

1 AN ACT concerning government.

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

4 Section 5. The Business Enterprise for Minorities, Women,  
5 and Persons with Disabilities Act is amended by changing  
6 Sections 2, 5, 7, and 8 and by adding Section 3.5 as follows:

7 (30 ILCS 575/2)

8 (Section scheduled to be repealed on June 30, 2024)

9 Sec. 2. Definitions.

10 (A) For the purpose of this Act, the following terms shall  
11 have the following definitions:

12 (1) "Minority person" shall mean a person who is a  
13 citizen or lawful permanent resident of the United States  
14 and who is any of the following:

15 (a) American Indian or Alaska Native (a person  
16 having origins in any of the original peoples of North  
17 and South America, including Central America, and who  
18 maintains tribal affiliation or community attachment).

19 (b) Asian (a person having origins in any of the  
20 original peoples of the Far East, Southeast Asia, or  
21 the Indian subcontinent, including, but not limited  
22 to, Cambodia, China, India, Japan, Korea, Malaysia,  
23 Pakistan, the Philippine Islands, Thailand, and

1 Vietnam).

2 (c) Black or African American (a person having  
3 origins in any of the black racial groups of Africa).

4 (d) Hispanic or Latino (a person of Cuban,  
5 Mexican, Puerto Rican, South or Central American, or  
6 other Spanish culture or origin, regardless of race).

7 (e) Native Hawaiian or Other Pacific Islander (a  
8 person having origins in any of the original peoples  
9 of Hawaii, Guam, Samoa, or other Pacific Islands).

10 (2) "Woman" shall mean a person who is a citizen or  
11 lawful permanent resident of the United States and who is  
12 of the female gender.

13 (2.05) "Person with a disability" means a person who  
14 is a citizen or lawful resident of the United States and is  
15 a person qualifying as a person with a disability under  
16 subdivision (2.1) of this subsection (A).

17 (2.1) "Person with a disability" means a person with a  
18 severe physical or mental disability that:

19 (a) results from:

20 amputation,

21 arthritis,

22 autism,

23 blindness,

24 burn injury,

25 cancer,

26 cerebral palsy,

1 Crohn's disease,  
2 cystic fibrosis,  
3 deafness,  
4 head injury,  
5 heart disease,  
6 hemiplegia,  
7 hemophilia,  
8 respiratory or pulmonary dysfunction,  
9 an intellectual disability,  
10 mental illness,  
11 multiple sclerosis,  
12 muscular dystrophy,  
13 musculoskeletal disorders,  
14 neurological disorders, including stroke and  
15 epilepsy,  
16 paraplegia,  
17 quadriplegia and other spinal cord conditions,  
18 sickle cell anemia,  
19 ulcerative colitis,  
20 specific learning disabilities, or  
21 end stage renal failure disease; and  
22 (b) substantially limits one or more of the  
23 person's major life activities.

24 Another disability or combination of disabilities may  
25 also be considered as a severe disability for the purposes  
26 of item (a) of this subdivision (2.1) if it is determined

1 by an evaluation of rehabilitation potential to cause a  
2 comparable degree of substantial functional limitation  
3 similar to the specific list of disabilities listed in  
4 item (a) of this subdivision (2.1).

5 (3) "Minority-owned business" means a business which  
6 is at least 51% owned by one or more minority persons, or  
7 in the case of a corporation, at least 51% of the stock in  
8 which is owned by one or more minority persons; and the  
9 management and daily business operations of which are  
10 controlled by one or more of the minority individuals who  
11 own it.

12 (4) "Women-owned business" means a business which is  
13 at least 51% owned by one or more women, or, in the case of  
14 a corporation, at least 51% of the stock in which is owned  
15 by one or more women; and the management and daily  
16 business operations of which are controlled by one or more  
17 of the women who own it.

18 (4.1) "Business owned by a person with a disability"  
19 means a business that is at least 51% owned by one or more  
20 persons with a disability and the management and daily  
21 business operations of which are controlled by one or more  
22 of the persons with disabilities who own it. A  
23 not-for-profit agency for persons with disabilities that  
24 is exempt from taxation under Section 501 of the Internal  
25 Revenue Code of 1986 is also considered a "business owned  
26 by a person with a disability".

1 (4.2) "Council" means the Business Enterprise Council  
2 for Minorities, Women, and Persons with Disabilities  
3 created under Section 5 of this Act.

4 (4.3) "Commission" means, unless the context clearly  
5 indicates otherwise, the Commission on Equity and  
6 Inclusion created under the Commission on Equity and  
7 Inclusion Act.

8 (4.4) "Certified vendor" means a minority-owned  
9 business, women-owned business, or business owned by a  
10 person with a disability that is certified by the Business  
11 Enterprise Program.

12 (4.5) "Subcontractor" means a person or entity that  
13 enters into a contractual agreement with a prime vendor to  
14 provide, on behalf of the prime vendor, goods, services,  
15 real property, or remuneration or other monetary  
16 consideration that is the subject of the primary State  
17 contract. "Subcontractor" includes a sublessee under a  
18 State contract.

19 (4.6) "Prime vendor" means any person or entity having  
20 a contract that is subject to this Act with a State agency  
21 or public institution of higher education.

22 (5) "State contracts" means all contracts entered into  
23 by the State, any agency or department thereof, or any  
24 public institution of higher education, including  
25 community college districts, regardless of the source of  
26 the funds with which the contracts are paid, which are not

1 subject to federal reimbursement. "State contracts" does  
2 not include contracts awarded by a retirement system,  
3 pension fund, or investment board subject to Section  
4 1-109.1 of the Illinois Pension Code. This definition  
5 shall control over any existing definition under this Act  
6 or applicable administrative rule.

7 "State construction contracts" means all State  
8 contracts entered into by a State agency or public  
9 institution of higher education for the repair,  
10 remodeling, renovation or construction of a building or  
11 structure, or for the construction or maintenance of a  
12 highway defined in Article 2 of the Illinois Highway Code.

13 (6) "State agencies" shall mean all departments,  
14 officers, boards, commissions, institutions and bodies  
15 politic and corporate of the State, but does not include  
16 the Board of Trustees of the University of Illinois, the  
17 Board of Trustees of Southern Illinois University, the  
18 Board of Trustees of Chicago State University, the Board  
19 of Trustees of Eastern Illinois University, the Board of  
20 Trustees of Governors State University, the Board of  
21 Trustees of Illinois State University, the Board of  
22 Trustees of Northeastern Illinois University, the Board of  
23 Trustees of Northern Illinois University, the Board of  
24 Trustees of Western Illinois University, municipalities or  
25 other local governmental units, or other State  
26 constitutional officers.

1           (7) "Public institutions of higher education" means  
2           the University of Illinois, Southern Illinois University,  
3           Chicago State University, Eastern Illinois University,  
4           Governors State University, Illinois State University,  
5           Northeastern Illinois University, Northern Illinois  
6           University, Western Illinois University, the public  
7           community colleges of the State, and any other public  
8           universities, colleges, and community colleges now or  
9           hereafter established or authorized by the General  
10          Assembly.

11          (8) "Certification" means a determination made by the  
12          Council or by one delegated authority from the Council to  
13          make certifications, or by a State agency with statutory  
14          authority to make such a certification, that a business  
15          entity is a business owned by a minority, woman, or person  
16          with a disability for whatever purpose. A business owned  
17          and controlled by women shall be certified as a  
18          "woman-owned business". A business owned and controlled by  
19          women who are also minorities shall be certified as both a  
20          "women-owned business" and a "minority-owned business".

21          (9) "Control" means the exclusive or ultimate and sole  
22          control of the business including, but not limited to,  
23          capital investment and all other financial matters,  
24          property, acquisitions, contract negotiations, legal  
25          matters, officer-director-employee selection and  
26          comprehensive hiring, operating responsibilities,

1 cost-control matters, income and dividend matters,  
2 financial transactions and rights of other shareholders or  
3 joint partners. Control shall be real, substantial and  
4 continuing, not pro forma. Control shall include the power  
5 to direct or cause the direction of the management and  
6 policies of the business and to make the day-to-day as  
7 well as major decisions in matters of policy, management  
8 and operations. Control shall be exemplified by possessing  
9 the requisite knowledge and expertise to run the  
10 particular business and control shall not include simple  
11 majority or absentee ownership.

12 (10) "Business" means a business that has annual gross  
13 sales of less than \$75,000,000 as evidenced by the federal  
14 income tax return of the business. A vendor ~~firm~~ with  
15 gross sales in excess of this cap may apply to the Council  
16 for certification for a particular contract if the vendor  
17 ~~firm~~ can demonstrate that the contract would have  
18 significant impact on businesses owned by minorities,  
19 women, or persons with disabilities as suppliers or  
20 subcontractors or in employment of minorities, women, or  
21 persons with disabilities.

22 (11) "Utilization plan" means an attachment that is  
23 made to a form and additional documentations included in  
24 all bids or proposals and that demonstrates the bidder's  
25 or offeror's efforts to meet the contract-specific  
26 Business Enterprise Program goal. The utilization plan



1       shall indicate whether the prime vendor intends to meet  
2       the Business Enterprise Program goal through its own  
3       performance, if it is a certified vendor, or through the  
4       use of subcontractors that are certified vendors. ~~a~~  
5       ~~vendor's proposed utilization of vendors certified by the~~  
6       ~~Business Enterprise Program to meet the targeted goal.~~ The  
7       utilization plan shall demonstrate that the Vendor has  
8       either: (1) met the entire contract goal or (2) requested  
9       a full or partial waiver of the contract goal. If the prime  
10      vendor intends to use a subcontractor that is a certified  
11      vendor to fulfill the contract goal, a participation  
12      agreement executed between the prime vendor and the  
13      certified subcontractor must be included with the  
14      utilization plan ~~and made good faith efforts towards~~  
15      ~~meeting the goal.~~

16           (12) "Business Enterprise Program" means the Business  
17      Enterprise Program of the Commission on Equity and  
18      Inclusion.

19           (13) "Good faith effort" means actions undertaken by a  
20      vendor to achieve a contract specific Business Enterprise  
21      Program goal that, by scope, intensity, and  
22      appropriateness to the objective, can reasonably be  
23      expected to fulfill the program's requirements.

24           (B) When a business is owned at least 51% by any  
25      combination of minority persons, women, or persons with  
26      disabilities, even though none of the 3 classes alone holds at

1 least a 51% interest, the ownership requirement for purposes  
2 of this Act is considered to be met. The certification  
3 category for the business is that of the class holding the  
4 largest ownership interest in the business. If 2 or more  
5 classes have equal ownership interests, the certification  
6 category shall be determined by the business.

7 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;  
8 102-29, eff. 6-25-21.)

9 (30 ILCS 575/3.5 new)

10 Sec. 3.5. Uniform standard of contract goals.

11 (a) The Business Enterprise Program shall establish  
12 uniform standards for calculating contract specific Business  
13 Enterprise Program goals for all State contracts and State  
14 construction contracts subject to this Act. The uniform  
15 standards may consider normal industry practice, the scope of  
16 the work to be performed under a contract, the availability of  
17 vendors that are able to perform the scope of the work to be  
18 performed under a contract, the availability of certified  
19 vendors that are able to perform the work to be performed under  
20 a contract, and the State's progress to date toward meeting  
21 the aspirational goals set forth in this Act.

22 (b) No State agency or public institution of higher  
23 education shall maintain a policy of establishing contract  
24 specific goals for the participation of certified vendors that  
25 is inconsistent with or less stringent than the uniform

1 standards for calculating contract specific goals established  
2 by the Business Enterprise Program.

3 (c) Each State agency and public institution of higher  
4 education subject to the requirements of this Act shall, on an  
5 annual basis, submit a report to the Council detailing its  
6 plan to meet the aspirational contract goals established under  
7 this Act and established for that agency and institution.

8 (30 ILCS 575/5) (from Ch. 127, par. 132.605)

9 (Section scheduled to be repealed on June 30, 2024)

10 Sec. 5. Business Enterprise Council.

11 (1) To help implement, monitor, and enforce the goals of  
12 this Act, there is created the Business Enterprise Council for  
13 Minorities, Women, and Persons with Disabilities, hereinafter  
14 referred to as the Council, composed of the Chairperson of the  
15 Commission on Equity and Inclusion, the Secretary of Human  
16 Services and the Directors of the Department of Human Rights,  
17 the Department of Commerce and Economic Opportunity, the  
18 Department of Central Management Services, the Department of  
19 Transportation and the Capital Development Board, or their  
20 duly appointed representatives, with the Comptroller, or his  
21 or her designee, serving as an advisory member of the Council.  
22 Ten individuals representing businesses that are  
23 minority-owned, women-owned, or owned by persons with  
24 disabilities, 2 individuals representing the business  
25 community, and a representative of public institutions of

1 higher education shall be appointed by the Governor. These  
2 members shall serve 2-year terms and shall be eligible for  
3 reappointment. Any vacancy occurring on the Council shall also  
4 be filled by the Governor. Any member appointed to fill a  
5 vacancy occurring prior to the expiration of the term for  
6 which his or her predecessor was appointed shall be appointed  
7 for the remainder of such term. Members of the Council shall  
8 serve without compensation but shall be reimbursed for any  
9 ordinary and necessary expenses incurred in the performance of  
10 their duties.

11 The Chairperson of the Commission shall serve as the  
12 Council chairperson and shall select, subject to approval of  
13 the Council, a Secretary responsible for the operation of the  
14 program who shall serve as the Division Manager of the  
15 Business Enterprise for Minorities, Women, and Persons with  
16 Disabilities Division of the Commission on Equity and  
17 Inclusion.

18 The Director of each State agency and the chief executive  
19 officer of each public institution of higher education shall  
20 appoint a liaison to the Council. The liaison shall be  
21 responsible for submitting to the Council any reports and  
22 documents necessary under this Act.

23 (2) The Council's authority and responsibility shall be  
24 to:

25 (a) Devise a certification procedure to assure that  
26 businesses taking advantage of this Act are legitimately

1 classified as businesses owned by minorities, women, or  
2 persons with disabilities and a registration procedure to  
3 recognize, without additional evidence of Business  
4 Enterprise Program eligibility, the certification of  
5 businesses owned by minorities, women, or persons with  
6 disabilities certified by the City of Chicago, Cook  
7 County, or other jurisdictional programs with requirements  
8 and procedures equaling or exceeding those in this Act.

9 (b) Maintain a list of all businesses legitimately  
10 classified as businesses owned by minorities, women, or  
11 persons with disabilities to provide to State agencies and  
12 public institutions of higher education.

13 (c) Review rules and regulations for the  
14 implementation of the program for businesses owned by  
15 minorities, women, and persons with disabilities.

16 (d) Review compliance plans submitted by each State  
17 agency and public institution of higher education pursuant  
18 to this Act.

19 (e) Make annual reports as provided in Section 8f to  
20 the Governor and the General Assembly on the status of the  
21 program.

22 (f) Serve as a central clearinghouse for information  
23 on State contracts, including the maintenance of a list of  
24 all pending State contracts upon which businesses owned by  
25 minorities, women, and persons with disabilities may bid.  
26 At the Council's discretion, maintenance of the list may

1 include 24-hour electronic access to the list along with  
2 the bid and application information.

3 (g) Establish a toll-free telephone number to  
4 facilitate information requests concerning the  
5 certification process and pending contracts.

6 (3) No premium bond rate of a surety company for a bond  
7 required of a business owned by a minority, woman, or person  
8 with a disability bidding for a State contract shall be higher  
9 than the lowest rate charged by that surety company for a  
10 similar bond in the same classification of work that would be  
11 written for a business not owned by a minority, woman, or  
12 person with a disability.

13 (4) Any Council member who has direct financial or  
14 personal interest in any measure pending before the Council  
15 shall disclose this fact to the Council and refrain from  
16 participating in the determination upon such measure.

17 (5) The Secretary shall have the following duties and  
18 responsibilities:

19 (a) To be responsible for the day-to-day operation of  
20 the Council.

21 (b) To serve as a coordinator for all of the State's  
22 programs for businesses owned by minorities, women, and  
23 persons with disabilities and as the information and  
24 referral center for all State initiatives for businesses  
25 owned by minorities, women, and persons with disabilities.

26 (c) To establish an enforcement procedure whereby the

1 Council may recommend to the appropriate State legal  
2 officer that the State exercise its legal remedies which  
3 shall include (1) termination of the contract involved,  
4 (2) prohibition of participation by the respondent in  
5 State public contracts for a period not to exceed 3 years,  
6 (3) imposition of a penalty in the amount of the  
7 discrepancy between the commitment contained in the  
8 utilization plan, as such amount may be amended over the  
9 term of the contract, and the qualifying payments made to  
10 the eligible certified vendors listed in the utilization  
11 plan ~~a penalty not to exceed any profit acquired as a~~  
12 ~~result of violation~~, or (4) any combination thereof. Such  
13 procedures shall require prior approval by Council. All  
14 funds collected as penalties under this subsection shall  
15 be used exclusively for maintenance and further  
16 development of the Business Enterprise Program and  
17 encouragement of participation in State procurement by  
18 minorities, women, and persons with disabilities.

19 (d) To devise appropriate policies, regulations, and  
20 procedures for including participation by businesses owned  
21 by minorities, women, and persons with disabilities as  
22 prime contractors, including, but not limited to: (i)  
23 encouraging the inclusions of qualified businesses owned  
24 by minorities, women, and persons with disabilities on  
25 solicitation lists, (ii) investigating the potential of  
26 blanket bonding programs for small construction jobs, and

1 (iii) investigating and making recommendations concerning  
2 the use of the sheltered market process.

3 (e) To devise procedures for the waiver of the  
4 participation goals in appropriate circumstances.

5 (f) To accept donations and, with the approval of the  
6 Council or the Chairperson of the Commission on Equity and  
7 Inclusion, grants related to the purposes of this Act; to  
8 conduct seminars related to the purpose of this Act and to  
9 charge reasonable registration fees; and to sell  
10 directories, vendor lists, and other such information to  
11 interested parties, except that forms necessary to become  
12 eligible for the program shall be provided free of charge  
13 to a business or individual applying for the Business  
14 Enterprise Program.

15 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;  
16 102-29, eff. 6-25-21; 102-558, eff. 8-20-21.)

17 (30 ILCS 575/7) (from Ch. 127, par. 132.607)

18 (Section scheduled to be repealed on June 30, 2024)

19 Sec. 7. Exemptions; waivers; publication of data.

20 (1) Individual contract exemptions. The Council, at the  
21 written request of the affected agency, public institution of  
22 higher education, or recipient of a grant or loan of State  
23 funds of \$250,000 or more complying with Section 45 of the  
24 State Finance Act, may permit an individual contract or  
25 contract package, (related contracts being bid or awarded



1 simultaneously for the same project or improvements) be made  
2 wholly or partially exempt from State contracting goals for  
3 businesses owned by minorities, women, and persons with  
4 disabilities prior to the advertisement for bids or  
5 solicitation of proposals whenever there has been a  
6 determination, reduced to writing and based on the best  
7 information available at the time of the determination, that  
8 there is an insufficient number of businesses owned by  
9 minorities, women, and persons with disabilities to ensure  
10 adequate competition and an expectation of reasonable prices  
11 on bids or proposals solicited for the individual contract or  
12 contract package in question. Any such exemptions shall be  
13 given by the Council to the Bureau on Apprenticeship Programs  
14 and Clean Energy Jobs.

15 (a) Written request for contract exemption. A written  
16 request for an individual contract exemption must include,  
17 but is not limited to, the following:

18 (i) a list of eligible businesses owned by  
19 minorities, women, and persons with disabilities;

20 (ii) a clear demonstration that the number of  
21 eligible businesses identified in subparagraph (i)  
22 above is insufficient to ensure adequate competition;

23 (iii) the difference in cost between the contract  
24 proposals being offered by businesses owned by  
25 minorities, women, and persons with disabilities and  
26 the agency or public institution of higher education's

1 expectations of reasonable prices on bids or proposals  
2 within that class; and

3 (iv) a list of eligible businesses owned by  
4 minorities, women, and persons with disabilities that  
5 the contractor has used in the current and prior  
6 fiscal years.

7 (b) Determination. The Council's determination  
8 concerning an individual contract exemption must consider,  
9 at a minimum, the following:

10 (i) the justification for the requested exemption,  
11 including whether diligent efforts were undertaken to  
12 identify and solicit eligible businesses owned by  
13 minorities, women, and persons with disabilities;

14 (ii) the total number of exemptions granted to the  
15 affected agency, public institution of higher  
16 education, or recipient of a grant or loan of State  
17 funds of \$250,000 or more complying with Section 45 of  
18 the State Finance Act that have been granted by the  
19 Council in the current and prior fiscal years; and

20 (iii) the percentage of contracts awarded by the  
21 agency or public institution of higher education to  
22 eligible businesses owned by minorities, women, and  
23 persons with disabilities in the current and prior  
24 fiscal years.

25 (2) Class exemptions.

26 (a) Creation. The Council, at the written request of

1 the affected agency or public institution of higher  
2 education, may permit an entire class of contracts be made  
3 exempt from State contracting goals for businesses owned  
4 by minorities, women, and persons with disabilities  
5 whenever there has been a determination, reduced to  
6 writing and based on the best information available at the  
7 time of the determination, that there is an insufficient  
8 number of qualified businesses owned by minorities, women,  
9 and persons with disabilities to ensure adequate  
10 competition and an expectation of reasonable prices on  
11 bids or proposals within that class. Any such exemption  
12 shall be given by the Council to the Bureau on  
13 Apprenticeship Programs and Clean Energy Jobs.

14 (a-1) Written request for class exemption. A written  
15 request for a class exemption must include, but is not  
16 limited to, the following:

17 (i) a list of eligible businesses owned by  
18 minorities, women, and persons with disabilities;

19 (ii) a clear demonstration that the number of  
20 eligible businesses identified in subparagraph (i)  
21 above is insufficient to ensure adequate competition;

22 (iii) the difference in cost between the contract  
23 proposals being offered by eligible businesses owned  
24 by minorities, women, and persons with disabilities  
25 and the agency or public institution of higher  
26 education's expectations of reasonable prices on bids

1 or proposals within that class; and

2 (iv) the number of class exemptions the affected  
3 agency or public institution of higher education  
4 requested in the current and prior fiscal years.

5 (a-2) Determination. The Council's determination  
6 concerning class exemptions must consider, at a minimum,  
7 the following:

8 (i) the justification for the requested exemption,  
9 including whether diligent efforts were undertaken to  
10 identify and solicit eligible businesses owned by  
11 minorities, women, and persons with disabilities;

12 (ii) the total number of class exemptions granted  
13 to the requesting agency or public institution of  
14 higher education that have been granted by the Council  
15 in the current and prior fiscal years; and

16 (iii) the percentage of contracts awarded by the  
17 agency or public institution of higher education to  
18 eligible businesses owned by minorities, women, and  
19 persons with disabilities the current and prior fiscal  
20 years.

21 (b) Limitation. Any such class exemption shall not be  
22 permitted for a period of more than one year at a time.

23 (3) Waivers. Where a particular contract requires a vendor  
24 ~~contractor~~ to meet a goal established pursuant to this Act,  
25 the vendor ~~contractor~~ shall have the right to request a waiver  
26 from such requirements prior to the contract award. The

1 Business Enterprise Program shall evaluate a vendor's request  
2 for a waiver based on the vendor's documented good faith  
3 efforts to meet the contract-specific Business Enterprise  
4 Program goal. The Council may ~~shall~~ grant the waiver when the  
5 contractor demonstrates that there has been made a good faith  
6 effort to comply with the goals for participation by  
7 businesses owned by minorities, women, and persons with  
8 disabilities. Any such waiver may ~~shall~~ also be transmitted in  
9 writing to the Bureau on Apprenticeship Programs and Clean  
10 Energy Jobs.

11 (a) Request for waiver. A vendor's ~~contractor's~~  
12 request for a waiver under this subsection (3) must  
13 include, but is not limited to, the following, ~~if~~  
14 ~~available:~~

15 (i) a list of eligible businesses owned by  
16 minorities, women, and persons with disabilities that  
17 pertain to the the class of contracts in the requested  
18 waiver that were contracted by the vendor ~~scope of~~  
19 ~~work of the contract.~~ Eligible businesses are only  
20 eligible if the business is certified for the products  
21 or work advertised in the solicitation or bid;

22 (ii) (blank);

23 (iia) a clear demonstration that the vendor  
24 ~~contractor~~ selected portions of the work to be  
25 performed by certified vendors to facilitate meeting  
26 the contract specific goal, and that certified vendors

1           that have the capability to perform the work of the  
2           contract were eligible businesses owned by minorities,  
3           ~~women, and persons with disabilities,~~ solicited  
4           through all reasonable and available means eligible  
5           ~~businesses, and negotiated in good faith with~~  
6           ~~interested eligible businesses;~~

7           (iib) documentation demonstrating that certified  
8           vendors ~~businesses owned by minorities, women, and~~  
9           ~~persons with disabilities~~ are not rejected as being  
10          unqualified without sound reasons based on a thorough  
11          investigation of their capabilities. The certified  
12          vendor's standing within its industry, membership in  
13          specific groups, organizations, or associations, and  
14          political or social affiliations are not legitimate  
15          causes for rejecting or not contacting or negotiating  
16          with a certified vendor;

17          (iic) proof that the prime vendor solicited  
18          eligible certified vendors with: (1) sufficient time  
19          to respond; (2) adequate information about the scope,  
20          specifications, and requirements of the solicitation  
21          or bid, including plans, drawings, and addenda, to  
22          allow eligible businesses an opportunity to respond to  
23          the solicitation or bid; and (3) sufficient follow up  
24          with certified vendors;

25          (iid) a clear demonstration that the prime vendor  
26          communicated with certified vendors;

1           (iie) evidence that the prime vendor negotiated  
2           with certified vendors to enter into subcontracts to  
3           provide a commercially useful function of the contract  
4           for a reasonable cost;

5           (iii) documentation demonstrating that the  
6           difference in cost between the contract proposals  
7           being offered by certified vendors is ~~contract~~  
8           ~~proposals being offered by businesses owned by~~  
9           ~~minorities, women, and persons with disabilities are~~  
10           excessive or unreasonable; ~~and~~

11           (iv) a list of certified vendors ~~businesses~~ owned  
12           by minorities, women, and persons with disabilities  
13           that the contractor has used in the current and prior  
14           fiscal years; ~~and~~

15           (v) documentation demonstrating that the vendor  
16           made efforts to utilize certified vendors despite the  
17           ability or desire of a vendor to perform the work with  
18           its own operations by selecting portions of the work  
19           to be performed by certified vendors, which may, when  
20           appropriate, include breaking out portions of the work  
21           to be performed into economically feasible units to  
22           facilitate certified vendor participation; and

23           (vi) documentation that the vendor used the  
24           services of: (1) the State; (2) organizations or  
25           contractors' groups representing or composed of  
26           minorities, women, or persons with disabilities; (3)

1 local, State, or federal assistance offices  
2 representing or assisting minorities, women, or  
3 persons with disabilities; and (4) other organizations  
4 that provide assistance in the recruitment and  
5 engagement of certified vendors.

6 (b) Determination. The Council's determination  
7 concerning waivers must include following:

8 (i) the justification for the requested waiver,  
9 including whether the requesting vendor ~~contractor~~  
10 made a good faith effort to identify and solicit  
11 certified vendors based on the criteria set forth in  
12 this Section ~~eligible businesses owned by minorities,~~  
13 ~~women, and persons with disabilities;~~

14 (ii) the total number of waivers the vendor  
15 ~~contractor~~ has been granted by the Council in the  
16 current and prior fiscal years;

17 (iii) (blank); and

18 (iv) the vendor's ~~contractor's~~ use of businesses  
19 owned by minorities, women, and persons with  
20 disabilities in the current and prior fiscal years.

21 (3.5) (Blank).

22 (4) Conflict with other laws. In the event that any State  
23 contract, which otherwise would be subject to the provisions  
24 of this Act, is or becomes subject to federal laws or  
25 regulations which conflict with the provisions of this Act or  
26 actions of the State taken pursuant hereto, the provisions of



1 the federal laws or regulations shall apply and the contract  
2 shall be interpreted and enforced accordingly.

3 (5) Each chief procurement officer, as defined in the  
4 Illinois Procurement Code, shall maintain on his or her  
5 official Internet website a database of the following: (i)  
6 waivers granted under this Section with respect to contracts  
7 under his or her jurisdiction; (ii) a State agency or public  
8 institution of higher education's written request for an  
9 exemption of an individual contract or an entire class of  
10 contracts; and (iii) the Council's written determination  
11 granting or denying a request for an exemption of an  
12 individual contract or an entire class of contracts. The  
13 database, which shall be updated periodically as necessary,  
14 shall be searchable by contractor name and by contracting  
15 State agency.

16 (6) Each chief procurement officer, as defined by the  
17 Illinois Procurement Code, shall maintain on its website a  
18 list of all vendors ~~firms~~ that have been prohibited from  
19 bidding, offering, or entering into a contract with the State  
20 of Illinois as a result of violations of this Act.

21 Each public notice required by law of the award of a State  
22 contract shall include for each bid or offer submitted for  
23 that contract the following: (i) the bidder's or offeror's  
24 name, (ii) the bid amount, (iii) the name or names of the  
25 certified vendors ~~firms~~ identified in the bidder's or  
26 offeror's submitted utilization plan, and (iv) the ~~bid's~~

1 ~~amount and~~ percentage of the contract awarded to each  
2 certified vendor that is a business ~~businesses~~ owned by  
3 minorities, women, and persons with disabilities identified in  
4 the utilization plan.

5 (Source: P.A. 101-170, eff. 1-1-20; 101-601, eff. 1-1-20;  
6 101-657, eff. 1-1-22; 102-29, eff. 6-25-21; 102-662, eff.  
7 9-15-21.)

8 (30 ILCS 575/8) (from Ch. 127, par. 132.608)

9 (Section scheduled to be repealed on June 30, 2024)

10 Sec. 8. Enforcement.

11 (1) The Commission on Equity and Inclusion shall make such  
12 findings, recommendations and proposals to the Governor as are  
13 necessary and appropriate to enforce this Act. If, as a result  
14 of its monitoring activities, the Commission determines that  
15 its goals and policies are not being met by any State agency or  
16 public institution of higher education, the Commission may  
17 recommend any or all of the following actions:

18 (a) Establish enforcement procedures whereby the  
19 Commission may recommend to the appropriate State agency,  
20 public institutions of higher education, or law  
21 enforcement officer that legal or administrative remedies  
22 be initiated for violations of contract provisions or  
23 rules issued hereunder or by a contracting State agency or  
24 public institutions of higher education. State agencies  
25 and public institutions of higher education shall be

1 authorized to adopt remedies for such violations which  
2 shall include (1) termination of the contract involved,  
3 (2) prohibition of participation of the respondents in  
4 public contracts for a period not to exceed one year, (3)  
5 the assessment of a penalty in the amount of the  
6 discrepancy between the commitment contained in the  
7 utilization plan, as such amount may be amended over the  
8 term of the contract, and the qualifying payments made to  
9 the certified vendors listed in the utilization plan  
10 ~~imposition of a penalty not to exceed any profit acquired~~  
11 ~~as a result of violation~~, or (4) any combination thereof.

12 (b) If the Commission concludes that a compliance plan  
13 submitted under Section 6 is unlikely to produce the  
14 participation goals for businesses owned by minorities,  
15 women, and persons with disabilities within the then  
16 current fiscal year, the Commission may recommend that the  
17 State agency or public institution of higher education  
18 revise its plan to provide additional opportunities for  
19 participation by businesses owned by minorities, women,  
20 and persons with disabilities. Such recommended revisions  
21 may include, but shall not be limited to, the following:

22 (i) assurances of stronger and better focused  
23 solicitation efforts to obtain more businesses owned  
24 by minorities, women, and persons with disabilities as  
25 potential sources of supply;

26 (ii) division of the scope of work ~~job or project~~

1       ~~requirements~~, when economically feasible, into tasks  
2       or quantities to permit participation of businesses  
3       owned by minorities, women, and persons with  
4       disabilities;

5               (iii) elimination of extended experience or  
6       capitalization requirements, when programmatically  
7       feasible, to permit participation of businesses owned  
8       by minorities, women, and persons with disabilities;

9               (iv) identification of specific proposed contracts  
10       as particularly attractive or appropriate for  
11       participation by businesses owned by minorities,  
12       women, and persons with disabilities, such  
13       identification to result from and be coupled with the  
14       efforts of subparagraphs (i) through (iii);

15               (v) implementation of those regulations  
16       established for the use of the sheltered market  
17       process.

18       (2) State agencies and public institutions of higher  
19       education shall monitor a vendor's compliance with its  
20       utilization plan and the terms of its contract. Without  
21       limitation, a vendor's failure to comply with its contractual  
22       commitments as contained in the utilization plan; failure to  
23       cooperate in providing information regarding its compliance  
24       with its utilization plan; or the provision of false or  
25       misleading information or statements concerning compliance,  
26       certification status, or eligibility of the Business

1 Enterprise Program-certified vendor, good faith efforts, or  
2 any other material fact or representation shall constitute a  
3 material breach of the contract and entitle the State agency  
4 or public institution of higher education to declare a  
5 default, terminate the contract, or exercise those remedies  
6 provided for in the contract, at law, or in equity.

7 (3) Prior to the expiration or termination of a contract,  
8 State agencies and public institutions of higher education  
9 shall evaluate the contractor's fulfillment of the contract  
10 goals for participation by certified businesses owned by  
11 minorities, women, and persons with disabilities. The agency  
12 or public institution of higher education shall prepare a  
13 report of the vendor's compliance with the contract goals and  
14 file it with the Secretary. If the Secretary determines that  
15 the vendor did not fulfill the contract goals, the vendor  
16 shall be in breach of the contract and may be subject to  
17 remedies or sanctions, unless the vendor can show that it made  
18 good faith efforts to meet the contract goals. Such remedies  
19 or sanctions for failing to make good faith efforts may  
20 include (i) disqualification of the contractor from doing  
21 business with the State for a period of no more than one year,  
22 ~~or~~ (ii) cancellation, without any penalty to the State, of any  
23 contract entered into by the vendor, or (iii) the assessment  
24 of a penalty in the amount of the discrepancy between the  
25 commitment contained in the utilization plan, as such amount  
26 may be amended over the term of the contract, and the

1 qualifying payments made to the certified vendors listed in  
2 the utilization plan.

3       The Business Enterprise Program shall develop procedures  
4 for determining whether a vendor has made good faith efforts  
5 to meet the contract goals upon the expiration or termination  
6 of a contract, which may include, but shall not be limited to:  
7 (i) consideration of whether State or local action caused a  
8 shortfall, such as a change in the scope of work that  
9 eliminated work to be performed by certified vendors or a  
10 change in specifications; (ii) whether the vendor was unable  
11 to obtain certified business participation without requiring  
12 the introduction of extra participants not performing a  
13 commercially useful function; or (iii) whether the vendor made  
14 efforts to use appropriate forums for purposes of advertising  
15 subcontracting opportunities suitable for certified  
16 businesses.

17 (Source: P.A. 101-657, eff. 1-1-22; 102-29, eff. 6-25-21.)