

# SB2478



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB2478

Introduced 2/26/2021, by Sen. Ram Villivalam

#### SYNOPSIS AS INTRODUCED:

30 ILCS 575/2

Amends the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. Provides that certain economically disadvantaged persons, among other specified individuals, are considered minority persons under the Act. Provides additional requirements concerning qualification as a socially disadvantaged person. Defines "economically disadvantaged person". Provides requirements concerning qualification as an economically disadvantaged person. Makes other changes. Effective January 1, 2022.

LRB102 16422 RJF 21813 b

A BILL FOR

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 Business Enterprise for Minorities, Women,  
5 and Persons with Disabilities Act is amended by changing  
6 Section 2 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8 (Section scheduled to be repealed on June 30, 2024)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 (f) A person who qualifies as a socially  
11 disadvantaged person.

12 (g) A person who qualifies as an economically  
13 disadvantaged person.

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

17 (2.05) "Person with a disability" means a person who  
18 is a citizen or lawful resident of the United States and is  
19 a person qualifying as a person with a disability under  
20 subdivision (2.1) of this subsection (A).

21 (2.1) "Person with a disability" means a person with a  
22 severe physical or mental disability that:

23 (a) results from:

24 amputation,

25 arthritis,

26 autism,

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

1 person's major life activities.

2 Another disability or combination of disabilities may  
3 also be considered as a severe disability for the purposes  
4 of item (a) of this subdivision (2.1) if it is determined  
5 by an evaluation of rehabilitation potential to cause a  
6 comparable degree of substantial functional limitation  
7 similar to the specific list of disabilities listed in  
8 item (a) of this subdivision (2.1).

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

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

22 (4.1) "Business owned by a person with a disability"  
23 means a business that is at least 51% owned by one or more  
24 persons with a disability and the management and daily  
25 business operations of which are controlled by one or more  
26 of the persons with disabilities who own it. A

1 not-for-profit agency for persons with disabilities that  
2 is exempt from taxation under Section 501 of the Internal  
3 Revenue Code of 1986 is also considered a "business owned  
4 by a person with a disability".

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

8 (5) "State contracts" means all contracts entered into  
9 by the State, any agency or department thereof, or any  
10 public institution of higher education, including  
11 community college districts, regardless of the source of  
12 the funds with which the contracts are paid, which are not  
13 subject to federal reimbursement. "State contracts" does  
14 not include contracts awarded by a retirement system,  
15 pension fund, or investment board subject to Section  
16 1-109.1 of the Illinois Pension Code. This definition  
17 shall control over any existing definition under this Act  
18 or applicable administrative rule.

19 "State construction contracts" means all State  
20 contracts entered into by a State agency or public  
21 institution of higher education for the repair,  
22 remodeling, renovation or construction of a building or  
23 structure, or for the construction or maintenance of a  
24 highway defined in Article 2 of the Illinois Highway Code.

25 (6) "State agencies" shall mean all departments,  
26 officers, boards, commissions, institutions and bodies

1           politic and corporate of the State, but does not include  
2           the Board of Trustees of the University of Illinois, the  
3           Board of Trustees of Southern Illinois University, the  
4           Board of Trustees of Chicago State University, the Board  
5           of Trustees of Eastern Illinois University, the Board of  
6           Trustees of Governors State University, the Board of  
7           Trustees of Illinois State University, the Board of  
8           Trustees of Northeastern Illinois University, the Board of  
9           Trustees of Northern Illinois University, the Board of  
10          Trustees of Western Illinois University, municipalities or  
11          other local governmental units, or other State  
12          constitutional officers.

13           (7) "Public institutions of higher education" means  
14          the University of Illinois, Southern Illinois University,  
15          Chicago State University, Eastern Illinois University,  
16          Governors State University, Illinois State University,  
17          Northeastern Illinois University, Northern Illinois  
18          University, Western Illinois University, the public  
19          community colleges of the State, and any other public  
20          universities, colleges, and community colleges now or  
21          hereafter established or authorized by the General  
22          Assembly.

23           (8) "Certification" means a determination made by the  
24          Council or by one delegated authority from the Council to  
25          make certifications, or by a State agency with statutory  
26          authority to make such a certification, that a business

1           entity is a business owned by a minority, woman, or person  
2           with a disability for whatever purpose. A business owned  
3           and controlled by women shall be certified as a  
4           "woman-owned business". A business owned and controlled by  
5           women who are also minorities shall be certified as both a  
6           "women-owned business" and a "minority-owned business".

7           (9) "Control" means the exclusive or ultimate and sole  
8           control of the business including, but not limited to,  
9           capital investment and all other financial matters,  
10          property, acquisitions, contract negotiations, legal  
11          matters, officer-director-employee selection and  
12          comprehensive hiring, operating responsibilities,  
13          cost-control matters, income and dividend matters,  
14          financial transactions and rights of other shareholders or  
15          joint partners. Control shall be real, substantial and  
16          continuing, not pro forma. Control shall include the power  
17          to direct or cause the direction of the management and  
18          policies of the business and to make the day-to-day as  
19          well as major decisions in matters of policy, management  
20          and operations. Control shall be exemplified by possessing  
21          the requisite knowledge and expertise to run the  
22          particular business and control shall not include simple  
23          majority or absentee ownership.

24          (10) "Business" means a business that has annual gross  
25          sales of less than \$75,000,000 as evidenced by the federal  
26          income tax return of the business. A firm with gross sales



1 in excess of this cap may apply to the Council for  
2 certification for a particular contract if the firm can  
3 demonstrate that the contract would have significant  
4 impact on businesses owned by minorities, women, or  
5 persons with disabilities as suppliers or subcontractors  
6 or in employment of minorities, women, or persons with  
7 disabilities.

8 (11) "Utilization plan" means a form and additional  
9 documentations included in all bids or proposals that  
10 demonstrates a vendor's proposed utilization of vendors  
11 certified by the Business Enterprise Program to meet the  
12 targeted goal. The utilization plan shall demonstrate that  
13 the Vendor has either: (1) met the entire contract goal or  
14 (2) requested a full or partial waiver and made good faith  
15 efforts towards meeting the goal.

16 (12) "Business Enterprise Program" means the Business  
17 Enterprise Program of the Department of Central Management  
18 Services.

19 (13) "Socially disadvantaged person" means a person  
20 individually certified by the Council as having been  
21 subjected to racial or ethnic prejudice or cultural bias  
22 within American society because of his or her identity as  
23 a member of a group and without regard to his or her  
24 individual qualities.

25 (a) Social disadvantage must include the  
26 following:

1           (i) at least one objective distinguishing  
2           feature that has contributed to social  
3           disadvantage, such as race, ethnic origin, gender,  
4           disability, long-term residence in an environment  
5           isolated from the mainstream of American society,  
6           or other similar causes not common to individuals  
7           who are not socially disadvantaged;

8           (ii) personal experiences of substantial and  
9           chronic social disadvantage in American society;  
10          and

11          (iii) negative impact on entry into or  
12          advancement in the business world because of the  
13          disadvantage. The Business Enterprise Program will  
14          consider any relevant evidence in assessing this  
15          element, and in every case, as provided under  
16          subparagraph (b), the Business Enterprise Program  
17          will consider education, employment, and business  
18          history, when applicable, to determine whether the  
19          totality of circumstances shows disadvantage in  
20          entering into or advancing in the business world.

21          (b) In determining whether a person qualifies as a  
22          socially disadvantaged person, the Business Enterprise  
23          Program will further consider the following:

24                (i) Education. Such factors as denial of equal  
25                access to institutions of higher education and  
26                vocational training, exclusion from social and

1 professional association with students or  
2 teachers, denial of educational honors rightfully  
3 earned, and social patterns or pressures which  
4 discouraged the individual from pursuing a  
5 professional or business education.

6 (ii) Employment. Such factors as unequal  
7 treatment in hiring, promotions and other aspects  
8 of professional advancement, pay and fringe  
9 benefits, and other terms and conditions of  
10 employment; retaliatory or discriminatory behavior  
11 by an employer or labor union; and social patterns  
12 or pressures which have channeled the individual  
13 into non-professional or non-business fields.

14 (iii) Business history. Such factors as  
15 unequal access to credit or capital, acquisition  
16 of credit or capital under commercially  
17 unfavorable circumstances, unequal treatment in  
18 opportunities for government contracts or other  
19 work, unequal treatment by potential customers and  
20 business associates, and exclusion from business  
21 or professional organizations.

22 (14) "Economically disadvantaged person" means a  
23 socially disadvantaged person whose ability to compete in  
24 the free enterprise system has been impaired due to  
25 diminished capital and credit opportunities as compared to  
26 others in the same or similar line of business who are not

1       socially disadvantaged.

2               (a) Each individual claiming economic disadvantage  
3       must describe the conditions which are the basis for  
4       the claim in a narrative statement, and must submit  
5       personal financial information. If that individual is  
6       married, he or she must also submit separate financial  
7       information for his or her spouse, unless the  
8       individual and the spouse are legally separated.

9               (b) In considering diminished capital and credit  
10       opportunities, the Business Enterprise Program will  
11       examine factors relating to the personal financial  
12       condition of any individual claiming disadvantaged  
13       status, including personal income for the preceding 2  
14       years (including bonuses and the value of company  
15       stock given in lieu of cash), personal net worth, and  
16       the fair market value of all assets, whether  
17       encumbered or not. The Business Enterprise Program  
18       will also consider the financial condition of the  
19       applicant compared to the financial profiles of small  
20       businesses in the same primary industry  
21       classification, or, if not available, in similar lines  
22       of business, which are not owned and controlled by  
23       socially and economically disadvantaged persons in  
24       evaluating the individual's access to credit and  
25       capital. The financial profiles that the Business  
26       Enterprise Program will compare shall include total

1 assets, net sales, pre-tax profit, sales or working  
2 capital ratio, and net worth.

3 (c) Asset transfers within 2 years.

4 (i) Except as set forth in item (ii) of this  
5 subparagraph (c), the Business Enterprise Program  
6 will attribute to an individual claiming  
7 disadvantaged status any assets which that  
8 individual has transferred to an immediate family  
9 member, or to a trust, a beneficiary of which is an  
10 immediate family member, for less than fair market  
11 value, within 2 years prior to a concern's  
12 application for participation in the Business  
13 Enterprise Program, unless the individual claiming  
14 disadvantaged status can demonstrate that the  
15 transfer is to or on behalf of an immediate family  
16 member for that individual's education, medical  
17 expenses, or some other form of essential support.

18 (ii) The Business Enterprise Program will not  
19 attribute to an individual claiming disadvantaged  
20 status any assets transferred by that individual  
21 to an immediate family member that are consistent  
22 with the customary recognition of special  
23 occasions, such as birthdays, graduations,  
24 anniversaries, and retirements.

25 (iii) In determining an individual's access to  
26 capital and credit, the Business Enterprise

1           Program may consider any assets that the  
2           individual transferred within the 2-year period  
3           described by item (i) of this subparagraph (c)  
4           that are not considered in evaluating the  
5           individual's assets and net worth, such as  
6           transfers to charities.

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

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

17          Section 99. Effective date. This Act takes effect January  
18          1, 2022.