



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1270

Introduced 2/8/2011, by Sen. M. Maggie Crotty

SYNOPSIS AS INTRODUCED:

30 ILCS 500/45-57	
720 ILCS 5/33C-1	from Ch. 38, par. 33C-1
720 ILCS 5/33C-2	from Ch. 38, par. 33C-2
720 ILCS 5/33C-3	from Ch. 38, par. 33C-3
720 ILCS 5/33C-4	from Ch. 38, par. 33C-4
720 ILCS 5/33C-5	from Ch. 38, par. 33C-5
720 ILCS 5/33E-2	from Ch. 38, par. 33E-2
720 ILCS 5/33E-6	from Ch. 38, par. 33E-6

Amends the Illinois Procurement Code and the Criminal Code of 1961. Creates the goal of an annual 5% set-aside of State contracts for award to service-disabled veteran-owned small businesses or other veteran-owned small businesses (now, a task force-recommended set-aside percentage goal applies for service disabled veteran-owned businesses). Requires State agencies to appoint advocates to encourage and coordinate participation in State procurement activities by veteran-owned small businesses. Makes a violation relating to veteran-owned small business participation a Class 2 felony, subject to a civil penalty, and subject to suspension of participation. Establishes criminal penalties for other related offenses. Makes other changes. Effective July 1, 2011.

LRB097 07929 PJG 48046 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning finance.

2 WHEREAS, Generation after generation of Illinois' citizens
3 has served our nation and the State of Illinois by serving in
4 America's armed forces, often at great sacrifice; and military
5 service by their citizenry is fundamental to the continuing
6 freedom that America and the State of Illinois enjoy; and

7 WHEREAS, Accordingly, honoring the service of Illinois'
8 military veterans, past, present, and future, must be a
9 primary, cornerstone commitment of Illinois; and

10 WHEREAS, Inasmuch as the State of Illinois acknowledges the
11 past and ongoing commitment of Illinois' military veterans, it
12 is the intent of this Act to (i) foster economic opportunities
13 for Illinois' military veterans by encouraging the
14 establishment of service-disabled veteran-owned small
15 businesses (SDVOSB) and veteran-owned small businesses (VOSB)
16 and (ii) establish an annual, ongoing, percentage goal for all
17 State agencies' award of goods and services contracts and
18 construction-related State spending that shall be set aside for
19 competitive bidding by verified Illinois SDVOSB and VOSB; and

20 WHEREAS, It is further intended that appropriate
21 administrative procedures for the verification of SDVOSB,
22 VOSB, bid solicitations, awards, and all matters pertaining
23 thereto shall be established and implemented by the Department
24 of Central Management Services; therefore

25 **Be it enacted by the People of the State of Illinois,**

1 **represented in the General Assembly:**

2 Section 5. The Illinois Procurement Code is amended by
3 changing Section 45-57 as follows:

4 (30 ILCS 500/45-57)

5 Sec. 45-57. Veterans ~~Disabled veterans~~.

6 (a) Set-aside goal. It is the goal of the State to promote
7 and encourage the continued economic development of small
8 businesses owned and controlled by qualified ~~service-disabled~~
9 veterans and that qualified service-disabled ~~service-disabled~~
10 veteran-owned small businesses (referred to as SDVOSB ~~SDVOB~~)
11 and veteran-owned small businesses (referred to as VOSB)
12 participate in the State's procurement process as both prime
13 contractors and subcontractors. The State shall set aside 5% ~~A~~
14 ~~Task Force shall be established, appointed by the Directors or~~
15 ~~Secretaries of, and made up of representatives of, the Illinois~~
16 ~~Department of Veterans' Affairs, the Illinois Department of~~
17 ~~Transportation, the Department of Central Management Services,~~
18 ~~the Business Enterprise Program, and the Business Enterprise~~
19 ~~Council. The Department of Central Management Services shall~~
20 ~~provide administrative support to the Task Force. The purpose~~
21 ~~of this Task Force shall be to determine the appropriate~~
22 ~~percentage goal for award~~ each fiscal year of the State's total
23 expenditures for contracts awarded under this Code for award to
24 SDVOSB and VOSB ~~to SDVOB~~. That portion of a contract under

1 which the contractor subcontracts with a SDVOSB or VOSB ~~SDVOB~~
2 may be counted toward the goal of this subsection. The
3 Department of Central Management Services shall adopt rules to
4 implement compliance with this subsection by all State
5 agencies. ~~In making that determination the Task Force shall~~
6 ~~consult with statewide veterans' service organizations and the~~
7 ~~business community, including businesses owned by qualified~~
8 ~~disabled veterans. The Task Force shall submit its report to~~
9 ~~the General Assembly concerning its recommendations regarding~~
10 ~~the appropriate percentage goal for award each fiscal year of~~
11 ~~the State's total expenditures for contracts awarded under this~~
12 ~~Code to qualified service disabled veterans no later than 90~~
13 ~~days after the effective date of this amendatory Act of the~~
14 ~~96th General Assembly.~~

15 (b) Fiscal year reports. ~~By~~ ~~Once the appropriate goal is~~
16 ~~established, then by~~ each September 1, each chief procurement
17 officer shall report to the Department of Central Management
18 Services on all of the following for the immediately preceding
19 fiscal year, and by each October 1 the Department of Central
20 Management Services shall compile and report that information
21 to the General Assembly:

22 (1) The total number of VOSB, and the number of SDVOSB,
23 ~~SDVOB~~ who submitted bids ~~a bid~~ for contracts ~~a contract~~
24 under this Code.

25 (2) The total number of VOSB, and the number of SDVOSB,
26 ~~SDVOB~~ who entered into contracts with the State under this

1 Code and the total value of those contracts.

2 (c) Yearly review and recommendations. Each year, each
3 chief procurement officer shall review the progress of all
4 State agencies under its jurisdiction in meeting the goal
5 described in subsection (a), with input from statewide
6 veterans' service organizations and from the business
7 community, including businesses owned by qualified ~~disabled~~
8 veterans, and shall make recommendations to be included in the
9 Department of Central Management Services' report to the
10 General Assembly regarding continuation, increases, or
11 decreases of the percentage goal. The recommendations shall be
12 based upon the number of businesses that are owned by qualified
13 ~~disabled~~ veterans and on the continued need to encourage and
14 promote businesses owned by qualified ~~disabled~~ veterans.

15 (d) Governor's recommendations. To assist the State in
16 reaching the goal described in subsection (a), the Governor
17 shall recommend to the General Assembly changes in programs to
18 assist businesses owned by qualified ~~disabled~~ veterans.

19 (e) Definitions. As used in this Section:

20 ~~"Business" means a business that has average annual gross~~
21 ~~sales over the 3 most recent calendar years of less than~~
22 ~~\$31,000,000 as evidenced by the federal income tax returns of~~
23 ~~the business.~~

24 "Control" means the exclusive, ultimate, majority, or sole
25 control of the business, including but not limited to capital
26 investment and all other financial matters, property,

1 acquisitions, contract negotiations, legal matters,
2 officer-director-employee selection and comprehensive hiring,
3 operation responsibilities, cost-control matters, income and
4 dividend matters, financial transactions, and rights of other
5 shareholders or joint partners. Control shall be real,
6 substantial, and continuing, not pro forma. Control shall
7 include the power to direct or cause the direction of the
8 management and policies of the business and to make the
9 day-to-day as well as major decisions in matters of policy,
10 management, and operations. Control shall be exemplified by
11 possessing the requisite knowledge and expertise to run the
12 particular business.

13 "Qualified service-disabled ~~service-disabled~~ veteran"
14 means a veteran who has been found to have a service-connected
15 disability by the United States Department of Veterans Affairs
16 or the United States Department of Defense.

17 "Qualified service-disabled veteran-owned small business"
18 or "SDVOSB" means a small business (i) that is at least 51%
19 unconditionally owned by one or more qualified
20 service-disabled veterans living in Illinois or, in the case of
21 a corporation, at least 51% of the stock of which is
22 unconditionally owned by one or more qualified
23 service-disabled veterans living in Illinois; (ii) the
24 management and daily business operations of which are
25 controlled by one or more of the qualified service-disabled
26 veterans who own it; (iii) that has its home office in

1 Illinois; and (iv) for which items (i) through (iii) are
2 factually verified annually by the Department of Central
3 Management Services.

4 "Qualified veteran-owned small business" or "VOSB" means a
5 small business (i) that is at least 51% unconditionally owned
6 by one or more qualified veterans living in Illinois or, in the
7 case of a corporation, at least 51% of the stock of which is
8 unconditionally owned by one or more qualified veterans living
9 in Illinois; (ii) the management and daily business operations
10 of which are controlled by one or more of the qualified
11 veterans who own it; (iii) that has its home office in
12 Illinois; and (iv) for which items (i) through (iii) are
13 factually verified annually by the Department of Central
14 Management Services.

15 ~~"Qualified disabled veteran-owned business" means a~~
16 ~~business entity that is at least 51% owned by one or more~~
17 ~~qualified disabled veterans, or in the case of a corporation,~~
18 ~~at least 51% of the stock of which is owned by one or more~~
19 ~~qualified disabled veterans; and the management and daily~~
20 ~~business operations of which are controlled by one or more of~~
21 ~~the qualified disabled veterans who own it.~~

22 "Service-connected disability" means a disability incurred
23 in the line of duty in the active military, naval, or air
24 service as described in 38 U.S.C. 101(16).

25 "Small business" means any for-profit business in
26 Illinois, including but not limited to any sole proprietorship,

1 partnership, corporation, limited liability company, joint
2 venture, association, or cooperative, that (i) has, including
3 its affiliates, fewer than 500 full-time employees or (ii) is
4 determined by the Department of Central Management Services to
5 be not dominant in its field.

6 "Veteran" means a person who served in the active military,
7 naval, or air service and who was discharged or released from
8 his or her service under conditions other than dishonorable.

9 (f) Certification program. The Illinois Department of
10 Veterans' Affairs and the Department of Central Management
11 Services Business Enterprise Program shall work together to
12 devise a certification procedure to assure that businesses
13 taking advantage of this Section ~~Act~~ are legitimately
14 classified as qualified service-disabled ~~service-disabled~~
15 veteran-owned small businesses or qualified veteran-owned
16 small businesses.

17 (g) VOSBA network. The Director of Central Management
18 Services shall administer a State network of Veteran-Owned
19 Small Business Advocates (VOSBA), who shall report to the
20 Director's appointee and shall do all of the following:

21 (1) Oversee, promote, and coordinate the VOSBA
22 program.

23 (2) Manage appointment and oversight of all VOSBA
24 members.

25 (3) Submit to the Director's appointee an annual report
26 to document the VOSBA program.

1 (4) Coordinate with State agencies and with existing
2 and potential veteran-owned small businesses to achieve
3 the goal described in subsection (a).

4 (h) State agency VOSBA. Each State agency shall appoint and
5 support at least one State agency VOSBA. The Department of
6 Central Management Services shall maintain an online database
7 of all VOSBA, including their telephone numbers, facsimile
8 numbers, electronic mail addresses, and postal addresses. Each
9 State agency VOSBA shall do all of the following:

10 (1) Assist certified veteran-owned small businesses in
11 participating in the State agency's contracting process.

12 (2) Assist the State agency's State purchasing officer
13 in seeking veteran-owned small businesses to participate
14 in the State agency's contract and procurement activities
15 by any feasible means, including without limitation by
16 performing outreach efforts to recruit veteran-owned small
17 businesses to be prime contractors or subcontractors on
18 contracts proposed by the State agency that require
19 veteran-owned small business participation.

20 (3) Meet regularly with the contract and procurement
21 staffs of his or her State agency to disseminate
22 information about the veteran-owned small business
23 set-aside program.

24 (4) Advocate for the veteran-owned small businesses
25 that are used as the State agency's contractors or
26 subcontractors.

1 (5) Report to the Department of Central Management
2 Services regarding any violation of this Section.

3 (6) Coordinate and meet, on a regular basis, with the
4 Illinois Department of Veterans' Affairs in an effort to
5 meet the goal described in subsection (a).

6 (i) Penalties.

7 (1) Administrative penalties. The Department of
8 Central Management Services shall suspend any person who
9 commits a violation of Article 33C or subsection (d) of
10 Section 33E-6 of the Criminal Code of 1961 relating to this
11 Section from bidding on, or participating as a contractor,
12 subcontractor, or supplier in, any State contract or
13 project for a period of not less than 3 years, and, if the
14 person is certified as a service-disabled veteran-owned
15 small business or a veteran-owned small business, then the
16 Department shall revoke the business' certification for a
17 period of not less than 3 years. An additional or
18 subsequent violation shall extend the periods of
19 suspension and revocation for a period of not less than 5
20 years. The suspension and revocation shall apply to the
21 principals of the business and any subsequent business
22 formed or financed by, or affiliated with, those
23 principals.

24 (2) Reports of violations. Each State agency shall
25 report any alleged violation of Article 33C or subsection
26 (d) of Section 33E-6 of the Criminal Code of 1961 relating

1 to this Section to the Department of Central Management
2 Services. The Department of Central Management Services
3 shall subsequently report all such alleged violations to
4 the Attorney General, who shall determine whether to bring
5 a civil action against any person for the violation.

6 (3) List of suspended persons. The Department of
7 Central Management Services shall monitor the status of all
8 reported violations of Article 33C or subsection (d) of
9 Section 33E-6 of the Criminal Code of 1961 relating to this
10 Section and shall maintain and make available to all State
11 agencies a central listing of all persons that committed
12 violations resulting in suspension.

13 (4) Use of suspended persons. During the period of a
14 person's suspension under paragraph (1) of this
15 subsection, a State agency shall not enter into any
16 contract with that person or with any contractor using the
17 services of that person as a subcontractor.

18 (5) Duty to check list. Each State agency shall check
19 the central listing provided by the Department of Central
20 Management Services under paragraph (3) of this subsection
21 to verify that a person being awarded a contract by that
22 State agency, or to be used as a subcontractor or supplier
23 on a contract being awarded by that State agency, is not
24 under suspension pursuant to paragraph (1) of this
25 subsection.

26 (Source: P.A. 96-96, eff. 1-1-10.)

1 Section 10. The Criminal Code of 1961 is amended by
2 changing Sections 33C-1, 33C-2, 33C-3, 33C-4, 33C-5, 33E-2, and
3 33E-6 as follows:

4 (720 ILCS 5/33C-1) (from Ch. 38, par. 33C-1)

5 Sec. 33C-1. Fraudulently obtaining or retaining
6 certification. A person who, in the course of business,
7 fraudulently obtains or retains certification as a minority
8 owned business, ~~or~~ female owned business, service-disabled
9 veteran-owned small business, or veteran-owned small business
10 commits a Class 2 felony.

11 (Source: P.A. 84-192.)

12 (720 ILCS 5/33C-2) (from Ch. 38, par. 33C-2)

13 Sec. 33C-2. Willfully making a false statement. A person
14 who, in the course of business, willfully makes a false
15 statement whether by affidavit, report or other
16 representation, to an official or employee of a State agency or
17 the Minority and Female Business Enterprise Council for the
18 purpose of influencing the certification or denial of
19 certification of any business entity as a minority owned
20 business, ~~or~~ female owned business, service-disabled
21 veteran-owned small business, or veteran-owned small business
22 commits a Class 2 felony.

23 (Source: P.A. 84-192.)

1 (720 ILCS 5/33C-3) (from Ch. 38, par. 33C-3)

2 Sec. 33C-3. Willfully obstructing or impeding an official
3 or employee of any agency in his investigation. Any person who,
4 in the course of business, willfully obstructs or impedes an
5 official or employee of any State agency or the Minority and
6 Female Business Enterprise Council who is investigating the
7 qualifications of a business entity which has requested
8 certification as a minority owned business, ~~or a~~ female owned
9 business, service-disabled veteran-owned small business, or
10 veteran-owned small business commits a Class 2 felony.

11 (Source: P.A. 84-192.)

12 (720 ILCS 5/33C-4) (from Ch. 38, par. 33C-4)

13 Sec. 33C-4. Fraudulently obtaining public moneys reserved
14 for disadvantaged business enterprises. Any person who, in the
15 course of business, fraudulently obtains public moneys
16 reserved for, or allocated or available to, ~~minority owned~~
17 businesses, ~~or~~ female owned businesses, service-disabled
18 veteran-owned small businesses, or veteran-owned small
19 businesses commits a Class 2 felony.

20 (Source: P.A. 84-192.)

21 (720 ILCS 5/33C-5) (from Ch. 38, par. 33C-5)

22 Sec. 33C-5. Definitions. As used in this Article, "minority
23 owned business", "female owned business", "State agency" with

1 respect to minority owned businesses and female owned
2 businesses, and "certification" with respect to minority owned
3 businesses and female owned businesses shall have the meanings
4 ascribed to them in Section 2 of the Business Enterprise for
5 Minorities, Females, and Persons with Disabilities Act. As used
6 in this Article, "service-disabled veteran-owned small
7 business", "veteran-owned small business", "State agency" with
8 respect to service-disabled veteran-owned small businesses and
9 veteran-owned small businesses, and "certification" with
10 respect to service-disabled veteran-owned small businesses and
11 veteran-owned small businesses have the same meanings as in
12 Section 45-57 of the Illinois Procurement Code.

13 (Source: P.A. 92-16, eff. 6-28-01.)

14 (720 ILCS 5/33E-2) (from Ch. 38, par. 33E-2)

15 Sec. 33E-2. Definitions. In this Act:

16 (a) "Public contract" means any contract for goods,
17 services or construction let to any person with or without bid
18 by any unit of State or local government.

19 (b) "Unit of State or local government" means the State,
20 any unit of state government or agency thereof, any county or
21 municipal government or committee or agency thereof, or any
22 other entity which is funded by or expends tax dollars or the
23 proceeds of publicly guaranteed bonds.

24 (c) "Change order" means a change in a contract term other
25 than as specifically provided for in the contract which

1 authorizes or necessitates any increase or decrease in the cost
2 of the contract or the time to completion.

3 (d) "Person" means any individual, firm, partnership,
4 corporation, joint venture or other entity, but does not
5 include a unit of State or local government.

6 (e) "Person employed by any unit of State or local
7 government" means any employee of a unit of State or local
8 government and any person defined in subsection (d) who is
9 authorized by such unit of State or local government to act on
10 its behalf in relation to any public contract.

11 (f) "Sheltered market" has the meaning ascribed to it in
12 Section 8b of the Business Enterprise for Minorities, Females,
13 and Persons with Disabilities Act; except that, with respect to
14 State contracts set aside for award to service-disabled
15 veteran-owned small businesses and veteran-owned small
16 businesses pursuant to Section 45-57 of the Illinois
17 Procurement Code, "sheltered market" means procurements
18 pursuant to that Section.

19 (g) "Kickback" means any money, fee, commission, credit,
20 gift, gratuity, thing of value, or compensation of any kind
21 which is provided, directly or indirectly, to any prime
22 contractor, prime contractor employee, subcontractor, or
23 subcontractor employee for the purpose of improperly obtaining
24 or rewarding favorable treatment in connection with a prime
25 contract or in connection with a subcontract relating to a
26 prime contract.

1 (h) "Prime contractor" means any person who has entered
2 into a public contract.

3 (i) "Prime contractor employee" means any officer,
4 partner, employee, or agent of a prime contractor.

5 (i-5) "Stringing" means knowingly structuring a contract
6 or job order to avoid the contract or job order being subject
7 to competitive bidding requirements.

8 (j) "Subcontract" means a contract or contractual action
9 entered into by a prime contractor or subcontractor for the
10 purpose of obtaining goods or services of any kind under a
11 prime contract.

12 (k) "Subcontractor" (1) means any person, other than the
13 prime contractor, who offers to furnish or furnishes any goods
14 or services of any kind under a prime contract or a subcontract
15 entered into in connection with such prime contract; and (2)
16 includes any person who offers to furnish or furnishes goods or
17 services to the prime contractor or a higher tier
18 subcontractor.

19 (l) "Subcontractor employee" means any officer, partner,
20 employee, or agent of a subcontractor.

21 (Source: P.A. 92-16, eff. 6-28-01.)

22 (720 ILCS 5/33E-6) (from Ch. 38, par. 33E-6)

23 Sec. 33E-6. Interference with contract submission and
24 award by public official. (a) Any person who is an official of
25 or employed by any unit of State or local government who

1 knowingly conveys, either directly or indirectly, outside of
2 the publicly available official invitation to bid, pre-bid
3 conference, solicitation for contracts procedure or such
4 procedure used in any sheltered market procurement adopted
5 pursuant to law or ordinance by that unit of government, to any
6 person any information concerning the specifications for such
7 contract or the identity of any particular potential
8 subcontractors, when inclusion of such information concerning
9 the specifications or contractors in the bid or offer would
10 influence the likelihood of acceptance of such bid or offer,
11 commits a Class 4 felony. It shall not constitute a violation
12 of this subsection to convey information intended to clarify
13 plans or specifications regarding a public contract where such
14 disclosure of information is also made generally available to
15 the public.

16 (b) Any person who is an official of or employed by any
17 unit of State or local government who, either directly or
18 indirectly, knowingly informs a bidder or offeror that the bid
19 or offer will be accepted or executed only if specified
20 individuals are included as subcontractors commits a Class 3
21 felony.

22 (c) It shall not constitute a violation of subsection (a)
23 of this Section where any person who is an official of or
24 employed by any unit of State or local government follows
25 procedures established (i) by federal, State or local minority
26 or female owned business enterprise programs or (ii) pursuant

1 to Section 45-57 of the Illinois Procurement Code.

2 (d) Any bidder or offeror who is the recipient of
3 communications from the unit of government which he reasonably
4 believes to be proscribed by subsections (a) or (b), and fails
5 to inform either the Attorney General or the State's Attorney
6 for the county in which the unit of government is located,
7 commits a Class A misdemeanor.

8 (e) Any public official who knowingly awards a contract
9 based on criteria which were not publicly disseminated via the
10 invitation to bid, when such invitation to bid is required by
11 law or ordinance, the pre-bid conference, or any solicitation
12 for contracts procedure or such procedure used in any sheltered
13 market procurement procedure adopted pursuant to statute or
14 ordinance, commits a Class 3 felony.

15 (f) It shall not constitute a violation of subsection (a)
16 for any person who is an official of or employed by any unit of
17 State or local government to provide to any person a copy of
18 the transcript or other summary of any pre-bid conference where
19 such transcript or summary is also made generally available to
20 the public.

21 (Source: P.A. 86-150.)

22 Section 99. Effective date. This Act takes effect July 1,
23 2011.