

SB0308



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB0308

Introduced 2/2/2023, 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, 2024.

LRB103 25664 HLH 52013 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8 (Section scheduled to be repealed on June 30, 2024)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 (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 who is individually certified by the Council as having
2 been subjected to racial or ethnic prejudice or cultural
3 bias within American society because of his or her
4 identity as a member of a group and without regard to his
5 or her individual qualities.

6 (A) To certify that a person is a socially
7 disadvantaged person, the Council must find at least
8 one of the following:

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

17 (ii) that the person has personally
18 experienced substantial and chronic social
19 disadvantage in American society; and

20 (iii) that the totality of the person's
21 circumstances shows that there has been a negative
22 impact on the person's entry into or advancement
23 in the business world because of the disadvantage.

24 (B) In certifying a person as a socially
25 disadvantaged person, the Council shall also consider
26 the following:

1 (i) whether the person has been denied equal
2 access to institutions of higher education and
3 vocational training, excluded from social and
4 professional association with students or
5 teachers, denied educational honors rightfully
6 earned, or subjected to social patterns or
7 pressures that discouraged the individual from
8 pursuing a professional or business education;

9 (ii) whether the person has experienced any of
10 the following: unequal treatment in hiring,
11 promotion, or other aspects of professional
12 advancement; the denial or diminishment of pay and
13 fringe benefits and other terms and conditions of
14 employment; retaliatory or discriminatory behavior
15 by an employer or labor union; or social patterns
16 or pressures that have channeled the individual
17 into nonprofessional or nonbusiness fields; and

18 (iii) whether the person has experienced any
19 of the following: unequal access to credit or
20 capital or the inability to acquire credit or
21 capital under commercially favorable
22 circumstances; unequal treatment in opportunities
23 for government contracts or other work; unequal
24 treatment by potential customers and business
25 associates; or exclusion from business or
26 professional organizations.

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

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

14 (B) In considering diminished capital and credit
15 opportunities, the Council shall examine factors
16 relating to the personal financial condition of the
17 individual, including personal income for the
18 preceding 2 years (including bonuses and the value of
19 company stock given in lieu of cash), personal net
20 worth, and the fair market value of all assets owned by
21 the individual, whether encumbered or not. In
22 evaluating the individual's access to credit and
23 capital, the Council shall also consider the financial
24 condition of the applicant compared to the financial
25 profiles of small businesses in the same primary
26 industry classification or, if not available, in

1 similar lines of business that are not owned and
2 controlled by socially and economically disadvantaged
3 persons. The financial profiles that the Council
4 compares shall include total assets, net sales, pretax
5 profit, sales or working capital ratio, and net worth.

6 (c) Asset transfers within 2 years.

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

21 (ii) The Council shall not attribute to an
22 individual claiming disadvantaged status any
23 assets transferred by that individual to an
24 immediate family member that are consistent with
25 the customary recognition of special occasions,
26 such as birthdays, graduations, anniversaries, and

1 retirements.

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

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

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

21 Section 99. Effective date. This Act takes effect January
22 1, 2024.