
17 renderings, drawings, and specifications that, at a minimum,  
18 will be required by the Department to be produced by the  
19 design-build entities.

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

1           (d) The design professional that prepares the scope and  
2 performance criteria is prohibited from participating in any  
3 design-build entity proposal for the project.

4           Section 25. Solicitations.

5           (a) The request for qualifications shall be prepared for  
6 each project, other than small projects as defined in Section  
7 45 of this Act, and may contain, without limitation, the  
8 following information:

9                 (1) scope of the work;

10                (2) Phase I evaluation factors and their relative  
11 weights, including:

12                         (A) technical approach;

13                         (B) technical qualifications, such as specialized  
14 experience and technical competence, capability to  
15 perform, and past performance; and

16                         (C) other appropriate factors;

17                 (3) identification of key personnel;

18                 (4) prequalification criteria for design-build  
19 entities wishing to submit proposals; the Department shall  
20 include, at a minimum, its normal prequalification,  
21 licensing, registration, and other requirements, but  
22 nothing contained herein precludes the use of additional  
23 prequalification criteria by the Department;

24                 (5) Phase II evaluation factors; and

25                 (6) the maximum number of offerors that will be short



1 listed to submit Phase II proposals.

2 (b) The request for proposal shall be prepared for each  
3 project and may contain, without limitation, the following  
4 information:

5 (1) a preliminary schedule for the completion of the  
6 contract;

7 (2) the proposed budget for the project and the source  
8 of funds at the time the request for proposal is submitted;

9 (3) material requirements of the contract, including  
10 but not limited to, the proposed terms and conditions,  
11 required performance and payment bonds, insurance, and the  
12 entity's plan to comply with disadvantaged business  
13 enterprises requirements and with Section 2-105 of the  
14 Illinois Human Rights Act;

15 (4) the performance criteria;

16 (5) the requirements for the technical and price  
17 proposals, including factors that will affect contract  
18 award; and

19 (6) criteria for Phase II technical evaluation:

20 (A) compliance with objectives of the project;

21 (B) compliance of proposed services to the request  
22 for proposal requirements;

23 (C) quality of products or materials proposed;

24 (D) quality of design parameters;

25 (E) design concepts;

26 (F) innovation in meeting the scope and

1 performance criteria; and

2 (G) constructability of the proposed project.

3 (c) The Department may include any other relevant  
4 information that it chooses to supply. The additional  
5 information may include the payment of a stipend to assist  
6 design-build entities in the preparation of proposals. The  
7 Department may limit the amount of the stipend and may limit  
8 the payment of a stipend to those design-build entities who  
9 agree that their proposal will become the property of the  
10 Department, notwithstanding the provisions of Section 30. The  
11 design-build entity shall be entitled to rely upon the accuracy  
12 of this documentation in the development of its proposal.

13 (d) The date that proposals are due must be at least 21  
14 calendar days after the date of the issuance of the request for  
15 proposal. In the event the cost of the project is estimated to  
16 exceed \$10,000,000, then the proposal due date must be at least  
17 28 calendar days after the date of the issuance of the request  
18 for proposal. The Department shall include in the request for  
19 proposal a minimum of 30 days to develop the Phase II  
20 submissions after the selection of entities from the Phase I  
21 evaluation is completed.

22 Section 30. Submission of qualifications or proposals.  
23 Qualifications and proposals must be properly identified and  
24 sealed. Qualifications and proposals may not be reviewed until  
25 after the deadline for submission has passed as set forth in

1 the request for qualifications or proposals. All design-build  
2 entities submitting qualifications shall be disclosed after  
3 the deadline for submission, and all design-build entities who  
4 are selected for Phase II evaluation shall also be disclosed at  
5 the time of that determination.

6 Proposals shall include a bid bond in the form and security  
7 as designated in the request for proposals. Proposals shall  
8 also contain a separate sealed envelope with the cost  
9 information within the overall proposal submission. Proposals  
10 shall include a list of all design professionals and other  
11 entities to which any work may be subcontracted during the  
12 performance of the contract.

13 Proposals must meet all material requirements of the  
14 request for proposal or they may be rejected as non-responsive.  
15 The Department shall have the right to reject any and all  
16 qualifications or proposals.

17 The drawings and specifications of the proposal shall  
18 remain the property of the design-build entity.

19 The Department shall review the proposal for compliance  
20 with the performance criteria and evaluation factors.

21 Qualifications or proposals may be withdrawn prior to  
22 evaluation for any cause. After evaluation begins by the  
23 Department, clear and convincing evidence of error is required  
24 for withdrawal.

25 Section 35. Selection committee.

1           (a) When the Department elects to use the design-build  
2 delivery method, it shall establish a committee to evaluate and  
3 select the design-build entity. The committee, under the  
4 discretion of the Department, shall consist of 7 members and  
5 shall include at least 6 licensed design professionals. Two of  
6 the members shall be members of the public and shall both be  
7 licensed design professionals. Public members may not be  
8 employed or associated with any firm associated with a  
9 design-build entity proposing on the public project being  
10 evaluated. One public member shall be nominated by associations  
11 representing the general design or construction industry, and  
12 one member shall be nominated by associations that represent  
13 minority or female-owned design or construction industry  
14 businesses. The selection committee may be designated for a set  
15 term or for the particular project subject to the request for  
16 proposal.

17           (b) The members of the selection committee must certify for  
18 each request for proposal that no conflict of interest exists  
19 between the members and the design-build entities submitting  
20 proposals. If a conflict exists, the member must be replaced  
21 before any review of proposals.

22           Section 40. Procedures for selection.

23           (a) The Department must use a two-phase procedure for the  
24 selection of the successful design-build entity unless it is a  
25 small project as set forth in Section 45 of this Act. Phase I

1 of the procedure shall evaluate and shortlist the design-build  
2 entities based on qualifications, and Phase II shall evaluate  
3 the technical and cost proposals. In a two-phase procedure, a  
4 request for qualifications shall be used by the Department to  
5 solicit offerors for Phase I, and a request for proposals shall  
6 be used for Phase II.

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

17 The Department may not consider any design-build entity for  
18 evaluation or award if the entity has any pecuniary interest in  
19 the project or has other relationships or circumstances,  
20 including but not limited to, long-term leasehold, mutual  
21 performance, or development contracts with the Department,  
22 that may give the design-build entity a financial or tangible  
23 advantage over other design-build entities in the preparation,  
24 evaluation, or performance of the design-build contract or that  
25 create the appearance of impropriety. No proposal shall be  
26 considered that does not include an entity's utilization plan

1 to comply with the requirements of the Department's  
2 disadvantaged business enterprises program, for both the  
3 design and construction areas of performance, and with Section  
4 2-105 of the Illinois Human Rights Act.

5 Upon completion of the qualifications evaluation, the  
6 Department shall create a shortlist of the most highly  
7 qualified design-build entities. The Department, in its  
8 discretion, is not required to shortlist the maximum number of  
9 entities as identified for Phase II evaluation, provided  
10 however, no less than 2 design-build entities nor more than 5  
11 are selected to submit Phase II proposals.

12 The Department shall notify the entities selected for the  
13 shortlist in writing. This notification shall commence the  
14 period for the preparation of the Phase II technical and cost  
15 evaluations. The Department must allow sufficient time for the  
16 shortlist entities to prepare their Phase II submittals  
17 considering the scope and detail requested by the Department.

18 (c) The Department shall include in the request for  
19 proposal the evaluating factors to be used in the technical and  
20 cost submission components of Phase II. Each request for  
21 proposal shall establish, for both the technical and cost  
22 submission components of Phase II, the relative importance  
23 assigned to each evaluation factor and subfactor, including any  
24 weighting of criteria to be employed by the Department. The  
25 Department must maintain a record of the evaluation scoring to  
26 be disclosed in event of a protest regarding the solicitation.

1           The Department shall directly employ or retain a licensed  
2 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           Upon completion of the technical submissions and cost  
6 submissions evaluation, the Department may award the  
7 design-build contract to the highest overall ranked entity.

8           Section 45. Small projects. In any case where the total  
9 overall cost of the project is estimated to be less than  
10 \$10,000,000, the Department may combine the two-phase  
11 procedure for selection described in Section 40 into one  
12 combined step, provided that all the requirements of evaluation  
13 are performed in accordance with Section 40. The Department  
14 will solicit small projects with a request for proposals.

15           Section 50. Acquisition of property.

16           (a) The Department may exercise any and all powers for  
17 acquisition of property rights granted to it in the Illinois  
18 Highway Code or otherwise granted to the Department for the  
19 purpose of acquiring any lands or estates or interests in land  
20 for a transportation project as provided in the design-build  
21 contract or otherwise to the extent that the Department finds  
22 that the action serves the public purpose of this Act and it  
23 deems the action appropriate in the exercise of its powers  
24 under this Act.

1           (b) The Department and a design-build entity may enter into  
2 the leases, licenses, easements, and other grants of property  
3 interests that the Department determines necessary to carry out  
4 this Act.

5           Section 55. Award. The Department may award the contract to  
6 the highest overall ranked entity. If the highest overall  
7 ranked entity is unable to perform at the time of award, the  
8 Department may award to the next highest ranked entity. Notice  
9 of award shall be made in writing. Unsuccessful entities shall  
10 also be notified in writing. The Department may not request a  
11 best and final offer after the receipt of proposals. The  
12 Department may negotiate with the selected design-build entity  
13 after award but prior to contract execution for the purpose of  
14 securing better terms than originally proposed, provided that  
15 the salient features of the request for proposal are not  
16 diminished.

17           Section 60. Disadvantaged Business Enterprises.  
18 Disadvantaged Business Enterprises program compliance,  
19 enforcement, and monitoring shall be as established by federal  
20 law and Section 2-105 of the Illinois Human Rights Act.

21           Section 65. Administrative Procedure Act. The Illinois  
22 Administrative Procedure Act applies to all administrative  
23 rules and procedures of the Department under this Act except



1 that nothing herein shall be construed to render any  
2 prequalification or other responsibility criteria as a  
3 "license" or "licensing" under that Act.

4 Section 70. Federal requirements. In the procurement of  
5 design-build contracts, the Department shall comply with  
6 federal law and regulations and take all necessary steps to  
7 adapt their rules, policies, and procedures to remain eligible  
8 for federal aid.

9 Section 75. Repealer. This Act is repealed on July 1, 2015.

10 Section 100. The Illinois Procurement Code is amended by  
11 changing Section 30-45 as follows:

12 (30 ILCS 500/30-45)

13 Sec. 30-45. Other Acts. This Article is subject to  
14 applicable provisions of the following Acts:

15 (1) the Prevailing Wage Act;

16 (2) the Public Construction Bond Act;

17 (3) the Public Works Employment Discrimination Act;

18 (4) the Public Works Preference Act (repealed on June  
19 16, 2010 by Public Act 96-929);

20 (5) the Employment of Illinois Workers on Public Works  
21 Act;

22 (6) the Public Contract Fraud Act; ~~and~~

1           (7) the Illinois Construction Evaluation Act; and  
2           (8) the Design-Build for Highway Construction Act.

3           (Source: P.A. 90-572, eff. date - See Sec. 99-5; revised  
4           10-19-10.)

5           Section 105. The Architectural, Engineering, and Land  
6           Surveying Qualifications Based Selection Act is amended by  
7           adding Section 85 as follows:

8           (30 ILCS 535/85 new)

9           Sec. 85. Design-Build for Highway Construction Act. This  
10          Act is subject to applicable provisions of the Design-Build for  
11          Highway Construction Act.

12          Section 997. Severability. The provisions of this Act are  
13          severable under Section 1.31 of the Statute on Statutes.

14          Section 999. Effective date. This Act takes effect upon  
15          becoming law.