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Public-Private Partnerships for Transportation Act

An Analysis of New PPP Legislation in Illinois

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Agenda

- Legislative Process
- Eligible Projects
- Procurement Process
- Agreement Terms
- Labor Issues
- Sales and Property Tax

Legislative Process

- **Sponsors** – The Illinois Public-Private Partnerships for Transportation Act (P.A. 97-502/HB1091) was sponsored by Rep. Elaine Nekritz and Sen. Heather Steans and signed into law by Governor Pat Quinn on August 23, 2011.
- **Civic, Business and Labor Support** – The Metropolitan Planning Council, a not-for-profit organization based in Chicago that promotes regional planning efforts in the metropolitan Chicago area, assembled a broad coalition of business and civic leaders, engineering trade associations and labor organizations.
- **Momentum** – Similar legislation had been introduced in the Illinois General Assembly during the past several years, including legislation authorizing the development of the Illiana Expressway (P.A. 96-913).

Eligible Projects

- **Agencies** – The PPP Act authorizes the development of **new** PPP projects by IDOT and the Tollway Authority.
 - **Local Governments** – The Act does not affect local governments in Illinois, like the City of Chicago, that have authority to enter into PPPs through “home rule” powers or through specific statutory authorization.
- **Variety of Assets** – Projects can include roads, bridges, intermodal facilities, intercity or high-speed passenger rail or other transportation facilities (excluding airports) under the jurisdiction of IDOT and the Toll Authority.
- **Existing Assets (IDOT)** – The Act authorizes IDOT to enter into PPP agreements for reconstruction or expansion of such facilities.
- **Existing Assets (Tollway)** – The Tollway Authority is prohibited from entering into PPP agreements with respect to existing toll roads, including leases of existing toll roads or PPP agreements related to reconstruction or expansion of existing toll roads. The Act also prohibits the Tollway Authority from using tolls on existing toll roads to subsidize PPP projects.

Eligible Projects

- O'Hare International Airport Western Access



Eligible Projects

- **Tollway Authority** – The Tollway Authority recently approved a toll increase to fund an ambitious agenda of reconstruction of existing tollways and potential construction of new tollways in Illinois, possibly including the O’Hare western access project. The Tollway Authority’s new tollway projects (but not reconstruction projects) could be undertaken as PPPs pursuant to the PPP Act.
- **IDOT** – IDOT has plans for various road and bridge construction and rehabilitation projects as well as plans for new high-speed rail and intermodal facilities, any of which could also be undertaken as PPP projects through the PPP Act.

Eligible Projects

- **Project Identification** – IDOT and the Tollway Authority identify potential projects each year to the General Assembly.
- **Legislative Authorization** – The General Assembly must then authorize a project by joint resolution of the Illinois House and Senate before the project may proceed. But thereafter, no further legislative action is required.
- **Consistent with Regional Plans** – Projects must also be consistent with regional transportation plans developed by the local metropolitan planning organization (MPO), which in the Chicago area is the Chicago Metropolitan Agency for Planning (CMAP).

Procurement Process

- **Three Types of Processes** – The sponsoring agency (IDOT or the Tollway Authority) may choose one of three competitive processes by which to procure the PPP agreement:
 - **Sealed Bidding**
 - **Sealed Proposals**
 - **Design-Build**
- **Agency Review** – The sponsoring agency reviews bids/proposals and determines which best serves the public purpose of the PPP Act and satisfies the criteria set forth in the invitation for bids or request for proposals.
- **CGFA Review and Public Hearings** – If a proposal is selected by the sponsoring agency, it will be reviewed by the State’s Commission on Government Forecasting and Accountability and presented at one or more public hearings.
- **Decision by Governor** – The Governor makes the final decision as to whether the contract should be awarded to the selected proposer.

Procurement Process

- **Public Agencies May Submit Bids**

- The PPP Act permits (but does not require) public agencies, including IDOT and the Tollway Authority, to submit competing proposals in PPP procurements and requires the sponsoring agency to give such proposals equal consideration.
- This raises the possibility of “SH 121” risk: The North Texas Tollway Authority submitted a competing proposal in 2007 related to the development of SH 121 in Texas.
- Note, however, that the PPP Act prohibits the Tollway Authority from using tolls from existing toll roads to subsidize a PPP project. This prohibition should significantly mitigate the risk of a competing proposal by the Tollway Authority.

Agreement Terms

- **Broad Authority** – The sponsoring agencies have broad contracting authority.
- **Term** – The maximum term of any agreement, including all extensions, is 99 years, although it is presumed agreements entered into under the Act will be far shorter.
- **DBFOM** – The agency may enter into design-build-finance-operate-maintain agreements or agreements with only certain of those components.
- **Compensation** – The compensation terms may vary widely, including lump-sum fees, progress payments, availability payments, revenue concessions and other payment structures that the agency finds appropriate.
 - **Appropriation Risk (IDOT)** – For transaction structures requiring payment by the State, such as availability payments, IDOT and the Governor are directed to include the payments in annual budget requests, although there is still risk that the General Assembly might fail to appropriate the necessary funds.
- **User Fees** – IDOT and the Tollway Authority are authorized to set user fees in the agreement, including the imposition of tolls. User fees may be capped, indexed, or calculated using other methodologies.

Labor Issues

- **Labor Support** – The PPP Act was supported by numerous labor organizations that viewed it as a vehicle to create jobs in Illinois.
- **Project Labor Agreement** – The contractor would be required to enter into a “project labor agreement” to the extent utilized by IDOT for any transportation facility developed under the PPP Act.
- **Other Statutory Requirements** – The contractor must also comply with certain other Illinois statutory requirements, including the Illinois Prevailing Wage Act and the Business Enterprise for Minorities, Females, and Persons with Disabilities Act.

Sales and Property Tax

- **Sales Tax** – The PPP Act exempts building materials incorporated into a PPP project from state and local sales taxes.
- **Property Tax** – The PPP Act also exempts real property from property taxes to the extent a leasehold interest is granted as part of the PPP transaction.