



Sen. Ram Villivalam

Filed: 5/27/2020

10100SB3893sam001

LRB101 20273 RJF 71994 a

1 AMENDMENT TO SENATE BILL 3893

2 AMENDMENT NO. _____. Amend Senate Bill 3893 by replacing
3 everything after the enacting clause with the following:

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8 (Section scheduled to be repealed on June 30, 2024)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

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

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

9 (c) Black or African American (a person having
10 origins in any of the black racial groups of Africa).

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

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

17 (f) A person who qualifies as a socially
18 disadvantaged person.

19 (g) A person who qualifies as an economically
20 disadvantaged person.

21 (2) "Woman" shall mean a person who is a citizen or
22 lawful permanent resident of the United States and who is
23 of the female gender.

24 (2.05) "Person with a disability" means a person who is
25 a citizen or lawful resident of the United States and is a
26 person qualifying as a person with a disability under

1 subdivision (2.1) of this subsection (A).

2 (2.1) "Person with a disability" means a person with a
3 severe physical or mental disability that:

4 (a) results from:

5 amputation,

6 arthritis,

7 autism,

8 blindness,

9 burn injury,

10 cancer,

11 cerebral palsy,

12 Crohn's disease,

13 cystic fibrosis,

14 deafness,

15 head injury,

16 heart disease,

17 hemiplegia,

18 hemophilia,

19 respiratory or pulmonary dysfunction,

20 an intellectual disability,

21 mental illness,

22 multiple sclerosis,

23 muscular dystrophy,

24 musculoskeletal disorders,

25 neurological disorders, including stroke and

26 epilepsy,

1 paraplegia,
2 quadriplegia and other spinal cord conditions,
3 sickle cell anemia,
4 ulcerative colitis,
5 specific learning disabilities, or
6 end stage renal failure disease; and

7 (b) substantially limits one or more of the
8 person's major life activities.

9 Another disability or combination of disabilities may
10 also be considered as a severe disability for the purposes
11 of item (a) of this subdivision (2.1) if it is determined
12 by an evaluation of rehabilitation potential to cause a
13 comparable degree of substantial functional limitation
14 similar to the specific list of disabilities listed in item
15 (a) of this subdivision (2.1).

16 (3) "Minority-owned business" means a business which
17 is at least 51% owned by one or more minority persons, or
18 in the case of a corporation, at least 51% of the stock in
19 which is owned by one or more minority persons; and the
20 management and daily business operations of which are
21 controlled by one or more of the minority individuals who
22 own it.

23 (4) "Women-owned business" means a business which is at
24 least 51% owned by one or more women, or, in the case of a
25 corporation, at least 51% of the stock in which is owned by
26 one or more women; and the management and daily business

1 operations of which are controlled by one or more of the
2 women who own it.

3 (4.1) "Business owned by a person with a disability"
4 means a business that is at least 51% owned by one or more
5 persons with a disability and the management and daily
6 business operations of which are controlled by one or more
7 of the persons with disabilities who own it. A
8 not-for-profit agency for persons with disabilities that
9 is exempt from taxation under Section 501 of the Internal
10 Revenue Code of 1986 is also considered a "business owned
11 by a person with a disability".

12 (4.2) "Council" means the Business Enterprise Council
13 for Minorities, Women, and Persons with Disabilities
14 created under Section 5 of this Act.

15 (5) "State contracts" means all contracts entered into
16 by the State, any agency or department thereof, or any
17 public institution of higher education, including
18 community college districts, regardless of the source of
19 the funds with which the contracts are paid, which are not
20 subject to federal reimbursement. "State contracts" does
21 not include contracts awarded by a retirement system,
22 pension fund, or investment board subject to Section
23 1-109.1 of the Illinois Pension Code. This definition shall
24 control over any existing definition under this Act or
25 applicable administrative rule.

26 "State construction contracts" means all State

1 contracts entered into by a State agency or public
2 institution of higher education for the repair,
3 remodeling, renovation or construction of a building or
4 structure, or for the construction or maintenance of a
5 highway defined in Article 2 of the Illinois Highway Code.

6 (6) "State agencies" shall mean all departments,
7 officers, boards, commissions, institutions and bodies
8 politic and corporate of the State, but does not include
9 the Board of Trustees of the University of Illinois, the
10 Board of Trustees of Southern Illinois University, the
11 Board of Trustees of Chicago State University, the Board of
12 Trustees of Eastern Illinois University, the Board of
13 Trustees of Governors State University, the Board of
14 Trustees of Illinois State University, the Board of
15 Trustees of Northeastern Illinois University, the Board of
16 Trustees of Northern Illinois University, the Board of
17 Trustees of Western Illinois University, municipalities or
18 other local governmental units, or other State
19 constitutional officers.

20 (7) "Public institutions of higher education" means
21 the University of Illinois, Southern Illinois University,
22 Chicago State University, Eastern Illinois University,
23 Governors State University, Illinois State University,
24 Northeastern Illinois University, Northern Illinois
25 University, Western Illinois University, the public
26 community colleges of the State, and any other public

1 universities, colleges, and community colleges now or
2 hereafter established or authorized by the General
3 Assembly.

4 (8) "Certification" means a determination made by the
5 Council or by one delegated authority from the Council to
6 make certifications, or by a State agency with statutory
7 authority to make such a certification, that a business
8 entity is a business owned by a minority, woman, or person
9 with a disability for whatever purpose. A business owned
10 and controlled by women shall be certified as a
11 "woman-owned business". A business owned and controlled by
12 women who are also minorities shall be certified as both a
13 "women-owned business" and a "minority-owned business".

14 (9) "Control" means the exclusive or ultimate and sole
15 control of the business including, but not limited to,
16 capital investment and all other financial matters,
17 property, acquisitions, contract negotiations, legal
18 matters, officer-director-employee selection and
19 comprehensive hiring, operating responsibilities,
20 cost-control matters, income and dividend matters,
21 financial transactions and rights of other shareholders or
22 joint partners. Control shall be real, substantial and
23 continuing, not pro forma. Control shall include the power
24 to direct or cause the direction of the management and
25 policies of the business and to make the day-to-day as well
26 as major decisions in matters of policy, management and

1 operations. Control shall be exemplified by possessing the
2 requisite knowledge and expertise to run the particular
3 business and control shall not include simple majority or
4 absentee ownership.

5 (10) "Business" means a business that has annual gross
6 sales of less than \$75,000,000 as evidenced by the federal
7 income tax return of the business. A firm with gross sales
8 in excess of this cap may apply to the Council for
9 certification for a particular contract if the firm can
10 demonstrate that the contract would have significant
11 impact on businesses owned by minorities, women, or persons
12 with disabilities as suppliers or subcontractors or in
13 employment of minorities, women, or persons with
14 disabilities.

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 Department of Central Management
25 Services.

26 (13) "Socially disadvantaged person" means a person

1 individually certified by the Council as having been
2 subjected to racial or ethnic prejudice or cultural bias
3 within American society because of his or her identity as a
4 member of a group and without regard to his or her
5 individual qualities.

6 (a) Social disadvantage must include the
7 following:

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

15 (ii) personal experiences of substantial and
16 chronic social disadvantage in American society;
17 and

18 (iii) negative impact on entry into or
19 advancement in the business world because of the
20 disadvantage. The Council shall consider any
21 relevant evidence in assessing this element, and
22 in every case, as provided under subparagraph (b),
23 the Council shall consider education, employment,
24 and business history, when applicable, to
25 determine whether the totality of circumstances
26 shows disadvantage in entering into or advancing

1 in the business world.

2 (b) In determining whether a person qualifies as a
3 socially disadvantaged person, the Council shall
4 further consider the following:

5 (i) Education. Such factors as denial of equal
6 access to institutions of higher education and
7 vocational training, exclusion from social and
8 professional association with students or
9 teachers, denial of educational honors rightfully
10 earned, and social patterns or pressures which
11 discouraged the individual from pursuing a
12 professional or business education.

13 (ii) Employment. Such factors as unequal
14 treatment in hiring, promotions and other aspects
15 of professional advancement, pay and fringe
16 benefits, and other terms and conditions of
17 employment; retaliatory or discriminatory behavior
18 by an employer or labor union; and social patterns
19 or pressures which have channeled the individual
20 into non-professional or non-business fields.

21 (iii) Business history. Such factors as
22 unequal access to credit or capital, acquisition
23 of credit or capital under commercially
24 unfavorable circumstances, unequal treatment in
25 opportunities for government contracts or other
26 work, unequal treatment by potential customers and

1 business associates, and exclusion from business
2 or professional organizations.

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

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

16 (b) In considering diminished capital and credit
17 opportunities, the Council shall examine factors
18 relating to the personal financial condition of any
19 individual claiming disadvantaged status, including
20 personal income for the preceding 2 years (including
21 bonuses and the value of company stock given in lieu of
22 cash), personal net worth, and the fair market value of
23 all assets, whether encumbered or not. The Council
24 shall also consider the financial condition of the
25 applicant compared to the financial profiles of small
26 businesses in the same primary industry

1 classification, or, if not available, in similar lines
2 of business, which are not owned and controlled by
3 socially and economically disadvantaged persons in
4 evaluating the individual's access to credit and
5 capital. The financial profiles that the Council will
6 compare shall include total assets, net sales, pre-tax
7 profit, sales or working capital ratio, and net worth.

8 (c) Asset transfers within 2 years.

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

23 (ii) The Council shall not attribute to an
24 individual claiming disadvantaged status any
25 assets transferred by that individual to an
26 immediate family member that are consistent with

1 the customary recognition of special occasions,
2 such as birthdays, graduations, anniversaries, and
3 retirements.

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

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

20 (Source: P.A. 100-391, eff. 8-25-17; 101-601, eff. 1-1-20.)

21 Section 99. Effective date. This Act takes effect January
22 1, 2022."