



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB3606

Introduced 2/17/2023, by Rep. Curtis J. Tarver, II

#### SYNOPSIS AS INTRODUCED:

30 ILCS 575/2	
30 ILCS 575/3.5 new	
30 ILCS 575/5	from Ch. 127, par. 132.605
30 ILCS 575/7	from Ch. 127, par. 132.607
30 ILCS 575/8	from Ch. 127, par. 132.608

Amends the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. Defines terms. Provides factors for determining whether a good faith effort has been made for purposes of granting a waiver under the Act. Provides for a uniform standard of contract goals for State agencies, public institutions of higher education, and other departments. Specifies further requirements concerning uniform contract goals. Provides that the terms of every contract entered into by a State agency or public institution of higher education for purposes of the Act shall include a provision requiring vendors who fail to comply with a utilization plan to return all funds paid to that vendor with an expectation of compliance. Provides that the Business Enterprise Council may (rather than shall) grant a waiver under specified circumstances. Provides criteria for granting a waiver. Makes conforming changes.

LRB103 25805 DTM 52156 b

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 Business Enterprise for Minorities, Women,  
5 and Persons with Disabilities Act is amended by changing  
6 Sections 2, 5, 7, and 8 and by adding Section 3.5 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8 (Section scheduled to be repealed on June 30, 2024)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  
17 and South America, including Central America, and who  
18 maintains tribal affiliation or community attachment).

19 (b) Asian (a person having origins in any of the  
20 original peoples of the Far East, Southeast Asia, or  
21 the Indian subcontinent, including, but not limited  
22 to, Cambodia, China, India, Japan, Korea, Malaysia,  
23 Pakistan, the Philippine Islands, Thailand, and

1 Vietnam).

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

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

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

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

13 (2.05) "Person with a disability" means a person who  
14 is a citizen or lawful resident of the United States and is  
15 a person qualifying as a person with a disability under  
16 subdivision (2.1) of this subsection (A).

17 (2.1) "Person with a disability" means a person with a  
18 severe physical or mental disability that:

19 (a) results from:

20 amputation,

21 arthritis,

22 autism,

23 blindness,

24 burn injury,

25 cancer,

26 cerebral palsy,

1 Crohn's disease,  
2 cystic fibrosis,  
3 deafness,  
4 head injury,  
5 heart disease,  
6 hemiplegia,  
7 hemophilia,  
8 respiratory or pulmonary dysfunction,  
9 an intellectual disability,  
10 mental illness,  
11 multiple sclerosis,  
12 muscular dystrophy,  
13 musculoskeletal disorders,  
14 neurological disorders, including stroke and  
15 epilepsy,  
16 paraplegia,  
17 quadriplegia and other spinal cord conditions,  
18 sickle cell anemia,  
19 ulcerative colitis,  
20 specific learning disabilities, or  
21 end stage renal failure disease; and  
22 (b) substantially limits one or more of the  
23 person's major life activities.

24 Another disability or combination of disabilities may  
25 also be considered as a severe disability for the purposes  
26 of item (a) of this subdivision (2.1) if it is determined

1 by an evaluation of rehabilitation potential to cause a  
2 comparable degree of substantial functional limitation  
3 similar to the specific list of disabilities listed in  
4 item (a) of this subdivision (2.1).

5 (3) "Minority-owned business" means a business which  
6 is at least 51% owned by one or more minority persons, or  
7 in the case of a corporation, at least 51% of the stock in  
8 which is owned by one or more minority persons; and the  
9 management and daily business operations of which are  
10 controlled by one or more of the minority individuals who  
11 own it.

12 (4) "Women-owned business" means a business which is  
13 at least 51% owned by one or more women, or, in the case of  
14 a corporation, at least 51% of the stock in which is owned  
15 by one or more women; and the management and daily  
16 business operations of which are controlled by one or more  
17 of the women who own it.

18 (4.1) "Business owned by a person with a disability"  
19 means a business that is at least 51% owned by one or more  
20 persons with a disability and the management and daily  
21 business operations of which are controlled by one or more  
22 of the persons with disabilities who own it. A  
23 not-for-profit agency for persons with disabilities that  
24 is exempt from taxation under Section 501 of the Internal  
25 Revenue Code of 1986 is also considered a "business owned  
26 by a person with a disability".

1 (4.2) "Council" means the Business Enterprise Council  
2 for Minorities, Women, and Persons with Disabilities  
3 created under Section 5 of this Act.

4 (4.3) "Commission" means, unless the context clearly  
5 indicates otherwise, the Commission on Equity and  
6 Inclusion created under the Commission on Equity and  
7 Inclusion Act.

8 (4.4) "Certified vendor" means a minority-owned  
9 business, women-owned business, or business owned by a  
10 person with a disability that is certified by the Business  
11 Enterprise Program.

12 (4.5) "Subcontractor" means a person or entity that  
13 enters into a contractual agreement with a prime vendor to  
14 provide, on behalf of the prime vendor, goods, services,  
15 real property, or remuneration or other monetary  
16 consideration that is the subject of the primary State  
17 contract. "Subcontractor" includes a sublessee under a  
18 State contract.

19 (4.6) "Prime vendor" means any person or entity having  
20 a contract that is subject to this Act with a State agency  
21 or public institution of higher education.

22 (5) "State contracts" means all contracts entered into  
23 by the State, any agency or department thereof, or any  
24 public institution of higher education, including  
25 community college districts, regardless of the source of  
26 the funds with which the contracts are paid, which are not

1 subject to federal reimbursement. "State contracts" does  
2 not include contracts awarded by a retirement system,  
3 pension fund, or investment board subject to Section  
4 1-109.1 of the Illinois Pension Code. This definition  
5 shall control over any existing definition under this Act  
6 or applicable administrative rule.

7 "State construction contracts" means all State  
8 contracts entered into by a State agency or public  
9 institution of higher education for the repair,  
10 remodeling, renovation or construction of a building or  
11 structure, or for the construction or maintenance of a  
12 highway defined in Article 2 of the Illinois Highway Code.

13 (6) "State agencies" shall mean all departments,  
14 officers, boards, commissions, institutions and bodies  
15 politic and corporate of the State, but does not include  
16 the Board of Trustees of the University of Illinois, the  
17 Board of Trustees of Southern Illinois University, the  
18 Board of Trustees of Chicago State University, the Board  
19 of Trustees of Eastern Illinois University, the Board of  
20 Trustees of Governors State University, the Board of  
21 Trustees of Illinois State University, the Board of  
22 Trustees of Northeastern Illinois University, the Board of  
23 Trustees of Northern Illinois University, the Board of  
24 Trustees of Western Illinois University, municipalities or  
25 other local governmental units, or other State  
26 constitutional officers.

1           (7) "Public institutions of higher education" means  
2           the University of Illinois, Southern Illinois University,  
3           Chicago State University, Eastern Illinois University,  
4           Governors State University, Illinois State University,  
5           Northeastern Illinois University, Northern Illinois  
6           University, Western Illinois University, the public  
7           community colleges of the State, and any other public  
8           universities, colleges, and community colleges now or  
9           hereafter established or authorized by the General  
10          Assembly.

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

21          (9) "Control" means the exclusive or ultimate and sole  
22          control of the business including, but not limited to,  
23          capital investment and all other financial matters,  
24          property, acquisitions, contract negotiations, legal  
25          matters, officer-director-employee selection and  
26          comprehensive hiring, operating responsibilities,



1 cost-control matters, income and dividend matters,  
2 financial transactions and rights of other shareholders or  
3 joint partners. Control shall be real, substantial and  
4 continuing, not pro forma. Control shall include the power  
5 to direct or cause the direction of the management and  
6 policies of the business and to make the day-to-day as  
7 well as major decisions in matters of policy, management  
8 and operations. Control shall be exemplified by possessing  
9 the requisite knowledge and expertise to run the  
10 particular business and control shall not include simple  
11 majority or absentee ownership.

12 (10) "Business" means a business that has annual gross  
13 sales of less than \$150,000,000 as evidenced by the  
14 federal income tax return of the business. A vendor ~~firm~~  
15 with gross sales in excess of this cap may apply to the  
16 Council for certification for a particular contract if the  
17 vendor ~~firm~~ can demonstrate that the contract would have  
18 significant impact on businesses owned by minorities,  
19 women, or persons with disabilities as suppliers or  
20 subcontractors or in employment of minorities, women, or  
21 persons with disabilities. Firms with gross sales in  
22 excess of this cap that are granted certification by the  
23 Council shall be granted certification for the life of the  
24 contract, including available renewals.

25 (11) "Utilization plan" means an attachment that is  
26 made to ~~a form and additional documentations included in~~

1 all bids or proposals and that demonstrates the bidder's  
2 or offeror's efforts to meet the contract-specific  
3 Business Enterprise Program goal. The utilization plan  
4 shall indicate whether the prime vendor intends to meet  
5 the Business Enterprise Program goal through its own  
6 performance, if it is a certified vendor, or through the  
7 use of subcontractors that are certified vendors ~~a~~  
8 ~~vendor's proposed utilization of vendors certified by the~~  
9 ~~Business Enterprise Program to meet the targeted goal.~~ The  
10 utilization plan shall demonstrate that the Vendor has  
11 either: (1) met the entire contract goal or (2) requested  
12 a full or partial waiver of the contract goal. If the prime  
13 vendor intends to use a subcontractor that is a certified  
14 vendor to fulfill the contract goal, a participation  
15 agreement executed between the prime vendor and the  
16 certified subcontractor must be included with the  
17 utilization plan ~~and made good faith efforts towards~~  
18 ~~meeting the goal.~~

19 (12) "Business Enterprise Program" means the Business  
20 Enterprise Program of the Commission on Equity and  
21 Inclusion.

22 (13) "Good faith effort" means actions undertaken by a  
23 vendor to achieve a contract specific Business Enterprise  
24 Program goal that, by scope, intensity, and  
25 appropriateness to the objective, can reasonably be  
26 expected to fulfill the program's requirements.

1 (B) When a business is owned at least 51% by any  
2 combination of minority persons, women, or persons with  
3 disabilities, even though none of the 3 classes alone holds at  
4 least a 51% interest, the ownership requirement for purposes  
5 of this Act is considered to be met. The certification  
6 category for the business is that of the class holding the  
7 largest ownership interest in the business. If 2 or more  
8 classes have equal ownership interests, the certification  
9 category shall be determined by the business.

10 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;  
11 102-29, eff. 6-25-21; 102-1119, eff. 1-23-23.)

12 (30 ILCS 575/3.5 new)

13 Sec. 3.5. Uniform standard of contract goals.

14 (a) The Business Enterprise Program shall establish  
15 uniform standards for calculating contract specific Business  
16 Enterprise Program goals for all State contracts and State  
17 construction contracts subject to this Act. The uniform  
18 standards may consider normal industry practice, the scope of  
19 the work to be performed under a contract, the availability of  
20 vendors that are able to perform the scope of the work to be  
21 performed under a contract, the availability of certified  
22 vendors that are able to perform the work to be performed under  
23 a contract, and the State's progress to date toward meeting  
24 the aspirational goals set forth in this Act.

25 (b) No State agency or public institution of higher

1 education shall maintain a policy of establishing contract  
2 specific goals for the participation of certified vendors that  
3 is inconsistent with or less stringent than the uniform  
4 standards for calculating contract specific goals established  
5 by the Business Enterprise Program.

6 (c) Each State agency and public institution of higher  
7 education subject to the requirements of this Act shall, on an  
8 annual basis, submit a report to the Council detailing its  
9 plan to meet the aspirational contract goals established under  
10 this Act and established for that agency and institution.

11 (30 ILCS 575/5) (from Ch. 127, par. 132.605)

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

13 Sec. 5. Business Enterprise Council.

14 (1) To help implement, monitor, and enforce the goals of  
15 this Act, there is created the Business Enterprise Council for  
16 Minorities, Women, and Persons with Disabilities, hereinafter  
17 referred to as the Council, composed of the Chairperson of the  
18 Commission on Equity and Inclusion, the Secretary of Human  
19 Services and the Directors of the Department of Human Rights,  
20 the Department of Commerce and Economic Opportunity, the  
21 Department of Central Management Services, the Department of  
22 Transportation and the Capital Development Board, or their  
23 duly appointed representatives, with the Comptroller, or his  
24 or her designee, serving as an advisory member of the Council.  
25 Ten individuals representing businesses that are

1 minority-owned, women-owned, or owned by persons with  
2 disabilities, 2 individuals representing the business  
3 community, and a representative of public institutions of  
4 higher education shall be appointed by the Governor. These  
5 members shall serve 2-year terms and shall be eligible for  
6 reappointment. Any vacancy occurring on the Council shall also  
7 be filled by the Governor. Any member appointed to fill a  
8 vacancy occurring prior to the expiration of the term for  
9 which his or her predecessor was appointed shall be appointed  
10 for the remainder of such term. Members of the Council shall  
11 serve without compensation but shall be reimbursed for any  
12 ordinary and necessary expenses incurred in the performance of  
13 their duties.

14 The Chairperson of the Commission shall serve as the  
15 Council chairperson and shall select, subject to approval of  
16 the Council, a Secretary responsible for the operation of the  
17 program who shall serve as the Division Manager of the  
18 Business Enterprise for Minorities, Women, and Persons with  
19 Disabilities Division of the Commission on Equity and  
20 Inclusion.

21 The Director of each State agency and the chief executive  
22 officer of each public institution of higher education shall  
23 appoint a liaison to the Council. The liaison shall be  
24 responsible for submitting to the Council any reports and  
25 documents necessary under this Act.

26 (2) The Council's authority and responsibility shall be

1 to:

2 (a) Devise a certification procedure to assure that  
3 businesses taking advantage of this Act are legitimately  
4 classified as businesses owned by minorities, women, or  
5 persons with disabilities and a registration procedure to  
6 recognize, without additional evidence of Business  
7 Enterprise Program eligibility, the certification of  
8 businesses owned by minorities, women, or persons with  
9 disabilities certified by the City of Chicago, Cook  
10 County, or other jurisdictional programs with requirements  
11 and procedures equaling or exceeding those in this Act.

12 (b) Maintain a list of all businesses legitimately  
13 classified as businesses owned by minorities, women, or  
14 persons with disabilities to provide to State agencies and  
15 public institutions of higher education.

16 (c) Review rules and regulations for the  
17 implementation of the program for businesses owned by  
18 minorities, women, and persons with disabilities.

19 (d) Review compliance plans submitted by each State  
20 agency and public institution of higher education pursuant  
21 to this Act.

22 (e) Make annual reports as provided in Section 8f to  
23 the Governor and the General Assembly on the status of the  
24 program.

25 (f) Serve as a central clearinghouse for information  
26 on State contracts, including the maintenance of a list of

1 all pending State contracts upon which businesses owned by  
2 minorities, women, and persons with disabilities may bid.  
3 At the Council's discretion, maintenance of the list may  
4 include 24-hour electronic access to the list along with  
5 the bid and application information.

6 (g) Establish a toll-free telephone number to  
7 facilitate information requests concerning the  
8 certification process and pending contracts.

9 (h) Adopt a procedure to grant automatic certification  
10 to businesses holding a certification from at least one of  
11 the following entities: (i) the Illinois Unified  
12 Certification Program; (ii) the Women's Business  
13 Development Center in Chicago; (iii) the Chicago Minority  
14 Supplier Development Council; or (iv) any other similar  
15 entity offering such certification to businesses.

16 (i) Develop and maintain a repository for  
17 non-certified vendors that: (i) have applied for  
18 certification and have been denied; (ii) have started, but  
19 not completed, the certification process; (iii) have  
20 achieved certification, but did not seek renewal; or (iv)  
21 are known businesses owned by minorities, women, or  
22 persons with disabilities.

23 (3) No premium bond rate of a surety company for a bond  
24 required of a business owned by a minority, woman, or person  
25 with a disability bidding for a State contract shall be higher  
26 than the lowest rate charged by that surety company for a

1 similar bond in the same classification of work that would be  
2 written for a business not owned by a minority, woman, or  
3 person with a disability.

4 (4) Any Council member who has direct financial or  
5 personal interest in any measure pending before the Council  
6 shall disclose this fact to the Council and refrain from  
7 participating in the determination upon such measure.

8 (5) The Secretary shall have the following duties and  
9 responsibilities:

10 (a) To be responsible for the day-to-day operation of  
11 the Council.

12 (b) To serve as a coordinator for all of the State's  
13 programs for businesses owned by minorities, women, and  
14 persons with disabilities and as the information and  
15 referral center for all State initiatives for businesses  
16 owned by minorities, women, and persons with disabilities.

17 (c) To establish an enforcement procedure whereby the  
18 Council may recommend to the appropriate State legal  
19 officer that the State exercise its legal remedies which  
20 shall include (1) termination of the contract involved,  
21 (2) prohibition of participation by the respondent in  
22 public contracts for a period not to exceed 3 years, (3)  
23 imposition of a penalty in the amount of the discrepancy  
24 between the commitment contained in the utilization plan,  
25 as such amount may be amended over the term of the  
26 contract, and the qualifying payments made to the eligible



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

10 (d) 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, and  
18 (iii) investigating and making recommendations concerning  
19 the use of the sheltered market process.

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

22 (f) To accept donations and, with the approval of the  
23 Council or the Chairperson of the Commission on Equity and  
24 Inclusion, grants related to the purposes of this Act; to  
25 conduct seminars related to the purpose of this Act and to  
26 charge reasonable registration fees; and to sell

1 directories, vendor lists, and other such information to  
2 interested parties, except that forms necessary to become  
3 eligible for the program shall be provided free of charge  
4 to a business or individual applying for the Business  
5 Enterprise Program.

6 (Source: P.A. 101-601, eff. 1-1-20; 101-657, eff. 1-1-22;  
7 102-29, eff. 6-25-21; 102-558, eff. 8-20-21; 102-721, eff.  
8 1-1-23.)

9 (30 ILCS 575/7) (from Ch. 127, par. 132.607)

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

11 Sec. 7. Exemptions; waivers; publication of data.

12 (1) Individual contract exemptions. The Council, at the  
13 written request of the affected agency, public institution of  
14 higher education, or recipient of a grant or loan of State  
15 funds of \$250,000 or more complying with Section 45 of the  
16 State Finance Act, may permit an individual contract or  
17 contract package, (related contracts being bid or awarded  
18 simultaneously for the same project or improvements) be made  
19 wholly or partially exempt from State contracting goals for  
20 businesses owned by minorities, women, and persons with  
21 disabilities prior to the advertisement for bids or  
22 solicitation of proposals whenever there has been a  
23 determination, reduced to writing and based on the best  
24 information available at the time of the determination, that  
25 there is an insufficient number of businesses owned by

1 minorities, women, and persons with disabilities to ensure  
2 adequate competition and an expectation of reasonable prices  
3 on bids or proposals solicited for the individual contract or  
4 contract package in question. Any such exemptions shall be  
5 given by the Council to the Bureau on Apprenticeship Programs  
6 and Clean Energy Jobs.

7 (a) Written request for contract exemption. A written  
8 request for an individual contract exemption must include,  
9 but is not limited to, the following:

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

12 (ii) a clear demonstration that the number of  
13 eligible businesses identified in subparagraph (i)  
14 above is insufficient to ensure adequate competition;

15 (iii) the difference in cost between the contract  
16 proposals being offered by businesses owned by  
17 minorities, women, and persons with disabilities and  
18 the agency or public institution of higher education's  
19 expectations of reasonable prices on bids or proposals  
20 within that class; and

21 (iv) a list of eligible businesses owned by  
22 minorities, women, and persons with disabilities that  
23 the contractor has used in the current and prior  
24 fiscal years.

25 (b) Determination. The Council's determination  
26 concerning an individual contract exemption must consider,

1 at a minimum, the following:

2 (i) the justification for the requested exemption,  
3 including whether diligent efforts were undertaken to  
4 identify and solicit eligible businesses owned by  
5 minorities, women, and persons with disabilities;

6 (ii) the total number of exemptions granted to the  
7 affected agency, public institution of higher  
8 education, or recipient of a grant or loan of State  
9 funds of \$250,000 or more complying with Section 45 of  
10 the State Finance Act that have been granted by the  
11 Council in the current and prior fiscal years; and

12 (iii) the percentage of contracts awarded by the  
13 agency or public institution of higher education to  
14 eligible businesses owned by minorities, women, and  
15 persons with disabilities in the current and prior  
16 fiscal years.

17 (2) Class exemptions.

18 (a) Creation. The Council, at the written request of  
19 the affected agency or public institution of higher  
20 education, may permit an entire class of contracts be made  
21 exempt from State contracting goals for businesses owned  
22 by minorities, women, and persons with disabilities  
23 whenever there has been a determination, reduced to  
24 writing and based on the best information available at the  
25 time of the determination, that there is an insufficient  
26 number of qualified businesses owned by minorities, women,

1 and persons with disabilities to ensure adequate  
2 competition and an expectation of reasonable prices on  
3 bids or proposals within that class. Any such exemption  
4 shall be given by the Council to the Bureau on  
5 Apprenticeship Programs and Clean Energy Jobs.

6 (a-1) Written request for class exemption. A written  
7 request for a class exemption must include, but is not  
8 limited to, the following:

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

11 (ii) a clear demonstration that the number of  
12 eligible businesses identified in subparagraph (i)  
13 above is insufficient to ensure adequate competition;

14 (iii) the difference in cost between the contract  
15 proposals being offered by eligible businesses owned  
16 by minorities, women, and persons with disabilities  
17 and the agency or public institution of higher  
18 education's expectations of reasonable prices on bids  
19 or proposals within that class; and

20 (iv) the number of class exemptions the affected  
21 agency or public institution of higher education  
22 requested in the current and prior fiscal years.

23 (a-2) Determination. The Council's determination  
24 concerning class exemptions must consider, at a minimum,  
25 the following:

26 (i) the justification for the requested exemption,

1 including whether diligent efforts were undertaken to  
2 identify and solicit eligible businesses owned by  
3 minorities, women, and persons with disabilities;

4 (ii) the total number of class exemptions granted  
5 to the requesting agency or public institution of  
6 higher education that have been granted by the Council  
7 in the current and prior fiscal years; and

8 (iii) the percentage of contracts awarded by the  
9 agency or public institution of higher education to  
10 eligible businesses owned by minorities, women, and  
11 persons with disabilities the current and prior fiscal  
12 years.

13 (b) Limitation. Any such class exemption shall not be  
14 permitted for a period of more than one year at a time.

15 (3) Waivers. Where a particular contract requires a vendor  
16 ~~contractor~~ to meet a goal established pursuant to this Act,  
17 the vendor ~~contractor~~ shall have the right to request a waiver  
18 from such requirements prior to the contract award. The  
19 Business Enterprise Program shall evaluate a vendor's request  
20 for a waiver based on the vendor's documented good faith  
21 efforts to meet the contract-specific Business Enterprise  
22 Program goal. The Council may ~~shall~~ grant the waiver when the  
23 contractor demonstrates that there has been made a good faith  
24 effort to comply with the goals for participation by  
25 businesses owned by minorities, women, and persons with  
26 disabilities. Any such waiver may ~~shall~~ also be transmitted in

1 writing to the Bureau on Apprenticeship Programs and Clean  
2 Energy Jobs.

3 (a) Request for waiver. A vendor's ~~contractor's~~  
4 request for a waiver under this subsection (3) must  
5 include, but is not limited to, the following, ~~if~~  
6 ~~available~~:

7 (i) a list of eligible businesses owned by  
8 minorities, women, and persons with disabilities that  
9 pertain to the the class of contracts in the requested  
10 waiver that were contracted by the vendor ~~scope of~~  
11 ~~work of the contract~~. Eligible businesses are only  
12 eligible if the business is certified for the products  
13 or work advertised in the solicitation or bid;

14 (ii) (blank);

15 (iia) a clear demonstration that the vendor  
16 ~~contractor~~ selected portions of the work to be  
17 performed by certified vendors to facilitate meeting  
18 the contract specific goal, and that certified vendors  
19 that have the capability to perform the work of the  
20 contract were eligible businesses owned by minorities,  
21 ~~women, and persons with disabilities,~~ solicited  
22 through all reasonable and available means ~~eligible~~  
23 ~~businesses, and negotiated in good faith with~~  
24 ~~interested eligible businesses;~~

25 (iib) documentation demonstrating that certified  
26 vendors ~~businesses owned by minorities, women, and~~

1 ~~persons with disabilities~~ are not rejected as being  
2 unqualified without sound reasons based on a thorough  
3 investigation of their capabilities. The certified  
4 vendor's standing within its industry, membership in  
5 specific groups, organizations, or associations, and  
6 political or social affiliations are not legitimate  
7 causes for rejecting or not contacting or negotiating  
8 with a certified vendor;

9 (iic) proof that the prime vendor solicited  
10 eligible certified vendors with: (1) sufficient time  
11 to respond; (2) adequate information about the scope,  
12 specifications, and requirements of the solicitation  
13 or bid, including plans, drawings, and addenda, to  
14 allow eligible businesses an opportunity to respond to  
15 the solicitation or bid; and (3) sufficient follow up  
16 with certified vendors;

17 (iid) a clear demonstration that the prime vendor  
18 communicated with certified vendors;

19 (iie) evidence that the prime vendor negotiated  
20 with certified vendors to enter into subcontracts to  
21 provide a commercially useful function of the contract  
22 for a reasonable cost;

23 (iii) documentation demonstrating that the  
24 difference in cost between the contract proposals  
25 being offered by certified vendors is ~~contract~~  
26 proposals being offered by businesses owned by



1 ~~minorities, women, and persons with disabilities are~~  
2 excessive or unreasonable; ~~and~~

3 (iv) a list of certified vendors ~~businesses~~ owned  
4 by minorities, women, and persons with disabilities  
5 that the contractor has used in the current and prior  
6 fiscal years;  ~~-~~

7 (v) documentation demonstrating that the vendor  
8 made efforts to utilize certified vendors despite the  
9 ability or desire of a vendor to perform the work with  
10 its own operations by selecting portions of the work  
11 to be performed by certified vendors, which may, when  
12 appropriate, include breaking out portions of the work  
13 to be performed into economically feasible units to  
14 facilitate certified vendor participation; and

15 (vi) documentation that the vendor used the  
16 services of: (1) the State; (2) organizations or  
17 contractors' groups representing or composed of  
18 minorities, women, or persons with disabilities; (3)  
19 local, State, or federal assistance offices  
20 representing or assisting minorities, women, or  
21 persons with disabilities; and (4) other organizations  
22 that provide assistance in the recruitment and  
23 engagement of certified vendors.

24 (b) Determination. The Council's determination  
25 concerning waivers must include following:

26 (i) the justification for the requested waiver,

1 including whether the requesting vendor ~~contractor~~  
2 made a good faith effort to identify and solicit  
3 certified vendors based on the criteria set forth in  
4 this Section ~~eligible businesses owned by minorities,~~  
5 ~~women, and persons with disabilities;~~

6 (ii) the total number of waivers the vendor  
7 ~~contractor~~ has been granted by the Council in the  
8 current and prior fiscal years;

9 (iii) (blank); and

10 (iv) the vendor's ~~contractor's~~ use of businesses  
11 owned by minorities, women, and persons with  
12 disabilities in the current and prior fiscal years.

13 (3.5) (Blank).

14 (4) Conflict with other laws. In the event that any State  
15 contract, which otherwise would be subject to the provisions  
16 of this Act, is or becomes subject to federal laws or  
17 regulations which conflict with the provisions of this Act or  
18 actions of the State taken pursuant hereto, the provisions of  
19 the federal laws or regulations shall apply and the contract  
20 shall be interpreted and enforced accordingly.

21 (5) Each chief procurement officer, as defined in the  
22 Illinois Procurement Code, shall maintain on his or her  
23 official Internet website a database of the following: (i)  
24 waivers granted under this Section with respect to contracts  
25 under his or her jurisdiction; (ii) a State agency or public  
26 institution of higher education's written request for an

1 exemption of an individual contract or an entire class of  
2 contracts; and (iii) the Council's written determination  
3 granting or denying a request for an exemption of an  
4 individual contract or an entire class of contracts. The  
5 database, which shall be updated periodically as necessary,  
6 shall be searchable by contractor name and by contracting  
7 State agency.

8 (6) Each chief procurement officer, as defined by the  
9 Illinois Procurement Code, shall maintain on its website a  
10 list of all vendors ~~firms~~ that have been prohibited from  
11 bidding, offering, or entering into a contract with the State  
12 of Illinois as a result of violations of this Act.

13 Each public notice required by law of the award of a State  
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 vendors ~~firms~~ identified in the bidder's or  
18 offeror's submitted utilization plan, and (iv) the ~~bid's~~  
19 ~~amount~~ ~~and~~ percentage of the contract awarded to each  
20 certified vendor that is a business ~~businesses~~ owned by  
21 minorities, women, and persons with disabilities identified in  
22 the utilization plan.

23 (Source: P.A. 101-170, eff. 1-1-20; 101-601, eff. 1-1-20;  
24 101-657, eff. 1-1-22; 102-29, eff. 6-25-21; 102-662, eff.  
25 9-15-21.)

1 (30 ILCS 575/8) (from Ch. 127, par. 132.608)  
2 (Section scheduled to be repealed on June 30, 2024)  
3 Sec. 8. Enforcement.

4 (1) The Commission on Equity and Inclusion shall make such  
5 findings, recommendations and proposals to the Governor as are  
6 necessary and appropriate to enforce this Act. If, as a result  
7 of its monitoring activities, the Commission determines that  
8 its goals and policies are not being met by any State agency or  
9 public institution of higher education, the Commission may  
10 recommend any or all of the following actions:

11 (a) Establish enforcement procedures whereby the  
12 Commission may recommend to the appropriate State agency,  
13 public institutions of higher education, or law  
14 enforcement officer that legal or administrative remedies  
15 be initiated for violations of contract provisions or  
16 rules issued hereunder or by a contracting State agency or  
17 public institutions of higher education. State agencies  
18 and public institutions of higher education shall be  
19 authorized to adopt remedies for such violations which  
20 shall include (1) termination of the contract involved,  
21 (2) prohibition of participation of the respondents in  
22 public contracts for a period not to exceed one year, (3)  
23 the assessment of a penalty in the amount of the  
24 discrepancy between the commitment contained in the  
25 utilization plan, as such amount may be amended over the  
26 term of the contract, and the qualifying payments made to

1        the certified vendors listed in the utilization plan  
2        ~~imposition of a penalty not to exceed any profit acquired~~  
3        ~~as a result of violation,~~ or (4) any combination thereof.

4            (b) If the Commission concludes that a compliance plan  
5        submitted under Section 6 is unlikely to produce the  
6        participation goals for businesses owned by minorities,  
7        women, and persons with disabilities within the then  
8        current fiscal year, the Commission may recommend that the  
9        State agency or public institution of higher education  
10       revise its plan to provide additional opportunities for  
11       participation by businesses owned by minorities, women,  
12       and persons with disabilities. Such recommended revisions  
13       may include, but shall not be limited to, the following:

14            (i) assurances of stronger and better focused  
15        solicitation efforts to obtain more businesses owned  
16        by minorities, women, and persons with disabilities as  
17        potential sources of supply;

18            (ii) division of the scope of work ~~job or project~~  
19        ~~requirements,~~ when economically feasible, into tasks  
20        or quantities to permit participation of businesses  
21        owned by minorities, women, and persons with  
22        disabilities;

23            (iii) elimination of extended experience or  
24        capitalization requirements, when programmatically  
25        feasible, to permit participation of businesses owned  
26        by minorities, women, and persons with disabilities;

1           (iv) identification of specific proposed contracts  
2           as particularly attractive or appropriate for  
3           participation by businesses owned by minorities,  
4           women, and persons with disabilities, such  
5           identification to result from and be coupled with the  
6           efforts of subparagraphs (i) through (iii);

7           (v) implementation of those regulations  
8           established for the use of the sheltered market  
9           process.

10          (2) State agencies and public institutions of higher  
11          education shall monitor a vendor's compliance with its  
12          utilization plan and the terms of its contract. Without  
13          limitation, a vendor's failure to comply with its contractual  
14          commitments as contained in the utilization plan; failure to  
15          cooperate in providing information regarding its compliance  
16          with its utilization plan; or the provision of false or  
17          misleading information or statements concerning compliance,  
18          certification status, or eligibility of the Business  
19          Enterprise Program-certified vendor, good faith efforts, or  
20          any other material fact or representation shall constitute a  
21          material breach of the contract and entitle the State agency  
22          or public institution of higher education to declare a  
23          default, terminate the contract, or exercise those remedies  
24          provided for in the contract, at law, or in equity.

25          (3) Prior to the expiration or termination of a contract,  
26          State agencies and public institutions of higher education

1 shall evaluate the contractor's fulfillment of the contract  
2 goals for participation by certified businesses owned by  
3 minorities, women, and persons with disabilities. The agency  
4 or public institution of higher education shall prepare a  
5 report of the vendor's compliance with the contract goals and  
6 file it with the Secretary. If the Secretary determines that  
7 the vendor did not fulfill the contract goals, the vendor  
8 shall be in breach of the contract and may be subject to  
9 remedies or sanctions, unless the vendor can show that it made  
10 good faith efforts to meet the contract goals. Such remedies  
11 or sanctions for failing to make good faith efforts may  
12 include (i) disqualification of the contractor from doing  
13 business with the State for a period of no more than one year,  
14 ~~or~~ (ii) cancellation, without any penalty to the State, of any  
15 contract entered into by the vendor, or (iii) the assessment  
16 of a penalty in the amount of the discrepancy between the  
17 commitment contained in the utilization plan, as such amount  
18 may be amended over the term of the contract, and the  
19 qualifying payments made to the certified vendors listed in  
20 the utilization plan.

21 The Business Enterprise Program shall develop procedures  
22 for determining whether a vendor has made good faith efforts  
23 to meet the contract goals upon the expiration or termination  
24 of a contract, which may include, but shall not be limited to:  
25 (i) consideration of whether State or local action caused a  
26 shortfall, such as a change in the scope of work that

1 eliminated work to be performed by certified vendors or a  
2 change in specifications; (ii) whether the vendor was unable  
3 to obtain certified business participation without requiring  
4 the introduction of extra participants not performing a  
5 commercially useful function; or (iii) whether the vendor made  
6 efforts to use appropriate forums for purposes of advertising  
7 subcontracting opportunities suitable for certified  
8 businesses.

9 (Source: P.A. 101-657, eff. 1-1-22; 102-29, eff. 6-25-21.)