

SB2674



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2674

Introduced 1/10/2024, by Sen. Michael E. Hastings

SYNOPSIS AS INTRODUCED:

30 ILCS 500/45-57

Amends the Illinois Procurement Code. Provides that the certification of service-disabled veteran-owned small businesses and veteran-owned small businesses is an exclusive power and function of the State. Denies home rule powers. Effective immediately.

LRB103 36464 MXP 66567 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 Illinois Procurement Code is amended by
5 changing Section 45-57 as follows:

6 (30 ILCS 500/45-57)

7 Sec. 45-57. Veterans.

8 (a) Set-aside goal. It is the goal of the State to promote
9 and encourage the continued economic development of small
10 businesses owned and controlled by qualified veterans and that
11 qualified service-disabled veteran-owned small businesses
12 (referred to as SDVOSB) and veteran-owned small businesses
13 (referred to as VOSB) participate in the State's procurement
14 process as both prime contractors and subcontractors. Not less
15 than 3% of the total dollar amount of State contracts, as
16 defined by the Commission on Equity and Inclusion, shall be
17 established as a goal to be awarded to SDVOSB and VOSB. That
18 portion of a contract under which the contractor subcontracts
19 with a SDVOSB or VOSB may be counted toward the goal of this
20 subsection. The Commission on Equity and Inclusion shall adopt
21 rules to implement compliance with this subsection by all
22 State agencies.

23 (b) Fiscal year reports. By each November 1, each chief

1 procurement officer shall report to the Commission on Equity
2 and Inclusion on all of the following for the immediately
3 preceding fiscal year, and by each March 1 the Commission on
4 Equity and Inclusion shall compile and report that information
5 to the General Assembly:

6 (1) The total number of VOSB, and the number of
7 SDVOSB, who submitted bids for contracts under this Code.

8 (2) The total number of VOSB, and the number of
9 SDVOSB, who entered into contracts with the State under
10 this Code and the total value of those contracts.

11 (b-5) The Commission on Equity and Inclusion shall submit
12 an annual report to the Governor and the General Assembly that
13 shall include the following:

14 (1) a year-by-year comparison of the number of
15 certifications the State has issued to veteran-owned small
16 businesses and service-disabled veteran-owned small
17 businesses;

18 (2) the obstacles, if any, the Commission on Equity
19 and Inclusion faces when certifying veteran-owned
20 businesses and possible rules or changes to rules to
21 address those issues;

22 (3) a year-by-year comparison of awarded contracts to
23 certified veteran-owned small businesses and
24 service-disabled veteran-owned small businesses; and

25 (4) any other information that the Commission on
26 Equity and Inclusion deems necessary to assist

1 veteran-owned small businesses and service-disabled
2 veteran-owned small businesses to become certified with
3 the State.

4 The Commission on Equity and Inclusion shall conduct a
5 minimum of 2 outreach events per year to ensure that
6 veteran-owned small businesses and service-disabled
7 veteran-owned small businesses know about the procurement
8 opportunities and certification requirements with the State.
9 The Commission on Equity and Inclusion may receive
10 appropriations for outreach.

11 (b-10) The certifications of SDVOSB and VOSB are exclusive
12 powers and functions of the State. A home rule unit may not
13 certify a SDVOSB or VOSB. This subsection is a denial and
14 limitation of home rule powers and functions under subsection
15 (h) of Section 6 of Article VII of the Illinois Constitution.

16 (c) Yearly review and recommendations. Each year, each
17 chief procurement officer shall review the progress of all
18 State agencies under its jurisdiction in meeting the goal
19 described in subsection (a), with input from statewide
20 veterans' service organizations and from the business
21 community, including businesses owned by qualified veterans,
22 and shall make recommendations to be included in the
23 Commission on Equity and Inclusion's report to the General
24 Assembly regarding continuation, increases, or decreases of
25 the percentage goal. The recommendations shall be based upon
26 the number of businesses that are owned by qualified veterans

1 and on the continued need to encourage and promote businesses
2 owned by qualified veterans.

3 (d) Governor's recommendations. To assist the State in
4 reaching the goal described in subsection (a), the Governor
5 shall recommend to the General Assembly changes in programs to
6 assist businesses owned by qualified veterans.

7 (e) Definitions. As used in this Section:

8 "Armed forces of the United States" means the United
9 States Army, Navy, Air Force, Marine Corps, Coast Guard, or
10 service in active duty as defined under 38 U.S.C. Section 101.
11 Service in the Merchant Marine that constitutes active duty
12 under Section 401 of federal Public Act 95-202 shall also be
13 considered service in the armed forces for purposes of this
14 Section.

15 "Certification" means a determination made by the Illinois
16 Department of Veterans' Affairs and the Commission on Equity
17 and Inclusion that a business entity is a qualified
18 service-disabled veteran-owned small business or a qualified
19 veteran-owned small business for whatever purpose. A SDVOSB or
20 VOSB owned and controlled by women, minorities, or persons
21 with disabilities, as those terms are defined in Section 2 of
22 the Business Enterprise for Minorities, Women, and Persons
23 with Disabilities Act, may also select and designate whether
24 that business is to be certified as a "women-owned business",
25 "minority-owned business", or "business owned by a person with
26 a disability", as defined in Section 2 of the Business

1 Enterprise for Minorities, Women, and Persons with
2 Disabilities Act.

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

19 "Qualified service-disabled veteran" means a veteran who
20 has been found to have 10% or more service-connected
21 disability by the United States Department of Veterans Affairs
22 or the United States Department of Defense.

23 "Qualified service-disabled veteran-owned small business"
24 or "SDVOSB" means a small business (i) that is at least 51%
25 owned by one or more qualified service-disabled veterans
26 living in Illinois or, in the case of a corporation, at least

1 51% of the stock of which is owned by one or more qualified
2 service-disabled veterans living in Illinois; (ii) that has
3 its home office in Illinois; and (iii) for which items (i) and
4 (ii) are factually verified annually by the Commission on
5 Equity and Inclusion.

6 "Qualified veteran-owned small business" or "VOSB" means a
7 small business (i) that is at least 51% owned by one or more
8 qualified veterans living in Illinois or, in the case of a
9 corporation, at least 51% of the stock of which is owned by one
10 or more qualified veterans living in Illinois; (ii) that has
11 its home office in Illinois; and (iii) for which items (i) and
12 (ii) are factually verified annually by the Commission on
13 Equity and Inclusion.

14 "Service-connected disability" means a disability incurred
15 in the line of duty in the active military, naval, or air
16 service as described in 38 U.S.C. 101(16).

17 "Small business" means a business that has annual gross
18 sales of less than \$150,000,000 as evidenced by the federal
19 income tax return of the business. A firm with gross sales in
20 excess of this cap may apply to the Commission on Equity and
21 Inclusion for certification for a particular contract if the
22 firm can demonstrate that the contract would have significant
23 impact on SDVOSB or VOSB as suppliers or subcontractors or in
24 employment of veterans or service-disabled veterans.

25 "State agency" has the meaning provided in Section
26 1-15.100 of this Code.

1 "Time of hostilities with a foreign country" means any
2 period of time in the past, present, or future during which a
3 declaration of war by the United States Congress has been or is
4 in effect or during which an emergency condition has been or is
5 in effect that is recognized by the issuance of a Presidential
6 proclamation or a Presidential executive order and in which
7 the armed forces expeditionary medal or other campaign service
8 medals are awarded according to Presidential executive order.

9 "Veteran" means a person who (i) has been a member of the
10 armed forces of the United States or, while a citizen of the
11 United States, was a member of the armed forces of allies of
12 the United States in time of hostilities with a foreign
13 country and (ii) has served under one or more of the following
14 conditions: (a) the veteran served a total of at least 6
15 months; (b) the veteran served for the duration of hostilities
16 regardless of the length of the engagement; (c) the veteran
17 was discharged on the basis of hardship; or (d) the veteran was
18 released from active duty because of a service connected
19 disability and was discharged under honorable conditions.

20 (f) Certification program. The Illinois Department of
21 Veterans' Affairs and the Commission on Equity and Inclusion
22 shall work together to devise a certification procedure to
23 assure that businesses taking advantage of this Section are
24 legitimately classified as qualified service-disabled
25 veteran-owned small businesses or qualified veteran-owned
26 small businesses.

1 The Commission on Equity and Inclusion shall:

2 (1) compile and maintain a comprehensive list of
3 certified veteran-owned small businesses and
4 service-disabled veteran-owned small businesses;

5 (2) assist veteran-owned small businesses and
6 service-disabled veteran-owned small businesses in
7 complying with the procedures for bidding on State
8 contracts;

9 (3) provide training for State agencies regarding the
10 goal setting process and compliance with veteran-owned
11 small business and service-disabled veteran-owned small
12 business goals; and

13 (4) implement and maintain an electronic portal on the
14 Commission on Equity and Inclusion's website for the
15 purpose of completing and submitting veteran-owned small
16 business and service-disabled veteran-owned small business
17 certificates.

18 The Commission on Equity and Inclusion, in consultation
19 with the Department of Veterans' Affairs, may develop programs
20 and agreements to encourage cities, counties, towns,
21 townships, and other certifying entities to adopt uniform
22 certification procedures and certification recognition
23 programs.

24 (f-5) A business shall be certified by the Commission on
25 Equity and Inclusion as a service-disabled veteran-owned small
26 business or a veteran-owned small business for purposes of

1 this Section if the Commission on Equity and Inclusion
2 determines that the business has been certified as a
3 service-disabled veteran-owned small business or a
4 veteran-owned small business by the Vets First Verification
5 Program of the United States Department of Veterans Affairs,
6 and the business has provided to the Commission on Equity and
7 Inclusion the following:

8 (1) documentation showing certification as a
9 service-disabled veteran-owned small business or a
10 veteran-owned small business by the Vets First
11 Verification Program of the United States Department of
12 Veterans Affairs;

13 (2) proof that the business has its home office in
14 Illinois; and

15 (3) proof that the qualified veterans or qualified
16 service-disabled veterans live in the State of Illinois.

17 The policies of the Commission on Equity and Inclusion
18 regarding recognition of the Vets First Verification Program
19 of the United States Department of Veterans Affairs shall be
20 reviewed annually by the Commission on Equity and Inclusion,
21 and recognition of service-disabled veteran-owned small
22 businesses and veteran-owned small businesses certified by the
23 Vets First Verification Program of the United States
24 Department of Veterans Affairs may be discontinued by the
25 Commission on Equity and Inclusion by rule upon a finding that
26 the certification standards of the Vets First Verification

1 Program of the United States Department of Veterans Affairs do
2 not meet the certification requirements established by the
3 Commission on Equity and Inclusion.

4 (g) Penalties.

5 (1) Administrative penalties. The chief procurement
6 officers appointed pursuant to Section 10-20 shall suspend
7 any person who commits a violation of Section 17-10.3 or
8 subsection (d) of Section 33E-6 of the Criminal Code of
9 2012 relating to this Section from bidding on, or
10 participating as a contractor, subcontractor, or supplier
11 in, any State contract or project for a period of not less
12 than 3 years, and, if the person is certified as a
13 service-disabled veteran-owned small business or a
14 veteran-owned small business, then the Commission on
15 Equity and Inclusion shall revoke the business's
16 certification for a period of not less than 3 years. An
17 additional or subsequent violation shall extend the
18 periods of suspension and revocation for a period of not
19 less than 5 years. The suspension and revocation shall
20 apply to the principals of the business and any subsequent
21 business formed or financed by, or affiliated with, those
22 principals.

23 (2) Reports of violations. Each State agency shall
24 report any alleged violation of Section 17-10.3 or
25 subsection (d) of Section 33E-6 of the Criminal Code of
26 2012 relating to this Section to the chief procurement

1 officers appointed pursuant to Section 10-20. The chief
2 procurement officers appointed pursuant to Section 10-20
3 shall subsequently report all such alleged violations to
4 the Attorney General, who shall determine whether to bring
5 a civil action against any person for the violation.

6 (3) List of suspended persons. The chief procurement
7 officers appointed pursuant to Section 10-20 shall monitor
8 the status of all reported violations of Section 17-10.3
9 or subsection (d) of Section 33E-6 of the Criminal Code of
10 1961 or the Criminal Code of 2012 relating to this Section
11 and shall maintain and make available to all State
12 agencies a central listing of all persons that committed
13 violations resulting in suspension.

14 (4) Use of suspended persons. During the period of a
15 person's suspension under paragraph (1) of this
16 subsection, a State agency shall not enter into any
17 contract with that person or with any contractor using the
18 services of that person as a subcontractor.

19 (5) Duty to check list. Each State agency shall check
20 the central listing provided by the chief procurement
21 officers appointed pursuant to Section 10-20 under
22 paragraph (3) of this subsection to verify that a person
23 being awarded a contract by that State agency, or to be
24 used as a subcontractor or supplier on a contract being
25 awarded by that State agency, is not under suspension
26 pursuant to paragraph (1) of this subsection.

1 (h) On and after the effective date of this amendatory Act
2 of the 102nd General Assembly, all powers, duties, rights, and
3 responsibilities of the Department of Central Management
4 Services with respect to the requirements of this Section are
5 transferred to the Commission on Equity and Inclusion.

6 All books, records, papers, documents, property (real and
7 personal), contracts, causes of action, and pending business
8 pertaining to the powers, duties, rights, and responsibilities
9 transferred by this amendatory Act from the Department of
10 Central Management Services to the Commission on Equity and
11 Inclusion, including, but not limited to, material in
12 electronic or magnetic format and necessary computer hardware
13 and software, shall be transferred to the Commission on Equity
14 and Inclusion.

15 The powers, duties, rights, and responsibilities
16 transferred from the Department of Central Management Services
17 by this amendatory Act shall be vested in and shall be
18 exercised by the Commission on Equity and Inclusion.

19 Whenever reports or notices are now required to be made or
20 given or papers or documents furnished or served by any person
21 to or upon the Department of Central Management Services in
22 connection with any of the powers, duties, rights, and
23 responsibilities transferred by this amendatory Act, the same
24 shall be made, given, furnished, or served in the same manner
25 to or upon the Commission on Equity and Inclusion.

26 This amendatory Act of the 102nd General Assembly does not

1 affect any act done, ratified, or canceled or any right
2 occurring or established or any action or proceeding had or
3 commenced in an administrative, civil, or criminal cause by
4 the Department of Central Management Services before this
5 amendatory Act takes effect; such actions or proceedings may
6 be prosecuted and continued by the Commission on Equity and
7 Inclusion.

8 Any rules of the Department of Central Management Services
9 that relate to its powers, duties, rights, and
10 responsibilities under this Section and are in full force on
11 the effective date of this amendatory Act of the 102nd General
12 Assembly shall become the rules of the Commission on Equity
13 and Inclusion. This amendatory Act does not affect the
14 legality of any such rules in the Illinois Administrative
15 Code. Any proposed rules filed with the Secretary of State by
16 the Department of Central Management Services that are pending
17 in the rulemaking process on the effective date of this
18 amendatory Act and pertain to the powers, duties, rights, and
19 responsibilities transferred, shall be deemed to have been
20 filed by the Commission on Equity and Inclusion. As soon as
21 practicable hereafter, the Commission on Equity and Inclusion
22 shall revise and clarify the rules transferred to it under
23 this amendatory Act to reflect the reorganization of powers,
24 duties, rights, and responsibilities affected by this
25 amendatory Act, using the procedures for recodification of
26 rules available under the Illinois Administrative Procedure

1 Act, except that existing title, part, and section numbering
2 for the affected rules may be retained. The Commission on
3 Equity and Inclusion may propose and adopt under the Illinois
4 Administrative Procedure Act such other rules of the
5 Department of Central Management Services that will now be
6 administered by the Commission on Equity and Inclusion.

7 (Source: P.A. 102-166, eff. 7-26-21; 102-671, eff. 11-30-21;
8 103-570, eff. 1-1-24.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.