



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB2906

Introduced 2/16/2023, by Rep. Kevin John Olickal

#### 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, 2023.

LRB103 29428 DTM 55819 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 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8 (Section scheduled to be repealed on June 30, 2024)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 (4.3) "Commission" means, unless the context clearly  
9 indicates otherwise, the Commission on Equity and  
10 Inclusion created under the Commission on Equity and  
11 Inclusion Act.

12 (5) "State contracts" means all contracts entered into  
13 by the State, any agency or department thereof, or any  
14 public institution of higher education, including  
15 community college districts, regardless of the source of  
16 the funds with which the contracts are paid, which are not  
17 subject to federal reimbursement. "State contracts" does  
18 not include contracts awarded by a retirement system,  
19 pension fund, or investment board subject to Section  
20 1-109.1 of the Illinois Pension Code. This definition  
21 shall control over any existing definition under this Act  
22 or applicable administrative rule.

23 "State construction contracts" means all State  
24 contracts entered into by a State agency or public  
25 institution of higher education for the repair,  
26 remodeling, renovation or construction of a building or

1 structure, or for the construction or maintenance of a  
2 highway defined in Article 2 of the Illinois Highway Code.

3 (6) "State agencies" shall mean all departments,  
4 officers, boards, commissions, institutions and bodies  
5 politic and corporate of the State, but does not include  
6 the Board of Trustees of the University of Illinois, the  
7 Board of Trustees of Southern Illinois University, the  
8 Board of Trustees of Chicago State University, the Board  
9 of Trustees of Eastern Illinois University, the Board of  
10 Trustees of Governors State University, the Board of  
11 Trustees of Illinois State University, the Board of  
12 Trustees of Northeastern Illinois University, the Board of  
13 Trustees of Northern Illinois University, the Board of  
14 Trustees of Western Illinois University, municipalities or  
15 other local governmental units, or other State  
16 constitutional officers.

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

1           (8) "Certification" means a determination made by the  
2 Council or by one delegated authority from the Council to  
3 make certifications, or by a State agency with statutory  
4 authority to make such a certification, that a business  
5 entity is a business owned by a minority, woman, or person  
6 with a disability for whatever purpose. A business owned  
7 and controlled by women shall be certified as a  
8 "woman-owned business". A business owned and controlled by  
9 women who are also minorities shall be certified as both a  
10 "women-owned business" and a "minority-owned business".

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



1 majority or absentee ownership.

2 (10) "Business" means a business that has annual gross  
3 sales of less than \$150,000,000 as evidenced by the  
4 federal income tax return of the business. A firm with  
5 gross sales in excess of this cap may apply to the Council  
6 for certification for a particular contract if the firm  
7 can demonstrate that the contract would have significant  
8 impact on businesses owned by minorities, women, or  
9 persons with disabilities as suppliers or subcontractors  
10 or in employment of minorities, women, or persons with  
11 disabilities. Firms with gross sales in excess of this cap  
12 that are granted certification by the Council shall be  
13 granted certification for the life of the contract,  
14 including available renewals.

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

23 (12) "Business Enterprise Program" means the Business  
24 Enterprise Program of the Commission on Equity and  
25 Inclusion.

26 (13) "Socially disadvantaged person" means a person

1 individually certified by the Council as having been  
2 subjected to racial or ethnic prejudice or cultural bias  
3 within American society because of his or her identity as  
4 a member of a group and without regard to his or her  
5 individual qualities.

6 (a) Social disadvantage must include the  
7 following:

8 (i) at least one objective distinguishing  
9 feature that has contributed to social  
10 disadvantage, such as race, ethnic origin, gender,  
11 disability, long-term residence in an environment  
12 isolated from the mainstream of American society,  
13 or other similar causes not common to individuals  
14 who are not socially disadvantaged;

15 (ii) personal experiences of substantial and  
16 chronic social disadvantage in American society;  
17 and

18 (iii) negative impact on entry into or  
19 advancement in the business world because of the  
20 disadvantage. The Business Enterprise Program will  
21 consider any relevant evidence in assessing this  
22 element, and in every case, as provided under  
23 subparagraph (b), the Business Enterprise Program  
24 will consider education, employment, and business  
25 history, when applicable, to determine whether the  
26 totality of circumstances shows disadvantage in

1 entering into or advancing in the business world.

2 (b) In determining whether a person qualifies as a  
3 socially disadvantaged person, the Business Enterprise  
4 Program will further consider the following:

5 (i) Education. Such factors as denial of equal  
6 access to institutions of higher education and  
7 vocational training, exclusion from social and  
8 professional association with students or  
9 teachers, denial of educational honors rightfully  
10 earned, and social patterns or pressures which  
11 discouraged the individual from pursuing a  
12 professional or business education.

13 (ii) Employment. Such factors as unequal  
14 treatment in hiring, promotions and other aspects  
15 of professional advancement, pay and fringe  
16 benefits, and other terms and conditions of  
17 employment; retaliatory or discriminatory behavior  
18 by an employer or labor union; and social patterns  
19 or pressures which have channeled the individual  
20 into non-professional or non-business fields.

21 (iii) Business history. Such factors as  
22 unequal access to credit or capital, acquisition  
23 of credit or capital under commercially  
24 unfavorable circumstances, unequal treatment in  
25 opportunities for government contracts or other  
26 work, unequal treatment by potential customers and

1           business associates, and exclusion from business  
2           or professional organizations.

3           (14) "Economically disadvantaged person" means a  
4           socially disadvantaged person whose ability to compete in  
5           the free enterprise system has been impaired due to  
6           diminished capital and credit opportunities as compared to  
7           others in the same or similar line of business who are not  
8           socially disadvantaged.

9           (a) Each individual claiming economic disadvantage  
10          must describe the conditions which are the basis for  
11          the claim in a narrative statement, and must submit  
12          personal financial information. If that individual is  
13          married, he or she must also submit separate financial  
14          information for his or her spouse, unless the  
15          individual and the spouse are legally separated.

16          (b) In considering diminished capital and credit  
17          opportunities, the Business Enterprise Program will  
18          examine factors relating to the personal financial  
19          condition of any individual claiming disadvantaged  
20          status, including personal income for the preceding 2  
21          years (including bonuses and the value of company  
22          stock given in lieu of cash), personal net worth, and  
23          the fair market value of all assets, whether  
24          encumbered or not. The Business Enterprise Program  
25          will also consider the financial condition of the  
26          applicant compared to the financial profiles of small

1 businesses in the same primary industry  
2 classification, or, if not available, in similar lines  
3 of business, which are not owned and controlled by  
4 socially and economically disadvantaged persons in  
5 evaluating the individual's access to credit and  
6 capital. The financial profiles that the Business  
7 Enterprise Program will compare shall include total  
8 assets, net sales, pre-tax profit, sales or working  
9 capital ratio, and net worth.

10 (c) Asset transfers within 2 years.

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

25 (ii) The Business Enterprise Program will not  
26 attribute to an individual claiming disadvantaged

1 status any assets transferred by that individual  
2 to an immediate family member that are consistent  
3 with the customary recognition of special  
4 occasions, such as birthdays, graduations,  
5 anniversaries, and retirements.

6 (iii) In determining an individual's access to  
7 capital and credit, the Business Enterprise  
8 Program may consider any assets that the  
9 individual transferred within the 2-year period  
10 described by item (i) of this subparagraph (c)  
11 that are not considered in evaluating the  
12 individual's assets and net worth, such as  
13 transfers to charities.

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

23 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;  
24 102-29, eff. 6-25-21; 102-1119, eff. 1-23-23.)

25 Section 99. Effective date. This Act takes effect January  
26 1, 2023.