

HB3889



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3889

Introduced 2/17/2023, by Rep. William "Will" Davis

SYNOPSIS AS INTRODUCED:

30 ILCS 575/4

from Ch. 127, par. 132.604

Amends the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. Provides that notwithstanding any other provision of law, the goals established in this Act should apply to 100% of a State agencies total procurement spending.

LRB103 30517 DTM 56950 b

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 Business Enterprise for Minorities, Women,
5 and Persons with Disabilities Act is amended by changing
6 Section 4 as follows:

7 (30 ILCS 575/4) (from Ch. 127, par. 132.604)

8 (Section scheduled to be repealed on June 30, 2024)

9 Sec. 4. Award of State contracts.

10 (a) Except as provided in subsection (b), not less than
11 30% of the total dollar amount of State contracts, as defined
12 by the Secretary of the Council and approved by the Council,
13 shall be established as an aspirational goal to be awarded to
14 businesses owned by minorities, women, and persons with
15 disabilities; provided, however, that of the total amount of
16 all State contracts awarded to businesses owned by minorities,
17 women, and persons with disabilities pursuant to this Section,
18 contracts representing at least 16% shall be awarded to
19 businesses owned by minorities, contracts representing at
20 least 10% shall be awarded to women-owned businesses, and
21 contracts representing at least 4% shall be awarded to
22 businesses owned by persons with disabilities.

23 (a-5) In addition to the aspirational goals in awarding

1 State contracts set under subsection (a), the Commission shall
2 by rule further establish targeted efforts to encourage the
3 participation of businesses owned by minorities, women, and
4 persons with disabilities on State contracts. Such efforts
5 shall include, but not be limited to, further concerted
6 outreach efforts to businesses owned by minorities, women, and
7 persons with disabilities.

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

23 (b) Not less than 20% of the total dollar amount of State
24 construction contracts is established as an aspirational goal
25 to be awarded to businesses owned by minorities, women, and
26 persons with disabilities; provided that, contracts

1 representing at least 11% of the total dollar amount of State
2 construction contracts shall be awarded to businesses owned by
3 minorities; contracts representing at least 7% of the total
4 dollar amount of State construction contracts shall be awarded
5 to women-owned businesses; and contracts representing at least
6 2% of the total dollar amount of State construction contracts
7 shall be awarded to businesses owned by persons with
8 disabilities.

9 (c) (Blank).

10 (c-5) All goals established under this Section shall be
11 contingent upon the results of the most recent disparity study
12 conducted by the State.

13 (d) Within one year after April 28, 2009 (the effective
14 date of Public Act 96-8), the Department of Central Management
15 Services shall conduct a social scientific study that measures
16 the impact of discrimination on minority and women business
17 development in Illinois. Within 18 months after April 28, 2009
18 (the effective date of Public Act 96-8), the Department shall
19 issue a report of its findings and any recommendations on
20 whether to adjust the goals for minority and women
21 participation established in this Act. Copies of this report
22 and the social scientific study shall be filed with the
23 Governor and the General Assembly.

24 By December 1, 2020, the Department of Central Management
25 Services shall conduct a new social scientific study that
26 measures the impact of discrimination on minority and women

1 business development in Illinois. By June 1, 2022, the
2 Department shall issue a report of its findings and any
3 recommendations on whether to adjust the goals for minority
4 and women participation established in this Act. Copies of
5 this report and the social scientific study shall be filed
6 with the Governor and the General Assembly. By December 1,
7 2022, the Commission on Equity and Inclusion Business
8 Enterprise Program shall develop a model for social scientific
9 disparity study sourcing for local governmental units to adapt
10 and implement to address regional disparities in public
11 procurement.

12 (e) All State contract solicitations that include Business
13 Enterprise Program participation goals shall require bidders
14 or offerors to include utilization plans. Utilization plans
15 are due at the time of bid or offer submission. Failure to
16 complete and include a utilization plan, including
17 documentation demonstrating good faith efforts when requesting
18 a waiver, shall render the bid or offer non-responsive.

19 Except as permitted under this Act or as otherwise
20 mandated by federal regulation, a bidder or offeror whose bid
21 or offer is accepted and who included in that bid a completed
22 utilization plan but who fails to meet the goals set forth in
23 the plan shall be notified of the deficiency by the
24 contracting agency or public institution of higher education
25 and shall be given a period of 10 calendar days to cure the
26 deficiency by contracting with additional subcontractors who

1 are certified by the Business Enterprise Program or by
2 increasing the work to be performed by previously identified
3 vendors certified by the Business Enterprise Program.

4 Deficiencies that may be cured include: (i) scrivener's
5 errors, such as transposed numbers; (ii) information submitted
6 in an incorrect form or format; (iii) mistakes resulting from
7 failure to follow instructions or to identify and adequately
8 document good faith efforts taken to comply with the
9 utilization plan; or (iv) a proposal to use a firm whose
10 Business Enterprise Program certification has lapsed or is not
11 yet recognized. Cure is not authorized if the bidder or
12 offeror submits a blank utilization plan, a utilization plan
13 that shows lack of reasonable effort to complete the form on
14 time, or a utilization plan that states the contract will be
15 self-performed, by a non-certified vendor, without showing
16 good faith efforts or a request for a waiver. All cure activity
17 shall address the deficiencies identified by the purchasing
18 agency and shall require clear documentation, including that
19 of good faith efforts, to address those deficiencies. Any
20 increase in cost to a contract for the addition of a
21 subcontractor to cure a bid's deficiency shall not affect the
22 bid price and shall not be used in the request for an exemption
23 under this Act, and, in no case, shall an identified
24 subcontractor with a Business Enterprise Program certification
25 made under this Act be terminated from a contract without the
26 written consent of the State agency or public institution of

1 higher education entering into the contract. The purchasing
2 agency or public institution of higher education shall make
3 the determination whether the cure is adequate.

4 Vendors certified with the Business Enterprise Program at
5 the time and date submittals are due and who do not submit a
6 utilization plan or have utilization plan deficiencies shall
7 have 10 business days to submit a utilization plan or to
8 correct the utilization plan deficiencies.

9 (f) (Blank).

10 (g) (Blank).

11 (h) State agencies and public institutions of higher
12 education shall notify the Commission on Equity and Inclusion
13 of all non-responsive bids or proposals for State contracts.

14 Notwithstanding any other provision of law, the goals
15 established in this Act should apply to 100% of a State
16 agencies total procurement spending.

17 (Source: P.A. 101-170, eff. 1-1-20; 101-601, eff. 1-1-20;
18 101-657, Article 1, Section 1-5, eff. 1-1-22; 101-657, Article
19 40, Section 40-130, eff. 1-1-22; 102-29, eff. 6-25-21;
20 102-558, eff. 8-20-21; 102-1119, eff. 1-23-23.)