



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB5863

by Rep. Camille Y. Lilly

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/45

Creates the Park and Museum District Business Enterprise Act. Creates the Park and Museum District Business Enterprise Council for Minorities, Women, and Persons with Disabilities comprised of members appointed by the Governor, including individuals representing businesses that are minority-owned or women-owned or owned by persons with disabilities, an individual representing the business community, and individuals representing park districts and museum districts. Provides for an aspirational goal in park districts and museum districts of not less than 30% of the total dollar amount of specified park and museum district contracts to be awarded to businesses owned by minorities, women, and persons with disabilities. Provides, however, that of the total amount of all park and museum district contracts awarded to businesses owned by minorities, women, and persons with disabilities, contracts representing at least 16% shall be awarded to businesses owned by minorities, contracts representing at least 10% shall be awarded to women-owned businesses, and contracts representing at least 3% shall be awarded to businesses owned by persons with disabilities. Provides for duties of the Secretary of the Council and for annual report requirements of the Council. Provides for compliance, exemptions, waivers, and other requirements. Provides that the Department of Central Management Services shall conduct studies that measures the impact of discrimination on minority and women business development in park and museum districts in Illinois. Amends the State Finance Act making conforming changes.

LRB101 22475 AWJ 73557 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning local government.

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

4 Section 1. Short title. This Act may be cited as the Park  
5 and Museum District Business Enterprise Act.

6 Section 5. Definitions. As used in this Act:

7 "Board" means the board of commissioners of a governmental  
8 unit.

9 "Business", "business Enterprise Program", "business owned  
10 by a person with a disability", "certification", "minority  
11 person", "minority-owned business", "person with a  
12 disability", "utilization plan", "woman", and "women-owned  
13 business" have the meaning given to those terms in Section 2 of  
14 the Business Enterprise for Minorities, Women, and Persons with  
15 Disabilities Act.

16 "Chief executive officer" means the president of the board  
17 of a museum district, the chairperson of a board of  
18 commissioners of a park district, or the General Superintendent  
19 of the Chicago Park District.

20 "Council" means the Park and Museum District Business  
21 Enterprise Council for Minorities, Women, and Persons with  
22 Disabilities created under Section 10 of this Act.

23 "Governmental unit" or "unit" means a: (i) park district

1 organized under the Park District Code or Chicago Park District  
2 Act; or (ii) museum district organized under the Museum  
3 District Act.

4 "Sheltered market" means a procurement procedure whereby  
5 certain contracts are selected and specifically set aside for  
6 businesses owned by minorities, women, and persons with  
7 disabilities on a competitive bid or negotiated basis.

8 "Unit construction contracts" means all contracts entered  
9 into by a single governmental unit for the repair, remodeling,  
10 renovation or construction of a building or structure, or for  
11 the construction or maintenance of a highway defined in Article  
12 2 of the Illinois Highway Code.

13 "Unit contracts" means all contracts entered into by a  
14 single governmental unit, regardless of the source of the funds  
15 with which the contracts are paid, which are not subject to  
16 federal reimbursement.

17 Section 10. Park and Museum District Business Enterprise  
18 Council for Minorities, Women, and Persons with Disabilities.

19 (a) To help implement, monitor and enforce the goals of  
20 this Act, there is created the Park and Museum District  
21 Business Enterprise Council for Minorities, Women, and Persons  
22 with Disabilities composed of the following individuals  
23 appointed by the Governor: 6 individuals representing  
24 businesses that are minority-owned or women-owned or owned by  
25 persons with disabilities, one individual representing the

1 business community, and 2 individuals representing each of the  
2 following: park districts, other than the Chicago Park  
3 District; the Chicago Park District; and museum districts.  
4 These members shall serve 2 year terms and shall be eligible  
5 for reappointment. Any vacancy occurring on the Council shall  
6 also be filled by the Governor. Any member appointed to fill a  
7 vacancy occurring prior to the expiration of the term for which  
8 his or her predecessor was appointed shall be appointed for the  
9 remainder of such term. Members of the Council shall serve  
10 without compensation but shall be reimbursed for any ordinary  
11 and necessary expenses incurred in the performance of their  
12 duties.

13 The Council shall select one of the Council members  
14 representing a park district or museum district as chairperson  
15 and the chairperson shall select a Secretary responsible for  
16 the operation of the program.

17 The board of every governmental unit shall appoint a  
18 liaison to the Council. Each liaison shall be responsible for  
19 submitting to the Council any reports and documents necessary  
20 under this Act.

21 (b) The Council's authority and responsibility shall be to:

22 (1) Devise a certification procedure to assure that  
23 businesses taking advantage of this Act are legitimately  
24 classified as businesses owned by minorities, women, or  
25 persons with disabilities and a registration procedure to  
26 recognize, without additional evidence of Business

1 Enterprise Program eligibility, the certification of  
2 businesses owned by minorities, women, or persons with  
3 disabilities certified by the City of Chicago, Cook County,  
4 or other jurisdictional programs with requirements and  
5 procedures equaling or exceeding those in this Act.

6 (2) Maintain a list of all businesses legitimately  
7 classified as businesses owned by minorities, women, or  
8 persons with disabilities to provide to governmental  
9 units.

10 (3) Review rules and regulations for the  
11 implementation of the program for businesses owned by  
12 minorities, women, and persons with disabilities.

13 (4) Review compliance plans submitted by each  
14 governmental unit pursuant to this Act.

15 (5) Make annual reports as provided in Section 35 to  
16 the Governor and the General Assembly on the status of the  
17 program.

18 (6) Serve as a central clearinghouse for information on  
19 unit contracts, including the maintenance of a list of all  
20 pending unit contracts upon which businesses owned by  
21 minorities, women, and persons with disabilities may bid.  
22 At the Council's discretion, maintenance of the list may  
23 include 24-hour electronic access to the list along with  
24 the bid and application information.

25 (7) Establish a toll free telephone number to  
26 facilitate information requests concerning the

1 certification process and pending contracts.

2 (c) No premium bond rate of a surety company for a bond  
3 required of a business owned by a minority, woman, or person  
4 with a disability bidding for a unit contract shall be higher  
5 than the lowest rate charged by that surety company for a  
6 similar bond in the same classification of work that would be  
7 written for a business not owned by a minority, woman, or  
8 person with a disability.

9 (d) Any Council member who has direct financial or personal  
10 interest in any measure pending before the Council shall  
11 disclose this fact to the Council and refrain from  
12 participating in the determination upon such measure.

13 (e) The Secretary shall have the following duties and  
14 responsibilities:

15 (1) To be responsible for the day-to-day operation of  
16 the Council.

17 (2) To serve as a coordinator for all of the Council's  
18 programs for businesses owned by minorities, women, and  
19 persons with disabilities and as the information and  
20 referral center for all Council initiatives for businesses  
21 owned by minorities, women, and persons with disabilities.

22 (3) To establish an enforcement procedure whereby the  
23 Council may recommend to the appropriate unit legal officer  
24 that the unit exercise its legal remedies which shall  
25 include (i) termination of the contract involved, (ii)  
26 prohibition of participation by the respondent in unit

1 contracts for a period not to exceed 3 years, (iii)  
2 imposition of a penalty not to exceed any profit acquired  
3 as a result of violation, or (iv) any combination thereof.  
4 Such procedures shall require prior approval by Council.  
5 All funds collected as penalties under this subsection  
6 shall be used exclusively for maintenance and further  
7 development of the Business Enterprise Program and  
8 encouragement of participation in unit procurement by  
9 minorities, women, and persons with disabilities.

10 (4) To devise appropriate policies, regulations and  
11 procedures for including participation by businesses owned  
12 by minorities, women, and persons with disabilities as  
13 prime contractors including, but not limited to, (i)  
14 encouraging the inclusions of qualified businesses owned  
15 by minorities, women, and persons with disabilities on  
16 solicitation lists, (ii) investigating the potential of  
17 blanket bonding programs for small construction jobs, or  
18 (iii) investigating and making recommendations concerning  
19 the use of the sheltered market process.

20 (5) To devise procedures for the waiver of the  
21 participation goals in appropriate circumstances.

22 (6) To accept donations and, with the approval of the  
23 Council, grants related to the purposes of this Act.

24 (7) To conduct seminars related to the purpose of this  
25 Act and to charge reasonable registration fees.

26 (8) To sell directories, vendor lists, and other such

1 information to interested parties, except that forms  
2 necessary to become eligible for the program shall be  
3 provided free of charge to a business or individual  
4 applying for the program.

5 (f) The Council shall conduct regular meetings to carry out  
6 its responsibilities under this Act. At each of the regularly  
7 scheduled meetings, time shall be allocated for the Council to  
8 receive, review, and discuss any evidence regarding past or  
9 present racial, ethnic, or gender based discrimination which  
10 directly impacts the unit contracting with businesses owned by  
11 minorities, women, and persons with disabilities. If after  
12 reviewing such evidence the Council finds that there is or has  
13 been such discrimination against a specific group, race, or  
14 sex, the Council shall establish sheltered markets or adjust  
15 existing sheltered markets tailored to address the Council's  
16 specific findings.

17 As part of the annual report which the Council must file  
18 pursuant to paragraph (5) of subsection (b), the Council shall  
19 report on any findings made pursuant to this subsection.

20 (g) The Department of Central Management Services shall  
21 provide administrative and other support to the Council.

22 Section 15. Governmental unit compliance plans.

23 (a) Each unit shall file with the Council an annual  
24 compliance plan which shall outline the goals of the unit for  
25 contracting with businesses owned by minorities, women, and



1 persons with disabilities for the then current fiscal year, the  
2 manner in which the unit intends to reach these goals and a  
3 timetable for reaching these goals. The Council shall review  
4 and approve the plan of each unit and may reject any plan that  
5 does not comply with this Act or any rules adopted by the  
6 Council or the Department of Central Management Services  
7 pursuant to this Act.

8 (b) The compliance plan shall also include, but not be  
9 limited to, (i) a policy statement, signed by the chief  
10 executive officer of the unit, expressing a commitment to  
11 encourage the use of businesses owned by minorities, women, and  
12 persons with disabilities, (ii) the designation of the liaison  
13 officer provided for in Section 10, (iii) procedures to  
14 distribute to potential contractors and vendors the list of all  
15 businesses legitimately classified as businesses owned by  
16 minorities, women, and persons with disabilities and so  
17 certified under this Act, (iv) procedures to set separate  
18 contract goals on specific prime contracts and purchase orders  
19 with subcontracting possibilities based upon the type of work  
20 or services and subcontractor availability, (v) procedures to  
21 assure that contractors and vendors make good faith efforts to  
22 meet contract goals, (vi) procedures for contract goal  
23 exemption, modification and waiver, and (vii) the delineation  
24 of separate contract goals for businesses owned by minorities,  
25 women, and persons with disabilities.

26 (c) Approval of the compliance plans shall include such

1 delegation of responsibilities to the requesting unit as the  
2 Council deems necessary and appropriate to fulfill the purpose  
3 of this Act. Such responsibilities may include, but need not be  
4 limited to, those outlined in subsections (a), (b) and (c) of  
5 Section 25, paragraph (1) of subsection (a) of Section 35, and  
6 Section 40.

7 (d) Each unit shall file with the Council an annual report  
8 of its utilization of businesses owned by minorities, women,  
9 and persons with disabilities during the preceding fiscal year  
10 including lapse period spending and a mid-fiscal year report of  
11 its utilization to date for the then current fiscal year. The  
12 reports shall include a self-evaluation of the efforts of the  
13 unit to meet its goals under the Act.

14 (e) Notwithstanding any provisions to the contrary in this  
15 Act, any unit which administers a construction program, for  
16 which federal law or regulations establish standards and  
17 procedures for the utilization of minority-owned and  
18 women-owned businesses and disadvantaged businesses, shall  
19 implement a disadvantaged business enterprise program to  
20 include minority-owned and women-owned businesses and  
21 disadvantaged businesses, using the federal standards and  
22 procedures for the establishment of goals and utilization  
23 procedures for the State-funded, as well as the federally  
24 assisted, portions of the program. In such cases, these goals  
25 shall not exceed those established pursuant to the relevant  
26 federal statutes or regulations. Notwithstanding the

1 provisions of subsection (f) of Section 10, the Illinois  
2 Department of Transportation is authorized to establish  
3 sheltered markets for the State-funded portions of the program  
4 consistent with federal law and regulations. Additionally, a  
5 compliance plan which is filed by such unit pursuant to this  
6 Act, which incorporates equivalent terms and conditions of its  
7 federally-approved compliance plan, shall be deemed approved  
8 under this Act.

9 Section 20. Notice of contracts to Council. Except in case  
10 of emergency, as that term is defined in Section 20-30 of the  
11 Illinois Procurement Code, each unit shall notify the Secretary  
12 of the Council of proposed contracts for professional and  
13 artistic services and provide the information in the form and  
14 detail as required the Secretary of the Council. Notification  
15 may be made through direct written communication to the  
16 Secretary to be received at least 14 days before execution of  
17 the contract (or the solicitation response date, if  
18 applicable). The unit must consider any vendor referred by the  
19 Secretary before execution of the contract. The provisions of  
20 this Section shall not apply to any unit that has awarded  
21 contracts for professional and artistic services to businesses  
22 owned by minorities, women, and persons with disabilities  
23 totaling in the aggregate \$40,000,000 or more during the  
24 preceding fiscal year.

1 Section 25. Exemptions; waivers; posting of data.

2 (a) The Council, at the written request of the affected  
3 unit or recipient of a grant or loan of State funds of \$250,000  
4 or more complying with Section 45 of the State Finance Act, may  
5 permit an individual contract or contract package (related  
6 contracts being bid or awarded simultaneously for the same  
7 project or improvements) be made wholly or partially exempt  
8 from unit contracting goals for businesses owned by minorities,  
9 women, and persons with disabilities prior to the advertisement  
10 for bids or solicitation of proposals whenever there has been a  
11 determination, reduced to writing and based on the best  
12 information available at the time of the determination, that  
13 there is an insufficient number of businesses owned by  
14 minorities, women, and persons with disabilities to ensure  
15 adequate competition and an expectation of reasonable prices on  
16 bids or proposals solicited for the individual contract or  
17 contract package in question.

18 (1) The following procedures shall be followed for  
19 individual exemptions:

20 (A) A written request for an individual contract  
21 exemption must include, but is not limited to, the  
22 following:

23 (i) a list of eligible businesses owned by  
24 minorities, women, and persons with disabilities;

25 (ii) a clear demonstration that the number of  
26 eligible businesses identified in subdivision (i)

1 above is insufficient to ensure adequate  
2 competition;

3 (iii) the difference in cost between the  
4 contract proposals being offered by businesses  
5 owned by minorities, women, and persons with  
6 disabilities and the unit's expectations of  
7 reasonable prices on bids or proposals within that  
8 class; and

9 (iv) a list of eligible businesses owned by  
10 minorities, women, and persons with disabilities  
11 that the contractor has used in the current and  
12 prior fiscal years.

13 (B) The Council's determination concerning an  
14 individual contract exemption must consider, at a  
15 minimum, the following:

16 (i) the justification for the requested  
17 exemption, including whether diligent efforts were  
18 undertaken to identify and solicit eligible  
19 businesses owned by minorities, women, and persons  
20 with disabilities;

21 (ii) the total number of exemptions granted to  
22 the affected unit or recipient of a grant or loan  
23 of State funds of \$250,000 or more complying with  
24 Section 45 of the State Finance Act that have been  
25 granted by the Council in the current and prior  
26 fiscal years; and

1 (iii) the percentage of contracts awarded by  
2 the unit to eligible businesses owned by  
3 minorities, women, and persons with disabilities  
4 in the current and prior fiscal years.

5 (2) The following procedures shall be followed for  
6 class exemptions:

7 (A) The Council, at the written request of an  
8 affected unit, may permit an entire class of contracts  
9 be made exempt from unit contracting goals for  
10 businesses owned by minorities, women, and persons  
11 with disabilities whenever there has been a  
12 determination, reduced to writing and based on the best  
13 information available at the time of the  
14 determination, that there is an insufficient number of  
15 qualified businesses owned by minorities, women, and  
16 persons with disabilities to ensure adequate  
17 competition and an expectation of reasonable prices on  
18 bids or proposals within that class.

19 (B) A written request for a class exemption must  
20 include, but is not limited to, the following:

21 (i) a list of eligible businesses owned by  
22 minorities, women, and persons with disabilities;

23 (ii) a clear demonstration that the number of  
24 eligible businesses identified in subdivision (i)  
25 above is insufficient to ensure adequate  
26 competition;

1 (iii) the difference in cost between the  
2 contract proposals being offered by eligible  
3 businesses owned by minorities, women, and persons  
4 with disabilities and the unit's expectations of  
5 reasonable prices on bids or proposals within that  
6 class; and

7 (iv) the number of class exemptions the  
8 affected unit requested in the current and prior  
9 fiscal years.

10 (C) The Council's determination concerning class  
11 exemptions must consider, at a minimum, the following:

12 (i) the justification for the requested  
13 exemption, including whether diligent efforts were  
14 undertaken to identify and solicit eligible  
15 businesses owned by minorities, women, and persons  
16 with disabilities;

17 (ii) the total number of class exemptions  
18 granted to the requesting unit that have been  
19 granted by the Council in the current and prior  
20 fiscal years; and

21 (iii) the percentage of contracts awarded by  
22 the unit to eligible businesses owned by  
23 minorities, women, and persons with disabilities  
24 the current and prior fiscal years.

25 (D) Any such class exemption shall not be permitted  
26 for a period of more than one year at a time.

1           (b) Where a particular contract requires a contractor to  
2 meet a goal established pursuant to this Act, the contractor  
3 shall have the right to request a waiver from such requirement.  
4 The Council shall grant the waiver where the contractor  
5 demonstrates that there has been made a good faith effort to  
6 comply with the goals for participation by businesses owned by  
7 minorities, women, and persons with disabilities. The  
8 following procedures shall be followed for waivers:

9           (1) A contractor's request for a waiver under this  
10 subsection must include, but is not limited to, the  
11 following, if available:

12           (A) a list of eligible businesses owned by  
13 minorities, women, and persons with disabilities that  
14 pertain to the class of contracts in the requested  
15 waiver;

16           (B) a clear demonstration that the number of  
17 eligible businesses identified in subparagraph (A)  
18 above is insufficient to ensure competition;

19           (C) the difference in cost between the contract  
20 proposals being offered by businesses owned by  
21 minorities, women, and persons with disabilities and  
22 the unit's expectations of reasonable prices on bids or  
23 proposals within that class; and

24           (D) a list of businesses owned by minorities,  
25 women, and persons with disabilities that the  
26 contractor has used in the current and prior fiscal



1 years.

2 (2) The Council's determination concerning waivers  
3 must include following:

4 (A) the justification for the requested waiver,  
5 including whether the requesting contractor made a  
6 good faith effort to identify and solicit eligible  
7 businesses owned by minorities, women, and persons  
8 with disabilities;

9 (B) the total number of waivers the contractor has  
10 been granted by the Council in the current and prior  
11 fiscal years;

12 (C) the percentage of contracts awarded by the unit  
13 to eligible businesses owned by minorities, women, and  
14 persons with disabilities in the current and prior  
15 fiscal years; and

16 (D) the contractor's use of businesses owned by  
17 minorities, women, and persons with disabilities in  
18 the current and prior fiscal years.

19 (c) If any unit contract, which otherwise would be subject  
20 to the provisions of this Act, is or becomes subject to federal  
21 laws or regulations which conflict with the provisions of this  
22 Act or actions of the State taken pursuant hereto, the  
23 provisions of the federal laws or regulations shall apply and  
24 the contract shall be interpreted and enforced accordingly.

25 (d) Each unit shall post and maintain on its website a  
26 database of the following: (i) waivers granted under this

1 Section with respect to contracts under his or her  
2 jurisdiction; (ii) a unit's written request for an exemption of  
3 an individual contract or an entire class of contracts; and  
4 (iii) the Council's written determination granting or denying a  
5 request for an exemption of an individual contract or an entire  
6 class of contracts. The database, which shall be updated  
7 periodically as necessary, shall be searchable by contractor  
8 name and by contracting unit.

9 (e) Each unit shall post and maintain on its website a list  
10 of all firms that have been prohibited from bidding, offering,  
11 or entering into a contract with the unit as a result of  
12 violations of this Act.

13 Each public notice required by law of the award of a unit  
14 contract shall include, for each bid or offer submitted for  
15 that contract, the following: (i) the bidder's or offeror's  
16 name, (ii) the bid amount, (iii) the name or names of the  
17 certified firms identified in the bidder's or offeror's  
18 submitted utilization plan, and (iv) the bid's amount and  
19 percentage of the contract awarded to businesses owned by  
20 minorities, women, and persons with disabilities identified in  
21 the utilization plan.

22 Section 30. Award of unit contracts.

23 (a) Except as provided in subsection (b), not less than 30%  
24 of the total dollar amount of unit contracts, as defined by the  
25 Secretary of the Council and approved by the Council, shall be

1 established as an aspirational goal to be awarded to businesses  
2 owned by minorities, women, and persons with disabilities;  
3 provided, however, that of the total amount of all unit  
4 contracts awarded to businesses owned by minorities, women, and  
5 persons with disabilities pursuant to this Section, contracts  
6 representing at least 16% shall be awarded to businesses owned  
7 by minorities, contracts representing at least 10% shall be  
8 awarded to women-owned businesses, and contracts representing  
9 at least 3% shall be awarded to businesses owned by persons  
10 with disabilities.

11 The above percentage relates to the total dollar amount of  
12 unit contracts during each unit's fiscal year, calculated by  
13 examining independently each type of contract for each unit  
14 which lets such contracts. Only that percentage of arrangements  
15 which represents the participation of businesses owned by  
16 minorities, women, and persons with disabilities on such  
17 contracts shall be included. Unit contracts subject to the  
18 requirements of this Act shall include the requirement that  
19 only expenditures to businesses owned by minorities, women, and  
20 persons with disabilities that perform a commercially useful  
21 function may be counted toward the goals set forth by this Act.  
22 Contracts shall include a definition of "commercially useful  
23 function" that is consistent with 49 CFR 26.55(c).

24 (b) Not less than 30% of the total dollar amount of unit  
25 construction contracts is established as an aspirational goal  
26 to be awarded to businesses owned by minorities, women, and

1 persons with disabilities; provided that, contracts  
2 representing at least 16% of the total dollar amount of unit  
3 construction contracts shall be awarded to businesses owned by  
4 minorities; contracts representing at least 10% of the total  
5 dollar amount of unit construction contracts shall be awarded  
6 to women-owned businesses; and contracts representing at least  
7 3% of the total dollar amount of unit construction contracts  
8 shall be awarded to businesses owned by persons with  
9 disabilities.

10 (c) By July 1, 2022, the Department of Central Management  
11 Services shall conduct a social scientific study that measures  
12 the impact of discrimination on minority and women business  
13 development in governmental units in Illinois. By December 1,  
14 2023, the Department shall issue a report of its findings and  
15 any recommendations on whether to adjust the goals for minority  
16 and women participation established in this Act. Copies of this  
17 report and the social scientific study shall be filed with the  
18 Council, the Governor, and the General Assembly.

19 By December 1, 2030, the Department of Central Management  
20 Services shall conduct a new social scientific study that  
21 measures the impact of discrimination on minority and women  
22 business development in governmental units in Illinois. By June  
23 1, 2032, the Department shall issue a report of its findings  
24 and any recommendations on whether to adjust the goals for  
25 minority and women participation established in this Act.  
26 Copies of this report and the social scientific study shall be

1 filed with the Council, the Governor, and the General Assembly.  
2 By December 1, 2032, the Department of Central Management  
3 Services Business Enterprise Program shall develop a model for  
4 social scientific disparity study sourcing for units to adapt  
5 and implement to address regional disparities in public  
6 procurement.

7 (d) Except as permitted under this Act or as otherwise  
8 mandated by federal law or regulation, those who submit bids or  
9 proposals for unit contracts subject to the provisions of this  
10 Act, whose bids or proposals are successful and include a  
11 utilization plan but that fail to meet the goals set forth in  
12 subsection (b), shall be notified of that deficiency and shall  
13 be afforded a period not to exceed 10 calendar days from the  
14 date of notification to cure that deficiency in the bid or  
15 proposal. The deficiency in the bid or proposal may only be  
16 cured by contracting with additional subcontractors who are  
17 owned by minorities or women. Any increase in cost to a  
18 contract for the addition of a subcontractor to cure a bid's  
19 deficiency shall not affect the bid price, shall not be used in  
20 the request for an exemption in this Act, and in no case shall  
21 an identified subcontractor with a certification made pursuant  
22 to this Act be terminated from the contract without the written  
23 consent of the unit entering into the contract.

24 (e) Non-construction solicitations that include park and  
25 museum district Business Enterprise Program participation  
26 goals shall require bidders and offerors to include utilization

1 plans. Utilization plans are due at the time of bid or offer  
2 submission. Failure to complete and include a utilization plan,  
3 including documentation demonstrating good faith effort when  
4 requesting a waiver, shall render the bid or offer  
5 nonresponsive.

6 Section 35. Enforcement.

7 (a) The Council shall make such findings, recommendations  
8 and proposals to the Governor and General Assembly as are  
9 necessary and appropriate to enforce this Act. If, as a result  
10 of its monitoring activities, the Council determines that its  
11 goals and policies are not being met by any unit, the Council  
12 may recommend any or all of the following actions:

13 (1) Establish enforcement procedures whereby the  
14 Council may recommend to the appropriate unit or law  
15 enforcement agency that legal or administrative remedies  
16 be initiated for violations of contract provisions or rules  
17 adopted hereunder or by a contracting unit. Units may adopt  
18 remedies for such violations, which may include (i)  
19 termination of the contract involved, (ii) prohibition of  
20 participation of the respondents in public contracts for a  
21 period not to exceed one year, (iii) imposition of a  
22 penalty not to exceed any profit acquired as a result of  
23 violation, or (iv) any combination of items (i), (ii), or  
24 (iii).

25 (2) If the Council concludes that a compliance plan

1 submitted under Section 15 is unlikely to produce the  
2 participation goals for businesses owned by minorities,  
3 women, and persons with disabilities within the then  
4 current fiscal year, the Council may recommend that the  
5 unit revise its plan to provide additional opportunities  
6 for participation by businesses owned by minorities,  
7 women, and persons with disabilities. Such recommended  
8 revisions may include, but are not limited to, the  
9 following:

10 (A) Assurances of stronger and better focused  
11 solicitation efforts to obtain more businesses owned  
12 by minorities, women, and persons with disabilities as  
13 potential sources of supply.

14 (B) Division of job or project requirements, when  
15 economically feasible, into tasks or quantities to  
16 permit participation of businesses owned by  
17 minorities, women, and persons with disabilities.

18 (C) Elimination of extended experience or  
19 capitalization requirements, when programmatically  
20 feasible, to permit participation of businesses owned  
21 by minorities, women, and persons with disabilities.

22 (D) Identification of specific proposed contracts  
23 as particularly attractive or appropriate for  
24 participation by businesses owned by minorities,  
25 women, and persons with disabilities, such  
26 identification to result from and be coupled with the

1 efforts of subparagraphs (A) through (C).

2 (E) Implementation of those regulations  
3 established for the use of the sheltered market  
4 process.

5 (b) Units shall review a vendor's compliance with its  
6 utilization plan and the terms of its contract. Without  
7 limitation, a vendor's failure to comply with its contractual  
8 commitments as contained in the utilization plan; failure to  
9 cooperate in providing information regarding its compliance  
10 with its utilization plan; or the provision of false or  
11 misleading information or statements concerning compliance,  
12 certification status, or eligibility of the Business  
13 Enterprise Program-certified vendor, good faith efforts, or  
14 any other material fact or representation shall constitute a  
15 material breach of the contract and entitle the unit to declare  
16 a default, terminate the contract, or exercise those remedies  
17 provided for in the contract, at law, or in equity.

18 (c) A vendor shall be in breach of the contract and may be  
19 subject to penalties for failure to meet contract goals  
20 established under this Act, unless the vendor can show that it  
21 made good faith efforts to meet the contract goals.

22 Section 40. Annual report.

23 (a) The Council shall post and file an annual report that  
24 shall detail the level of achievement toward the goals  
25 specified in this Act over the 3 most recent calendar or fiscal



1 years. The annual report shall include, but need not be limited  
2 to, the following:

3 (1) a summary detailing expenditures subject to the  
4 goals, the actual goals specified, and the goals attained  
5 by each unit;

6 (2) a summary of the number of contracts awarded and  
7 the average contract amount by each unit;

8 (3) an analysis of the level of overall goal  
9 achievement concerning purchases from minority-owned  
10 businesses, women-owned businesses, and businesses owned  
11 by persons with disabilities;

12 (4) an analysis of the number of businesses owned by  
13 minorities, women, and persons with disabilities that are  
14 certified under the program as well as the number of those  
15 businesses that received State procurement contracts; and

16 (5) a summary of the number of contracts awarded to  
17 businesses with annual gross sales of less than \$100,000;  
18 of \$100,000 or more, but less than \$250,000; of \$250,000 or  
19 more, but less than \$500,000; of \$500,000 or more, but less  
20 than \$1,000,000; of \$1,000,000 or more, but less than  
21 \$5,000,000; of \$5,000,000 or more, but less than  
22 \$10,000,000; and of \$10,000,000 or more.

23 (b) Each annual report must be posted publicly on the  
24 website of the unit and filed with the General Assembly and  
25 Governor no later than January 31 for units that choose  
26 calendar year annual reporting or no later than 30 days

1 following the conclusion of the unit's fiscal year for units  
2 that choose fiscal year annual reporting. A unit may extend the  
3 due date of its annual report by 15 days by posting a public  
4 notice on the website of the entity and filing the notice with  
5 the General Assembly and Governor. If an annual report is  
6 posted and filed beyond the 15-day extension, units will be  
7 issued a fine of \$10,000 by the Council, enforceable by the  
8 State Comptroller through withholding or reducing any form of  
9 State funding to the entity, including, but not limited to,  
10 grants, revenue sharing, and line-item appropriations. The  
11 Comptroller shall transfer the amount withheld due to the fines  
12 issued under this subsection to the Business Enterprise Program  
13 and those amounts shall be used exclusively for maintenance and  
14 further development of the Business Enterprise Program.

15 Section 45. Ownership requirement for combination of  
16 minority persons, women, or persons with disabilities. When a  
17 business is owned at least 51% by any combination of minority  
18 persons, women, or persons with disabilities, even though none  
19 of the 3 classes alone holds at least a 51% interest, the  
20 ownership requirement for purposes of this Act is considered to  
21 be met. The certification category for the business is that of  
22 the class holding the largest ownership interest in the  
23 business. If 2 or more classes have equal ownership interests,  
24 the certification category shall be determined by the business.

1           Section 50. Advance and progress payments. Any contract  
2 awarded to a business owned by a minority, woman, or person  
3 with a disability pursuant to this Act may contain a provision  
4 for advance or progress payments, or both, except that a unit  
5 construction contract awarded to a minority-owned or  
6 women-owned business pursuant to this Act may contain a  
7 provision for progress payments but may not contain a provision  
8 for advance payments.

9           Section 55. Posting on website. If a governmental unit does  
10 not have a website, any posting requirement by the unit under  
11 this Act is satisfied by posting on the county website or on  
12 the several county websites in which the unit is located to  
13 satisfy the posting requirements of the Act.

14           Section 90. The State Finance Act is amended by changing  
15 Section 45 as follows:

16           (30 ILCS 105/45)

17           Sec. 45. Award of capital funds. Each award by grant or  
18 loan of State funds of \$250,000 or more for capital  
19 construction costs or professional services is conditioned  
20 upon the recipient's written certification that the recipient  
21 shall comply with the business enterprise program practices for  
22 minority-owned businesses, women-owned businesses, and  
23 businesses owned by persons with disabilities of the Business

1 Enterprise for Minorities, Women, and Persons with  
2 Disabilities Act, the Park and Museum District Business  
3 Enterprise Act, ~~(30 ILCS 575/)~~ and the equal employment  
4 practices of Section 2-105 of the Illinois Human Rights Act  
5 ~~(775 ILCS 5/2-105)~~. This Section, however, does not apply to  
6 any grant or loan (i) for which a grant or loan agreement was  
7 executed before the effective date of this amendatory Act of  
8 the 96th General Assembly, (ii) for which prior-incurred costs  
9 are being reimbursed, or (iii) for a federally funded program  
10 under which the requirement of this Section would contravene  
11 federal law. Each recipient shall submit the written  
12 certification and business enterprise program plan for  
13 minority-owned businesses, women-owned businesses, and  
14 businesses owned by persons with disabilities before signing  
15 the relevant grant or loan agreement. Each grant or loan  
16 agreement shall include a provision that the grant or loan  
17 recipient agrees to comply with the provisions of the Business  
18 Enterprise for Minorities, Women, and Persons with  
19 Disabilities Act, the Park and Museum District Business  
20 Enterprise Act, ~~(30 ILCS 575/)~~ and the equal employment  
21 practices of Section 2-105 of the Illinois Human Rights Act  
22 ~~(775 ILCS 5/2-105)~~.

23 Each business enterprise program plan shall apply only to  
24 the State-funded portion of the relevant capital project and  
25 must be in compliance with all certification and other  
26 requirements of the Business Enterprise for Minorities, Women,

1 and Persons with Disabilities Act.

2 (Source: P.A. 100-391, eff. 8-25-17.)