

## HEALTH INFORMATION EXCHANGE AUTHORITY BYLAWS

### ARTICLE I – ORGANIZATION

#### Section 1. Name.

The name of the Authority shall be the Illinois Health Information Exchange Authority (the "Authority"), as provided in Section 10 of the Illinois Health Information Exchange and Technology Act, 20 ILCS 3860/1 et seq. (the "Act").

#### Section 2. Status.

The Authority is an instrumentality and an administrative agency of the State of Illinois<sup>1</sup>, duly organized and existing under the Act.

#### Section 3. Principal Office.

The principal office of the Authority shall be located at Chicago, Illinois. The Authority may maintain a branch office anywhere in the State.

#### Section 4. Seal.

The Board may adopt the form of corporate seal in the manner provided for the adoption of ordinances or resolutions at any regular or special meeting called for such purpose.

### ARTICLE II - BOARD

#### Section 1 – Members of the Board; Appointment.

The governing and administrative body of the Health Information Exchange Authority ("Authority") shall be a board, to be known as the Health Information Exchange Authority Board ("Board"). The Executive Director and eight (8) Members of the Board are appointed by the Governor of Illinois, with the advice and consent of the Senate.<sup>2</sup> In addition, the following five (5) individuals are designated by statute as *ex officio* Members of the Board: the directors of the Illinois Department of Healthcare and Family Services, the Illinois Department of Public Health, and the Illinois Department of Insurance, the Secretary of the Illinois Department of Human Services, or their designees, and a designee of the Office of the Governor.<sup>3</sup>

#### Section 2 – Terms

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<sup>1</sup> 20 ILCS 3860/10

<sup>2</sup> 20 ILCS 3860/15(b)

<sup>3</sup> 20 ILCS 3860/15(d)

The Executive Director and eight (8) Members of the Board appointed by the Governor of Illinois shall hold office for the term of three (3) years<sup>4</sup> beginning the first day of February of the year in which the term of office commences. Of the Members initially appointed, three (3) Members appointed by the Governor shall be appointed for a term expiring February 1, 2014. Three (3) Members appointed by the Governor shall be appointed for a term expiring February 1, 2013, and three (3) shall expire February 1, 2012.<sup>5</sup> The Executive Director and directors may serve successive terms and, in the event the term of the Executive Director or a director expires, he or she shall serve in the expired term until a new Executive Director or director is appointed and qualified.<sup>6</sup>

### Section 3 – Powers.

The nine (9) appointed Directors shall exercise voting authority<sup>7</sup> and shall govern the Authority<sup>8</sup>. The voting members of the Authority shall possess and exercise all the powers granted in the Act, and by all other statutes of the State of Illinois specifically naming the Authority; and such other powers not inconsistent with the Act as are authorized by the general laws of the State of Illinois and as may be necessary to effectuate the purposes of the Act.

### Section 4 – Reimbursement.

Members may be reimbursed for ordinary and contingent travel and meeting expenses for their service at the rate approved for State employee travel.<sup>9</sup> Ex-officio members of the Board shall request reimbursement for travel and subsistence expenses from their respective departments as being a form of their official duties.

### Section 5 – Certification; Oath.

Within thirty (30) days after certification of appointment, and before entering upon the duties of office, each Member of the Board shall take and subscribe to the Constitutional Oath of Office. The Secretary shall immediately file said Oaths with the Illinois Secretary of State.

### Section 6 – Resignation and Removal of Board Members.

Members of the Board shall hold office until their respective successors have been appointed and qualified.<sup>10</sup> Any Member may resign from his or her office, to take effect when his or her successor has been appointed and qualified. The Governor may remove any Member of the Board appointed by him or her in case of incompetency, dereliction of

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<sup>4</sup> 20 ILCS 3860/15(b)

<sup>5</sup> 20 ILCS 3860/15(b)

<sup>6</sup> 20 ILCS 3860/15(b)

<sup>7</sup> 20 ILCS 3860/15(e)

<sup>8</sup> 20 ILCS 3860/15(a)

<sup>9</sup> 20 ILCS 3860/15(g)

<sup>10</sup> 20 ILCS 3860/15(b)

duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.<sup>11</sup> If a Member abandons his or her office, dies, is convicted of a felony, or is removed from office, then the office the Member holds shall become vacant.

Section 7 – Vacancies.

All vacancies shall be filled by appointment, in like manner as in the case of the appointment of, and for the unexpired term of, the Member previously appointed to the vacant position on the Board.<sup>12</sup>

Section 8 – Conflicts of Interest.

(a) No Member of the Board shall have or acquire a contract, or have or acquire a direct pecuniary interest in a contract with the State that relates to the Authority during and for one year after the conclusion of the Member's term of office. No later than thirty (30) days after the commencement of his or her service as a Member of the Board, and annually thereafter, each Member shall complete an ethics training program conducted by the Authority in accordance with all applicable Illinois law, including the Illinois Governmental Ethics Act and the State Officials and Employees Ethics Act.

(b) The Board recognizes that a particular situation may present a conflict of interest as between any member's private interests and his or her service on the Board. Such situations may arise where the Board may take regulatory action directly relating to individuals, organizations or agencies with whom the member is closely associated or has a direct business relationship. In such instances the member shall declare the situation and refrain from voting on any matter relating to the particular situation. A member's affiliation to an entity which is directly or indirectly a participant in the ILHIE shall not in and of itself be deemed a conflict of interest.

Section 9 – Attendance at Meetings.

Attendance by Members of the Board at meetings of the Board is deemed to be vital to the conduct of the business of the Board. In the event that a Member of the Board fails to attend meetings of the Board for three (3) consecutive meetings, the Chair shall notify the Governor, unless such Board Member has submitted an explanation for such failure to attend to the Board, which has been accepted by the Board as just reason for non-attendance.

**ARTICLE III - OFFICERS**

Section 1 – Officers.

The officers of the Health Information Exchange Authority Board shall be as follows: (a) Chair; (b) Vice Chair; (c) Secretary; and (d) Treasurer. The Chair and Vice Chair must be

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<sup>11</sup> 20 ILCS 3860/15(b)

<sup>12</sup> 20 ILCS 3860/15(b)

Members of the Board. The Secretary and the Treasurer may, but need not, be Members of the Board. No officer of the Board shall have or acquire a contract, or have or acquire a direct pecuniary interest in a contract with the State that relates to the Authority, other than a contract of employment or for the furnishing of services as such Officer, during and for one year after the conclusion of the Member's term of office. No later than thirty (30) days after the commencement of his or her service as an Officer, and annually thereafter, each Officer shall complete an ethics training program conducted by the Authority in accordance with all applicable Illinois law, including the Illinois Governmental Ethics Act and the State Officials and Employees Ethics Act. Each officer shall serve for a term of one year, and may serve successive terms. Each incumbent officer shall remain in office after the expiration of their term of office pending the election of their successor.

#### Section 2 – Chair.

The Chair shall preside at all meetings of the Authority and perform such other duties as shall be necessary or desirable by reason of his or her position as Chair or as may be directed by a duly adopted resolution of the Authority. The Chair shall be elected by the Board annually.

#### Section 3 – Vice Chair.

The Vice Chair will act as the Chair in the absence of the Chair or in the event of his or her inability or refusal to perform the duties of the Chair, and when so acting, shall have all of the powers and be subject to all of the restrictions upon the Chair. In the absence of both the Chair and the Vice Chair the Secretary shall perform the duties of the Chair.

#### Section 4 – Secretary.

The Secretary shall: (a) attend all meetings of the Board and record the minutes of the meetings of the Board in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) be custodian of the Authority record book, all books and papers pertaining to his or her office, and of the corporate seal; (d) keep a register of the post office address of each Member of the Board which shall be furnished to the secretary by such Member; (e) attest and affix the corporate seal to all instruments requiring such action when authorized by vote of the Board; (f) cause all Resolutions and other actions of the Board requiring publications to be duly published; and (g) perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the Board.

Before entering upon the duties of office, the Secretary shall take and subscribe to the Constitutional Oath of Office and file said Oath in the principal office of the Authority. The Secretary shall be appointed or reconfirmed yearly at the beginning of the fiscal year. The Secretary who is not a Board Member may be compensated in such amount as the Board may from time to time determine.

Section 5 – Treasurer.

The Treasurer shall be the principal accounting and financial officer of the Authority. He or she shall (a) have charge of and be responsible for the maintenance of adequate books of account; (b) have charge and custody of all funds of the Authority and be responsible therefore and for the receipt and disbursement thereof; and (c) perform all the duties incident to the office of treasurer and such other duties as may from time to time be assigned to him or her by the Board.

The Treasurer shall submit periodic reports to the Board of all receipts and disbursements and shall, at the first meeting of each fiscal year, submit a detailed statement showing all receipts and disbursements during the preceding year.

Before entering upon his or her duties as Treasurer, the Treasurer shall take and subscribe to the Constitutional Oath of Office. The Treasurer shall be appointed or reconfirmed yearly at the beginning of the fiscal year. The Treasurer who is not a Board Member may be compensated in such amount as the Board may from time to time determine.

Section 6 – Assistants.

Upon approval of the Board, assistants to the Secretary or Treasurer may be appointed. Said assistants shall possess and be subject to the same requirements of the officers to whom they are appointed to assist, and shall perform such duties as may be assigned to them from time to time by the officers to whom they are appointed and by Members of the Board.

Section 7 – Additional Duties of Officers.

In addition to the duties hereinabove specified, each officer shall perform such other duties as may be required of him by law or by the Resolutions of the Board.

Section 8 – Vacancies of Offices.

Vacancies in all offices herein established shall be filled by the Board as soon as practical after a vacancy occurs. Vacancies may be filled at any regular or special meeting of the Board, and in the case of the temporary absence or inability of any officer to act as such, the Board may fill his office pro tempore.

Section 9 – Compensation of Officers and Employees.

The Executive Director shall be compensated at an annual salary of 75% of the salary of the Governor.<sup>13</sup> The Authority's other Officers and employees, other than Board Members appointed by the Governor, may receive compensation as determined by the Board.

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<sup>13</sup> 20 ILCS 3860/15(b)

**ARTICLE IV - EXECUTIVE DIRECTOR, GENERAL COUNSEL, CIO,  
PRIVACY & SECURITY OFFICER AND OTHER EMPLOYEES**

Section 1 – Executive Director.

- (a) The Executive Director of the Board shall be named by the Governor. <sup>14</sup>
- (b) The Executive Director shall be the chief executive officer of the Authority, responsible to the Chair and, through the Chair, responsible to the Board for the execution of its policies and procedures.
- (c) The Executive Director shall be employed and paid by the Authority, and be responsible to carry out the duties assigned to the Authority by the Act.
- (d) The Executive Director shall, on behalf of the Authority, have responsibility and commensurate authority to perform duties, including but not limited to, the following:
- 1) provide staff and administrative services for the Authority; report periodically to the Board on staffing, budgetary, and administrative resources and needs.
  - 2) recommend to the Authority its policies and procedures for implementing the provisions and purposes of the Act.
  - 3) execute and administer the program in accordance with Authority policies, procedures and directives.
  - 4) plan, with the Chair, all meetings of the Authority and prepare the tentative agenda for Board approval.
  - 5) maintain all records, files, and reports required by the Authority.
  - 6) as the agent of the Authority, and in the manner it prescribes, prepare all contracts and agreements to which the Authority is a party.
  - 7) represent the Authority whenever necessary; write and issue letters and other communications on its behalf.
  - 8) perform other duties as directed by the Board, or by its Chair.

Section 2 – Other Agents and Employees.

The Board may, under the direction of the Executive Director<sup>15</sup>, appoint and discharge a General Counsel, Chief Information Officer (CIO), Privacy & Security Officer, and

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<sup>14</sup> 20 ILCS 3860/15(b)

<sup>15</sup> 20 ILCS 3860/10(10)

employ and discharge such other staff, including administrative, technical, expert, professional, and legal staff, as is necessary or convenient to carry out the purposes of the Illinois Health Information Exchange and Technology Act. No employee or agent shall have or acquire a contract, or have or acquire a direct pecuniary interest in a contract with the State that relates to the Authority, other than a contract of employment or for the furnishing of services as an agent, during the employee's or agent's engagement. No later than thirty (30) days after the commencement of his or her service as an employee, and annually thereafter, each employee shall complete an ethics training program conducted by the Authority in accordance with all applicable Illinois law, including the Illinois Governmental Ethics Act and the State Officials and Employees Ethics Act.

## **ARTICLE V - MEETINGS**

### **Section 1 – Open Meetings Act; Illinois Administrative Procedure Act.**

All meetings of the Authority shall be held in compliance with the provisions of the Illinois Open Meetings Act (5 ILCS 120/1 et seq., as supplemented and amended) (the "Open Meetings Act"). The provisions of the Illinois Administrative Procedure Act (5 ILCS 100/Art. 5 et seq., as supplemented and amended) (the "Administrative Procedure Act") shall apply to all administrative rules and procedures of the Authority, except that Section 5-35 of the Administrative Procedure Act relating to procedures for rulemaking does not apply to the adoption of any rule required by federal law when the Authority is precluded by that law from exercising any discretion regarding that rule.<sup>16</sup>

### **Section 2 –Regular Meetings.**

The time, date and location of all regular meetings for the fiscal year shall be established by resolution of the Board. Immediately following such adoption, a schedule reflecting the time, date and location of the meetings so established shall be prepared, posted and distributed in accordance with the Open Meetings Act. The time, date and location of any regular meeting may be changed by resolution of the members of the Authority in compliance with the Open Meetings Act.

### **Section 3– Special Meetings.**

Special meetings of the Board may be called by the Chair whenever he or she shall deem necessary and shall be called by the Secretary at the request of any three (3) voting Members of the Board. The Notice shall state the purpose for which the special meeting is called. No business may be transacted at the special meeting except that for which it is called. Notice of any special meeting, together with the agenda therefore, shall be posted as provided in the Illinois Open Meetings Act.

### **Section 4 – Place of Meetings; Participation by Electronic Means.**

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<sup>16</sup> 20 ILCS 3860/35

The meetings of the Board shall be held at the location approved by the Board with proper public notice given. Members who are not physically present at this location may participate in the meeting and vote on all matters by means of a video or audio conference in accordance with policies adopted by the Board from time to time.<sup>17</sup> During the roll call of the members at any Authority meeting, the Secretary or Assistant Secretary shall call the name of the members physically present at the meeting and the name of those members participating by means of a video or audio conference. Each member participating by means of a video or audio conference shall be deemed authorized to attend, participate in, and vote at, the meeting once their name has been called into the roll of the members or called during any roll call vote of the members taken at such meeting.

#### Section 5 – Public Notice; Agenda.

The Secretary shall, at the beginning of each calendar or fiscal year, give public notice of the schedule of all regular meetings and shall state the dates, times, and places of such meetings. The Secretary shall post an agenda for each regular meeting at the location where the meeting is to be held, in accordance with the Illinois Open Meetings Act. Except for emergency meetings, the Secretary shall provide public notice of any special meeting, rescheduled regular meeting, or of any reconvened meeting, at least 48 hours before such meeting. Such notice shall include the agenda for the special, rescheduled, or reconvened meeting, but the validity of any action taken by the Authority which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda. The Chair in consultation with the Executive Director shall establish the agenda for meetings of the Authority, provided that the Chair or any two (2) members of the Authority may direct that a matter be placed on the agenda.

Notice of an emergency meeting shall be given as soon as practicable, but in any event prior to the holding of such meeting, to any news medium which has filed an annual request for notice under the Illinois Open Meetings Act.

The Secretary shall supply copies of the notice of Authority regular meetings, and of the notice of any special, emergency, rescheduled or reconvened meetings, to any news medium that has filed an annual request for such notice. Any such news media shall also be given the same notice of all special, emergency, rescheduled or reconvened meetings in the same manner as is given to Members of the Authority provided such news medium has given the Authority an address or telephone number at which such notice may be given.

#### Section 6 – Adjournment of Meetings.

Any regular or special meeting may be adjourned to a later date, provided that it is not beyond the date of the next regular Board meeting. Any subject may be considered at an adjourned regular meeting the might have been considered at the original regular

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<sup>17</sup> 20 ILCS 3860/15(e)

meeting. No subject may be considered at any adjourned special meeting that might not have been considered at the original special meeting so adjourned.

Section 7 – Quorum.

A majority of the voting Members of the Board then in office shall constitute a quorum for the transaction of business.

Section 8 – Actions by Board.

(a) All official acts of the Authority, including, but not limited to, all resolutions, ordinances, bylaws, rules and regulations for the conduct of its business and affairs, shall be adopted by the affirmative vote of a majority of the voting Members.<sup>18</sup>

(b) All ordinances and resolutions of the Authority shall be public records and open to public inspection, except for any documents or records that are kept or prepared by the Board for use in negotiations, actions, or proceedings to which the Authority is a party.

Section 9 – Written Minutes of Meetings.

(a) The Secretary shall keep written minutes of all open meetings of the Authority and a verbatim record of all closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to: (1) the date, time and place of the meeting; (2) the Members of the Board recorded as either present or absent; and (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

(b) Minutes of meetings open to the public shall be available for public inspection within 7 days of the approval of such minutes by the Authority. The verbatim record of closed session minutes may be destroyed without notification to or the approval of a records commission or the State Archivist under the Local Records Act or the State Records Act no less than 18 months after the completion of the meeting recorded but only after: (1) the Authority approves the destruction of a particular recording; and (2) the Authority approves minutes of the closed meeting that meet the written minutes requirements above.

(c) The Authority shall periodically, but no less than semi-annually, meet to review minutes and recordings of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

(d) Unless the Authority makes a determination that the verbatim recording no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to

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<sup>18</sup> 20 ILCS 3860/15(e)

discovery in any administrative proceeding other than one brought to enforce the Open Meetings Act.

(e) Minutes of meetings closed to the public shall be available only after the Authority determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential.

Section 10 – Public Comment.

The Board may by resolution adopt guidelines for the expression of public comment in connection with meetings of the Board or its committees.

Section 11 – Voting Procedure.

Voting by the members on all official acts of the Authority, including, but not limited to, all resolutions, ordinances, bylaws, rules and regulations for the conduct of its business and affairs, shall be recorded, to be kept by the Secretary.

Section 12 – Rules of Order and Procedure in Board Meetings.

1. Every Member desiring to speak shall address the Chair and upon recognition by the Chair shall confine himself or herself to the question under debate in decorous language and avoiding all personalities. A Member once recognized shall not be interrupted when speaking, unless it be to call him to order or as herein otherwise provided. If a Member while speaking, be called to order, he shall cease speaking until the question or order be determined and if in order, he shall be permitted to proceed.

2. The Chair shall have the privilege of closing the debate.

3. A Board Member may request, through the Chair, the privilege of having his remarks on any subject under consideration by the Board entered in the minutes; and thereupon, it shall be the duty of the Secretary to record same.

4. Any person other than a Board Member desiring to address the Board, shall first secure the permission of the Chair, provided however, that interested parties or their authorized representatives may address the Board by written communications in regard to matters then under discussion.

5. Unless otherwise provided by law, the Act, rules of the Authority or these By-Laws, the business of the Authority at any regular or special meeting shall be conducted pursuant to “Robert’s Rules of Order”, Newly Revised (2000 Edition).

**ARTICLE VI - COMMITTEES**

Section 1 – Board Committees.

From time to time the Board may appoint committees of the Board to address topics defined by the Board.

## Section 2 – Advisory Committee

(a) The Board shall appoint an Illinois Health Information Exchange Authority Advisory Committee ("Advisory Committee") with representation from any of the following fields or groups: health care consumers, consumer advocates, physicians, nurses, hospitals, federally qualified health centers as defined in Section 1905(l)(2)(B) of the Social Security Act and any subsequent amendments thereto, health plans or third-party payors, employers, long-term care providers, pharmacists, State and local public health entities, outpatient diagnostic service providers, behavioral health providers, home health agency organizations, health professional schools in Illinois, health information technology, or health information research.<sup>19</sup>

(b) The purpose of the Advisory Committee shall be to advise and provide recommendations to the Authority regarding the ILHIE. The Advisory Committee members shall serve 2-year terms.<sup>20</sup>

(c) Members of the Advisory Committee, and any other advisory committee and subcommittee members may be reimbursed for ordinary and contingent travel and meeting expenses for their service at the rate approved for State employee travel.<sup>21</sup>

## Section 3 – Other Advisory Bodies

The Authority may establish other advisory committees and subcommittees to conduct the business of the Authority.

## **ARTICLE VII - INSTITUTIONAL REVIEW BOARD**

The Authority may appoint or designate an institutional review board in accordance with federal and State law to review and approve requests for research in order to ensure compliance with standards and patient privacy and security protections adopted by the Board.<sup>22</sup>

## **ARTICLE VIII - CONTRACTS**

### Section 1 – Contracts.

The Authority may enter into all contracts and agreements necessary or incidental to the performance of its powers under this Act.<sup>23</sup> The Authority's expenditures of private funds

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<sup>19</sup> 20 ILCS 3860/15(f)

<sup>20</sup> 20 ILCS 3860/15(f)

<sup>21</sup> 20 ILCS 3860/15(g)

<sup>22</sup> 20 ILCS 3860/20(6)

<sup>23</sup> 20 ILCS 3860/20(7)

are exempt from the Illinois Procurement Code, pursuant to Section 1-10 of that Act. Notwithstanding this exception, the Authority shall comply with the Business Enterprise for Minorities, Females, and Persons with Disabilities Act.

## Section 2 - Execution of Documents.

All contracts and agreements entered into by the Authority shall, unless the voting Members by resolution otherwise direct, be executed on behalf of the Authority by the Chair, Executive Director, or Treasurer, and may be attested to by the Secretary or any Assistant Secretary. Nothing in these Bylaws shall be deemed to limit in any manner the right of the Members by resolution adopted at a meeting to delegate other or different officers to execute a specific document or documents at any time. Nothing in these Bylaws shall be deemed to prohibit the use of facsimile signatures where compliance has been had with the Uniform Facsimile Signature of Public Officials Act of the State of Illinois. (30 ILCS 320/1 et seq., as supplemented and amended).

## **ARTICLE IX - FINANCES & FINANCIAL RECORDS**

(a) The Authority may solicit and accept grants, loans, contributions, or appropriations from any public or private source and may expend those moneys, through contracts, grants, loans, or agreements, on activities it considers suitable to the performance of its duties under the Act.<sup>24</sup>

(b) The Authority may determine, charge, and collect any fees, charges, costs, and expenses from any healthcare provider or entity in connection with its duties under this Act. Moneys collected under this Article shall be deposited into the Health Information Exchange Fund.<sup>25</sup>

(c) The Authority's accounts and books shall be set up and maintained in accordance with the Office of the Comptroller's requirements, and the Authority's Executive Director shall be responsible for the approval of recording of receipts, approval of payments, and proper filing of required reports. The moneys held and made available by the Authority shall be subject to financial and compliance audits by the Auditor General in compliance with the Illinois State Auditing Act.<sup>26</sup>

## **ARTICLE X - HEALTH INFORMATION EXCHANGE FUND**

(a) The Health Information Exchange Fund (the "Fund") is created as a separate fund outside the State treasury. Moneys in the Fund are not subject to appropriation by the General Assembly. The State Treasurer shall be ex-officio custodian of the Fund. Revenues arising from the operation and administration of the Authority and the ILHIE shall be deposited into the Fund. Fees, charges, State and federal moneys, grants,

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<sup>24</sup> 20 ILCS 3860/20(8)

<sup>25</sup> 20 ILCS 3860/20(9)

<sup>26</sup> 20 ILCS 3860/25(e)

donations, gifts, interest, or other moneys shall be deposited into the Fund. "Private funds" means gifts, donations, and private grants.<sup>27</sup>

(b) The Authority is authorized to spend moneys in the Fund on activities suitable to the performance of its duties as authorized by the Act. Disbursements may be made from the Fund for purposes related to the operations and functions of the Authority and the ILHIE.<sup>28</sup>

(c) The Illinois General Assembly may appropriate moneys to the Authority and the ILHIE, and those moneys shall be deposited into the Fund.<sup>29</sup>

(d) The Fund is not subject to administrative charges or charge-backs, including but not limited to those authorized under Section 8h of the State Finance Act.<sup>30</sup>

### **ARTICLE XI - PERSONNEL CODE**

The Authority may establish and administer standards of classification regarding compensation, benefits, duties, performance, and tenure for its staff and may enter into contracts of employment with members of that staff for such periods and on such terms as the Authority deems desirable. All employees of the Authority are exempt from the State of Illinois Personnel Code as provided by Section 4 of the Personnel Code.<sup>31</sup>

### **ARTICLE XII – INDEMNIFICATION**

Section 1 - General. The Authority shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Authority) by reason of the fact that the person is or was a member, officer or employee of the Authority, against expenses (including attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Authority, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Authority, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

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<sup>27</sup> 20 ILCS 3860/25(a)

<sup>28</sup> 20 ILCS 3860/25(b)

<sup>29</sup> 20 ILCS 3860/25(c)

<sup>30</sup> 20 ILCS 3860/25(d)

<sup>31</sup> 20 ILCS 3860/10(10)

Section 2 - Derivative Claims. The Authority shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Authority to procure a judgment in its favor by reason of the fact that the person is or was a member, officer or employee of the Authority, against expenses (including attorneys fees) actually and reasonably incurred by the person in connection with the defense or settlement of suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Authority, and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Authority unless and only to the extent that the Chancery Division, Circuit Court of Cook County, State of Illinois, or the court in which such action or suit was brought, shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

Section 3 - Expenses. To the extent that any person referred to in Sections 1 or 2 of this Article has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to therein or in the defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 4 - Authorization for Indemnification. Any indemnification under Sections 1 or 2 of this Article (unless ordered by a court) shall be made by the Authority only as authorized in a specific case upon a determination that indemnification of the member, officer or employee is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 1 or 2 of this Article. Such determination shall be made (i) by the members of the Authority by the affirmative vote of at least a majority of voting members who were not parties to such action, suit or proceeding, or (ii) pursuant to the direction of the members, by independent legal counsel expressed in a written opinion.

Section 5 - Advancement of Funds for Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Authority in advance of the final disposition of such action, suit or proceeding upon delivery to the Authority of a written undertaking by or on behalf of the member, officer or employee to repay all amounts so advanced if it should be determined ultimately, as provided herein, that such person is not entitled to indemnification as provided in this Article. Notwithstanding the foregoing, no advance shall be made by the Authority if a determination is reasonably and promptly made (i) by the members of the Authority by the affirmative vote of at least a majority of voting members who were not parties to such action, suit or proceeding, or (ii) pursuant to the direction of the members, by independent legal counsel expressed in a written opinion, that, based on the facts known to the Board or independent counsel at the time such determination is made, such person acted in bad faith and in a manner that such person did not believe to be in or not opposed to the best interests of the Authority, or with respect to a criminal proceeding, that such person believed or had reasonable cause

to believe his conduct was unlawful. In no event shall the Authority be required to advance any expenses to a person against whom the Authority brings a claim, in a proceeding, alleging that such person has breached his or her duty of loyalty to the Authority, committed an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law.

Section 6 - Non-exclusive. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, by-law, agreement, vote of disinterested members or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a member or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7 - Insurance. The Authority shall have power to purchase and maintain insurance on behalf of any person who is or was a member, officer, employee or agent of the Authority, or is or was serving at the request of the Authority as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in any such capacity, or arising out of the person's status as such, whether or not the Authority would have the power to indemnify the person against such liability under the provisions of this Article.

### **ARTICLE XIII - MISCELLANEOUS**

Section 1– Amendment.

These Bylaws may be amended in the manner provided for the adoption of ordinances or resolutions at any regular or special meeting called for such purpose; provided ten (10) days written notice of the proposed amendment has been given to all voting Members. Such notice may, however, be waived if all voting Members are present and if unanimous consent is given to the adoption of the amendment.

#### **SECRETARY'S CERTIFICATION**

The undersigned Mark A. Chudzinski as acting Secretary of the Authority certifies that the foregoing Bylaws were adopted by a majority vote of the appointed members of the Authority on the 27th day of April, 2011.

  

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