



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB2906

Introduced 2/14/2018, by Sen. Karen McConnaughay

SYNOPSIS AS INTRODUCED:

15 ILCS 405/23.9	
30 ILCS 105/5.886 new	
30 ILCS 575/6a	from Ch. 127, par. 132.606a
30 ILCS 575/8	from Ch. 127, par. 132.608
30 ILCS 575/10 new	
30 ILCS 575/15 new	
30 ILCS 575/20 new	

Amends the State Comptroller Act. Requires the Comptroller to work with the Department of Central Management Services to fulfill his or her responsibilities under the Minority Contractor Opportunity Initiative. Provides for specified aspects of the Minority Contractor Opportunity Initiative to be administered by the Department of Central Management Services (rather than the Comptroller). Requires any bidder or offeror awarded a contract of \$1,000 or more under specified Sections of the Illinois Procurement Code to pay a fee of \$50 (currently, \$15) annually for each year of the contract to cover expenses related to the operation of the Business Enterprise Program, and for the administration of the Initiative. Requires the fee to be paid into the Business Enterprise Program Fund (currently, the Comptroller's Administrative Fund). Amends the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. Requires a copy of a proposed contract to be provided to the Secretary of the Business Enterprise Council within 14 days of execution before work may be commenced. Modifies enforcement provisions. Provides requirements for prompt payments to subcontractors. Specifies contracts subject to Business Enterprise Program goal analysis. Amends the State Finance Act to create the Business Enterprise Program Fund as a special fund in the State treasury. Makes other changes.

LRB100 19156 RJF 34421 b

1 AN ACT concerning State government.

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

4 Section 5. The State Comptroller Act is amended by changing
5 Section 23.9 as follows:

6 (15 ILCS 405/23.9)

7 Sec. 23.9. Minority Contractor Opportunity Initiative. The
8 State Comptroller Minority Contractor Opportunity Initiative
9 is created to provide greater opportunities for minority-owned
10 businesses, women-owned businesses, businesses owned by
11 persons with disabilities, and small businesses with 20 or
12 fewer employees in this State to participate in the State
13 procurement process. The following portions of the initiative
14 shall be administered by the Department of Central Management
15 Services Comptroller. ~~Under this initiative, the Comptroller~~
16 ~~is responsible for the following:~~ (i) outreach to
17 minority-owned businesses, women-owned businesses, businesses
18 owned by persons with disabilities, and small businesses
19 capable of providing services to the State; (ii) education of
20 minority-owned businesses, women-owned businesses, businesses
21 owned by persons with disabilities, and small businesses
22 concerning State contracting and procurement; and (iii)
23 notification of minority-owned businesses, women-owned

1 businesses, businesses owned by persons with disabilities, and
2 small businesses of State contracting opportunities. The
3 Comptroller shall be responsible for ~~;~~ ~~and (iv)~~ maintenance of
4 an online database of State contracts that identifies the
5 contracts awarded to minority-owned businesses, women-owned
6 businesses, businesses owned by persons with disabilities, and
7 small businesses that includes the total amount paid by State
8 agencies to contractors and the percentage paid to
9 minority-owned businesses, women-owned businesses, businesses
10 owned by persons with disabilities, and small businesses.

11 The Comptroller shall work with the Department of Central
12 Management Services and the Business Enterprise Council
13 created under Section 5 of the Business Enterprise for
14 Minorities, Women, and Persons with Disabilities Act to fulfill
15 the Comptroller's responsibilities under this Section. The
16 Comptroller may rely on the Business Enterprise Council's
17 identification of minority-owned businesses, women-owned
18 businesses, and businesses owned by persons with disabilities.

19 The Comptroller shall annually prepare and submit a report
20 to the Governor and the General Assembly concerning the
21 progress of this initiative including the following
22 information for the preceding calendar year: (i) a statement of
23 the total amounts paid by each executive branch agency to
24 contractors since the previous report; (ii) the percentage of
25 the amounts that were paid to minority-owned businesses,
26 women-owned businesses, businesses owned by persons with

1 disabilities, and small businesses; (iii) the successes
2 achieved and the challenges faced by the Comptroller in
3 operating outreach programs for minorities, women, persons
4 with disabilities, and small businesses; (iv) the challenges
5 each executive branch agency may face in hiring qualified
6 minority, woman, and small business employees and employees
7 with disabilities and contracting with qualified
8 minority-owned businesses, women-owned businesses, businesses
9 owned by persons with disabilities, and small businesses; and
10 (iv) any other information, findings, conclusions, and
11 recommendations for legislative or agency action, as the
12 Comptroller deems appropriate.

13 On and after the effective date of this amendatory Act of
14 the 97th General Assembly, any bidder or offeror awarded a
15 contract of \$1,000 or more under Section 20-10, 20-15, 20-25,
16 or 20-30 of the Illinois Procurement Code is required to pay a
17 fee of \$50 annually for each year of the contract ~~\$15~~ to cover
18 expenses related to the operation of the Business Enterprise
19 Program provided under the Business Enterprise for Minorities,
20 Women, and Persons with Disabilities Act, and for the
21 administration of this Section. The Comptroller shall deduct
22 the fee from the first check issued to the vendor under the
23 contract and deposit the fee into the Business Enterprise
24 Program ~~Comptroller's Administrative~~ Fund. Contracts
25 administered for statewide orders placed by agencies (commonly
26 referred to as "statewide master contracts") are exempt from

1 this fee.

2 (Source: P.A. 99-143, eff. 7-27-15; 100-391, eff. 8-25-17.)

3 Section 10. The State Finance Act is amended by adding
4 Section 5.886 as follows:

5 (30 ILCS 105/5.886 new)

6 Sec. 5.886. The Business Enterprise Program Fund.

7 Section 15. The Business Enterprise for Minorities, Women,
8 and Persons with Disabilities Act is amended by changing
9 Sections 6a and 8 and by adding Sections 10, 15, and 20 as
10 follows:

11 (30 ILCS 575/6a) (from Ch. 127, par. 132.606a)

12 (Section scheduled to be repealed on June 30, 2020)

13 Sec. 6a. Notice of contracts to Council. Except in case of
14 emergency as defined in the Illinois Procurement Code, or as
15 authorized by rule promulgated by the Department of Central
16 Management Services, each agency and public institution of
17 higher education under the jurisdiction of this Act shall
18 notify the Secretary of the Council of proposed contracts for
19 professional and artistic services and provide the information
20 in the form and detail as required by rule promulgated by the
21 Department of Central Management Services. Notification may be
22 made through direct written communication to the Secretary to

1 be received at least 14 days before execution of the contract
2 (or the solicitation response date, if applicable). The agency
3 or public institution of higher education must consider any
4 vendor referred by the Secretary before execution of the
5 contract. The agency or public institution of higher education
6 shall provide a copy of the contract to the Secretary of the
7 Business Enterprise Council within 14 days of execution. Work
8 shall not commence on a contract until the executed version has
9 been provided to the Secretary of the Council as required under
10 this Section. The provisions of this Section shall not apply to
11 any State agency or public institution of higher education that
12 has awarded contracts for professional and artistic services to
13 businesses owned by minorities, women, and persons with
14 disabilities totaling in the aggregate \$40,000,000 or more
15 during the preceding fiscal year.

16 (Source: P.A. 99-462, eff. 8-25-15; 100-391, eff. 8-25-17.)

17 (30 ILCS 575/8) (from Ch. 127, par. 132.608)

18 (Section scheduled to be repealed on June 30, 2020)

19 Sec. 8. Enforcement.

20 (1) The Council shall make such findings, recommendations
21 and proposals to the Governor as are necessary and appropriate
22 to enforce this Act. If, as a result of its monitoring
23 activities, the Council determines that its goals and policies
24 are not being met by any State agency or public institution of
25 higher education, the Council may recommend any or all of the

1 following actions:

2 (a) Establish enforcement procedures whereby the
3 Council may recommend to the appropriate State agency,
4 public institutions of higher education, or law
5 enforcement officer that legal or administrative remedies
6 be initiated for violations of contract provisions or rules
7 issued hereunder or by a contracting State agency or public
8 institutions of higher education. The Director of the
9 Department of Central Management Services ~~State agencies~~
10 ~~and public institutions of higher education~~ shall be
11 authorized to adopt remedies for such violations which
12 shall include (1) termination of the contract involved, (2)
13 prohibition of participation of the respondents in public
14 contracts for a period not to exceed one year, (3)
15 imposition of a penalty not to exceed the dollar value of
16 the contract goal for the contract term in which the vendor
17 is in any profit acquired as a result of violation, or (4)
18 any combination thereof.

19 (b) If the Council concludes that a compliance plan
20 submitted under Section 6 is unlikely to produce the
21 participation goals for businesses owned by minorities,
22 women, and persons with disabilities within the then
23 current fiscal year, the Council may recommend that the
24 State agency or public institution of higher education
25 revise its plan to provide additional opportunities for
26 participation by businesses owned by minorities, women,

1 and persons with disabilities. Such recommended revisions
2 may include, but shall not be limited to, the following:

3 (i) assurances of stronger and better focused
4 solicitation efforts to obtain more businesses owned
5 by minorities, women, and persons with disabilities as
6 potential sources of supply;

7 (ii) division of job or project requirements, when
8 economically feasible, into tasks or quantities to
9 permit participation of businesses owned by
10 minorities, women, and persons with disabilities;

11 (iii) elimination of extended experience or
12 capitalization requirements, when programmatically
13 feasible, to permit participation of businesses owned
14 by minorities, women, and persons with disabilities;

15 (iv) identification of specific proposed contracts
16 as particularly attractive or appropriate for
17 participation by businesses owned by minorities,
18 women, and persons with disabilities, such
19 identification to result from and be coupled with the
20 efforts of subparagraphs (i) through (iii);

21 (v) implementation of those regulations
22 established for the use of the sheltered market
23 process.

24 (2) State agencies and public institutions of higher
25 education shall review a vendor's compliance with its
26 utilization plan and the terms of its contract. Without

1 limitation, a vendor's failure to comply with its contractual
2 commitments as contained in the utilization plan; failure to
3 cooperate in providing information regarding its compliance
4 with its utilization plan; or the provision of false or
5 misleading information or statements concerning compliance,
6 certification status, or eligibility of the Business
7 Enterprise Program-certified vendor, good faith efforts, or
8 any other material fact or representation shall constitute a
9 material breach of the contract and entitle the State agency or
10 public institution of higher education to declare a default,
11 terminate the contract, or exercise those remedies provided for
12 in the contract, at law, or in equity.

13 (3) A vendor shall be in breach of the contract and may be
14 subject to penalties for failure to meet contract goals
15 established under this Act, unless the vendor can show that it
16 made good faith efforts to meet the contract goals.

17 (Source: P.A. 99-462, eff. 8-25-15; 100-391, eff. 8-25-17.)

18 (30 ILCS 575/10 new)

19 Sec. 10. Prompt payments to subcontractors.

20 (a) When a State official or agency responsible for
21 administering a contract submits a voucher to the Comptroller
22 for payment to a contractor, that State official or agency
23 shall promptly make available electronically the voucher
24 number, the date of the voucher, and the amount of the voucher.
25 The State official or agency responsible for administering the

1 contract shall provide subcontractors and material suppliers,
2 known to the State official or agency, with instructions on how
3 to access the electronic information.

4 (b) When a contractor receives any payment, the contractor
5 shall pay each subcontractor and material supplier in
6 proportion to the work completed by each subcontractor and
7 material supplier its application or pay estimate, plus
8 interest received under this Act. When a contractor receives
9 any payment, the contractor shall pay each lower-tiered
10 subcontractor and material supplier and each subcontractor and
11 material supplier shall make payment to its own respective
12 subcontractors and material suppliers. If the contractor
13 receives less than the full payment due under the contract, the
14 contractor shall be obligated to disburse on a pro rata basis
15 those funds received, plus interest received under this Act,
16 with the contractor, subcontractors and material suppliers
17 each receiving a prorated portion based on the amount of
18 payment each has earned. When, however, the State official or
19 agency does not release the full payment due under the contract
20 because there are specific areas of work or materials the State
21 agency or official has determined are not suitable for payment,
22 then those specific subcontractors or material suppliers
23 involved shall not be paid for that portion of work rejected or
24 deemed not suitable for payment and all other subcontractors
25 and suppliers shall be paid based upon the amount of payment
26 each has earned, plus interest received under this Act.

1 (c) A contractor who refuses to make prompt payment, in
2 whole or in part, shall provide to the subcontractor or
3 material supplier and the public owner or its agent, a written
4 notice of that refusal. The written notice shall be made by a
5 contractor no later than 5 calendar days after payment is
6 received by the contractor. The written notice shall identify
7 the contract, any subcontract or material purchase agreement, a
8 detailed reason for refusal, the value of the payment to be
9 withheld, and the specific remedial actions required of the
10 subcontractor or material supplier so that payment may be made.
11 Written notice of refusal may be given in a form and method
12 which is acceptable to the parties and public owner.

13 (d) If the contractor, without reasonable cause, fails to
14 make full payment of amounts due under subsection (a) to its
15 subcontractors and material suppliers within 30 calendar days
16 after receipt of payment from the State official or agency, the
17 contractor shall pay to its subcontractors and material
18 suppliers, in addition to the payment due them, interest in the
19 amount of 15% per month, calculated from the expiration of the
20 30-day period until fully paid. This subsection shall further
21 apply to any payments made by subcontractors and material
22 suppliers to their subcontractors and material suppliers and to
23 all payments made to lower tier subcontractors and material
24 suppliers throughout the contracting chain.

25 (1) If a contractor, without reasonable cause, fails to
26 make payment in full as provided in subsection (b) within

1 15 calendar days after receipt of payment under the
2 contract, any subcontractor or material supplier to whom
3 payments are owed may file a written notice and request for
4 administrative hearing with the State official or agency
5 setting forth the amount owed by the contractor and the
6 contractor's failure to timely pay the amount owed. The
7 written notice and request for administrative hearing
8 shall identify the contract, the contractor, and the amount
9 owed, and shall contain a sworn statement or attestation to
10 verify the accuracy of the notice. The notice and request
11 for administrative hearing shall be filed with the State
12 official for the contract, with a copy of the notice
13 concurrently provided to the contractor. Notice to the
14 State official may be made by certified or registered mail,
15 messenger service, or personal service, and must include
16 proof of delivery to the State official.

17 (2) The State official or agency, within 15 calendar
18 days after receipt of a subcontractor's or material
19 supplier's written notice and request for administrative
20 hearing, shall hold a hearing convened by an administrative
21 law judge to determine whether the contractor withheld
22 payment, without reasonable cause, from the subcontractors
23 or material suppliers and what amount, if any, is due to
24 the subcontractors or material suppliers, and the
25 reasonable cause or causes asserted by the contractor. The
26 State official or agency shall provide appropriate notice

1 to the parties of the date, time, and location of the
2 hearing. Each contractor, subcontractor, or material
3 supplier has the right to be represented by counsel at a
4 hearing and to cross-examine witnesses and challenge
5 documents. Upon the request of the subcontractor or
6 material supplier and a showing of good cause, reasonable
7 continuances may be granted by the administrative law
8 judge.

9 (3) Upon a finding by the administrative law judge that
10 the contractor failed to make payment in full, without
11 reasonable cause, as provided in subsection (c), then the
12 administrative law judge shall, in writing, order the
13 contractor to pay the amount owed to the subcontractors or
14 material suppliers plus interest within 15 calendar days
15 after the order.

16 (4) If a contractor fails to make full payment as
17 ordered under paragraph (3) of this subsection (d) within
18 15 days after the administrative law judge's order, then
19 the contractor shall be barred from entering into a State
20 contract for a period of one year beginning on the date of
21 the administrative law judge's order.

22 (5) If, on 2 or more occasions within a 3-calendar-year
23 period, there is a finding by an administrative law judge
24 that the contractor failed to make payment in full, without
25 reasonable cause, and a written order was issued to a
26 contractor under paragraph (3) of this subsection (d), then

1 the contractor shall be barred from entering into a State
2 contract for a period of 6 months beginning on the date of
3 the administrative law judge's second written order, even
4 if the payments required under the orders were made in
5 full.

6 (6) If a contractor fails to make full payment as
7 ordered under paragraph (4) of this subsection (d), the
8 subcontractor or material supplier may, within 30 days of
9 the date of that order, petition the State agency for an
10 order for reasonable attorney's fees and costs incurred in
11 the prosecution of the action under this subsection (d).
12 Upon that petition and taking of additional evidence, as
13 may be required, the administrative law judge may issue a
14 supplemental order directing the contractor to pay those
15 reasonable attorney's fees and costs.

16 (7) The written order of the administrative law judge
17 shall be final and appealable under the Administrative
18 Review Law.

19 (e) This Section shall not be construed to in any manner
20 diminish, negate, or interfere with the
21 contractor-subcontractor or contractor-material supplier
22 relationship or commercially useful function.

23 (f) This Section shall not preclude, bar, or stay the
24 rights, remedies, and defenses available to the parties by way
25 of the operation of their contract or purchase agreement.

26 (g) As used in this Section:

1 "Payment" means the discharge of an obligation in money
2 or other valuable consideration or thing delivered in full
3 or partial satisfaction of an obligation to pay. "Payment"
4 shall include interest paid pursuant to this Act.

5 "Reasonable cause" may include, but is not limited to,
6 unsatisfactory workmanship or materials; failure to
7 provide documentation required by the contract,
8 subcontract, or material purchase agreement. "Reasonable
9 cause" does not include payments issued to the contractor
10 that create a negative or reduced valuation pay application
11 or pay estimate due to a reduction of contract quantities
12 or work not performed or provided by the subcontractor or
13 material supplier; the interception or withholding of
14 funds for reasons not related to the subcontractor's or
15 material supplier's work on the contract; anticipated
16 claims or assessments of third parties not a party related
17 to the contract or subcontract; asserted claims or
18 assessments of third parties that are not authorized by
19 court order, administrative tribunal, or statute.
20 "Reasonable cause" further does not include the
21 withholding, offset, or reduction of payment, in whole or
22 in part, due to the assessment of liquidated damages or
23 penalties assessed against the contractor, unless the
24 subcontractor's performance or supplied materials were the
25 sole and proximate cause of the liquidated damage or
26 penalty.

1 (30 ILCS 575/15 new)

2 Sec. 15. Business Enterprise Program Fund. The Business
3 Enterprise Program Fund is created as a special fund in the
4 State treasury. All money in the Business Enterprise Program
5 Fund shall be paid to the Department of Central Management
6 Services for the operation of the Business Enterprise Program
7 for Minorities, Women, and Persons with Disabilities.

8 (30 ILCS 575/20 new)

9 Sec. 20. Contracts subject to goal.

10 (a) All non-exempt contracts over \$100,000 shall be
11 reviewed by the Department of Central Management Services for a
12 Business Enterprise Program goal analysis.

13 (b) The Department of Central Management Services shall
14 make all final decisions regarding Business Enterprise Program
15 goal amounts to be applied to any solicitations or contracts
16 that are subject to the requirements of this Act.