



Sen. James F. Clayborne, Jr.

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1 AMENDMENT TO SENATE BILL 263

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 263 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Department of Transportation Law of the  
5 Civil Administrative Code of Illinois is amended by changing  
6 Section 2705-595 and by adding Section 2705-607 as follows:

7 (20 ILCS 2705/2705-595)

8 Sec. 2705-595. Prequalification of minority-owned and  
9 women-owned contractors.

10 (a) The Department shall, within 30 days after the  
11 effective date of this amendatory Act of the 96th General  
12 Assembly, establish a committee to review the rules for  
13 prequalification of contractors adopted by the Department at 44  
14 Illinois Administrative Code 650. The purpose of the review is  
15 to determine whether the rules for prequalification operate as  
16 a barrier to minority-owned and women-owned contractors

1 becoming prequalified to bid on or make proposals for  
2 Department contracts. The committee shall, in addition to  
3 Department staff, be constituted with membership representing  
4 the construction industry and minority-owned and women-owned  
5 contractors. The committee shall complete its work and make  
6 recommendations for any changes to the rules for  
7 prequalification to the Secretary of Transportation within 180  
8 days after the effective date of this amendatory Act of the  
9 96th General Assembly.

10 (b) The Department, in conjunction with the Capital  
11 Development Board, shall hold 2 public hearings to determine  
12 whether a more effective, efficient, and less burdensome method  
13 exists to prequalify an architect, engineer, or contractor. The  
14 hearings shall also specifically determine how the Department  
15 can obtain greater participation in the bidding process of  
16 small contractors and minority, female, disabled, and veteran  
17 architects, engineers, and contractors. The Department and the  
18 Capital Development Board shall collect data to review at the  
19 hearings, which shall include, but is not limited to,  
20 percentages and the number of minority, female, disabled, and  
21 veteran employees who are hired for each trade necessary for  
22 each project. The Department and the Capital Development Board  
23 shall issue their joint findings and recommendations to the  
24 Governor and the General Assembly no later than January 1,  
25 2018.

26 (Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793

1 for the effective date of P.A. 96-795).)

2 (20 ILCS 2705/2705-607 new)

3 Sec. 2705-607. Performance evaluation; contractor.

4 (a) For purposes of this Section, "Performance Factor"  
5 means a numerical value determined by the contractor's  
6 performance evaluation in a work category during the previous  
7 year.

8 (b) At the close of each construction season, the  
9 Department, other State agencies or authorities using  
10 contractors based on the prequalification standards of the  
11 Department, and officials of a unit of local government  
12 administering a contract approved for award by the Department,  
13 shall evaluate each contractor who performed work for them  
14 during the previous year as either a prime contractor or a  
15 subcontractor. The information shall be submitted on the  
16 Contractor's Annual Performance Report and shall be subject to  
17 disclosure under the Freedom of Information Act. The  
18 performance evaluation shall be based upon:

19 (1) the quality of work performed for each work  
20 category under 44 Ill. Admin. Code 650; and

21 (2) the overall execution of work measured by:

22 (A) organization and prosecution of work;

23 (B) cooperation with public agency personnel  
24 responsible for contract administration and  
25 inspection;

1           (C) traffic control and site protection under  
2           contract requirements;

3           (D) compliance with the Equal Employment  
4           Opportunity program and labor requirements;

5           (E) erosion control; and

6           (F) the contractor's ability to meet the Quality  
7           Control plan and Quality Assurance plan under contract  
8           requirements for materials production and construction  
9           quality control.

10          (c) The performance evaluation scale is a rating from 2 to  
11          8 in accordance with the following definitions:

12           (1) "8" means excellent;

13           (2) "7" means good;

14           (3) "6" means satisfactory;

15           (4) "3" means marginal; and

16           (5) "0" means poor.

17          (d) The quality and evaluating categories under execution  
18          of work are rated as follows:

19           (1) to determine the contractor's quality of  
20           performance, the Department shall consider the project's  
21           durability and appearance, knowledge of supervisory  
22           personnel, and compliance with contract requirements and  
23           shall evaluate the performance based on the following  
24           scale:

25           (A) if the contractor exceeded project  
26           requirements in all areas considered, he or she shall

1 receive an 8;

2 (B) if the contractor exceeded project  
3 requirements in a majority of areas considered, he or  
4 she shall receive a 7;

5 (C) if the contractor met project requirements in  
6 all areas considered, he or she shall receive a 6;

7 (D) if the contractor did not meet project  
8 requirements in one area considered, he or she shall  
9 receive a 3; and

10 (E) if the contractor did not meet project  
11 requirements in 2 or more areas considered, he or she  
12 shall receive a 0;

13 (2) to determine the contractor's organization and  
14 prosecution, the Department shall consider the  
15 contractor's ability to diligently prosecute work by  
16 planning and scheduling labor, materials, and the work of  
17 subcontractors on the project site and shall evaluate the  
18 organization and prosecution based on the following scale:

19 (A) if the contractor exceeded project  
20 requirements in all areas considered and completed the  
21 project well ahead of schedule, he or she shall receive  
22 an 8;

23 (B) if the contractor exceeded project  
24 requirements in a majority of areas considered and the  
25 project was completed slightly ahead of schedule, he or  
26 she shall receive a 7;

1           (C) if the contractor met project requirements in  
2           all areas considered and the scheduled completion date  
3           was met, he or she shall receive a 6;

4           (D) if the contractor did not meet project  
5           requirements in one area considered and occasionally  
6           did not work when conditions permitted and the  
7           scheduled completion date was met, he or she shall  
8           receive a 3; and

9           (E) if the contractor did not meet project  
10           requirements in 2 or more areas considered and the  
11           scheduled completion date was not met, he or she shall  
12           receive a 0;

13           (3) to determine the contractor's cooperation, the  
14           Department shall consider the contractor's willingness to  
15           negotiate contract disputes, to respond to reasonable  
16           requests by the resident engineer, and to respond to  
17           various correspondence from the Department and shall  
18           evaluate the cooperation based on the following scale:

19           (A) if the contractor exceeded project  
20           requirements in all areas considered, he or she shall  
21           receive an 8;

22           (B) if the contractor exceeded project  
23           requirements in a majority of areas considered, he or  
24           she shall receive a 7;

25           (C) if the contractor met project requirements in  
26           all areas considered, he or she shall receive a 6;

1           (D) if the contractor did not meet project  
2           requirements in one area considered, he or she shall  
3           receive a 3; and

4           (E) if the contractor did not meet project  
5           requirements in 2 or more areas considered, he or she  
6           shall receive a 0;

7           (4) to determine the project's traffic control and site  
8           protection, the Department shall consider the appearance  
9           of traffic control devices, the response to repair  
10           deficient devices, and the contractor's willingness to  
11           comply with the Traffic Control Plan and shall evaluate  
12           based on the following scale:

13           (A) if the contractor exceeded project  
14           requirements in all areas considered, he or she shall  
15           receive an 8;

16           (B) if the contractor exceeded project  
17           requirements in a majority of areas considered, he or  
18           she shall receive a 7;

19           (C) if the contractor met project requirements in  
20           all areas considered, he or she shall receive a 6;

21           (D) if the contractor did not meet project  
22           requirements in one area considered, he or she shall  
23           receive a 3; and

24           (E) if the contractor did not meet project  
25           requirements in 2 or more areas considered or the  
26           contractor committed an act or omission which

1 seriously compromised the safety of the public, he or  
2 she shall receive a 0;

3 (5) to determine the contractor's compliance with the  
4 Equal Employment Opportunity program and labor  
5 requirements, the Department shall evaluate the compliance  
6 based on the following scale:

7 (A) if the contractor exceeded project  
8 requirements, he or she shall receive an 8;

9 (B) if the contractor met project requirements  
10 through extraordinary effort and initiative, he or she  
11 shall receive a 7;

12 (C) if the contractor met project requirements  
13 with minimum effort and initiative, he or she shall  
14 receive a 6;

15 (D) if the contractor met project requirements,  
16 but had to be motivated by Department personnel, he or  
17 she shall receive a 3; and

18 (E) if the contractor did not meet project  
19 requirements, he or she shall receive a 0;

20 (6) to determine the project's erosion control, the  
21 Department shall consider the contractor's compliance with  
22 the project's erosion control plan and all pertinent  
23 federal and State laws, permits, rules, and regulations and  
24 shall evaluate based on the following scale:

25 (A) if the contractor exceeded project  
26 requirements, he or she shall receive an 8;



1           (B) if the contractor exceeded project  
2 requirements in a majority of the areas, he or she  
3 shall receive a 7;

4           (C) if the contractor met project requirements in  
5 all areas, he or she shall receive a 6;

6           (D) if the contractor did not meet the project  
7 requirements in one area considered, he or she shall  
8 receive a 3; and

9           (E) if the contractor did not meet the contract  
10 requirements in 2 or more areas, he or she shall  
11 receive a 0;

12           (7) to determine the contractor's ability to meet the  
13 Quality Control plan and Quality Assurance plan, the  
14 Department shall consider the contractor's ability to meet  
15 a Quality Control plan and Quality Assurance plan  
16 inspection, testing, and documentation requirements, to  
17 take control of the product, to take corrective action, and  
18 to communicate production and construction issued to  
19 Department personnel and shall evaluate based on the  
20 following scale:

21           (A) if the contractor exceeded Quality Control  
22 plan and Quality Assurance plan requirements in all  
23 areas considered, he or she shall receive an 8;

24           (B) if the contractor exceeded Quality Control  
25 plan and Quality Assurance plan requirements in a  
26 majority of areas considered, he or she shall receive a

1           7;

2                   (C) if the contractor met Quality Control plan and  
3                   Quality Assurance plan requirements in all areas  
4                   considered, he or she shall receive a 6;

5                   (D) if the contractor did not meet Quality Control  
6                   plan and Quality Assurance plan requirements in one  
7                   area considered, he or she shall receive a 3; and

8                   (E) if the contractor did not meet Quality Control  
9                   plan and Quality Assurance plan requirements in 2 or  
10                   more areas considered, he or she shall receive a 0.

11           (e) The Department shall calculate the Performance Factor  
12           by first determining the Project Cost Ratio for the relevant  
13           work category. The Project Cost Ratio is the ratio of the value  
14           of all contracts being evaluated to the value of all contracts  
15           performed. The Department shall establish a weighted  
16           performance evaluation value for each performance evaluation  
17           completed by determining the product of the Project Cost Ratio,  
18           the rating for quality given on the relevant performance  
19           evaluation, and the averaged ratings for the execution given on  
20           the relevant performance evaluation divided by 6. Finally, the  
21           Department shall divide the summation of all weighted  
22           performance evaluation values by 6 to arrive at the Performance  
23           Factor.

24           (f) A work rating shall be subject to denial or revocation  
25           if the summation of all weighted performance evaluation values  
26           for a work rating category is less than 6 for 2 successive

1 years. A work rating shall be subject to denial or revocation  
2 if the summation of all weighted performance evaluation values  
3 for a work rating category is less than 3 for one year.

4 (g) The Department shall evaluate performance on any  
5 individual contract or group of contracts for purposes of  
6 determining the current responsibility of a contractor when the  
7 Engineer of Construction has determined that performance on any  
8 contract or contracts may not be acceptable and that an  
9 immediate evaluation is necessary to assess the responsibility  
10 of a contractor in order to protect the interests of the State  
11 in sound procurement practices. If the evaluation ordered by  
12 the Engineer of Construction results in the quality of work or  
13 the average overall execution of work ratings being rated at  
14 less than 3, the work ratings shall be revoked.

15 (h) If a contractor receives a Quality of Work Rating of 0  
16 for any work category being evaluated on any one contract, the  
17 work rating shall be revoked.

18 (i) The Department shall notify the contractor of the  
19 performance evaluation in writing within 14 days of completion  
20 of the evaluation with a detailed explanation of any  
21 substandard items. If a performance evaluation results in a  
22 denied, reduced, or revoked work rating, the contractor may  
23 proceed with the review procedures under 44 Ill. Admin. Code  
24 650.150.

25 (j) If an applicant did not have a contract with the  
26 Department in the previous year, the last evaluation issued

1 within a 5-year period shall be used. If an applicant has not  
2 had an evaluation in the last 5 years or is applying for an  
3 initial rating in a category and lists no public agencies or  
4 private customers as references, a Performance Factor of "1"  
5 shall be used until an actual evaluation is made.

6 (k) On January 1, 2018, and annually on January 1 of each  
7 subsequent year, the Auditor General shall conduct a compliance  
8 audit of the performance evaluations and work ratings under  
9 this Section and manipulation of work ratings investigations by  
10 the Division of Internal Investigation. Within 30 days after  
11 receiving the results of the audit, the Department shall  
12 publish the results on its website.

13 Section 10. The Capital Development Board Act is amended by  
14 changing Section 16 and by adding Section 10.19 as follows:

15 (20 ILCS 3105/10.19 new)

16 Sec. 10.19. Performance evaluation; contractor. At the  
17 close of each construction season, the Board shall evaluate  
18 each contractor who performed work for them during the previous  
19 year either as a prime contractor or as a subcontractor using  
20 the evaluation standards under Section 2705-607 of the  
21 Department of Transportation Law of the Civil Administrative  
22 Code of Illinois .

23 (20 ILCS 3105/16) (from Ch. 127, par. 783b)

1           Sec. 16. (a) In addition to any other power granted in this  
2 Act to adopt rules or regulations, the Board may adopt  
3 regulations or rules relating to the issuance or renewal of the  
4 prequalification of an architect, engineer or contractor or the  
5 suspension or modification of the prequalification of any such  
6 person or entity including, without limitation, an interim or  
7 emergency suspension or modification without a hearing founded  
8 on any one or more of the bases set forth in this Section.

9           (a-5) The Board, in conjunction with the Department of  
10 Transportation, shall hold 2 public hearings to determine  
11 whether a more effective, efficient, and less burdensome method  
12 exists to prequalify an architect, engineer, or contractor. The  
13 hearings shall also specifically determine how the Department  
14 can obtain greater participation in the bidding process of  
15 small contractors and minority, female, disabled, and veteran  
16 architects, engineers, and contractors. The Department and the  
17 Capital Development Board shall collect data to review at the  
18 hearings, which shall include, but is not limited to,  
19 percentages and the number of minority, female, disabled, and  
20 veteran employees who are hired for each trade necessary for  
21 each project. The Department and the Capital Development Board  
22 shall issue their joint findings and recommendations to the  
23 Governor and the General Assembly no later than January 1,  
24 2018.

25           (b) Among the bases for an interim or emergency suspension  
26 or modification of prequalification are:

1           (1) A finding by the Board that the public interest,  
2           safety or welfare requires a summary suspension or  
3           modification of a prequalification without hearings.

4           (2) The occurrence of an event or series of events  
5           which, in the Board's opinion, warrants a summary  
6           suspension or modification of a prequalification without a  
7           hearing including, without limitation, (i) the indictment  
8           of the holder of the prequalification by a State or federal  
9           agency or other branch of government for a crime; (ii) the  
10          suspension or modification of a license or  
11          prequalification by another State agency or federal agency  
12          or other branch of government after hearings; (iii) a  
13          material breach of a contract made between the Board and an  
14          architect, engineer or contractor; and (iv) the failure to  
15          comply with State law including, without limitation, the  
16          Business Enterprise for Minorities, Females, and Persons  
17          with Disabilities Act, the prevailing wage requirements,  
18          and the Steel Products Procurement Act.

19          (c) If a prequalification is suspended or modified by the  
20          Board without hearings for any reason set forth in this Section  
21          or in Section 10-65 of the Illinois Administrative Procedure  
22          Act, as amended, the Board shall within 30 days of the issuance  
23          of an order of suspension or modification of a prequalification  
24          initiate proceedings for the suspension or modification of or  
25          other action upon the prequalification.

26          (Source: P.A. 92-16, eff. 6-28-01.)

1 Section 15. The Criminal Code of 2012 is amended by adding  
2 Section 33E-15.5 as follows:

3 (720 ILCS 5/33E-15.5 new)

4 Sec. 33E-15.5. Manipulation of work ratings.

5 (a) Any person who knowingly manipulates a work rating  
6 factor for a contractor or subcontractor under Section 2705-907  
7 of the Department of Transportation Law of the Civil  
8 Administrative Code of Illinois that results in a rating  
9 disqualifying or qualifying a contractor or subcontractor who  
10 would have been otherwise qualified or disqualified commits  
11 manipulation of work ratings. A charge of manipulation of work  
12 ratings under this Section shall be investigated by the  
13 Department of Transportation Division of Internal  
14 Investigation.

15 (b) Sentence. Manipulation of work ratings is a Class 4  
16 felony.

17 Section 99. Effective date. This Act takes effect upon  
18 becoming law.".