



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB3267

by Rep. William Davis

SYNOPSIS AS INTRODUCED:

20 ILCS 2705/2705-610 new
30 ILCS 105/5.826 new
30 ILCS 105/8r new

Amends the Department of Transportation Law of the Civil Administrative Code of Illinois. Provides that the Department of Transportation may make low-interest loans from the Working Capital Revolving Loan Fund to disadvantaged business enterprises. Establishes a loan selection committee to review applications and select eligible businesses. Provides that the Department may set eligibility requirements for loans by administrative rule. Provides that loans shall not be used for (1) refinancing or payment of existing long-term debt; (2) payment of non-current taxes; (3) payments, advances, or loans to stockholders, officers, directors, partners, or member owners of limited liability companies; or (4) the purchase or lease of non-construction motor vehicles or equipment. Provides that loans may be made with interest. Limits the number of loans a business may receive under this Section. Provides that the Department shall give annual reports to the Governor and the General Assembly on this program. The Department's authority to issue loans under this Section expires on June 1, 2018. Amends the State Finance Act. Establishes the Working Capital Revolving Loan Fund. Provides for transfers not to exceed \$3,000,000 a year, for a period of 5 years, from the Road Fund to the Working Capital Revolving Loan Fund as requested by the Secretary of Transportation. Provides that no transfer will occur if the available balance in the Working Capital Revolving Loan Fund is equal to or greater than \$6,000,000. Effective July 1, 2013.

LRB098 11170 MLW 41876 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

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

4 Section 5. The Department of Transportation Law of the
5 Civil Administrative Code of Illinois is amended by adding
6 Section 2705-610 as follows:

7 (20 ILCS 2705/2705-610 new)

8 Sec. 2705-610. Disadvantaged business revolving loan and
9 grant program.

10 Purpose. The purpose of this Section is to provide for
11 assistance to small, disadvantaged business enterprises with
12 project financing and start-up costs to level the playing field
13 for these firms that want to participate on Department
14 construction contracts. The Department's disparity study
15 recommends and supports a financing program to address this
16 barrier faced by disadvantaged business enterprises.

17 (a) For the purposes of this Section:

18 "Construction" means building, altering, repairing,
19 improving, or demolishing any public structure or building, or
20 making improvements of any kind to public real property.
21 Construction does not include the routine operation, routine
22 repair, or routine maintenance of existing structures,
23 buildings, or real property.

1 "Construction-related services" means those services
2 including construction design, layout, inspection, support,
3 feasibility or location study, research, development,
4 planning, or other investigative study undertaken by a
5 construction agency concerning construction or potential
6 construction.

7 "Contractor" means one who participates, through a
8 contract or subcontract at any tier, in a United States
9 Department of Transportation-assisted or Illinois Department
10 of Transportation-assisted highway, rail, transit, or airport
11 program.

12 "Escrow account" means a fiduciary account established
13 with (1) a banking corporation which is both organized under
14 the Illinois Banking Act and authorized to accept and
15 administer trusts in this State; or (2) a national banking
16 association which has its principal place of business in this
17 State and which is authorized to accept and administer trusts
18 in this State.

19 "Fund Control Agent" means a person who provides managerial
20 and technical assistance to disadvantage business enterprises
21 and holds the authority to manage a loan under this Section.
22 The Fund Control Agent will be procured by the Department under
23 a request for proposal process governed by the Illinois
24 Procurement Code and rules adopted under that Code.

25 "Loan" or "loan assistance funds" means a low-interest line
26 of credit made available to a selected disadvantaged business

1 enterprise under this program for the purposes set forth in
2 subparagraph (e) below.

3 (b) The Department has the power to enter into agreements
4 to make low-interest loans to disadvantaged business
5 enterprises certified by the Department for participation on
6 Department-procured construction and construction-related
7 contracts. For purposes of this Section, the term
8 "disadvantaged business enterprise" has the meaning ascribed
9 to it by 49 CFR Part 26.

10 The Department shall establish a loan selection committee
11 to review applications and select eligible disadvantaged
12 business enterprises for low-interest loans under this
13 program. A selection committee will be comprised of at least
14 three members appointed by the Secretary of the Department and
15 will include at least one public member from the construction
16 or financing industry. The public member may not be employed or
17 associated with any disadvantaged business enterprise holding
18 a contract with the Department nor may the public member's firm
19 be considered for a contract with the Department while he or
20 she is serving as a public member of the committee. Terms of
21 service for public members shall not exceed five years. No
22 public member of the loan selection committee shall hold
23 consecutive terms.

24 The Department shall establish through administrative
25 rules the requirements for eligibility and criteria for loan
26 applications, approved use of funds, amount of loans, interest

1 rates, collateral, and terms. The Department is authorized to
2 adopt rules to implement this Section.

3 (c) Loan funds shall be disbursed to the escrow account,
4 subject to appropriation, from the Working Capital Revolving
5 Loan Fund established as a special fund in the State treasury.
6 Loaned funds that are repaid to the Department shall be
7 deposited into the Working Capital Revolving Loan Fund. Other
8 appropriations, grants, awards, and donations to the
9 Department for the purpose of the revolving loan program
10 established by this Section shall be deposited into the Working
11 Capital Revolving Loan Fund.

12 (d) A funds control process will be established to serve as
13 an intermediary between the Department and the contractor to
14 verify payments and to ensure paperwork is properly filed. The
15 Fund Control Agent and contractor shall enter into an agreement
16 regarding the control and disbursement of all payments to be
17 made by the Fund Control Agent under the contract. The
18 Department will authorize and direct the Fund Control Agent to
19 review all disbursement requests and supporting documents
20 received from the contractor. The Fund Control Agent will
21 direct the escrow account to disburse escrow funds to the
22 subcontractor, material supplier, and other appropriate
23 entities by written request for the disbursement. The
24 disadvantaged business enterprise will maintain control over
25 its business operations by directing the payments of the loan
26 funds through its relationship with the Funds Control Agent.

1 (e) Loan assistance funds shall be allowed for current
2 liabilities or working capital expenses associated with
3 participation in the performance of contracts procured by the
4 Department for transportation construction and
5 construction-related purposes. Loan funds shall not be used
6 for:

7 (1) refinancing or payment of existing long-term debt;

8 (2) payment of non-current taxes;

9 (3) payments, advances, or loans to stockholders,
10 officers, directors, partners, or member owners of limited
11 liability companies; or

12 (4) the purchase or lease of non-construction motor
13 vehicles or equipment.

14 The loan agreement shall provide for the terms and
15 conditions of repayment which shall not extend repayment longer
16 than one year after completion and acceptance of the work
17 authorized for loan assistance under the program. The funds may
18 be loaned with interest.

19 (f) The number of loans one disadvantaged business
20 enterprise may receive under this program is limited to five.
21 Loans shall not be granted simultaneously. An applicant will
22 not be permitted to obtain a loan under this program for a
23 different and additional project until payment in full of any
24 outstanding loans granted under this program have been received
25 by the Department.

26 (g) The rate of interest for any loan shall not exceed the

1 prime rate.

2 (h) The loan amount to any successful applicant shall not
3 exceed 75% percent of the contract or subcontract supporting
4 the loan.

5 (i) Nothing in this Section shall impair the contractual
6 rights of the Department and the prime contractor or the
7 contractual rights between a prime contractor and
8 subcontractor.

9 (j) Nothing in this Section is intended nor shall be
10 construed to vest applicants denied funds by the Department in
11 accordance with this Section a right to challenge, protest, or
12 contest the awarding of funds by the Department to successful
13 applicants or any loan or agreement executed in connection with
14 it.

15 (k) The debt delinquency prohibition will apply to all
16 future contracts or subcontracts in the event of a loan default
17 (30 ILCS 500/50-11).

18 (l) Investment income which is attributable to the
19 investment of moneys in the Working Capital Revolving Loan Fund
20 shall be retained in the Working Capital Revolving Loan Fund.

21 (m) By January 1, 2014 and January 1 of each succeeding
22 year, the Department shall report to the Governor and the
23 General Assembly on the utilization and status of the revolving
24 loan program. The report shall, at a minimum, include the
25 amount transferred from the Road Fund to the Working Capital
26 Revolving Loan Fund, the number and size of approved loans, the

1 amounts disbursed to and from the escrow account, the amounts,
2 if any, repaid to the Working Capital Revolving Loan Fund, the
3 interest and fees paid by loan recipients, and the interest
4 earned on balances in the Working Capital Revolving Loan Fund.

5 (n) The Department's authority to execute additional loans
6 or request transfers to the Working Capital Revolving Loan Fund
7 expires on June 1, 2018. The Comptroller shall order
8 transferred and the Treasurer shall transfer any available
9 balance remaining in the Working Capital Revolving Loan Fund to
10 the Road Fund on January 1, 2019, or as soon thereafter as may
11 be practical. Any loan repayments, interest, or fees that are
12 by the terms of a loan agreement payable to the Working Capital
13 Revolving Loan Fund after June 20, 2018 shall instead be paid
14 into the Road Fund as the successor fund to the Working Capital
15 Revolving Loan Fund.

16 Section 10. The State Finance Act is amended by adding
17 Sections 5.826 and 8r as follows:

18 (30 ILCS 105/5.826 new)

19 Sec. 5.826. The Working Capital Revolving Loan Fund.

20 (30 ILCS 105/8r new)

21 Sec. 8r. Transfer to the Working Capital Revolving Loan
22 Fund.

23 (a) Except as provided in subsection (b), upon the written

1 request of the Secretary of Transportation, the State
2 Comptroller shall order and the State Treasurer shall transfer
3 amounts not to exceed \$3,000,000 in aggregate during a fiscal
4 year, for a period of 5 years, from the Road Fund to the
5 Working Capital Revolving Loan Fund as requested by the
6 Secretary of Transportation or as soon thereafter as may be
7 practical.

8 (b) No transfer may be requested or ordered if the
9 available balance in the Working Capital Revolving Loan Fund is
10 equal to or greater than \$6,000,000.

11 Section 99. Effective date. This Act takes effect July 1,
12 2013.