



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB2959

Introduced 2/19/2021, by Rep. Camille Y. Lilly

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/45

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

LRB102 13339 AWJ 18683 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning local government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (1) Devise a certification procedure to assure that
24 businesses taking advantage of this Act are legitimately
25 classified as businesses owned by minorities, women, or
26 persons with disabilities and a registration procedure to

1 recognize, without additional evidence of Business
2 Enterprise Program eligibility, the certification of
3 businesses owned by minorities, women, or persons with
4 disabilities certified by the City of Chicago, Cook
5 County, or other jurisdictional programs with requirements
6 and procedures equaling or exceeding those in this Act.

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

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

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

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

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

26 (7) Establish a toll free telephone number to

1 facilitate information requests concerning the
2 certification process and pending contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Section 15. Governmental unit compliance plans.

24 (a) Each unit shall file with the Council an annual
25 compliance plan which shall outline the goals of the unit for

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

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

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

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

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

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

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

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

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

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

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

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

25 (ii) a clear demonstration that the number of

1 eligible businesses identified in subdivision (i)
2 above is insufficient to ensure adequate
3 competition;

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

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

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

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

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

1 fiscal years; and

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

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

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

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

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

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

1 competition;

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

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

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

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

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

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

26 (D) Any such class exemption shall not be

1 permitted for a period of more than one year at a time.

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

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

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

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

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

26 (D) a list of businesses owned by minorities,

1 women, and persons with disabilities that the
2 contractor has used in the current and prior fiscal
3 years.

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

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

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

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

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

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

1 (d) Each unit shall post and maintain on its website a
2 database of the following: (i) waivers granted under this
3 Section with respect to contracts under his or her
4 jurisdiction; (ii) a unit's written request for an exemption
5 of an individual contract or an entire class of contracts; and
6 (iii) the Council's written determination granting or denying
7 a request for an exemption of an individual contract or an
8 entire class of contracts. The database, which shall be
9 updated periodically as necessary, shall be searchable by
10 contractor name and by contracting unit.

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

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

24 Section 30. Award of unit contracts.

25 (a) Except as provided in subsection (b), not less than

1 30% of the total dollar amount of unit contracts, as defined by
2 the Secretary of the Council and approved by the Council,
3 shall be established as an aspirational goal to be awarded to
4 businesses owned by minorities, women, and persons with
5 disabilities; provided, however, that of the total amount of
6 all unit contracts awarded to businesses owned by minorities,
7 women, and persons with disabilities pursuant to this Section,
8 contracts representing at least 16% shall be awarded to
9 businesses owned by minorities, contracts representing at
10 least 10% shall be awarded to women-owned businesses, and
11 contracts representing at least 3% shall be awarded to
12 businesses owned by persons with disabilities.

13 The above percentage relates to the total dollar amount of
14 unit contracts during each unit's fiscal year, calculated by
15 examining independently each type of contract for each unit
16 which lets such contracts. Only that percentage of
17 arrangements which represents the participation of businesses
18 owned by minorities, women, and persons with disabilities on
19 such contracts shall be included. Unit contracts subject to
20 the requirements of this Act shall include the requirement
21 that only expenditures to businesses owned by minorities,
22 women, and persons with disabilities that perform a
23 commercially useful function may be counted toward the goals
24 set forth by this Act. Contracts shall include a definition of
25 "commercially useful function" that is consistent with 49 CFR
26 26.55(c).

1 (b) Not less than 30% of the total dollar amount of unit
2 construction contracts is established as an aspirational goal
3 to be awarded to businesses owned by minorities, women, and
4 persons with disabilities; provided that, contracts
5 representing at least 16% of the total dollar amount of unit
6 construction contracts shall be awarded to businesses owned by
7 minorities; contracts representing at least 10% of the total
8 dollar amount of unit construction contracts shall be awarded
9 to women-owned businesses; and contracts representing at least
10 3% of the total dollar amount of unit construction contracts
11 shall be awarded to businesses owned by persons with
12 disabilities.

13 (c) By July 1, 2023, the Department of Central Management
14 Services shall conduct a social scientific study that measures
15 the impact of discrimination on minority and women business
16 development in governmental units in Illinois. By December 1,
17 2024, the Department shall issue a report of its findings and
18 any recommendations on whether to adjust the goals for
19 minority and women participation established in this Act.
20 Copies of this report and the social scientific study shall be
21 filed with the Council, the Governor, and the General
22 Assembly.

23 By December 1, 2030, the Department of Central Management
24 Services shall conduct a new social scientific study that
25 measures the impact of discrimination on minority and women
26 business development in governmental units in Illinois. By

1 June 1, 2032, the Department shall issue a report of its
2 findings and any recommendations on whether to adjust the
3 goals for minority and women participation established in this
4 Act. Copies of this report and the social scientific study
5 shall be filed with the Council, the Governor, and the General
6 Assembly. By December 1, 2032, the Department of Central
7 Management Services Business Enterprise Program shall develop
8 a model for social scientific disparity study sourcing for
9 units to adapt and implement to address regional disparities
10 in public procurement.

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

1 written consent of the unit entering into the contract.

2 (e) Non-construction solicitations that include park and
3 museum district Business Enterprise Program participation
4 goals shall require bidders and offerors to include
5 utilization plans. Utilization plans are due at the time of
6 bid or offer submission. Failure to complete and include a
7 utilization plan, including documentation demonstrating good
8 faith effort when requesting a waiver, shall render the bid or
9 offer nonresponsive.

10 Section 35. Enforcement.

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

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

1 penalty not to exceed any profit acquired as a result of
2 violation, or (iv) any combination of items (i), (ii), or
3 (iii).

4 (2) If the Council concludes that a compliance plan
5 submitted under Section 15 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 Council may recommend that the
9 unit revise its plan to provide additional opportunities
10 for participation by businesses owned by minorities,
11 women, and persons with disabilities. Such recommended
12 revisions may include, but are not limited to, the
13 following:

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

22 (C) Elimination of extended experience or
23 capitalization requirements, when programmatically
24 feasible, to permit participation of businesses owned
25 by minorities, women, and persons with disabilities.

26 (D) Identification of specific proposed contracts

1 as particularly attractive or appropriate for
2 participation by businesses owned by minorities,
3 women, and persons with disabilities, such
4 identification to result from and be coupled with the
5 efforts of subparagraphs (A) through (C).

6 (E) Implementation of those regulations
7 established for the use of the sheltered market
8 process.

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

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

1 Section 40. Annual report.

2 (a) The Council shall post and file an annual report that
3 shall detail the level of achievement toward the goals
4 specified in this Act over the 3 most recent calendar or fiscal
5 years. The annual report shall include, but need not be
6 limited to, the following:

7 (1) a summary detailing expenditures subject to the
8 goals, the actual goals specified, and the goals attained
9 by each unit;

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

12 (3) an analysis of the level of overall goal
13 achievement concerning purchases from minority-owned
14 businesses, women-owned businesses, and businesses owned
15 by persons with disabilities;

16 (4) an analysis of the number of businesses owned by
17 minorities, women, and persons with disabilities that are
18 certified under the program as well as the number of those
19 businesses that received State procurement contracts; and

20 (5) a summary of the number of contracts awarded to
21 businesses with annual gross sales of less than \$100,000;
22 of \$100,000 or more, but less than \$250,000; of \$250,000
23 or more, but less than \$500,000; of \$500,000 or more, but
24 less than \$1,000,000; of \$1,000,000 or more, but less than
25 \$5,000,000; of \$5,000,000 or more, but less than
26 \$10,000,000; and of \$10,000,000 or more.

1 (b) Each annual report must be posted publicly on the
2 website of the unit and filed with the General Assembly and
3 Governor no later than January 31 for units that choose
4 calendar year annual reporting or no later than 30 days
5 following the conclusion of the unit's fiscal year for units
6 that choose fiscal year annual reporting. A unit may extend
7 the due date of its annual report by 15 days by posting a
8 public notice on the website of the entity and filing the
9 notice with the General Assembly and Governor. If an annual
10 report is posted and filed beyond the 15-day extension, units
11 will be issued a fine of \$10,000 by the Council, enforceable by
12 the State Comptroller through withholding or reducing any form
13 of State funding to the entity, including, but not limited to,
14 grants, revenue sharing, and line-item appropriations. The
15 Comptroller shall transfer the amount withheld due to the
16 fines issued under this subsection to the Business Enterprise
17 Program and those amounts shall be used exclusively for
18 maintenance and further development of the Business Enterprise
19 Program.

20 Section 45. Ownership requirement for combination of
21 minority persons, women, or persons with disabilities. When a
22 business is owned at least 51% by any combination of minority
23 persons, women, or persons with disabilities, even though none
24 of the 3 classes alone holds at least a 51% interest, the
25 ownership requirement for purposes of this Act is considered

1 to be met. The certification category for the business is that
2 of the class holding the largest ownership interest in the
3 business. If 2 or more classes have equal ownership interests,
4 the certification category shall be determined by the
5 business.

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

14 Section 55. Posting on website. If a governmental unit
15 does not have a website, any posting requirement by the unit
16 under this Act is satisfied by posting on the county website or
17 on the several county websites in which the unit is located to
18 satisfy the posting requirements of the Act.

19 Section 90. The State Finance Act is amended by changing
20 Section 45 as follows:

21 (30 ILCS 105/45)

22 Sec. 45. Award of capital funds. Each award by grant or

1 loan of State funds of \$250,000 or more for capital
2 construction costs or professional services is conditioned
3 upon the recipient's written certification that the recipient
4 shall comply with the business enterprise program practices
5 for minority-owned businesses, women-owned businesses, and
6 businesses owned by persons with disabilities of the Business
7 Enterprise for Minorities, Women, and Persons with
8 Disabilities Act, the Park and Museum District Business
9 Enterprise Act, ~~(30 ILCS 575/)~~ and the equal employment
10 practices of Section 2-105 of the Illinois Human Rights Act
11 ~~(775 ILCS 5/2-105)~~. This Section, however, does not apply to
12 any grant or loan (i) for which a grant or loan agreement was
13 executed before the effective date of this amendatory Act of
14 the 96th General Assembly, (ii) for which prior-incurred costs
15 are being reimbursed, or (iii) for a federally funded program
16 under which the requirement of this Section would contravene
17 federal law. Each recipient shall submit the written
18 certification and business enterprise program plan for
19 minority-owned businesses, women-owned businesses, and
20 businesses owned by persons with disabilities before signing
21 the relevant grant or loan agreement. Each grant or loan
22 agreement shall include a provision that the grant or loan
23 recipient agrees to comply with the provisions of the Business
24 Enterprise for Minorities, Women, and Persons with
25 Disabilities Act, the Park and Museum District Business
26 Enterprise Act, ~~(30 ILCS 575/)~~ and the equal employment

1 practices of Section 2-105 of the Illinois Human Rights Act
2 ~~(775 ILCS 5/2-105)~~.

3 Each business enterprise program plan shall apply only to
4 the State-funded portion of the relevant capital project and
5 must be in compliance with all certification and other
6 requirements of the Business Enterprise for Minorities, Women,
7 and Persons with Disabilities Act.

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