



Rep. William Davis

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LRB098 03906 CEL 42228 a

1 AMENDMENT TO HOUSE BILL 102

2 AMENDMENT NO. _____. Amend House Bill 102 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by adding
5 Section 4-503 as follows:

6 (220 ILCS 5/4-503 new)

7 Sec. 4-503. Procurement from female owned, minority owned,
8 and qualified service-disabled veteran-owned small businesses;
9 goals; reports.

10 (a) Definitions. For the purpose of this Section:

11 "Certification" means a determination made under the
12 Business Enterprise for Minorities, Females, and Persons with
13 Disabilities Act, Section 45-57 of the Illinois Procurement
14 Code, or the Clearinghouse that a business entity is a female
15 owned, minority owned, or qualified service-disabled
16 veteran-owned small business for whatever purpose. A business

1 owned and controlled by females shall select and designate
2 whether such business is to be certified as (i) a female owned
3 business or minority owned business if the females are also
4 minorities or (ii) a female owned business or qualified
5 service-disabled veteran-owned small business if the females
6 are qualified service-disabled veterans.

7 "Clearinghouse" means the Commission-supervised entity
8 authorized under subsection (d) of this Section whose primary
9 purpose is to audit and verify the status of female and
10 minority owned businesses, and to establish and maintain a
11 database of female, minority, and service-disabled
12 veteran-owned businesses that is accessible to the Commission
13 and participating entities.

14 "Commission" means the Illinois Commerce Commission.

15 "Control" has the meaning given to that term in the
16 Business Enterprise for Minorities, Females, and Persons with
17 Disabilities Act.

18 "Executive Director" means the Executive Director of the
19 Illinois Commerce Commission.

20 "Female owned business" has the meaning given to that term
21 in the Business Enterprise for Minorities, Females, and Persons
22 with Disabilities Act.

23 "Goal" means a target that, when achieved, indicates
24 progress in a preferred direction. A goal is neither a
25 requirement nor a quota.

26 "Long-term goal" means a goal applicable to a period of 5

1 years.

2 "Mid-term goal" means a goal applicable to a period of 3
3 years.

4 "Minority owned business" has the meaning given to that
5 term in the Business Enterprise for Minorities, Females, and
6 Persons with Disabilities Act.

7 "Participating entity" means a public utility, as defined
8 in this Section, that is required to participate in this
9 procurement program as well as any other entity, including
10 cable and wireless operators, that may voluntarily participate
11 in this procurement program.

12 "Product and service categories" means product and service
13 categories as defined by the Standard Industrial
14 Classification (SIC) system maintained by the United States
15 Department of Labor, Occupational Safety and Health
16 Administration.

17 "Public utility" means all regulated gas, electric, water
18 companies and incumbent local exchange telecommunications
19 carriers with at least 100,000 customers.

20 "Qualified service-disabled veteran-owned small business"
21 has the meaning given to that term in Section 45-57 of the
22 Illinois Procurement Code.

23 "Qualifying business" means a female owned business,
24 minority owned business, or qualified service-disabled
25 veteran-owned small business.

26 "Short-term goal" means a goal applicable to a period of

1 one year.

2 "Subcontract" means an agreement or arrangement between a
3 contractor and any party or person in which the parties do not
4 stand in the relationship of an employer and an employee (i)
5 for the furnishing of supplies or services for the use of real
6 or personal property, including lease arrangements, which, in
7 whole or in part, is necessary to the performance of any one or
8 more contracts or (ii) under which any portion of the
9 contractor's obligation under any one or more contracts is
10 performed, undertaken, or assumed.

11 (b) Annual reporting requirement. Within 90 days after the
12 effective date of this amendatory Act of the 98th General
13 Assembly, the Commission shall enter an order to establish a
14 format for participating entities' annual reports required by
15 subsection (h) and annual plans required by subsection (k).

16 (c) Verification rules and guidelines regarding
17 eligibility of business enterprises.

18 (1) The Clearinghouse, as described in subsection (d),
19 shall supply a verification form to applicants. An
20 applicant may complete the verification forms and return
21 them to the Clearinghouse for processing and inclusion in
22 the database. In addition to verification by the
23 Clearinghouse, a participating entity may accept
24 verification of a qualifying female or minority owned
25 business's status made under the Business Enterprise for
26 Minorities, Females, and Persons with Disabilities Act or

1 Section 45-57 of the Illinois Procurement Code or, for
2 verification of a qualifying service-disabled
3 veteran-owned business, under Section 45-57 of the
4 Illinois Procurement Code.

5 (2) In assessing the suitability of a qualifying
6 business to bid for procurement contracts, a participating
7 entity may require additional information or the
8 completion of additional forms to comply with specific
9 requirements created by the unique character of its
10 business, including, but not limited to, insurance
11 requirements, product and service codes, and bonding
12 limits. A participating entity may not, however, require
13 such additional information in order to verify that a
14 business is in fact a qualifying business.

15 (3) Female owned businesses and minority owned
16 businesses shall be required to submit verification forms
17 at least once every 3 years.

18 (4) Service-disabled veteran-owned businesses must
19 present proof of certification as determined by the
20 Illinois Department of Veterans' Affairs.

21 (5) Completion of the verification application only
22 initiates a verification of the business's status as a
23 female owned business or minority owned business. Filing of
24 an application does not guarantee verification.

25 (6) The fact that a verified qualifying business is
26 included in the Clearinghouse database shall not be

1 construed as an endorsement of its ability to perform, nor
2 shall such inclusion guarantee it business with the
3 participating entities.

4 (7) Verification forms for female owned businesses or
5 minority owned businesses shall be available for
6 inspection by the Commission.

7 (8) Falsification of information on the verification
8 form shall disqualify owners from reapplying for
9 verification for 5 years after the date the falsification
10 is discovered.

11 (d) Clearinghouse for the sharing of identification and
12 verification information of qualifying businesses. The
13 Commission shall within 90 days after the effective date of
14 this amendatory Act of the 98th General Assembly, after hearing
15 and by order, authorize a participating entity-formed entity or
16 arrangement whereby participating entities shall operate and
17 fund the operation of a Commission-supervised Clearinghouse.
18 In authorizing a participating entity-formed entity or
19 arrangement, the Commission must identify sufficient terms and
20 conditions to specify how verifications and audits shall be
21 performed, to develop a Request for Proposals to solicit bids
22 from vendors who will design and maintain the Clearinghouse
23 website, and to ascertain and ensure that the Clearinghouse is
24 operated in accordance with this Section and other applicable
25 legal requirements.

26 The primary purpose of the Clearinghouse shall be to audit

1 and verify the status of qualifying businesses and to establish
2 and maintain a database of qualifying businesses that is
3 accessible to the Commission and to participating entities.

4 The Clearinghouse auditing and verification program shall
5 preclude the need for an individual participating entity to
6 audit and verify the status of the qualifying businesses it
7 does business with.

8 The Clearinghouse shall distribute renewal verification
9 forms to female owned businesses or minority owned businesses
10 at least once every 3 years. If the renewal is not completed
11 and returned within a reasonable time, the Clearinghouse shall
12 notify the female owned business or minority owned business and
13 participating entities that the female owned business or
14 minority owned business will not be listed as a verified female
15 owned business or minority owned business in the shared
16 database until the renewal is completed.

17 (e) Participating entity implementation.

18 (1) Each participating entity's program shall be
19 designed to ensure that qualifying businesses are
20 encouraged to become potential suppliers of products and
21 services to the participating entities subject to this
22 Section. Nothing in this Section authorizes or permits a
23 participating entity to utilize set asides, preferences,
24 or quotas in administration of its program. The
25 participating entity retains its authority to use its
26 legitimate business judgment to select the supplier for a

1 particular contract.

2 (2) Each participating entity shall maintain an
3 appropriately sized staff to provide overall program
4 direction and guidance and to implement program
5 requirements. Each participating entity shall ensure that
6 its employees with procurement responsibilities receive
7 training in the implementation of its program.

8 (3) Each participating entity shall implement an
9 outreach program to inform and recruit qualifying
10 businesses to apply for procurement contracts. Outreach
11 activities may vary for each participating entity
12 depending on its size, service territory, and specific
13 lines of business. However, each participating entity
14 shall, at a minimum:

15 (A) actively seek out opportunities to identify
16 qualifying businesses and to expand qualifying
17 business source pools;

18 (B) actively support the efforts of organizations
19 experienced in the field who promote the interests of
20 qualifying businesses;

21 (C) work with qualifying businesses to facilitate
22 contracting relationships by explaining participating
23 entity qualification requirements, bid and contracting
24 procedures, materials requirements, invoicing and
25 payment schedules, and other procurement practices and
26 procedures;

1 (D) at the request of any unsuccessful qualifying
2 business bidder, provide information concerning the
3 relative range or ranking of the qualifying business's
4 bid as contrasted with the successful bid; information
5 on additional selection criteria, such as warranty
6 periods, maintenance costs, and delivery capability,
7 shall be provided when requested if disclosure would
8 not violate the proprietary nature of the specific
9 contract element;

10 (E) to the extent possible, make available to
11 qualifying businesses lists of participating entity
12 purchase and contract categories that offer them the
13 best opportunity for success;

14 (F) encourage employees involved in procurement
15 activities to break apart purchases and contracts as
16 appropriate to accommodate the capabilities of
17 qualifying businesses; and

18 (G) summarize this Section in its outreach program
19 handouts.

20 Each participating entity is directed to offer the same
21 assistance set forth in this subsection (e) to entities that
22 are not qualifying businesses, upon request.

23 (f) Subcontracting. Each participating entity shall
24 establish and maintain a subcontracting program for the purpose
25 of encouraging its prime contractors to utilize qualifying
26 businesses. The subcontracting program shall serve as an

1 enhancement to, and not as a replacement for, the participating
2 entity's prime contractor outreach program. The subcontracting
3 program shall apply to:

4 (A) purchases or contracts exceeding \$500,000 for
5 products and services;

6 (B) construction contracts exceeding \$1,000,000; and

7 (C) purchases or contracts that offer subcontracting
8 opportunities to qualifying businesses, regardless of
9 value, where appropriate.

10 The subcontracting program need not be applied to the
11 procurement of products manufactured for general consumption,
12 such as paper, pens, and the like.

13 Each participating entity shall encourage and assist its
14 prime contractors to develop plans to increase the utilization
15 of qualifying businesses as subcontractors. Prime contractors
16 shall be encouraged to submit to the participating entity plans
17 that include goals for the utilization of qualifying businesses
18 as subcontractors. These plans may be incorporated into the
19 contract between the participating entity and the prime
20 contractor. The prime contractor may submit periodic reports on
21 its compliance with the plan to the participating entity.

22 Each participating entity is encouraged to incorporate in
23 all purchase orders, requests for bid proposals, and other
24 appropriate procurement documents related to procurement
25 efforts subject to the subcontracting program, a statement in
26 substantially the following form:

1 "UTILIZATION OF FEMALE OWNED BUSINESSES, MINORITY
2 OWNED BUSINESSES, AND QUALIFIED SERVICE-DISABLED
3 VETERAN-OWNED SMALL BUSINESSES

4 (1) It is the policy of (insert the name of the
5 participating entity) that female owned businesses,
6 minority owned businesses, or qualified service-disabled
7 veteran-owned small businesses shall have the maximum
8 practicable opportunity to participate in the performance
9 of contracts. However, this policy shall not be used to
10 exclude other qualified businesses from participating in
11 participating entity contracting.

12 (2) The contractor agrees to use his or her best
13 efforts to carry out this policy in the award of
14 subcontracts to the fullest extent consistent with the
15 efficient performance of this contract.

16 (3) The contractor agrees to inform prospective female
17 owned businesses, minority owned businesses, or qualified
18 service-disabled veteran-owned small businesses of their
19 opportunity to request from the Clearinghouse a
20 verification application form and to return the completed
21 form to the Clearinghouse for processing and inclusion in
22 the database."

23 Each participating entity is encouraged to inform
24 suppliers of products and services that suppliers' good faith
25 efforts to subcontract with qualifying businesses is a factor
26 that will be considered in the bid evaluation process. A

1 statement to that effect could be included in all appropriate
2 procurement documents.

3 Each participating entity shall monitor and include in its
4 annual report to the Commission a summary of prime contractor
5 progress in increasing the participation of qualifying
6 businesses. Each participating entity shall include in its
7 annual plan a description of future plans for encouraging prime
8 contractors to engage qualifying businesses in all procurement
9 categories that provide subcontracting opportunities. Each
10 participating entity may include awards to verified qualifying
11 businesses in its results.

12 (g) Goals. Each participating entity shall set substantial
13 and verifiable short-term, mid-term, and long-term goals for
14 the utilization of qualifying businesses. Goals shall be set
15 annually for each major product and service category that
16 provides opportunities for procurement. A goal shall be
17 considered substantial if it is realistic and clearly
18 demonstrates a participating entity's commitment to encourage
19 the participation of qualifying businesses in participating
20 entity purchases and contracts. The participating entities
21 shall consider the following factors in setting their goals:

22 (A) total participating entity purchasing and
23 contracting projections;

24 (B) availability of qualifying businesses and
25 competitiveness in the geographical area served by the
26 participating entity;

1 (C) market dynamics based on historical data and
2 trends; and

3 (D) other appropriate factors that would increase the
4 qualifying businesses' share of participating entity
5 business.

6 Each participating entity shall establish initial minimum
7 long-term goals for each major category of products and
8 services the participating entity purchases from outside
9 vendors of not less than 11% for minority owned businesses and
10 not less than 7% for female owned businesses. For the purposes
11 of this Section, contracts with minority female owned
12 businesses can be counted toward either the minority owned
13 business goal or the female owned business goal, but not toward
14 both. Similarly, contracts with qualified service-disabled
15 veteran-owned small businesses can be counted either as
16 service-disabled veteran-owned small business procurement or
17 the appropriate female or minority business goal, but not
18 toward both. The goal for qualified service-disabled
19 veteran-owned small business participation in procurement
20 programs of the participating entities is set at 3%.

21 The specification of initial long-term goals in this
22 subsection shall not prevent the participating entities from
23 seeking to reach a goal of awarding 20% or more of their
24 contracts to female owned, minority owned, and
25 service-disabled veteran-owned businesses.

26 Goals shall also be established for both minority female

1 owned businesses and non-minority female owned businesses.
2 These goals are to be a subset of the overall goal for female
3 owned businesses and minority owned businesses established by
4 this subsection (g). These goals are intended to ensure that
5 participating entities do not direct their female owned
6 business and minority owned business procurement programs
7 toward non-minority female owned businesses and minority male
8 owned businesses to the detriment or exclusion of minority
9 female owned businesses.

10 Goals shall be set for each major category of products or
11 services. For each major category of products and services
12 where the minimum long-term goals required by this subsection
13 (g) are not met, the participating entity shall include a
14 comprehensive discussion and detailed description of any
15 efforts made to find or recruit qualifying businesses'
16 suppliers of products or services in areas where qualifying
17 businesses' suppliers are currently the only available
18 procurement method. The participating entity may also explain
19 in detail in its annual report how its ability to meet its
20 qualifying business's goals are affected because the
21 qualifying businesses capable of supplying certain products
22 and services are unavailable, or because sole source
23 procurement is the only available procurement method.

24 A participating entity that, on the effective date of this
25 Section, is purchasing products or services from affiliates may
26 subtract the dollars paid to affiliates for these products or

1 services from the total dollars used as the basis for
2 establishing goals for purchases from qualifying businesses of
3 these categories of products or services, provided that the
4 participating entity encourages the affiliate to establish an
5 appropriate subcontracting program where such affiliate
6 employs subcontractors. Any participating entity that
7 subtracts these dollars must, in its annual report to the
8 Commission, state whether the affiliates have established a
9 subcontracting program and describe the results of any such
10 program. The participating entity's annual plan must describe
11 any future plans to encourage such a subcontracting program.

12 Goals for each specific product or service category shall
13 be expressed as a percentage of total dollars awarded by a
14 participating entity to outside vendors in that category;
15 however, where appropriate, non-numeric goals may also be
16 included.

17 Overall program goals shall be expressed as a percentage of
18 total dollars awarded to outside vendors in all categories of
19 products and services purchased by a participating entity other
20 than products and services related to fuel procurement.

21 Payments to other public utilities, franchise tax fees,
22 other taxes, and postage need not be included in the standard
23 procurement base used to establish goals.

24 Each participating entity shall make special efforts to
25 increase utilization and encourage entry into the marketplace
26 of qualifying businesses in product or service categories where

1 there has been low utilization of qualifying businesses, such
2 as legal and financial services and areas that are considered
3 technical in nature.

4 No penalty shall be imposed for failure of any
5 participating entity to meet or exceed goals.

6 Participating entities shall report their goals in an
7 annual report.

8 (h) Annual report. Each participating entity shall submit
9 its annual report on its qualifying business program to the
10 Executive Director by February 1 of each year beginning in
11 2015. The annual report shall contain at least:

12 (1) a description of the activities of its qualifying
13 business program engaged in during the previous calendar
14 year, including both internal and external activities;

15 (2) a summary of purchases and contracts with
16 qualifying businesses, with breakdowns by qualifying
17 business (female, minority, service-disabled veteran),
18 product, and service categories compared with total
19 contract dollars awarded to outside vendors in those
20 categories;

21 (3) an itemization of its qualifying business program
22 expenses, provided in the format required by the
23 Commission;

24 (4) a description of its progress in meeting or
25 exceeding set goals and an explanation of any circumstances
26 that may have caused the participating entity to fall short

1 of its goals;

2 (5) a summary of prime contractor utilization of
3 qualifying business subcontractors; and

4 (6) a description of any efforts made to recruit
5 qualifying business suppliers of products or services in
6 procurement categories where qualifying business
7 utilization has been low, such as legal and financial
8 services and areas that are considered highly technical in
9 nature.

10 Participating entities shall retain all documents and data
11 they rely on in preparing their annual report for the longer of
12 either 3 years or in conformance with the a participating
13 entity's individual document retention policies, and shall
14 provide these documents and data to the Commission upon
15 request.

16 (i) Complaint process. The Commission shall within 90 days
17 after the effective date of this amendatory Act of the 98th
18 General Assembly establish, after hearing and by order, a
19 complaint process that addresses:

20 (A) complaints by business enterprises whose status
21 has been denied by the Clearinghouse, or who have been
22 deverified by the Clearinghouse;

23 (B) third-party complaints challenging the status of a
24 business whose verification is pending or who has already
25 been verified by the Clearinghouse; and

26 (C) the complaint and appeal process.

1 (j) Limitation. Nothing in this Section shall prohibit any
2 participating entity from breaking down specific categories
3 further than specifically required under this Section.

4 (k) Annual plan. Participating entities shall also submit a
5 detailed and verifiable plan for encouraging qualifying
6 business procurement in all categories to the Executive
7 Director by February 1 of each year, beginning in 2015. The
8 annual plan shall contain at least:

9 (A) the short-term, mid-term, and long-term goals set
10 as required by this Section;

11 (B) a description of qualifying business program
12 activities planned for the next calendar year, which shall
13 include both internal and external activities;

14 (C) plans for recruiting qualifying business suppliers
15 of products or services where utilization of qualifying
16 businesses has been low, such as legal and financial
17 services and areas that are considered highly technical in
18 nature;

19 (D) plans for seeking and recruiting qualifying
20 business suppliers of products or services where
21 qualifying business suppliers are currently unavailable;

22 (E) plans for encouraging prime contractors to engage
23 qualifying businesses in subcontracts in all categories
24 that provide subcontracting opportunities; and

25 (F) plans for complying with the qualifying business
26 program guidelines established by the Commission.

1 (1) Commission report. The Commission shall provide a
2 report to the General Assembly on or before January 31, 2014,
3 describing the Commission's and participating entities'
4 progress toward implementing this Section. Thereafter, the
5 Commission shall provide an annual report to the General
6 Assembly, beginning with the first such report on or before May
7 1, 2015, on the progress of activities undertaken by each
8 participating entity to implement this Section. In this report,
9 the Commission shall recommend a program to enhance
10 implementation of the policy declared in this Section, together
11 with recommendations for legislation it deems necessary or
12 desirable to further that policy. This report shall include
13 recommendations to the participating entities for the
14 achievement of maximum results in implementing this Section.

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.".