



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

**HB4288**

by Rep. Sheri L Jesiel

#### SYNOPSIS AS INTRODUCED:

5 ILCS 100/5-45

from Ch. 127, par. 1005-45

30 ILCS 500/45-46 new

Amends the Illinois Procurement Code. Provides that the chief procurement officer may grant a qualifying location operator a small business development waiver and a workforce development waiver from certain requirements of the Illinois Procurement Code. Requires the chief procurement officer to adopt rules governing the procedures for granting small business development and workforce development waivers. Defines terms. Amends the Illinois Administrative Procedure Act, making conforming changes. Effective immediately.

LRB099 13176 SXM 38004 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning finance.

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

4 Section 5. The Illinois Administrative Procedure Act is  
5 amended by changing Section 5-45 as follows:

6 (5 ILCS 100/5-45) (from Ch. 127, par. 1005-45)

7 Sec. 5-45. Emergency rulemaking.

8 (a) "Emergency" means the existence of any situation that  
9 any agency finds reasonably constitutes a threat to the public  
10 interest, safety, or welfare.

11 (b) If any agency finds that an emergency exists that  
12 requires adoption of a rule upon fewer days than is required by  
13 Section 5-40 and states in writing its reasons for that  
14 finding, the agency may adopt an emergency rule without prior  
15 notice or hearing upon filing a notice of emergency rulemaking  
16 with the Secretary of State under Section 5-70. The notice  
17 shall include the text of the emergency rule and shall be  
18 published in the Illinois Register. Consent orders or other  
19 court orders adopting settlements negotiated by an agency may  
20 be adopted under this Section. Subject to applicable  
21 constitutional or statutory provisions, an emergency rule  
22 becomes effective immediately upon filing under Section 5-65 or  
23 at a stated date less than 10 days thereafter. The agency's

1 finding and a statement of the specific reasons for the finding  
2 shall be filed with the rule. The agency shall take reasonable  
3 and appropriate measures to make emergency rules known to the  
4 persons who may be affected by them.

5 (c) An emergency rule may be effective for a period of not  
6 longer than 150 days, but the agency's authority to adopt an  
7 identical rule under Section 5-40 is not precluded. No  
8 emergency rule may be adopted more than once in any 24 month  
9 period, except that this limitation on the number of emergency  
10 rules that may be adopted in a 24 month period does not apply  
11 to (i) emergency rules that make additions to and deletions  
12 from the Drug Manual under Section 5-5.16 of the Illinois  
13 Public Aid Code or the generic drug formulary under Section  
14 3.14 of the Illinois Food, Drug and Cosmetic Act, (ii)  
15 emergency rules adopted by the Pollution Control Board before  
16 July 1, 1997 to implement portions of the Livestock Management  
17 Facilities Act, (iii) emergency rules adopted by the Illinois  
18 Department of Public Health under subsections (a) through (i)  
19 of Section 2 of the Department of Public Health Act when  
20 necessary to protect the public's health, (iv) emergency rules  
21 adopted pursuant to subsection (n) of this Section, (v)  
22 emergency rules adopted pursuant to subsection (o) of this  
23 Section, or (vi) emergency rules adopted pursuant to subsection  
24 (c-5) of this Section. Two or more emergency rules having  
25 substantially the same purpose and effect shall be deemed to be  
26 a single rule for purposes of this Section.

1 (c-5) To facilitate the maintenance of the program of group  
2 health benefits provided to annuitants, survivors, and retired  
3 employees under the State Employees Group Insurance Act of  
4 1971, rules to alter the contributions to be paid by the State,  
5 annuitants, survivors, retired employees, or any combination  
6 of those entities, for that program of group health benefits,  
7 shall be adopted as emergency rules. The adoption of those  
8 rules shall be considered an emergency and necessary for the  
9 public interest, safety, and welfare.

10 (d) In order to provide for the expeditious and timely  
11 implementation of the State's fiscal year 1999 budget,  
12 emergency rules to implement any provision of Public Act 90-587  
13 or 90-588 or any other budget initiative for fiscal year 1999  
14 may be adopted in accordance with this Section by the agency  
15 charged with administering that provision or initiative,  
16 except that the 24-month limitation on the adoption of  
17 emergency rules and the provisions of Sections 5-115 and 5-125  
18 do not apply to rules adopted under this subsection (d). The  
19 adoption of emergency rules authorized by this subsection (d)  
20 shall be deemed to be necessary for the public interest,  
21 safety, and welfare.

22 (e) In order to provide for the expeditious and timely  
23 implementation of the State's fiscal year 2000 budget,  
24 emergency rules to implement any provision of this amendatory  
25 Act of the 91st General Assembly or any other budget initiative  
26 for fiscal year 2000 may be adopted in accordance with this

1 Section by the agency charged with administering that provision  
2 or initiative, except that the 24-month limitation on the  
3 adoption of emergency rules and the provisions of Sections  
4 5-115 and 5-125 do not apply to rules adopted under this  
5 subsection (e). The adoption of emergency rules authorized by  
6 this subsection (e) shall be deemed to be necessary for the  
7 public interest, safety, and welfare.

8 (f) In order to provide for the expeditious and timely  
9 implementation of the State's fiscal year 2001 budget,  
10 emergency rules to implement any provision of this amendatory  
11 Act of the 91st General Assembly or any other budget initiative  
12 for fiscal year 2001 may be adopted in accordance with this  
13 Section by the agency charged with administering that provision  
14 or initiative, except that the 24-month limitation on the  
15 adoption of emergency rules and the provisions of Sections  
16 5-115 and 5-125 do not apply to rules adopted under this  
17 subsection (f). The adoption of emergency rules authorized by  
18 this subsection (f) shall be deemed to be necessary for the  
19 public interest, safety, and welfare.

20 (g) In order to provide for the expeditious and timely  
21 implementation of the State's fiscal year 2002 budget,  
22 emergency rules to implement any provision of this amendatory  
23 Act of the 92nd General Assembly or any other budget initiative  
24 for fiscal year 2002 may be adopted in accordance with this  
25 Section by the agency charged with administering that provision  
26 or initiative, except that the 24-month limitation on the

1 adoption of emergency rules and the provisions of Sections  
2 5-115 and 5-125 do not apply to rules adopted under this  
3 subsection (g). The adoption of emergency rules authorized by  
4 this subsection (g) shall be deemed to be necessary for the  
5 public interest, safety, and welfare.

6 (h) In order to provide for the expeditious and timely  
7 implementation of the State's fiscal year 2003 budget,  
8 emergency rules to implement any provision of this amendatory  
9 Act of the 92nd General Assembly or any other budget initiative  
10 for fiscal year 2003 may be adopted in accordance with this  
11 Section by the agency charged with administering that provision  
12 or initiative, except that the 24-month limitation on the  
13 adoption of emergency rules and the provisions of Sections  
14 5-115 and 5-125 do not apply to rules adopted under this  
15 subsection (h). The adoption of emergency rules authorized by  
16 this subsection (h) shall be deemed to be necessary for the  
17 public interest, safety, and welfare.

18 (i) In order to provide for the expeditious and timely  
19 implementation of the State's fiscal year 2004 budget,  
20 emergency rules to implement any provision of this amendatory  
21 Act of the 93rd General Assembly or any other budget initiative  
22 for fiscal year 2004 may be adopted in accordance with this  
23 Section by the agency charged with administering that provision  
24 or initiative, except that the 24-month limitation on the  
25 adoption of emergency rules and the provisions of Sections  
26 5-115 and 5-125 do not apply to rules adopted under this

1 subsection (i). The adoption of emergency rules authorized by  
2 this subsection (i) shall be deemed to be necessary for the  
3 public interest, safety, and welfare.

4 (j) In order to provide for the expeditious and timely  
5 implementation of the provisions of the State's fiscal year  
6 2005 budget as provided under the Fiscal Year 2005 Budget  
7 Implementation (Human Services) Act, emergency rules to  
8 implement any provision of the Fiscal Year 2005 Budget  
9 Implementation (Human Services) Act may be adopted in  
10 accordance with this Section by the agency charged with  
11 administering that provision, except that the 24-month  
12 limitation on the adoption of emergency rules and the  
13 provisions of Sections 5-115 and 5-125 do not apply to rules  
14 adopted under this subsection (j). The Department of Public Aid  
15 may also adopt rules under this subsection (j) necessary to  
16 administer the Illinois Public Aid Code and the Children's  
17 Health Insurance Program Act. The adoption of emergency rules  
18 authorized by this subsection (j) shall be deemed to be  
19 necessary for the public interest, safety, and welfare.

20 (k) In order to provide for the expeditious and timely  
21 implementation of the provisions of the State's fiscal year  
22 2006 budget, emergency rules to implement any provision of this  
23 amendatory Act of the 94th General Assembly or any other budget  
24 initiative for fiscal year 2006 may be adopted in accordance  
25 with this Section by the agency charged with administering that  
26 provision or initiative, except that the 24-month limitation on

1 the adoption of emergency rules and the provisions of Sections  
2 5-115 and 5-125 do not apply to rules adopted under this  
3 subsection (k). The Department of Healthcare and Family  
4 Services may also adopt rules under this subsection (k)  
5 necessary to administer the Illinois Public Aid Code, the  
6 Senior Citizens and Disabled Persons Property Tax Relief Act,  
7 the Senior Citizens and Disabled Persons Prescription Drug  
8 Discount Program Act (now the Illinois Prescription Drug  
9 Discount Program Act), and the Children's Health Insurance  
10 Program Act. The adoption of emergency rules authorized by this  
11 subsection (k) shall be deemed to be necessary for the public  
12 interest, safety, and welfare.

13 (l) In order to provide for the expeditious and timely  
14 implementation of the provisions of the State's fiscal year  
15 2007 budget, the Department of Healthcare and Family Services  
16 may adopt emergency rules during fiscal year 2007, including  
17 rules effective July 1, 2007, in accordance with this  
18 subsection to the extent necessary to administer the  
19 Department's responsibilities with respect to amendments to  
20 the State plans and Illinois waivers approved by the federal  
21 Centers for Medicare and Medicaid Services necessitated by the  
22 requirements of Title XIX and Title XXI of the federal Social  
23 Security Act. The adoption of emergency rules authorized by  
24 this subsection (l) shall be deemed to be necessary for the  
25 public interest, safety, and welfare.

26 (m) In order to provide for the expeditious and timely



1 implementation of the provisions of the State's fiscal year  
2 2008 budget, the Department of Healthcare and Family Services  
3 may adopt emergency rules during fiscal year 2008, including  
4 rules effective July 1, 2008, in accordance with this  
5 subsection to the extent necessary to administer the  
6 Department's responsibilities with respect to amendments to  
7 the State plans and Illinois waivers approved by the federal  
8 Centers for Medicare and Medicaid Services necessitated by the  
9 requirements of Title XIX and Title XXI of the federal Social  
10 Security Act. The adoption of emergency rules authorized by  
11 this subsection (m) shall be deemed to be necessary for the  
12 public interest, safety, and welfare.

13 (n) In order to provide for the expeditious and timely  
14 implementation of the provisions of the State's fiscal year  
15 2010 budget, emergency rules to implement any provision of this  
16 amendatory Act of the 96th General Assembly or any other budget  
17 initiative authorized by the 96th General Assembly for fiscal  
18 year 2010 may be adopted in accordance with this Section by the  
19 agency charged with administering that provision or  
20 initiative. The adoption of emergency rules authorized by this  
21 subsection (n) shall be deemed to be necessary for the public  
22 interest, safety, and welfare. The rulemaking authority  
23 granted in this subsection (n) shall apply only to rules  
24 promulgated during Fiscal Year 2010.

25 (o) In order to provide for the expeditious and timely  
26 implementation of the provisions of the State's fiscal year

1 2011 budget, emergency rules to implement any provision of this  
2 amendatory Act of the 96th General Assembly or any other budget  
3 initiative authorized by the 96th General Assembly for fiscal  
4 year 2011 may be adopted in accordance with this Section by the  
5 agency charged with administering that provision or  
6 initiative. The adoption of emergency rules authorized by this  
7 subsection (o) is deemed to be necessary for the public  
8 interest, safety, and welfare. The rulemaking authority  
9 granted in this subsection (o) applies only to rules  
10 promulgated on or after the effective date of this amendatory  
11 Act of the 96th General Assembly through June 30, 2011.

12 (p) In order to provide for the expeditious and timely  
13 implementation of the provisions of Public Act 97-689,  
14 emergency rules to implement any provision of Public Act 97-689  
15 may be adopted in accordance with this subsection (p) by the  
16 agency charged with administering that provision or  
17 initiative. The 150-day limitation of the effective period of  
18 emergency rules does not apply to rules adopted under this  
19 subsection (p), and the effective period may continue through  
20 June 30, 2013. The 24-month limitation on the adoption of  
21 emergency rules does not apply to rules adopted under this  
22 subsection (p). The adoption of emergency rules authorized by  
23 this subsection (p) is deemed to be necessary for the public  
24 interest, safety, and welfare.

25 (q) In order to provide for the expeditious and timely  
26 implementation of the provisions of Articles 7, 8, 9, 11, and

1 12 of this amendatory Act of the 98th General Assembly,  
2 emergency rules to implement any provision of Articles 7, 8, 9,  
3 11, and 12 of this amendatory Act of the 98th General Assembly  
4 may be adopted in accordance with this subsection (q) by the  
5 agency charged with administering that provision or  
6 initiative. The 24-month limitation on the adoption of  
7 emergency rules does not apply to rules adopted under this  
8 subsection (q). The adoption of emergency rules authorized by  
9 this subsection (q) is deemed to be necessary for the public  
10 interest, safety, and welfare.

11 (r) In order to provide for the expeditious and timely  
12 implementation of the provisions of this amendatory Act of the  
13 98th General Assembly, emergency rules to implement this  
14 amendatory Act of the 98th General Assembly may be adopted in  
15 accordance with this subsection (r) by the Department of  
16 Healthcare and Family Services. The 24-month limitation on the  
17 adoption of emergency rules does not apply to rules adopted  
18 under this subsection (r). The adoption of emergency rules  
19 authorized by this subsection (r) is deemed to be necessary for  
20 the public interest, safety, and welfare.

21 (s) In order to provide for the expeditious and timely  
22 implementation of the provisions of Sections 5-5b.1 and 5A-2 of  
23 the Illinois Public Aid Code, emergency rules to implement any  
24 provision of Section 5-5b.1 or Section 5A-2 of the Illinois  
25 Public Aid Code may be adopted in accordance with this  
26 subsection (s) by the Department of Healthcare and Family

1 Services. The rulemaking authority granted in this subsection  
2 (s) shall apply only to those rules adopted prior to July 1,  
3 2015. Notwithstanding any other provision of this Section, any  
4 emergency rule adopted under this subsection (s) shall only  
5 apply to payments made for State fiscal year 2015. The adoption  
6 of emergency rules authorized by this subsection (s) is deemed  
7 to be necessary for the public interest, safety, and welfare.

8 (t) In order to provide for the expeditious and timely  
9 implementation of the provisions of this amendatory Act of the  
10 99th General Assembly: rules to implement Section 45-46 of the  
11 Illinois Procurement Code may be adopted by the chief  
12 procurement officer or chief procurement officers indicated in  
13 subsection (c) of Section 45-46 of the Illinois Procurement  
14 Code. The adoption of emergency rules authorized by this  
15 subsection (t) shall be deemed to be necessary for the public  
16 interest, safety, and welfare.

17 (Source: P.A. 98-104, eff. 7-22-13; 98-463, eff. 8-16-13;  
18 98-651, eff. 6-16-14; 99-2, eff. 3-26-15.)

19 Section 10. The Illinois Procurement Code is amended by  
20 adding Section 45-46 as follows:

21 (30 ILCS 500/45-46 new)

22 Sec. 45-46. Small business and workforce development  
23 waivers.

24 (a) Definitions. As used in this Section:

1       "Qualifying location" means a particular property or  
2 facility, or part thereof, owned by or under the control of a  
3 State agency that is either leased to a private party, or  
4 subject to a management or operating agreement with a private  
5 party.

6       "Qualifying location operator" means a State agency that  
7 owns or controls a qualifying location, or a private party who  
8 has leased or who has an operating agreement at a qualifying  
9 location.

10       (b) A qualifying location operator may seek a small  
11 business development waiver from the requirements of Section  
12 45-45 of this Code for operations at a qualifying location as  
13 provided for in subsection (d) of this Section.

14       (c) A qualifying location operator may seek a workforce  
15 development waiver from the requirements of subsection (6) of  
16 Section 30-22 of this Code for operations at a qualifying  
17 location as provided for in subsection (d) of this Section.

18       (d) The chief procurement officer or chief procurement  
19 officers appointed under Section 10-20 of this Code having  
20 jurisdiction over the operations of a qualifying location  
21 operator may grant a small business development waiver  
22 exempting a qualifying location operator from the requirements  
23 of Section 45-45 of this Code, or a workforce development  
24 waiver exempting a qualifying location operator from the  
25 requirements of subsection (6) of Section 30-22 of this Code  
26 for operations at a qualifying location where the chief

1 procurement officer or chief procurement officers determine  
2 that the operations at the qualifying location: are effectively  
3 competing with other private sector entities, and are subject  
4 to private sector market pressures. A qualifying location  
5 operator may seek and is eligible to receive both a small  
6 business development waiver and a workforce development  
7 waiver.

8 The chief procurement officer or chief procurement  
9 officers shall adopt rules to implement the provisions of this  
10 Section. In order to fulfill the purposes of this Section, the  
11 chief procurement officer or chief procurement officers may  
12 adopt emergency rules as provided for under subsection (t) of  
13 Section 5-45 of the Illinois Administrative Procedure Act.

14 (e) A small business development waiver or a workforce  
15 development waiver granted under this Section shall be made in  
16 writing and shall be granted for the duration of the qualifying  
17 location operator's lease or operating agreement.

18 (f) A small business development waiver or a workforce  
19 development waiver granted under this Section may be revoked by  
20 the chief procurement officer or chief procurement officers if  
21 the qualifying location operator no longer meets the  
22 requirements for receiving a small business development waiver  
23 or a workforce development waiver under this Section.  
24 Revocation of the small business development waiver or a  
25 workforce development waiver may only be made after giving  
26 notice and providing the qualifying location operator with an

1 opportunity to be heard before a neutral arbitrator, as the  
2 chief procurement officer or chief procurement officers shall  
3 by rule provide.

4 Section 99. Effective date. This Act takes effect upon  
5 becoming law.