



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2405

Introduced 2/26/2021, by Sen. Napoleon Harris, III

SYNOPSIS AS INTRODUCED:

30 ILCS 500/50-35

30 ILCS 575/2

30 ILCS 575/4

30 ILCS 575/5

from Ch. 127, par. 132.604

from Ch. 127, par. 132.605

Amends the Illinois Procurement Code. Requires disclosure of financial interests for all bids and offers from responsive bidders, offerors, vendors, or contractors with an annual value in excess of the specified small purchase threshold under the Code (currently, more than \$50,000). Amends the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. Provides that business firms with gross sales in excess of \$75,000,000 that are granted certification by the Business Enterprise Council shall be granted certification for the life of the contract including available renewals. Provides further requirements concerning the cure of deficiencies in specified solicitations. Provides for automatic certification under the Act. Requires the Business Enterprise Council to develop and maintain a repository for specified non-certified vendors. Makes conforming and other changes.

LRB102 15390 RJF 20753 b

1 AN ACT concerning finance.

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

4 Section 5. The Illinois Procurement Code is amended by
5 changing Section 50-35 as follows:

6 (30 ILCS 500/50-35)

7 Sec. 50-35. Financial disclosure and potential conflicts
8 of interest.

9 (a) All bids and offers from responsive bidders, offerors,
10 vendors, or contractors with an annual value in excess of the
11 identified small purchase threshold established under
12 subsection (a) of Section 20-20 ~~of more than \$50,000~~, and all
13 submissions to a vendor portal, shall be accompanied by
14 disclosure of the financial interests of the bidder, offeror,
15 potential contractor, or contractor and each subcontractor to
16 be used. In addition, all subcontracts identified as provided
17 by Section 20-120 of this Code with an annual value of more
18 than \$50,000 shall be accompanied by disclosure of the
19 financial interests of each subcontractor. The financial
20 disclosure of each successful bidder, offeror, potential
21 contractor, or contractor and its subcontractors shall be
22 incorporated as a material term of the contract and shall
23 become part of the publicly available contract or procurement

1 file maintained by the appropriate chief procurement officer.
2 Each disclosure under this Section shall be signed and made
3 under penalty of perjury by an authorized officer or employee
4 on behalf of the bidder, offeror, potential contractor,
5 contractor, or subcontractor, and must be filed with the
6 Procurement Policy Board.

7 (b) Disclosure shall include any ownership or distributive
8 income share that is in excess of 5%, or an amount greater than
9 60% of the annual salary of the Governor, of the disclosing
10 entity or its parent entity, whichever is less, unless the
11 bidder, offeror, potential contractor, contractor, or
12 subcontractor (i) is a publicly traded entity subject to
13 Federal 10K reporting, in which case it may submit its 10K
14 disclosure in place of the prescribed disclosure, or (ii) is a
15 privately held entity that is exempt from Federal 10k
16 reporting but has more than 100 shareholders, in which case it
17 may submit the information that Federal 10k reporting
18 companies are required to report under 17 CFR 229.401 and list
19 the names of any person or entity holding any ownership share
20 that is in excess of 5% in place of the prescribed disclosure.
21 The form of disclosure shall be prescribed by the applicable
22 chief procurement officer and must include at least the names,
23 addresses, and dollar or proportionate share of ownership of
24 each person identified in this Section, their instrument of
25 ownership or beneficial relationship, and notice of any
26 potential conflict of interest resulting from the current

1 ownership or beneficial relationship of each individual
2 identified in this Section having in addition any of the
3 following relationships:

4 (1) State employment, currently or in the previous 3
5 years, including contractual employment of services.

6 (2) State employment of spouse, father, mother, son,
7 or daughter, including contractual employment for services
8 in the previous 2 years.

9 (3) Elective status; the holding of elective office of
10 the State of Illinois, the government of the United
11 States, any unit of local government authorized by the
12 Constitution of the State of Illinois or the statutes of
13 the State of Illinois currently or in the previous 3
14 years.

15 (4) Relationship to anyone holding elective office
16 currently or in the previous 2 years; spouse, father,
17 mother, son, or daughter.

18 (5) Appointive office; the holding of any appointive
19 government office of the State of Illinois, the United
20 States of America, or any unit of local government
21 authorized by the Constitution of the State of Illinois or
22 the statutes of the State of Illinois, which office
23 entitles the holder to compensation in excess of expenses
24 incurred in the discharge of that office currently or in
25 the previous 3 years.

26 (6) Relationship to anyone holding appointive office

1 currently or in the previous 2 years; spouse, father,
2 mother, son, or daughter.

3 (7) Employment, currently or in the previous 3 years,
4 as or by any registered lobbyist of the State government.

5 (8) Relationship to anyone who is or was a registered
6 lobbyist in the previous 2 years; spouse, father, mother,
7 son, or daughter.

8 (9) Compensated employment, currently or in the
9 previous 3 years, by any registered election or
10 re-election committee registered with the Secretary of
11 State or any county clerk in the State of Illinois, or any
12 political action committee registered with either the
13 Secretary of State or the Federal Board of Elections.

14 (10) Relationship to anyone; spouse, father, mother,
15 son, or daughter; who is or was a compensated employee in
16 the last 2 years of any registered election or re-election
17 committee registered with the Secretary of State or any
18 county clerk in the State of Illinois, or any political
19 action committee registered with either the Secretary of
20 State or the Federal Board of Elections.

21 (b-1) The disclosure required under this Section must also
22 include the name and address of each lobbyist required to
23 register under the Lobbyist Registration Act and other agent
24 of the bidder, offeror, potential contractor, contractor, or
25 subcontractor who is not identified under subsections (a) and
26 (b) and who has communicated, is communicating, or may

1 communicate with any State officer or employee concerning the
2 bid or offer. The disclosure under this subsection is a
3 continuing obligation and must be promptly supplemented for
4 accuracy throughout the process and throughout the term of the
5 contract if the bid or offer is successful.

6 (b-2) The disclosure required under this Section must also
7 include, for each of the persons identified in subsection (b)
8 or (b-1), each of the following that occurred within the
9 previous 10 years: suspension or debarment from contracting
10 with any governmental entity; professional licensure
11 discipline; bankruptcies; adverse civil judgments and
12 administrative findings; and criminal felony convictions. The
13 disclosure under this subsection is a continuing obligation
14 and must be promptly supplemented for accuracy throughout the
15 process and throughout the term of the contract if the bid or
16 offer is successful.

17 (c) The disclosure in subsection (b) is not intended to
18 prohibit or prevent any contract. The disclosure is meant to
19 fully and publicly disclose any potential conflict to the
20 chief procurement officers, State purchasing officers, their
21 designees, and executive officers so they may adequately
22 discharge their duty to protect the State.

23 (d) When a potential for a conflict of interest is
24 identified, discovered, or reasonably suspected, the chief
25 procurement officer or State procurement officer shall send
26 the contract to the Procurement Policy Board. In accordance

1 with the objectives of subsection (c), if the Procurement
2 Policy Board finds evidence of a potential conflict of
3 interest not originally disclosed by the bidder, offeror,
4 potential contractor, contractor, or subcontractor, the Board
5 shall provide written notice to the bidder, offeror, potential
6 contractor, contractor, or subcontractor that is identified,
7 discovered, or reasonably suspected of having a potential
8 conflict of interest. The bidder, offeror, potential
9 contractor, contractor, or subcontractor shall have 15
10 calendar days to respond in writing to the Board, and a hearing
11 before the Board will be granted upon request by the bidder,
12 offeror, potential contractor, contractor, or subcontractor,
13 at a date and time to be determined by the Board, but which in
14 no event shall occur later than 15 calendar days after the date
15 of the request. Upon consideration, the Board shall recommend,
16 in writing, whether to allow or void the contract, bid, offer,
17 or subcontract weighing the best interest of the State of
18 Illinois. All recommendations shall be submitted to the
19 Executive Ethics Commission. The Executive Ethics Commission
20 must hold a public hearing within 30 calendar days after
21 receiving the Board's recommendation if the Procurement Policy
22 Board makes a recommendation to (i) void a contract or (ii)
23 void a bid or offer and the chief procurement officer selected
24 or intends to award the contract to the bidder, offeror, or
25 potential contractor. A chief procurement officer is
26 prohibited from awarding a contract before a hearing if the

1 Board recommendation does not support a bid or offer. The
2 recommendation and proceedings of any hearing, if applicable,
3 shall be available to the public.

4 (e) These thresholds and disclosure do not relieve the
5 chief procurement officer, the State purchasing officer, or
6 their designees from reasonable care and diligence for any
7 contract, bid, offer, or submission to a vendor portal. The
8 chief procurement officer, the State purchasing officer, or
9 their designees shall be responsible for using any reasonably
10 known and publicly available information to discover any
11 undisclosed potential conflict of interest and act to protect
12 the best interest of the State of Illinois.

13 (f) Inadvertent or accidental failure to fully disclose
14 shall render the contract, bid, offer, proposal, subcontract,
15 or relationship voidable by the chief procurement officer if
16 he or she deems it in the best interest of the State of
17 Illinois and, at his or her discretion, may be cause for
18 barring from future contracts, bids, offers, proposals,
19 subcontracts, or relationships with the State for a period of
20 up to 2 years.

21 (g) Intentional, willful, or material failure to disclose
22 shall render the contract, bid, offer, proposal, subcontract,
23 or relationship voidable by the chief procurement officer if
24 he or she deems it in the best interest of the State of
25 Illinois and shall result in debarment from future contracts,
26 bids, offers, proposals, subcontracts, or relationships for a

1 period of not less than 2 years and not more than 10 years.
2 Reinstatement after 2 years and before 10 years must be
3 reviewed and commented on in writing by the Governor of the
4 State of Illinois, or by an executive ethics board or
5 commission he or she might designate. The comment shall be
6 returned to the responsible chief procurement officer who must
7 rule in writing whether and when to reinstate.

8 (h) In addition, all disclosures shall note any other
9 current or pending contracts, bids, offers, proposals,
10 subcontracts, leases, or other ongoing procurement
11 relationships the bidder, offeror, potential contractor,
12 contractor, or subcontractor has with any other unit of State
13 government and shall clearly identify the unit and the
14 contract, offer, proposal, lease, or other relationship.

15 (i) The bidder, offeror, potential contractor, or
16 contractor has a continuing obligation to supplement the
17 disclosure required by this Section throughout the bidding
18 process during the term of any contract, and during the vendor
19 portal registration process.

20 (Source: P.A. 97-490, eff. 8-22-11; 97-895, eff. 8-3-12;
21 98-1076, eff. 1-1-15.)

22 Section 10. The Business Enterprise for Minorities, Women,
23 and Persons with Disabilities Act is amended by changing
24 Sections 2, 4, and 5 as follows:

1 (30 ILCS 575/2)

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

3 Sec. 2. Definitions.

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

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

9 (a) American Indian or Alaska Native (a person
10 having origins in any of the original peoples of North
11 and South America, including Central America, and who
12 maintains tribal affiliation or community attachment).

13 (b) Asian (a person having origins in any of the
14 original peoples of the Far East, Southeast Asia, or
15 the Indian subcontinent, including, but not limited
16 to, Cambodia, China, India, Japan, Korea, Malaysia,
17 Pakistan, the Philippine Islands, Thailand, and
18 Vietnam).

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

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

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

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

4 (2.05) "Person with a disability" means a person who
5 is a citizen or lawful resident of the United States and is
6 a person qualifying as a person with a disability under
7 subdivision (2.1) of this subsection (A).

8 (2.1) "Person with a disability" means a person with a
9 severe physical or mental disability that:

10 (a) results from:
11 amputation,
12 arthritis,
13 autism,
14 blindness,
15 burn injury,
16 cancer,
17 cerebral palsy,
18 Crohn's disease,
19 cystic fibrosis,
20 deafness,
21 head injury,
22 heart disease,
23 hemiplegia,
24 hemophilia,
25 respiratory or pulmonary dysfunction,
26 an intellectual disability,

1 mental illness,
2 multiple sclerosis,
3 muscular dystrophy,
4 musculoskeletal disorders,
5 neurological disorders, including stroke and
6 epilepsy,
7 paraplegia,
8 quadriplegia and other spinal cord conditions,
9 sickle cell anemia,
10 ulcerative colitis,
11 specific learning disabilities, or
12 end stage renal failure disease; and

13 (b) substantially limits one or more of the
14 person's major life activities.

15 Another disability or combination of disabilities may
16 also be considered as a severe disability for the purposes
17 of item (a) of this subdivision (2.1) if it is determined
18 by an evaluation of rehabilitation potential to cause a
19 comparable degree of substantial functional limitation
20 similar to the specific list of disabilities listed in
21 item (a) of this subdivision (2.1).

22 (3) "Minority-owned business" means a business which
23 is at least 51% owned by one or more minority persons, or
24 in the case of a corporation, at least 51% of the stock in
25 which is owned by one or more minority persons; and the
26 management and daily business operations of which are

1 controlled by one or more of the minority individuals who
2 own it.

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

9 (4.1) "Business owned by a person with a disability"
10 means a business that is at least 51% owned by one or more
11 persons with a disability and the management and daily
12 business operations of which are controlled by one or more
13 of the persons with disabilities who own it. A
14 not-for-profit agency for persons with disabilities that
15 is exempt from taxation under Section 501 of the Internal
16 Revenue Code of 1986 is also considered a "business owned
17 by a person with a disability".

18 (4.2) "Council" means the Business Enterprise Council
19 for Minorities, Women, and Persons with Disabilities
20 created under Section 5 of this Act.

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

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

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

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

26 (7) "Public institutions of higher education" means

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

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

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

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

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

24 (11) "Utilization plan" means a form and additional
25 documentations included in all bids or proposals that
26 demonstrates a vendor's proposed utilization of vendors

1 certified by the Business Enterprise Program to meet the
2 targeted goal. The utilization plan shall demonstrate that
3 the Vendor has either: (1) met the entire contract goal or
4 (2) requested a full or partial waiver and made good faith
5 efforts towards meeting the goal.

6 (12) "Business Enterprise Program" means the Business
7 Enterprise Program of the Department of Central Management
8 Services.

9 (B) When a business is owned at least 51% by any
10 combination of minority persons, women, or persons with
11 disabilities, even though none of the 3 classes alone holds at
12 least a 51% interest, the ownership requirement for purposes
13 of this Act is considered to be met. The certification
14 category for the business is that of the class holding the
15 largest ownership interest in the business. If 2 or more
16 classes have equal ownership interests, the certification
17 category shall be determined by the business.

18 (Source: P.A. 100-391, eff. 8-25-17; 101-601, eff. 1-1-20.)

19 (30 ILCS 575/4) (from Ch. 127, par. 132.604)

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

21 Sec. 4. Award of State contracts.

22 (a) Except as provided in subsection (b), not less than
23 20% of the total dollar amount of State contracts, as defined
24 by the Secretary of the Council and approved by the Council,
25 shall be established as an aspirational goal to be awarded to

1 businesses owned by minorities, women, and persons with
2 disabilities; provided, however, that of the total amount of
3 all State contracts awarded to businesses owned by minorities,
4 women, and persons with disabilities pursuant to this Section,
5 contracts representing at least 11% shall be awarded to
6 businesses owned by minorities, contracts representing at
7 least 7% shall be awarded to women-owned businesses, and
8 contracts representing at least 2% shall be awarded to
9 businesses owned by persons with disabilities.

10 The above percentage relates to the total dollar amount of
11 State contracts during each State fiscal year, calculated by
12 examining independently each type of contract for each agency
13 or public institutions of higher education which lets such
14 contracts. Only that percentage of arrangements which
15 represents the participation of businesses owned by
16 minorities, women, and persons with disabilities on such
17 contracts shall be included. State contracts subject to the
18 requirements of this Act shall include the requirement that
19 only expenditures to businesses owned by minorities, women,
20 and persons with disabilities that perform a commercially
21 useful function may be counted toward the goals set forth by
22 this Act. Contracts shall include a definition of
23 "commercially useful function" that is consistent with 49 CFR
24 26.55(c).

25 (b) Not less than 20% of the total dollar amount of State
26 construction contracts is established as an aspirational goal

1 to be awarded to businesses owned by minorities, women, and
2 persons with disabilities; provided that, contracts
3 representing at least 11% of the total dollar amount of State
4 construction contracts shall be awarded to businesses owned by
5 minorities; contracts representing at least 7% of the total
6 dollar amount of State construction contracts shall be awarded
7 to women-owned businesses; and contracts representing at least
8 2% of the total dollar amount of State construction contracts
9 shall be awarded to businesses owned by persons with
10 disabilities.

11 (c) (Blank).

12 (d) Within one year after April 28, 2009 (the effective
13 date of Public Act 96-8), the Department of Central Management
14 Services shall conduct a social scientific study that measures
15 the impact of discrimination on minority and women business
16 development in Illinois. Within 18 months after April 28, 2009
17 (the effective date of Public Act 96-8), the Department shall
18 issue a report of its findings and any recommendations on
19 whether to adjust the goals for minority and women
20 participation established in this Act. Copies of this report
21 and the social scientific study shall be filed with the
22 Governor and the General Assembly.

23 By December 1, 2020, the Department of Central Management
24 Services shall conduct a new social scientific study that
25 measures the impact of discrimination on minority and women
26 business development in Illinois. By June 1, 2022, the

1 Department shall issue a report of its findings and any
2 recommendations on whether to adjust the goals for minority
3 and women participation established in this Act. Copies of
4 this report and the social scientific study shall be filed
5 with the Governor, ~~the Advisory Board,~~ and the General
6 Assembly. By December 1, 2022, the Department of Central
7 Management Services Business Enterprise Program shall develop
8 a model for social scientific disparity study sourcing for
9 local governmental units to adapt and implement to address
10 regional disparities in public procurement.

11 (e) Except as permitted under this Act or as otherwise
12 mandated by federal law or regulation, those who submit bids
13 or proposals for State contracts subject to the provisions of
14 this Act, whose bids or proposals are successful and include a
15 utilization plan but that fail to meet the goals set forth in
16 subsection (b) of this Section, shall be notified of that
17 deficiency and shall be afforded a period not to exceed 10
18 calendar days from the date of notification to cure that
19 deficiency in the bid or proposal. The deficiency in the bid or
20 proposal may only be cured by contracting with additional
21 subcontractors who are owned by minorities or women. Any
22 increase in cost to a contract for the addition of a
23 subcontractor to cure a bid's deficiency shall not affect the
24 bid price, shall not be used in the request for an exemption in
25 this Act, and in no case shall an identified subcontractor
26 with a certification made pursuant to this Act be terminated

1 from the contract without the written consent of the State
2 agency or public institution of higher education entering into
3 the contract.

4 (f) Non-construction solicitations that include Business
5 Enterprise Program participation goals shall require bidders
6 and offerors to include utilization plans. Utilization plans
7 are due at the time of bid or offer submission. Failure to
8 complete and include a utilization plan, including
9 documentation demonstrating good faith effort when requesting
10 a waiver, shall render the bid or offer non-responsive.

11 Except as permitted under this Act or as otherwise
12 mandated by federal regulation, those who submit bids or
13 proposals for State contracts, whose bids or proposals are
14 successful and include a completed utilization plan with an
15 established goal, but fail to meet the goals set forth in the
16 solicitation, shall be notified of the deficiency by the
17 contracting agency or public institution of higher education
18 allowing the cure and shall be afforded a period not to exceed
19 10 calendar days from the date of notification to cure that
20 deficiency in the bid or proposal. The deficiency in the bid or
21 proposal may only be cured by contracting with additional
22 subcontractors who are certified by the Business Enterprise
23 Program, or by increasing the work to be performed by
24 previously identified vendors certified by the Business
25 Enterprise Program.

26 Deficiencies that may be cured include: (i) obvious

1 mistakes, such as transposed numbers; (ii) correct information
2 submitted in the wrong form or format; (iii) failure to use or
3 adequately document all good faith effort actions identified
4 in the utilization plan or instructions; or (iv) proposing a
5 firm whose certification has lapsed or whose certification is
6 not yet recognized by the Business Enterprise Program. Cure is
7 not authorized if the bidder or offeror submits a blank
8 utilization plan, a utilization plan that shows lack of
9 reasonable effort to complete the form on time, or a
10 utilization plan that states the contract will be
11 self-performed, by a non-certified vendor, without showing
12 good faith effort and request for waiver. All cure activity
13 shall address the deficiencies identified by the procuring
14 agency and shall require clear documentation, including that
15 of good faith efforts, to address those deficiencies. Any
16 increase in cost to a contract for the addition of a
17 subcontractor to cure a bid's deficiency shall not affect the
18 bid price, shall not be used in the request for an exemption
19 under this Act, and in no case shall an identified
20 subcontractor with a Business Enterprise Program certification
21 made under this Act be terminated from the contract without
22 the written consent of the State agency or public institution
23 of higher education entering into the contract. The procuring
24 agency or public institution of higher education shall make
25 the determination whether the cure is adequate.

26 (Source: P.A. 100-391, eff. 8-25-17; 101-170, eff. 1-1-20;

1 101-601, eff. 1-1-20; revised 10-26-20.)

2 (30 ILCS 575/5) (from Ch. 127, par. 132.605)

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

4 Sec. 5. Business Enterprise Council.

5 (1) To help implement, monitor, and enforce the goals of
6 this Act, there is created the Business Enterprise Council for
7 Minorities, Women, and Persons with Disabilities, hereinafter
8 referred to as the Council, composed of the Secretary of Human
9 Services and the Directors of the Department of Human Rights,
10 the Department of Commerce and Economic Opportunity, the
11 Department of Central Management Services, the Department of
12 Transportation and the Capital Development Board, or their
13 duly appointed representatives, with the Comptroller, or his
14 or her designee, serving as an advisory member of the Council.
15 Ten individuals representing businesses that are
16 minority-owned, ~~or~~ women-owned, or owned by persons with
17 disabilities, 2 individuals representing the business
18 community, and a representative of public institutions of
19 higher education shall be appointed by the Governor. These
20 members shall serve 2-year ~~2-year~~ terms and shall be eligible
21 for reappointment. Any vacancy occurring on the Council shall
22 also be filled by the Governor. Any member appointed to fill a
23 vacancy occurring prior to the expiration of the term for
24 which his or her predecessor was appointed shall be appointed
25 for the remainder of such term. Members of the Council shall

1 serve without compensation but shall be reimbursed for any
2 ordinary and necessary expenses incurred in the performance of
3 their duties.

4 The Director of the Department of Central Management
5 Services shall serve as the Council chairperson and shall
6 select, subject to approval of the council, a Secretary
7 responsible for the operation of the program who shall serve
8 as the Division Manager of the Business Enterprise for
9 Minorities, Women, and Persons with Disabilities Division of
10 the Department of Central Management Services.

11 The Director of each State agency and the chief executive
12 officer of each public institution ~~institutions~~ of higher
13 education shall appoint a liaison to the Council. The liaison
14 shall be responsible for submitting to the Council any reports
15 and documents necessary under this Act.

16 (2) The Council's authority and responsibility shall be
17 to:

18 (a) Devise a certification procedure to assure that
19 businesses taking advantage of this Act are legitimately
20 classified as businesses owned by minorities, women, or
21 persons with disabilities and a registration procedure to
22 recognize, without additional evidence of Business
23 Enterprise Program eligibility, the certification of
24 businesses owned by minorities, women, or persons with
25 disabilities certified by the City of Chicago, Cook
26 County, or other jurisdictional programs with requirements

1 and procedures equaling or exceeding those in this Act.

2 (b) Maintain a list of all businesses legitimately
3 classified as businesses owned by minorities, women, or
4 persons with disabilities to provide to State agencies and
5 public institutions of higher education.

6 (c) Review rules and regulations for the
7 implementation of the program for businesses owned by
8 minorities, women, and persons with disabilities.

9 (d) Review compliance plans submitted by each State
10 agency and public institution ~~institutions~~ of higher
11 education pursuant to this Act.

12 (e) Make annual reports as provided in Section 8f to
13 the Governor and the General Assembly on the status of the
14 program.

15 (f) Serve as a central clearinghouse for information
16 on State contracts, including the maintenance of a list of
17 all pending State contracts upon which businesses owned by
18 minorities, women, and persons with disabilities may bid.
19 At the Council's discretion, maintenance of the list may
20 include 24-hour electronic access to the list along with
21 the bid and application information.

22 (g) Establish a toll-free ~~toll-free~~ telephone number
23 to facilitate information requests concerning the
24 certification process and pending contracts.

25 (h) Adopt a procedure to grant automatic certification
26 to businesses holding a certification from at least one of

1 the following entities: (i) the Illinois Unified
2 Certification Program; (ii) the Women's Business
3 Development Center in Chicago; (iii) the Chicago Minority
4 Supplier Development Council; or (iv) any other similar
5 entity offering such certification to businesses.

6 (i) Develop and maintain a repository for
7 non-certified vendors that: (i) have applied for
8 certification and have been denied; (ii) have started, but
9 not completed, the certification process; (iii) have
10 achieved certification, but did not seek renewal; or (iv)
11 are known businesses owned by minorities, women, or
12 persons with disabilities.

13 (3) No premium bond rate of a surety company for a bond
14 required of a business owned by a minority, woman, or person
15 with a disability bidding for a State contract shall be higher
16 than the lowest rate charged by that surety company for a
17 similar bond in the same classification of work that would be
18 written for a business not owned by a minority, woman, or
19 person with a disability.

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

24 (5) The Secretary shall have the following duties and
25 responsibilities:

26 (a) To be responsible for the day-to-day operation of

1 the Council.

2 (b) To serve as a coordinator for all of the State's
3 programs for businesses owned by minorities, women, and
4 persons with disabilities and as the information and
5 referral center for all State initiatives for businesses
6 owned by minorities, women, and persons with disabilities.

7 (c) To establish an enforcement procedure whereby the
8 Council may recommend to the appropriate State legal
9 officer that the State exercise its legal remedies which
10 shall include (1) termination of the contract involved,
11 (2) prohibition of participation by the respondent in
12 public contracts for a period not to exceed 3 years, (3)
13 imposition of a penalty not to exceed any profit acquired
14 as a result of violation, or (4) any combination thereof.
15 Such procedures shall require prior approval by Council.
16 All funds collected as penalties under this subsection
17 shall be used exclusively for maintenance and further
18 development of the Business Enterprise Program and
19 encouragement of participation in State procurement by
20 minorities, women, and persons with disabilities.

21 (d) To devise appropriate policies, regulations, and
22 procedures for including participation by businesses owned
23 by minorities, women, and persons with disabilities as
24 prime contractors, including, but not limited to: (i)
25 encouraging the inclusions of qualified businesses owned
26 by minorities, women, and persons with disabilities on

1 solicitation lists, (ii) investigating the potential of
2 blanket bonding programs for small construction jobs, and
3 (iii) investigating and making recommendations concerning
4 the use of the sheltered market process.

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

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

16 (Source: P.A. 100-391, eff. 8-25-17; 100-801, eff. 8-10-18;
17 101-601, eff. 1-1-20; revised 8-18-20.)