



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB0102

Introduced 1/10/2013, by Rep. William Davis

SYNOPSIS AS INTRODUCED:

220 ILCS 5/4-503 new

Amends the Public Utilities Act. Requires the Illinois Commerce Commission to establish a procedure for entities regulated by it and their Commission-regulated subsidiaries and affiliates to submit annual detailed and verifiable plans for increasing female, minority, and disabled veteran business's procurement in all categories. Provides that the Commission shall provide a clearinghouse for the sharing of identification and verification information of qualifying businesses. Sets forth guidelines and goals for each regulated entity's program to ensure that qualifying businesses are encouraged to become potential suppliers of products and services to the regulated entity, including provisions regarding outreach programs and subcontracting programs. Requires each regulated entity to set substantial and verifiable short-term, mid-term, and long-term goals for the utilization of qualifying businesses. Requires each regulated entity to submit an annual report and an annual plan with respect to these goals. Requires the Commission to provide an annual report to the General Assembly on the progress of activities undertaken by each regulated entity. Effective immediately.

LRB098 03906 AMC 33924 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by adding
5 Section 4-503 as follows:

6 (220 ILCS 5/4-503 new)

7 Sec. 4-503. Procurement from female owned, minority owned,
8 and qualified service-disabled veteran-owned small businesses;
9 goals; reports.

10 (a) For the purpose of this Section:

11 "Certification" means a determination made under the
12 Business Enterprise for Minorities, Females, and Persons with
13 Disabilities Act, Section 45-57 of the Illinois Procurement
14 Code, or the clearinghouse that a business entity is a female
15 owned business, minority owned business, or qualified
16 service-disabled veteran-owned small business for whatever
17 purpose. A business owned and controlled by females shall
18 select and designate whether such business is to be certified
19 as (i) a female owned business or minority owned business if
20 the females are also minorities or (i) a female owned business
21 or qualified service-disabled veteran-owned small business if
22 the females are qualified service-disabled veterans.

23 "Clearinghouse" means the clearinghouse authorized under

1 subsection (d) of this Section.

2 "Control" has the meaning given to that term in the
3 Business Enterprise for Minorities, Females, and Persons with
4 Disabilities Act.

5 "Female owned business" has the meaning given to that term
6 in the Business Enterprise for Minorities, Females, and Persons
7 with Disabilities Act.

8 "Goal" means a target that, when achieved, indicates
9 progress in a preferred direction. A goal is neither a
10 requirement nor a quota.

11 "Long-term goal" means a goal applicable to a period of 5
12 years.

13 "Mid-term goal" means a goal applicable to a period of 3
14 years.

15 "Minority owned business" has the meaning given to that
16 term in the Business Enterprise for Minorities, Females, and
17 Persons with Disabilities Act.

18 "Product and service categories" means product and service
19 categories as defined by the Standard Industrial
20 Classification (SIC) system maintained by the United States
21 Department of Labor, Occupational Safety and Health
22 Administration.

23 "Qualified service-disabled veteran-owned small business"
24 has the meaning given to that term in Section 45-57 of the
25 Illinois Procurement Code.

26 "Qualifying business" means a female owned business,

1 minority owned business, or qualified service-disabled
2 veteran-owned small business.

3 "Regulated entity" means any entity that is regulated by
4 the Commission and their Commission-regulated subsidiaries and
5 affiliates.

6 "Short-term goal" means a goal applicable to a period of
7 one year.

8 "Subcontract" means an agreement or arrangement between a
9 contractor and any party or person in which the parties do not
10 stand in the relationship of an employer and an employee (i)
11 for the furnishing of supplies or services for the use of real
12 or personal property, including lease arrangements, which, in
13 whole or in part, is necessary to the performance of any one or
14 more contracts or (ii) under which any portion of the
15 contractor's obligation under any one or more contracts is
16 performed, undertaken, or assumed.

17 (b) The Commission shall establish a procedure for
18 regulated entities to submit annual detailed and verifiable
19 plans for increasing female, minority, and disabled veteran
20 business's procurement in all categories. In addition, the
21 Commission may accept such plans from cable operators.

22 In cases where the application of this Section results in
23 undue hardship or unreasonable expense to a regulated entity,
24 the regulated entity may request relief by filing an
25 application with the Commission. Where the relief requested is
26 of minor importance or temporary in nature, the regulated

1 entity may apply for such relief through an advice letter
2 filing. Any advice letter filing must, at a minimum, be served
3 on all parties on the service list of this proceeding.

4 (c) The clearinghouse shall supply a verification form to
5 applicants. An applicant may complete the verification forms
6 and return them to the clearinghouse for processing and
7 inclusion in the database. In addition to verification by the
8 clearinghouse, a regulated entity may accept verification of a
9 qualifying business's status made under the Business
10 Enterprise for Minorities, Females, and Persons with
11 Disabilities Act or Section 45-57 of the Illinois Procurement
12 Code or made by the Supplier Clearinghouse used by the
13 California Public Utilities Commission.

14 In assessing the suitability of a qualifying business to
15 bid for procurement contracts, a regulated entity may require
16 additional information or the completion of additional forms to
17 comply with specific requirements created by the unique
18 character of its business, including, but not limited to,
19 insurance requirements, product and service codes, and bonding
20 limits. A regulated entity may not, however, require such
21 additional information in order to verify that a business is in
22 fact a qualifying business.

23 Female owned businesses and minority owned businesses
24 shall be required to submit verification forms at least once
25 every 3 years.

26 Completion of the verification application only initiates

1 a verification of the business's status as a female owned
2 business or minority owned business. Filing of an application
3 does not guarantee verification.

4 The fact that a verified qualifying business is included in
5 the clearinghouse database shall not be construed as an
6 endorsement of its ability to perform, nor shall such inclusion
7 guarantee it business with the utilities.

8 Verification forms for female owned businesses or minority
9 owned businesses shall be available for inspection by the
10 Commission.

11 Falsification of information on the verification form is
12 subject to penalties as set by the Commission by administrative
13 rule.

14 (d) The Commission shall provide a clearinghouse for the
15 sharing of identification and verification information of
16 qualifying businesses. The Commission may establish and
17 operate such a clearinghouse internally or authorize, by
18 decision or resolution, a regulated entity-formed entity or
19 arrangement to fund the operation of such a clearinghouse. In
20 authorizing a regulated entity-formed entity or arrangement,
21 the Commission must specify sufficient terms and conditions to
22 specify how verifications and audits shall be performed and to
23 ascertain and ensure that the clearinghouse is operated in
24 accordance with this Section and other applicable legal
25 requirements.

26 The primary purpose of the clearinghouse shall be to audit

1 and verify the status of qualifying businesses and to establish
2 and maintain a database of qualifying businesses that is
3 accessible to the Commission and to participating utilities.
4 The clearinghouse auditing and verification program shall
5 preclude the need for an individual regulated entity to audit
6 and verify the status of the qualifying businesses it does
7 business with.

8 The clearinghouse shall distribute renewal verification
9 forms to female owned businesses or minority owned businesses
10 at least once every 3 years. If the renewal is not completed
11 and returned within a reasonable time, the clearinghouse shall
12 notify the female owned business or minority owned business and
13 utilities that the female owned business or minority owned
14 business will not be listed as a verified female owned business
15 or minority owned business in the shared database until the
16 renewal is completed.

17 (d) Each regulated entity's program shall be designed to
18 ensure that qualifying businesses are encouraged to become
19 potential suppliers of products and services to the utilities
20 subject to this Section. Nothing in this Section authorizes or
21 permits a regulated entity to utilize setasides, preferences,
22 or quotas in administration of its program. The regulated
23 entity retains its authority to use its legitimate business
24 judgment to select the supplier for a particular contract.

25 Each regulated entity shall maintain an appropriately
26 sized staff to provide overall program direction and guidance

1 and to implement program requirements. Each regulated entity
2 shall ensure that its employees with procurement
3 responsibilities receive training in the implementation of its
4 program.

5 Each regulated entity shall implement an outreach program
6 to inform and recruit qualifying businesses to apply for
7 procurement contracts. Outreach activities may vary for each
8 regulated entity depending on its size, service territory, and
9 specific lines of business. However, each regulated entity
10 shall, at a minimum:

11 (1) actively seek out opportunities to identify
12 qualifying businesses and to expand qualifying business
13 source pools;

14 (2) actively support the efforts of organizations
15 experienced in the field who promote the interests of
16 qualifying businesses;

17 (3) work with qualifying businesses to facilitate
18 contracting relationships by explaining regulated entity
19 qualification requirements, bid and contracting
20 procedures, materials requirements, invoicing and payment
21 schedules, and other procurement practices and procedures;

22 (4) at the request of any unsuccessful qualifying
23 business bidder, provide information concerning the
24 relative range or ranking of the qualifying business's bid
25 as contrasted with the successful bid; information on
26 additional selection criteria, such as warranty periods,

1 maintenance costs, and delivery capability, shall be
2 provided when requested if disclosure would not violate the
3 proprietary nature of the specific contract element;

4 (5) to the extent possible, make available to
5 qualifying businesses lists of regulated entity purchase
6 and contract categories that offer them the best
7 opportunity for success;

8 (6) encourage employees involved in procurement
9 activities to break apart purchases and contracts as
10 appropriate to accommodate the capabilities of qualifying
11 businesses; and

12 (7) summarize this Section in its outreach program
13 handouts.

14 Each regulated entity is directed to offer the same
15 assistance set forth in this subsection (d) to entities that
16 are not qualifying businesses, upon request.

17 (e) Each regulated entity shall establish and maintain a
18 subcontracting program for the purpose of encouraging its prime
19 contractors to utilize qualifying businesses. The
20 subcontracting program shall serve as an enhancement to, and
21 not as a replacement for, the regulated entity's prime
22 contractor outreach program. The subcontracting program shall
23 apply to:

24 (1) purchases or contracts exceeding \$500,000 for
25 products and services;

26 (2) construction contracts exceeding \$1,000,000; and

1 (3) purchases or contracts that offer subcontracting
2 opportunities to qualifying businesses, regardless of
3 value, where appropriate.

4 The subcontracting program need not be applied to the
5 procurement of products manufactured for general consumption,
6 such as paper, pens, and the like.

7 Each regulated entity shall encourage and assist its prime
8 contractors to develop plans to increase the utilization of
9 qualifying businesses as subcontractors. Prime contractors
10 shall be encouraged to submit to the regulated entity plans
11 that include goals for the utilization of qualifying businesses
12 as subcontractors. These plans may be incorporated into the
13 contract between the regulated entity and the prime contractor.
14 The prime contractor may submit periodic reports on its
15 compliance with the plan to the regulated entity.

16 Each regulated entity is encouraged to incorporate in all
17 purchase orders, requests for bid proposals, and other
18 appropriate procurement documents related to procurement
19 efforts subject to the subcontracting program, a statement in
20 substantially the following form:

21 "UTILIZATION OF FEMALE OWNED BUSINESSES, MINORITY OWNED
22 BUSINESSES, AND QUALIFIED SERVICE-DISABLED VETERAN-OWNED
23 SMALL BUSINESSES

24 (1) It is the policy of (insert the name of the
25 regulated entity) that female owned businesses, minority
26 owned businesses, or qualified service-disabled

1 veteran-owned small businesses shall have the maximum
2 practicable opportunity to participate in the performance
3 of contracts. However, this policy shall not be used to
4 exclude other qualified businesses from participating in
5 regulated entity contracting.

6 (2) The contractor agrees to use his or her best
7 efforts to carry out this policy in the award of
8 subcontracts to the fullest extent consistent with the
9 efficient performance of this contract.

10 (3) The contractor agrees to inform prospective female
11 owned businesses, minority owned businesses, or qualified
12 service-disabled veteran-owned small businesses of their
13 opportunity to request from the clearinghouse a
14 verification application form and to return the completed
15 form to the clearinghouse for processing and inclusion in
16 the database."

17 Each regulated entity is encouraged to inform suppliers of
18 products and services that suppliers' good faith efforts to
19 subcontract with qualifying businesses is a factor that will be
20 considered in the bid evaluation process. A statement to that
21 effect could be included in all appropriate procurement
22 documents.

23 Each regulated entity shall monitor and include in its
24 annual report to the Commission a summary of prime contractor
25 progress in increasing the participation of qualifying
26 businesses. Each regulated entity shall include in its annual

1 plan a description of future plans for encouraging both prime
2 contractors and grantees to engage qualifying businesses in all
3 procurement categories that provide subcontracting
4 opportunities. Each regulated entity may include awards to
5 verified qualifying businesses in its results.

6 (f) Each regulated entity shall set substantial and
7 verifiable short-term, mid-term, and long-term goals for the
8 utilization of qualifying businesses. Goals shall be set
9 annually for each major product and service category that
10 provides opportunities for procurement. A goal shall be
11 considered substantial if it is realistic and clearly
12 demonstrates a regulated entity's commitment to encourage the
13 participation of qualifying businesses in regulated entity
14 purchases and contracts. The utilities shall consider the
15 following factors in setting their goals:

16 (1) total regulated entity purchasing and contracting
17 projections;

18 (2) availability of qualifying businesses and
19 competitiveness in the geographical area served by the
20 regulated entity;

21 (3) market dynamics based on historical data and
22 trends; and

23 (4) other appropriate factors that would increase the
24 qualifying businesses' share of regulated entity business.

25 Each regulated entity shall establish initial minimum
26 long-term goals for each major category of products and

1 services the regulated entity purchases from outside vendors of
2 not less than 11% for minority owned businesses and not less
3 than 7% for female owned businesses. For the purposes of this
4 Section, contracts with minority female owned businesses can be
5 counted toward either the minority owned business goal or the
6 female owned business goal, but not toward both. Similarly,
7 contracts with qualified service-disabled veteran-owned small
8 businesses can be counted either as service-disabled
9 veteran-owned small business procurement or the appropriate
10 female or minority business goal, but not toward both. The goal
11 for qualified service-disabled veteran-owned small business
12 participation in procurement programs of the participating
13 utilities is set at 3%. The specification of initial long-term
14 goals in this subsection shall not prevent the utilities from
15 seeking to reach a goal of awarding 30% or more of their
16 contracts to female owned businesses and minority owned
17 businesses.

18 Goals shall also be established for both minority female
19 owned businesses and non-minority female owned businesses.
20 These goals are to be a subset of the overall goal for female
21 owned businesses and minority owned businesses established by
22 this subsection (f). These goals are intended to ensure that
23 utilities do not direct their female owned business and
24 minority owned business procurement programs toward
25 non-minority female owned businesses and minority male owned
26 businesses to the detriment or exclusion of minority female

1 owned businesses.

2 Goals shall be set for each major category of products or
3 services. For each major category of products and services
4 where the minimum long-term goals required by this subsection
5 (f) are not met, the regulated entity shall include a
6 comprehensive discussion and detailed description of any
7 efforts made to find or recruit qualifying businesses'
8 suppliers of products or services in areas where qualifying
9 businesses' suppliers are currently the only available
10 procurement method. The regulated entity may also explain in
11 detail in its annual report how its ability to meet its
12 qualifying business's goals are affected because the
13 qualifying businesses capable of supplying certain products
14 and services are unavailable, or because sole source
15 procurement is the only available procurement method.

16 A regulated entity that, on the effective date of this
17 Section, is purchasing products or services from affiliates may
18 subtract the dollars paid to affiliates for these products or
19 services from the total dollars used as the basis for
20 establishing goals for purchases from qualifying businesses of
21 these categories of products or services, provided that the
22 regulated entity encourages the affiliate to establish an
23 appropriate subcontracting program where such affiliate
24 employs subcontractors. Any regulated entity that subtracts
25 these dollars must, in its annual report to the Commission,
26 state whether the affiliates have established a subcontracting

1 program and describe the results of any such program. The
2 regulated entity's annual plan must describe any future plans
3 to encourage such a subcontracting program.

4 Goals for each specific product or service category shall
5 be expressed as a percentage of total dollars awarded by a
6 regulated entity to outside vendors in that category; however,
7 where appropriate, non-numeric goals may also be included.
8 Overall program goals shall be expressed as a percentage of
9 total dollars awarded to outside vendors in all categories of
10 products and services purchased by a regulated entity other
11 than products and services which are included in a fuel
12 procurement base established pursuant to this subsection (f).
13 Payments to other utilities, franchise tax fees, other taxes,
14 and postage need not be included in the standard procurement
15 base used to establish goals.

16 Each regulated entity may establish a separate fuel
17 procurement base for reporting progress and establishing goals
18 for procurement of fuels from qualifying businesses. Utilities
19 choosing to report fuel purchases separately from the purchase
20 of other products and services must follow the following
21 guidelines:

22 (i) Fuel used to power vehicles, heat facilities, and
23 supply emergency generators may not be included in the fuel
24 procurement base. Such fuel must be included in the
25 standard procurement base used to establish goals.

26 (ii) The fuel procurement base must, at a minimum,

1 include all purchases of natural gas from domestic on-shore
2 natural gas markets.

3 (iii) Utilities that purchase fuels other than
4 domestic on-shore natural gas from qualifying businesses
5 must include such purchases in the fuel procurement base.

6 Each regulated entity shall make special efforts to
7 increase utilization and encourage entry into the marketplace
8 of qualifying businesses in product or service categories where
9 there has been low utilization of qualifying businesses, such
10 as legal and financial services, fuel procurement, and areas
11 that are considered technical in nature.

12 No penalty shall be imposed for failure of any regulated
13 entity to meet or exceed goals.

14 (g) Utilities shall report their goals in an annual report.
15 Each regulated entity shall serve 12 copies of its annual
16 report on its qualifying business program on the Executive
17 Director by March 1 of each year beginning in 2014. The annual
18 report shall contain at least:

19 (1) a description of the activities of its qualifying
20 business program engaged in during the previous calendar
21 year, including both internal and external activities;

22 (2) a summary of purchases and contracts with
23 qualifying businesses, with breakdowns by ethnicity,
24 product, and service categories compared with total
25 contract dollars awarded to outside vendors in those
26 categories;

1 (3) an itemization of its qualifying business program
2 expenses, provided in the format required by the
3 Commission;

4 (4) a description of its progress in meeting or
5 exceeding set goals and an explanation of any circumstances
6 that may have caused the regulated entity to fall short of
7 its goals;

8 (5) a summary of prime contractor utilization of
9 qualifying business subcontractors; and

10 (6) a description of any efforts made to recruit
11 qualifying business suppliers of products or services in
12 procurement categories where qualifying business
13 utilization has been low, such as legal and financial
14 services, fuel procurement, and areas that are considered
15 highly technical in nature.

16 Utilities shall retain all documents and data they rely on
17 in preparing their annual report for the longer of either 3
18 years or in conformance with the utilities' individual document
19 retention policies, and shall provide these documents and data
20 to the Commission upon request.

21 (h) Each regulated entity that elects to report fuel
22 procurement separately must file with the Executive Director by
23 March 1 of each year, beginning in 2014, a separate detailed
24 and verifiable report on qualifying business participation in
25 fuel markets. These reports must include, at a minimum, the
26 results of purchases in each fuel category. Each regulated

1 entity shall report purchases by:

2 (1) market origin and fuel type;

3 (2) volume and dollar magnitude;

4 (3) the term of sale, such as spot, intermediate, or
5 long-term; and

6 (4) the ethnicity and gender of the supplier.

7 Each regulated entity shall provide (i) an explanation of
8 how existing and changing market conditions are affecting the
9 regulated entity's ability to meet or exceed its qualifying
10 business goals for fuel; (ii) a comprehensive description of
11 the specific out-reach programs used to seek qualifying
12 business fuel suppliers in each market in which fuel is
13 purchased; and (iii) a justification for any exclusion of a
14 specific fuel category from the regulated entity's fuel
15 procurement base.

16 (i) Nothing in this Section shall prohibit any regulated
17 entity from breaking down specific categories further than
18 specifically required under this Section.

19 (j) Utilities shall serve 12 copies of a detailed and
20 verifiable plan for encouraging qualifying business
21 procurement in all categories on the Executive Director by
22 March 1 of each year, beginning in 2014. The annual plan shall
23 contain at least:

24 (1) the short-term, mid-term, and long-term goals set
25 as required by this Section;

26 (2) a description of qualifying business program

1 activities planned for the next calendar year, which shall
2 include both internal and external activities;

3 (3) plans for recruiting qualifying business suppliers
4 of products or services where utilization of qualifying
5 businesses has been low, such as legal and financial
6 services, fuel procurement, and areas that are considered
7 highly technical in nature;

8 (4) plans for seeking and recruiting qualifying
9 business suppliers of products or services where
10 qualifying business suppliers are currently unavailable;

11 (5) plans for encouraging both prime contractors and
12 grantees to engage qualifying businesses in subcontracts
13 in all categories that provide subcontracting
14 opportunities; and

15 (6) plans for complying with the qualifying business
16 program guidelines established by the Commission by rule.

17 (k) The Commission shall provide an annual report to the
18 General Assembly, beginning in January of 2015, on the progress
19 of activities undertaken by each regulated entity to implement
20 this Section. In this report, the Commission shall recommend a
21 program for carrying out the policy declared in this Section,
22 together with recommendations for legislation it deems
23 necessary or desirable to further that policy. This report
24 shall include recommendations to the utilities for the
25 achievement of maximum results in implementing this Section.

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.