



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB3720

Introduced 2/17/2023, by Rep. Elizabeth "Lisa" Hernandez

#### SYNOPSIS AS INTRODUCED:

30 ILCS 575/4  
805 ILCS 5/8.12

from Ch. 127, par. 132.604

Amends the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. Provides that the Commission on Equity and Inclusion shall establish goals based on the types of communities served by businesses. Requires corporations that are publicly held domestic or foreign corporation with their principal executive office located in Illinois to provide in their annual report the percentage of professional services procurements from business enterprises owned by minority persons, women, or persons with disabilities as those terms are defined in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. Provides that the Secretary of State shall establish a publicly accessible and searchable database of the information in each annual report.

LRB103 29497 DTM 55892 b

1 AN ACT concerning State 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 Section 4 as follows:

7 (30 ILCS 575/4) (from Ch. 127, par. 132.604)

8 (Section scheduled to be repealed on June 30, 2024)

9 Sec. 4. Award of State contracts.

10 (a) Except as provided in subsection (b), not less than  
11 30% of the total dollar amount of State contracts, as defined  
12 by the Secretary of the Council and approved by the Council,  
13 shall be established as an aspirational goal to be awarded to  
14 businesses owned by minorities, women, and persons with  
15 disabilities; provided, however, that of the total amount of  
16 all State contracts awarded to businesses owned by minorities,  
17 women, and persons with disabilities pursuant to this Section,  
18 contracts representing at least 16% shall be awarded to  
19 businesses owned by minorities, contracts representing at  
20 least 10% shall be awarded to women-owned businesses, and  
21 contracts representing at least 4% shall be awarded to  
22 businesses owned by persons with disabilities.

23 (a-5) In addition to the aspirational goals in awarding

1 State contracts set under subsection (a), the Commission shall  
2 by rule further establish targeted efforts to encourage the  
3 participation of businesses owned by minorities, women, and  
4 persons with disabilities on State contracts and shall  
5 establish goals based on the types of communities served by  
6 businesses. Such efforts shall include, but not be limited to,  
7 further concerted outreach efforts to businesses owned by  
8 minorities, women, and persons with disabilities.

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

24 (b) Not less than 20% of the total dollar amount of State  
25 construction contracts is established as an aspirational goal  
26 to be awarded to businesses owned by minorities, women, and

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

10 (c) (Blank).

11 (c-5) All goals established under this Section shall be  
12 contingent upon the results of the most recent disparity study  
13 conducted by the State.

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

25 By December 1, 2020, the Department of Central Management  
26 Services shall conduct a new social scientific study that

1 measures the impact of discrimination on minority and women  
2 business development in Illinois. By June 1, 2022, the  
3 Department shall issue a report of its findings and any  
4 recommendations on whether to adjust the goals for minority  
5 and women participation established in this Act. Copies of  
6 this report and the social scientific study shall be filed  
7 with the Governor and the General Assembly. By December 1,  
8 2022, the Commission on Equity and Inclusion Business  
9 Enterprise Program shall develop a model for social scientific  
10 disparity study sourcing for local governmental units to adapt  
11 and implement to address regional disparities in public  
12 procurement.

13 (e) All State contract solicitations that include Business  
14 Enterprise Program participation goals shall require bidders  
15 or offerors to include utilization plans. Utilization plans  
16 are due at the time of bid or offer submission. Failure to  
17 complete and include a utilization plan, including  
18 documentation demonstrating good faith efforts when requesting  
19 a waiver, shall render the bid or offer non-responsive.

20 Except as permitted under this Act or as otherwise  
21 mandated by federal regulation, a bidder or offeror whose bid  
22 or offer is accepted and who included in that bid a completed  
23 utilization plan but who fails to meet the goals set forth in  
24 the plan shall be notified of the deficiency by the  
25 contracting agency or public institution of higher education  
26 and shall be given a period of 10 calendar days to cure the

1 deficiency by contracting with additional subcontractors who  
2 are certified by the Business Enterprise Program or by  
3 increasing the work to be performed by previously identified  
4 vendors certified by the Business Enterprise Program.

5 Deficiencies that may be cured include: (i) scrivener's  
6 errors, such as transposed numbers; (ii) information submitted  
7 in an incorrect form or format; (iii) mistakes resulting from  
8 failure to follow instructions or to identify and adequately  
9 document good faith efforts taken to comply with the  
10 utilization plan; or (iv) a proposal to use a firm whose  
11 Business Enterprise Program certification has lapsed or is not  
12 yet recognized. Cure is not authorized if the bidder or  
13 offeror submits a blank utilization plan, a utilization plan  
14 that shows lack of reasonable effort to complete the form on  
15 time, or a utilization plan that states the contract will be  
16 self-performed, by a non-certified vendor, without showing  
17 good faith efforts or a request for a waiver. All cure activity  
18 shall address the deficiencies identified by the purchasing  
19 agency and shall require clear documentation, including that  
20 of good faith efforts, to address those deficiencies. Any  
21 increase in cost to a contract for the addition of a  
22 subcontractor to cure a bid's deficiency shall not affect the  
23 bid price and shall not be used in the request for an exemption  
24 under this Act, and, in no case, shall an identified  
25 subcontractor with a Business Enterprise Program certification  
26 made under this Act be terminated from a contract without the

1 written consent of the State agency or public institution of  
2 higher education entering into the contract. The purchasing  
3 agency or public institution of higher education shall make  
4 the determination whether the cure is adequate.

5 Vendors certified with the Business Enterprise Program at  
6 the time and date submittals are due and who do not submit a  
7 utilization plan or have utilization plan deficiencies shall  
8 have 10 business days to submit a utilization plan or to  
9 correct the utilization plan deficiencies.

10 (f) (Blank).

11 (g) (Blank).

12 (h) State agencies and public institutions of higher  
13 education shall notify the Commission on Equity and Inclusion  
14 of all non-responsive bids or proposals for State contracts.

15 (Source: P.A. 101-170, eff. 1-1-20; 101-601, eff. 1-1-20;  
16 101-657, Article 1, Section 1-5, eff. 1-1-22; 101-657, Article  
17 40, Section 40-130, eff. 1-1-22; 102-29, eff. 6-25-21;  
18 102-558, eff. 8-20-21; 102-1119, eff. 1-23-23.)

19 Section 10. The Business Corporation Act of 1983 is  
20 amended by changing Section 8.12 as follows:

21 (805 ILCS 5/8.12)

22 Sec. 8.12. Female, minority, and LGBTQ directors.

23 (a) Findings and purpose. The General Assembly finds that  
24 women, minorities, and LGBTQ people are still largely

1 underrepresented nationally in positions of corporate  
2 authority, such as serving as a director on a corporation's  
3 board of directors. This low representation could be  
4 contributing to the disparity seen in wages made by females  
5 and minorities versus their white male counterparts. Increased  
6 representation of these individuals as directors on boards of  
7 directors for corporations may boost the Illinois economy,  
8 improve opportunities for women, minorities, and LGBTQ people  
9 in the workplace, and foster an environment in Illinois where  
10 the business community is representative of our residents.  
11 Therefore, it is the intent of the General Assembly to gather  
12 more data and study this issue within the State so that  
13 effective policy changes may be implemented to eliminate this  
14 disparity.

15 (b) As used in this Section:

16 "Annual report" means the report submitted annually to the  
17 Secretary of State pursuant to this Act.

18 "Female" means a person who is a citizen or lawful  
19 permanent resident of the United States and who  
20 self-identifies as a woman, without regard to the individual's  
21 designated sex at birth.

22 "Minority person" means a person who is a citizen or  
23 lawful permanent resident of the United States and who is any  
24 of the following races or ethnicities:

25 (1) American Indian or Alaska Native (a person having  
26 origins in any of the original peoples of North and South



1 America, including Central America, and who maintains  
2 tribal affiliation or community attachment).

3 (2) Asian (a person having origins in any of the  
4 original peoples of the Far East, Southeast Asia, or the  
5 Indian subcontinent, including, but not limited to,  
6 Cambodia, China, India, Japan, Korea, Malaysia, Pakistan,  
7 the Philippine Islands, Thailand, and Vietnam).

8 (3) Black or African American (a person having origins  
9 in any of the black racial groups of Africa). Terms such as  
10 "Haitian" or "Negro" can be used in addition to "Black" or  
11 "African American".

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

15 (5) Native Hawaiian or Other Pacific Islander (a  
16 person having origins in any of the original peoples of  
17 Hawaii, Guam, Samoa, or other Pacific Islands).

18 (6) "Publicly held domestic or foreign corporation"  
19 means a corporation with outstanding shares listed on a  
20 major United States stock exchange.

21 (c) Reporting to the Secretary of State. As soon as  
22 practical after August 27, 2019 (the effective date of Public  
23 Act 101-589), but no later than January 1, 2021, the following  
24 information shall be provided in a corporation's annual report  
25 submitted to the Secretary of State under this Act and made  
26 available by the Secretary of State to the public online as it

1 is received:

2 (1) Whether the corporation is a publicly held  
3 domestic or foreign corporation with its principal  
4 executive office located in Illinois.

5 (2) Where the corporation is a publicly held domestic  
6 or foreign corporation with its principal executive office  
7 located in Illinois, data on specific qualifications,  
8 skills, and experience that the corporation considers for  
9 its board of directors, nominees for the board of  
10 directors, and executive officers.

11 (3) Where the corporation is a publicly held domestic  
12 or foreign corporation with its principal executive office  
13 located in Illinois, the self-identified gender of each  
14 member of its board of directors.

15 (4) Where the corporation is a publicly held domestic  
16 or foreign corporation with its principal executive office  
17 located in Illinois, whether each member of its board of  
18 directors self-identifies as a minority person and, if so,  
19 which race or ethnicity to which the member belongs.

20 (5) Where the corporation is a publicly held domestic  
21 or foreign corporation with its principal executive office  
22 located in Illinois, the self-identified sexual  
23 orientation of each member of its board of directors.

24 (6) Where the corporation is a publicly held domestic  
25 or foreign corporation with its principal executive office  
26 located in Illinois, the self-identified gender identity

1 of each member of its board of directors.

2 (7) Where the corporation is a publicly held domestic  
3 or foreign corporation with its principal executive office  
4 located in Illinois, a description of the corporation's  
5 process for identifying and evaluating nominees for the  
6 board of directors, including whether and, if so, how  
7 demographic diversity is considered.

8 (8) Where the corporation is a publicly held domestic  
9 or foreign corporation with its principal executive office  
10 located in Illinois, a description of the corporation's  
11 process for identifying and appointing executive officers,  
12 including whether and, if so, how demographic diversity is  
13 considered.

14 (9) Where the corporation is a publicly held domestic  
15 or foreign corporation with its principal executive office  
16 located in Illinois, a description of the corporation's  
17 policies and practices for promoting diversity, equity,  
18 and inclusion among its board of directors and executive  
19 officers.

20 (10) Where the corporation is a publicly held domestic  
21 or foreign corporation with its principal executive office  
22 located in Illinois, the percentage of professional  
23 services procurements from business enterprises owned by  
24 minority persons, women, or persons with disabilities as  
25 those terms are defined in Section 2 of the Business  
26 Enterprise for Minorities, Women, and Persons with

1           Disabilities Act.

2           Information reported under this subsection shall be  
3 updated in each annual report filed with the Secretary of  
4 State thereafter. The Secretary of State shall establish a  
5 publicly accessible and searchable database of the information  
6 in each annual report.

7           (d) Beginning no later than March 1, 2021, and every March  
8 1 thereafter, the University of Illinois Systems shall review  
9 the information reported and published under subsection (c)  
10 and shall publish on its website a report that provides  
11 aggregate data on the demographic characteristics of the  
12 boards of directors and executive officers of corporations  
13 filing an annual report for the preceding year along with an  
14 individualized rating for each corporation. The report shall  
15 also identify strategies for promoting diversity and inclusion  
16 among boards of directors and corporate executive officers.

17           (e) The University of Illinois System shall establish a  
18 rating system assessing the representation of women,  
19 minorities, and LGBTQ people on corporate boards of directors  
20 of those corporations that are publicly held domestic or  
21 foreign corporations with their principal executive office  
22 located in Illinois based on the information gathered under  
23 this Section. The rating system shall consider, among other  
24 things: compliance with the demographic reporting obligations  
25 in subsection (c); the corporation's policies and practices  
26 for encouraging diversity in recruitment, board membership,

1 and executive appointments; and the demographic diversity of  
2 board seats and executive positions.

3 (Source: P.A. 101-589, eff. 8-27-19; 102-223, eff. 1-1-22;  
4 102-813, eff. 5-13-22.)