

SB1620



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1620

Introduced 2/9/2017, 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 powers and functions of the State. Denies home rule powers. Effective immediately.

LRB100 10230 MLM 20413 b

HOME RULE NOTE
ACT MAY APPLY

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 Director of Central Management Services, shall
17 be 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 Department of Central Management Services
21 shall adopt rules to implement compliance with this subsection
22 by all State agencies.

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

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

6 (b-5) The certifications of SDVOSB and VOSB are exclusive
7 powers and functions of the State. A home rule unit may not
8 certify a SDVOSB or VOSB. This subsection is a denial and
9 limitation of home rule powers and functions under subsection
10 (h) of Section 6 of Article VII of the Illinois Constitution.

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

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

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 Department
23 of Central Management Services' report to the General Assembly
24 regarding continuation, increases, or decreases of the
25 percentage goal. The recommendations shall be based upon the
26 number of businesses that are owned by qualified veterans and

1 on the continued need to encourage and promote businesses owned
2 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 States
9 Army, Navy, Air Force, Marine Corps, Coast Guard, or service in
10 active duty as defined under 38 U.S.C. Section 101. Service in
11 the Merchant Marine that constitutes active duty under Section
12 401 of federal Public Act 95-202 shall also be considered
13 service in the armed forces for purposes of this Section.

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

1 Disabilities Act.

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

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

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

1 service-disabled veterans living in Illinois; (ii) that has its
2 home office in Illinois; and (iii) for which items (i) and (ii)
3 are factually verified annually by the Department of Central
4 Management Services.

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

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

16 "Small business" means a business that has annual gross
17 sales of less than \$75,000,000 as evidenced by the federal
18 income tax return of the business. A firm with gross sales in
19 excess of this cap may apply to the Department of Central
20 Management Services for certification for a particular
21 contract if the firm can demonstrate that the contract would
22 have significant impact on SDVOSB or VOSB as suppliers or
23 subcontractors or in employment of veterans or
24 service-disabled veterans.

25 "State agency" has the same meaning as in Section 2 of the
26 Business Enterprise for Minorities, Females, and Persons with

1 Disabilities Act.

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

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

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

1 veteran-owned small businesses.

2 (g) Penalties.

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

20 (2) Reports of violations. Each State agency shall
21 report any alleged violation of Section 17-10.3 or
22 subsection (d) of Section 33E-6 of the Criminal Code of
23 2012 relating to this Section to the chief procurement
24 officers appointed pursuant to Section 10-20. The chief
25 procurement officers appointed pursuant to Section 10-20
26 shall subsequently report all such alleged violations to

1 the Attorney General, who shall determine whether to bring
2 a civil action against any person for the violation.

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

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

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

24 (Source: P.A. 97-260, eff. 8-5-11; 97-1150, eff. 1-25-13;
25 98-307, eff. 8-12-13; 98-1076, eff. 1-1-15.)

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

1 becoming law.