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# Legal Updates and Compliance Refreshers

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# Agenda

- Introduction
- Upcoming Laws Taking Effect or Recently Effective
- Compliance Updates and Refreshers
  - Business Enterprise Program Act Waiver Requirements
  - Illinois Public Construction Bond Act, effective January 1, 2024
- Questions and Answers

# Introductions



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**Upcoming Laws  
Taking Effect or  
Recently Effective**

# Truth in Taxation Act Amendment - P.A. 103-1018

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- Effective August 9, 2024
- Requires new notice requirements for taxing districts, which are required to estimate the amount of money needed from property taxes at least 20 days prior to adoption of their final annual levy. If that amount is more than 105% of the prior tax year's extensions, the taxing district must give public notice and hold a public hearing on the levy
- Mandates that taxing bodies that maintain a website to post notice on the website for a period of not less than 30 consecutive days and that the notice be posted on or near the top of the website's homepage or on a page accessible through a direct link from the homepage
- The Act still requires that such notice be published in a newspaper of general circulation in the district "not more than 14 days nor less than 7 days prior to the date of the public hearing," and contains detailed requirements for the form and content of that notice. Thus, a taxing district with a website must now be mindful of the 20-day period for estimating their levy, the 7-to-14 day newspaper notice period, and the new 30-day website notice period

# Refugee Transcripts- P.A. 103-0913

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- Effective January 1, 2025
- Mandates that each public institution of higher education either pay on behalf of a refugee or reimburse a refugee for any transcript evaluation fees required during the admission process. This change is designed to remove financial barriers and facilitate the integration of refugees into the educational system
- Requires public institutions of higher education to pay on behalf of a refugee any transcript evaluation fees that the institution mandates during the admission process or reimburse the refugee for any such fees they have paid

# Enrollment Reporting Data - P.A. 103-1020

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- Effective August 9, 2024
- Mandates detailed reporting requirements for higher education institutions, including community colleges, on or before October 1 of each year
- Information required to be reported includes:
  - Number of students (part-time and full-time) enrolled year over year
  - Number of students enrolled in online learning and in-person learning year over year
  - Rolling average of students enrolled over the previous five academic years

# Illinois Human Rights Act Amendments

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- Effective January 1, 2025
- Extends statute of limitations to bring a charge under the IHRA from 300 days from the date of an alleged violation to two years (consistent with the Equal Employment Opportunity Commission requirements under federal law).
- The IHRA will prohibit discrimination or harassment based on “family responsibilities,” which is defined as “an employee’s actual or perceived provision of personal care to a family member.”
- The IHRA, which already prohibits discrimination based on pregnancy, will also prohibit discrimination based on “reproductive health decisions,” meaning a person’s decisions regarding their use of: contraception; fertility or sterilization care; assisted reproductive technologies; miscarriage management care; healthcare related to the continuation or termination of pregnancy; or prenatal, intranatal, or postnatal care.



# Illinois Personnel Record Review Act Amendments

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- Effective January 1, 2025
- Employees able to request records relating to their benefits, employee handbooks, employee policies and procedures and employment agreements.
- Documents not produced cannot later be used in subsequent litigation.
- Employees will be permitted to make two requests per calendar year.
- If an employee files a complaint about their employer's failed response to a PRRA request and the Illinois Department of Labor fails to resolve the complaint within 180 days, the employee will be able to file a lawsuit in a state court and be entitled to recovery of costs and attorney's fees.

# Dependent Parent Coverage - P.A. 103-0700

- Effective January 1, 2025
- Provides that a group or individual policy of accident and health insurance issued, amended or renewed after January 1, 2026 that provides for dependent coverage shall make that dependent coverage available to the parent or stepparent of the insured if the parent or stepparent meets the definition of a qualifying relative under federal law or lives/resides within the policy's service area



# Miscarriage/Stillbirth Coverage - P.A. 103-0701

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- Effective January 1, 2026
- Requires coverage of medically necessary treatment of mental, emotional, nervous or substance abuse disorder or condition for all individuals who have experienced a miscarriage or stillbirth to the same extent and cost-sharing as *any other medical condition* covered under the policy



# Pregnancy Tests - P.A. 103-870

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- Effective January 1, 2025
- Requires group or individual policies of accident and health insurance, or managed care plan, that is amended, delivered, issued or renewed after January 1, 2025, to provide coverage for at-home, urine-based pregnancy tests that are prescribed to the covered persons, regardless of whether such tests are available over the counter

# Fertility and Menopause Coverage - P.A. 103-751

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- Effective August 2, 2024
- Provides that no group health insurance policy that provides pregnancy-related benefits may be issued, amended, delivered or renewed on or after January 1, 2026 unless the policy contains coverage for the diagnosis and treatment of infertility, including specified procedures, as well as annual menopause health visits for individuals age 45 or older

# Equal Pay Act (Pay Scale) - P.A. 103-0539

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- Effective January 1, 2025
- Provides that it is unlawful for an employer with 15 or more employees to fail to include the pay scale for a position in any job posting
- Applies to third-party postings as well



# Prevailing Wage (Power Washing) - P.A. 103-0346

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- Effective January 1, 2024
- Provides that the definition of “public works” includes power washing projects by a public body paid for wholly or in part out of public funds (regardless of whether the pressure washing requires abrasives or chemicals)



# Pay Stubs - P.A. 103-0953

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- Effective January 1, 2025
- Requires all employers to provide an employee with a copy of the employee's pay stub upon the employee's request up to twice in one year or within a year of separation
- Provides that an employer who furnishes electronic pay stubs that cannot be accessed for at least a full year after separation to provide all the outgoing employee a copy of all pay stubs



# Public Funds Investment Act - P.A.103-0880

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- Effective January 1, 2025
- Amends the Public Funds Investment Act to allow a public agency to adopt an ordinance or resolution that would allow for the investment of public funds in instruments that are not specifically listed as authorized investments
- Investments must still comply with other laws and investment policies



# Compliance Updates and Reminders

# Overview of Business Enterprise Act

- Applies to “state contracts” and “state construction contracts” entered into “by the State, any agency or department thereof, or any public institution of higher education, including community college districts”
- Not less than 30% of the total dollar amount of “state contracts” awarded by community colleges is established as an “**aspirational goal**” (with varying percentages for disadvantaged business owners)
- Not less than 20% of the total dollar amount of “state construction contracts” awarded by community colleges is established as an “**aspirational goal**” (with varying percentages for disadvantaged business owners)

# What “Aspirational Goals” are Specifically Established by the Business Enterprise Act?

| Type of Contract                | Total % of MFD* Contracts | Minority-Owned Businesses | Female-Owned Businesses | Persons with Disability Owned Businesses |
|---------------------------------|---------------------------|---------------------------|-------------------------|--|
| State Contracts                 | 30%                       | 16%                       | 10%                     | 4%                                       |
| State Construction Contracts    | 20%                       | 11%                       | 7%                      | 2%                                       |
| Professional Services Contracts | 20%                       | 11%                       | 7%                      | 2%                                       |

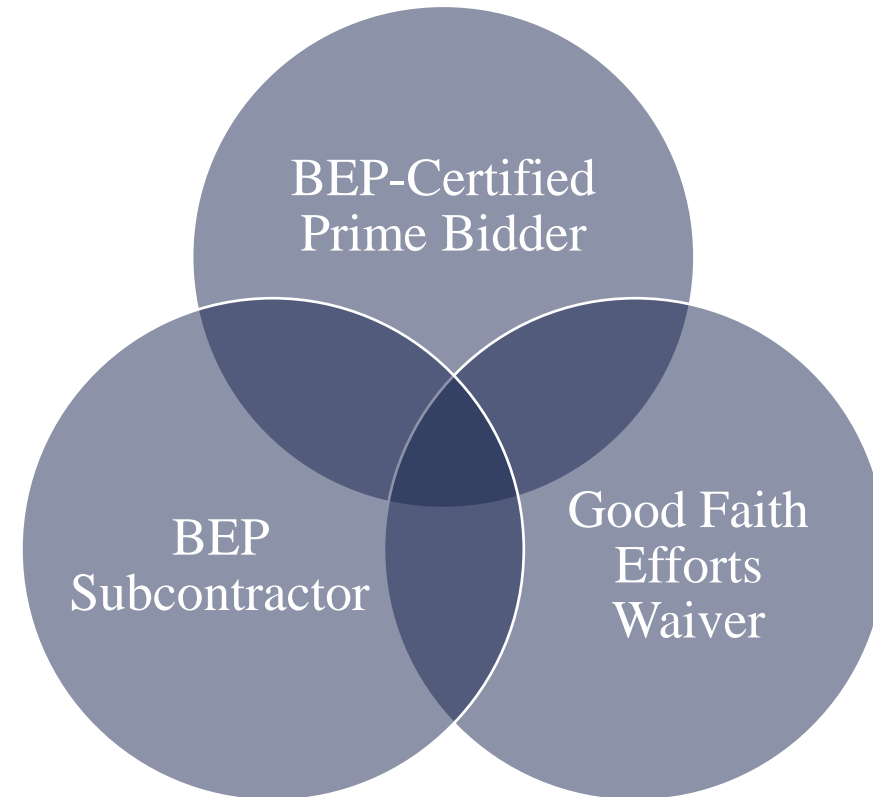
\*MFD – Businesses owned by minorities, females, and persons with disabilities

# Goal Setting and Utilization Plans

- Not all contracts that are let must include BEP participation goals, and each contract should include a goal reasonable to its scope
- All contracts that include BEP participation goals must require bidders or offerors to include BEP utilization plans along with their bid
- Failure to complete and include a utilization plan, *including documentation demonstrating good faith efforts when requesting a waiver, shall render the bid or offer non-responsive*
- A bidder or offeror whose bid or offer is accepted and who completed a utilization plan but who fails to request a waiver must cure the deficiency within 10 days or request a waiver
- Any increase in cost to a contract for the addition of a subcontractor to cure a bid's deficiency shall not affect the bid price and shall not be used in the request for an exemption under this Act

# Utilization Plans and Identifying BEP Diversity

- Means for prime bidder to demonstrate how the bidder will meet the BEP diversity goal
  - Vendor Commitment
  - Subcontractor Participation Agreement/Letter of Intent
  - Good Faith Efforts/Waiver
  - Terms and Conditions



# Standardizing and Leveraging Utilization Plans as Part of BEP Process

## STATE OF ILLINOIS BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN

### UTILIZATION PLAN PART I: COMMITMENT AND SIGNATURE

The undersigned Vendor submits this Utilization Plan as part of its bid or offer in accordance with the requirements of solicitation # \_\_\_\_\_ and the requirements of the Business Enterprise Program (BEP). The solicitation contains a goal that \_\_\_\_\_% of the value of the contract will be performed by BEP certified vendors as defined by the Commission on Equity and Inclusion (CEI). The solicitation contains a goal that \_\_\_\_\_% of the value of the contract will be performed by Veteran Small Business certified vendors (VSB) as defined by the Commission on Equity and Inclusion.

The Utilization Plan consists of the following parts, each of which must be completed and returned as instructed in this Commitment. No alterations of these forms will be permitted. One set of Parts I-IV must be completed for the BEP goal and one set must be completed for the VSB goal:

- Part I: Vendor Commitment (with Signature)
- Part II: Subcontractor Participation Agreement(s)
- Part III: Good Faith Effort (Checklist, Contact Log, and Documentation)
- Part IV: Utilization Plan Terms and Conditions (These terms and conditions apply to all options below but do not need to be returned.)

The undersigned Vendor acknowledges that (1) Vendor has read, understands, and agrees to BEP policies, rules, and procedures as defined in the Terms and Conditions in Part IV of this document, and (2) Vendor hereby affirms (select one of the options below):

- Vendor is a BEP certified firm and plans to fully meet the goal through self-performance or Vendor is a VSB certified firm and plans to fully meet the VSB goal through self-performance. (Return this Part I Signature Page only.)
- Vendor has identified BEP and VSB certified subcontractor(s) to fully meet the established BEP and VSB goals. Only BEP certified subcontractors may be used to meet the BEP goal and only VSB certified subcontracts may be used to meet the VSB goal if Vendor intends to meet the established goal in whole or in part through the use of subcontractors. Subcontractors that are both BEP and VSB certified may only be counted towards the BEP or VSB goal. (Return this Part I Signature page and signed Part II Subcontractor Participation Agreement(s) to equal or exceed the goal.)
- Vendor cannot fully meet the goal but has made Good Faith Effort towards meeting the goal, and hereby requests a waiver or reduction of the goal to \_\_\_\_\_% based on the completed Good Faith Effort. (If requesting a waiver, return this Part I Signature Page and completed Part III Good Faith Effort. If requesting a reduction, return this Part I Signature Page, Part II signed

# Determining Good Faith Efforts

- Determinations of a prime bidder's good faith efforts should include:
  - a clear demonstration that the contractor selected portions of the work to be performed by eligible businesses owned by minorities, women, and persons with disabilities, solicited through all reasonable and available means eligible businesses, and negotiated in good faith with interested eligible businesses
  - documentation demonstrating that businesses owned by minorities, women, and persons with disabilities are not rejected as being unqualified without sound reasons based on a thorough investigation of their capabilities
  - documentation demonstrating that the contract proposals being offered by businesses owned by minorities, women, and persons with disabilities are excessive or unreasonable
  - A list of businesses owned by minorities, women, and persons with disabilities that the contractor has used in the current and prior fiscal years



# Curing Utilization Plan Deficiencies

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- Deficiencies that may be cured include scrivener's errors; information submitted in an incorrect form or format; mistakes resulting from failure to follow instructions or to identify and adequately document good faith efforts; or a proposal to use a firm whose Business Enterprise Program certification has lapsed
- Community colleges **must notify** the Commission on Equity and Inclusion of all non-responsive bids or proposals for state contracts
- Community colleges may not allow a cure if a utilization plan is submitted that “shows a lack of reasonable effort to complete the form on time”
- Community colleges may not allow a cure if the utilization plan that states the contract will be self-performed, by a non-certified vendor, without showing good faith efforts or a request for a waiver

# Is the Notification Requirement New?

**Yes and No.** The Business Enterprise Act provided the Council with the sole authority to determine contractor goal waivers prior to the award of a contract. However, that authority was delegated by the Council by resolution on July 12, 2013. Effective July 1, 2024, the Council rescinded the delegation of authority. As a result:

- The BEP now has "the responsibility of determining vendor goal waiver requests"
- Illinois public institutions of higher education shall be responsible for evaluating the good faith efforts made by vendors in support of goal waiver requests
- These evaluations shall be made in accordance with 30 ILCS 575/7(3) and 44 Ill. Adm. Code 30.91
- Illinois public institutions of higher education shall provide BEP with determination recommendations based on their good faith effort evaluations

# The Business Enterprise Council's New Resolution Explained?

## The BEP Goal Waiver Review and Determination Process

The BEP Council delegated its waiver authority (Section 7(3) of the BEP Act) to BEP compliance unit staff in its bylaws. As a result, the BEP compliance unit handles waiver reviews, and that process is denoted below. The current process is identified in the first row. The process will change on July 1<sup>st</sup> when the new diversity certification and compliance monitoring system is ready, and will also be updated again when the BEP compliance unit adds three more staff at the end of this calendar year.

| Process Name   | Projected Timeline            | Process Steps   |
|--|-------------------------------|---|
| GFE Waiver Review Process w/o VIVA system*                               | Now – July 1, 2024            | <ol style="list-style-type: none"> <li>56** purchasing entities are distributed amongst 5 BEP compliance officers.</li> <li>The purchasing entity submits the vendor's U-Plan GFE waiver request to its assigned BEP compliance officer.</li> <li>The BEP compliance officer reviews the U-Plan with the GFE waiver request.</li> <li>Within 10 business days of receipt, the BEP compliance officer makes a GFE waiver approval/denial determination*** on the U-Plan Review Form and sends it to the purchasing entity.</li> </ol>  |
| GFE Waiver Review Process w/ VIVA system                                 | July 1, 2024, and beyond      | <ol style="list-style-type: none"> <li>108**** purchasing entities are distributed amongst 5 BEP compliance officers.</li> <li>CDB/PIHE evaluates the vendor's U-Plan GFE waiver request using its prescribed internal review process.</li> <li>Purchasing entities other than CDB and public institutions of higher education (PIHEs) submit the vendor's U-Plan GFE waiver request to its assigned BEP compliance officer.</li> <li>CDB/PIHE submits its approval/denial recommendation and the vendor's U-Plan GFE waiver request to its assigned BEP compliance officer using the VIVA system.</li> <li>The BEP compliance officer reviews the purchasing entity's U-Plan with the GFE waiver request.</li> <li>The BEP compliance officer reviews CDB/PIHE's recommendation and the U-Plan with the GFE waiver request.</li> <li>Within 10 business days of receipt, the BEP compliance officer makes a GFE waiver approval/denial determination in the VIVA system.*****</li> </ol> |
| GFE Waiver Review Process w/ VIVA system and additional compliance staff | December 31, 2024, and beyond | <ol style="list-style-type: none"> <li>108 purchasing entities are distributed amongst 8 BEP compliance officers.</li> <li>CDB/PIHE evaluates the vendor's U-Plan GFE waiver request using its prescribed internal review process.</li> <li>Purchasing entities other than CDB and PIHEs submit the vendor's U-Plan GFE waiver request to its assigned BEP compliance officer.</li> <li>CDB/PIHE submits its approval/denial recommendation and the vendor's U-Plan GFE waiver request to its assigned BEP compliance officer using the VIVA system.</li> <li>The BEP compliance officer reviews the purchasing entity's U-Plan with the GFE waiver request.</li> <li>The BEP compliance officer reviews CDB/PIHE's recommendation and the U-Plan with the GFE waiver request.</li> <li>Within 10 business days of receipt, the BEP compliance officer makes a GFE waiver approval/denial determination in the VIVA system.</li> </ol>  |

\*The VIVA system is CEI's new diversity certification and compliance monitoring system.

\*\*The 56 = agencies/boards/commissions, not including CDB and public institutions of higher education (PIHEs).

\*\*\*Depending on the complexity of the waiver request, the BEP compliance officer's determination may be based on the additional review of the compliance unit manager, the CEI deputy director over compliance, the general counsel, and the executive director.

\*\*\*\*The 108 = 57 agencies/boards/commissions (including CDB) + PIHEs (12 universities + 39 community colleges).

\*\*\*\*\*This determination is visible to CDB/PIHE in the VIVA system.

# Impact of New Requirement on Bidding and Contracting

- **Comply with the Bidding Requirements**
  - Require a utilization plan even for non-construction solicitations
  - Notify the Council of proposed contracts for professional and artistic services
- **Analyze Bids and Utilization Plans**
  - Determine whether a bid is responsive, responsible, competitive, and whether service are likely to be completed
  - Determine whether the utilization plan or waiver request is included in the bid response

# Impact of New Requirement on Bidding and Contracting (Continued)

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- **Reporting**
  - Notify the Commission of all nonresponsive bids
  - Wait for determination from BEP Council regarding good faith efforts waiver
- **Accept or Reject Bids**
  - Identify responsive and responsible bidders
  - Assess impact of BEP Council determination regarding good faith efforts waiver
  - Award contract
- **Post-Award Review**
  - Review a contractor's compliance with its utilization plan by evaluating the contractor's fulfillment of contract goals for participation
  - Report any contractor who is not in compliance with the contract goals to the Commission



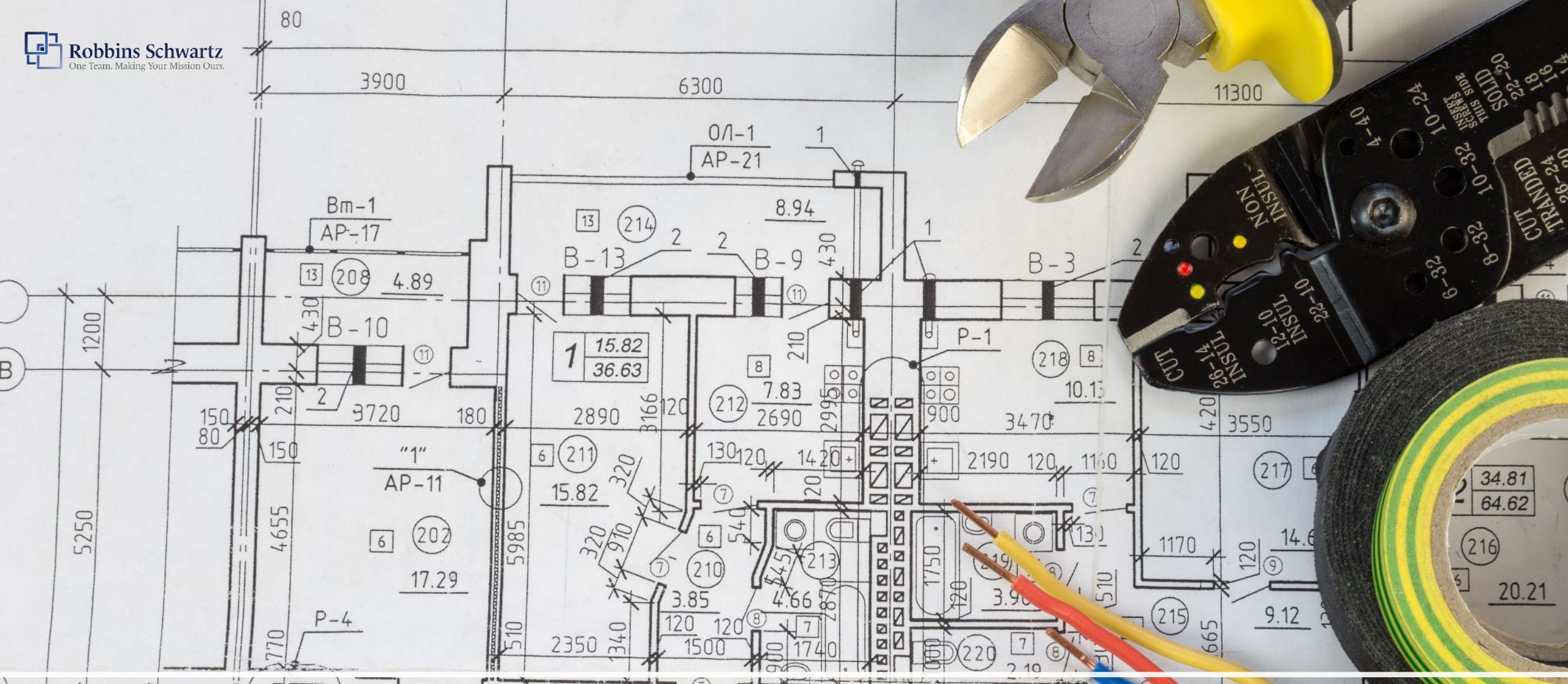
# Are there Additional Reporting Requirements under the Act?

- Yes.

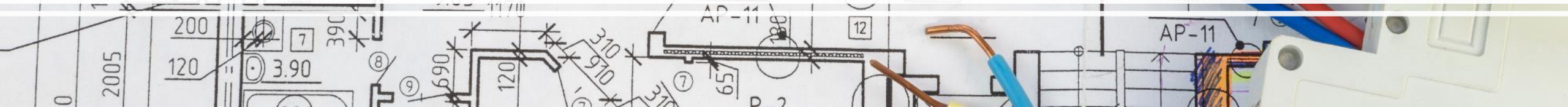
- In addition to complying with the previous reporting requirements, community colleges should report all plans and implementation procedures for increasing the use of professional services *for approval to the Commission* on annual basis
- The Act requires the Business Enterprise Council to file an annual report summarizing each college's goals, expenditures subject to the goals, and goals attained
- Community colleges must notify the Commission on Equity and Inclusion of all non-responsive bids
- Community colleges must continue to notify the Council of proposed contracts for professional and artistic services

# What are the Reporting Requirements for Community Colleges?

- All community colleges must:
  - File annual compliance plans and an annual report with the ICCB
  - Notify the Council of proposed contracts for professional and artistic services
  - Use bid forms identifying the bidder's percentage of disadvantaged business utilization plans and percentage of business enterprise program utilization plan
- All annual reports must include:
  - A description of a college's utilization of businesses owned by minorities, females, and persons with disabilities during the preceding fiscal year, as well as a mid-fiscal year report on the utilization to date for the current fiscal year
  - A self-evaluation of the college's efforts to meet its goals



# Bonding, Bidding and Payment Terms for Construction Projects





# Illinois Public Construction Bond Act (30 ILCS 550/1 *et seq.*)

- P.A. 103-0570
- Effective January 1, 2024
- Impacts all local government units engaged in the construction of public works, regardless of other provisions of enabling statutes
- Complements an earlier revision to Illinois Criminal Code increasing the threshold for approval of change orders by employees
- Applies to all construction contracts for public works moving forward

# Illinois Public Construction Bond Act (30 ILCS 550/1 *et seq.*)

- **Performance and Payment Bonds**

- Performance bonds ensure that the public construction project will be completed
- Payment bonds ensure that subcontractors, suppliers, and laborers will be paid
  - Impact of a contractor's failure to pay subcontractors, suppliers and laborers on project
  - Impact of a contractor's failure to pay subcontractors, suppliers and laborers on public funds
- As of January 1, 2024, the threshold for requiring bonds on all public works project increased from **\$50,000** to **\$150,000**
- Performance and payment bonds can be required for projects under **\$150,000** “by ordinance or resolution”
- Sunsets January 1, 2029

# Illinois Public Construction Bond Act (30 ILCS 550/1 *et seq.*)

- **Retainage**

- Created new requirements relating to the ability of public bodies (like community colleges) to withhold retainage in connection with public works projects
- Comparable provisions included in the Contractor Prompt Payment Act, which applies to private “construction contracts”
- Provisions do not address the withholding of amounts in dispute and payments, which may cause confusion among contractors
- After January 1, 2024, local government units may not withhold retainage of more than 10% until the “date of completion of 50% of the *contract* for public works”
- Following 50% completion, only 5% may be withheld as retainage



# Illinois Public Construction Bond Act (30 ILCS 550/1 *et seq.*)

- **Retainage**

- Similarly, a contractor or subcontractor may not withhold more than 10% of the contract sum until the “contract for public works” is complete and may withhold no more than 5% thereafter
- No clear definition to identify when 50% “completion” of the “contract for public works” occurs
- As a result, local governmental units will need to more closely consider when and how retainage can be withheld from a contractor and limits on a contractor’s ability to withhold subcontractor funds during phases of construction



# Construction Delivery Systems and Bonding

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- **Bonding by Construction Managers and General Contractors**
- **Subcontractor Liability Insurance**
- **Risk Management Considerations**
- **Builder's Risk**



# QUESTION & ANSWER



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