



Rep. William Davis

**Filed: 3/22/2013**

09800HB3267ham003

LRB098 11170 MRW 43798 a

1 AMENDMENT TO HOUSE BILL 3267

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3267 by replacing  
3 everything after the enacting clause with the following:

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 (a) Purpose. The purpose of this Section is to provide for  
11 assistance to disadvantaged business enterprises with project  
12 financing costs for those firms that are ready, willing, and  
13 able to participate on Department construction contracts. The  
14 Department's disparity study recommends and supports a  
15 financing program to address this barrier faced by  
16 disadvantaged business enterprises.

1       (b) For the purposes of this Section:

2       "Construction" means building, altering, repairing,  
3 improving, or demolishing any public structure or building, or  
4 making improvements of any kind to public real property.

5 Construction does not include the routine operation, routine  
6 repair, or routine maintenance of existing structures,  
7 buildings, or real property.

8       "Construction-related services" means those services  
9 including construction design, layout, inspection, support,  
10 feasibility or location study, research, development,  
11 planning, or other investigative study undertaken by a  
12 construction agency concerning construction or potential  
13 construction.

14       "Contractor" means one who participates, through a  
15 contract or subcontract at any tier, in a United States  
16 Department of Transportation-assisted or Illinois Department  
17 of Transportation-assisted highway, rail, transit, or airport  
18 program.

19       "Escrow account" means a fiduciary account established  
20 with (1) a banking corporation which is both organized under  
21 the Illinois Banking Act and authorized to accept and  
22 administer trusts in this State; or (2) a national banking  
23 association which has its principal place of business in this  
24 State and which is authorized to accept and administer trusts  
25 in this State.

26       "Fund Control Agent" means a person who provides managerial

1 and technical assistance to disadvantage business enterprises  
2 and holds the authority to manage a loan under this Section.  
3 The Fund Control Agent will be procured by the Department under  
4 a request for proposal process governed by the Illinois  
5 Procurement Code and rules adopted under that Code.

6 "Loan" or "loan assistance funds" means a low-interest line  
7 of credit made available to a selected disadvantaged business  
8 enterprise under this program for the purposes set forth in  
9 subsection (f) below.

10 (c) The Department may enter into agreements to make loans  
11 to disadvantaged business enterprises certified by the  
12 Department for participation on Department-procured  
13 construction and construction-related contracts. For purposes  
14 of this Section, the term "disadvantaged business enterprise"  
15 has the meaning ascribed to it by 49 CFR Part 26.

16 The Department shall establish a loan selection committee  
17 to review applications and select eligible disadvantaged  
18 business enterprises for low-interest loans under this  
19 program. A selection committee shall be comprised of at least 3  
20 members appointed by the Secretary of the Department and shall  
21 include at least one public member from the construction or  
22 financing industry. The public member may not be employed or  
23 associated with any disadvantaged business enterprise holding  
24 a contract with the Department nor may the public member's firm  
25 be considered for a contract with the Department while he or  
26 she is serving as a public member of the committee. Terms of

1 service for public members shall not exceed 5 years. No public  
2 member of the loan selection committee shall hold consecutive  
3 terms, nor shall any member receive any compensation other than  
4 for reasonable expenses for service related to this committee.

5 The Department shall establish through administrative  
6 rules the requirements for eligibility and criteria for loan  
7 applications, approved use of funds, amount of loans, interest  
8 rates, collateral, and terms. The Department is authorized to  
9 adopt rules to implement this Section.

10 The Department shall notify the prime contractor on a  
11 project that a subcontractor on the same project has been  
12 awarded a loan from the Working Capital Revolving Loan Fund. If  
13 the loan agreement is amended by the parties of the loan  
14 agreement, the prime contractor shall not be a party to any  
15 disadvantaged business enterprise loan agreement between the  
16 Department and participating subcontractor and shall not incur  
17 any liability for loan debt accrued as a result of the loan  
18 agreement.

19 (d) Loan funds shall be disbursed to the escrow account,  
20 subject to appropriation, from the Working Capital Revolving  
21 Loan Fund established as a special fund in the State treasury.  
22 Loaned funds that are repaid to the Department shall be  
23 deposited into the Working Capital Revolving Loan Fund. Other  
24 appropriations, grants, awards, and donations to the  
25 Department for the purpose of the revolving loan program  
26 established by this Section shall be deposited into the Working

1 Capital Revolving Loan Fund.

2 (e) A funds control process shall be established to serve  
3 as an intermediary between the Department and the contractor to  
4 verify payments and to ensure paperwork is properly filed. The  
5 Fund Control Agent and contractor shall enter into an agreement  
6 regarding the control and disbursement of all payments to be  
7 made by the Fund Control Agent under the contract. The  
8 Department shall authorize and direct the Fund Control Agent to  
9 review all disbursement requests and supporting documents  
10 received from the contractor. The Fund Control Agent shall  
11 direct the escrow account to disburse escrow funds to the  
12 subcontractor, material supplier, and other appropriate  
13 entities by written request for the disbursement. The  
14 disadvantaged business enterprise shall maintain control over  
15 its business operations by directing the payments of the loan  
16 funds through its relationship with the Funds Control Agent.  
17 The funds control process shall require the Fund Control Agent  
18 to intercept payments made from a contractor to a subcontractor  
19 receiving a loan made under this Act and allow the Fund Control  
20 Agent to deduct any unpaid loan repayments owed to the State  
21 before releasing the payment to the subcontractor.

22 (f) Loan assistance funds shall be allowed for current  
23 liabilities or working capital expenses associated with  
24 participation in the performance of contracts procured and  
25 awarded by the Department for transportation construction and  
26 construction-related purposes. Loan funds shall not be used

1 for:

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

3 (2) payment of non-current taxes;

4 (3) payments, advances, or loans to stockholders,  
5 officers, directors, partners, or member owners of limited  
6 liability companies; or

7 (4) the purchase or lease of non-construction motor  
8 vehicles or equipment.

9 The loan agreement shall provide for the terms and  
10 conditions of repayment which shall not extend repayment longer  
11 than final payment made by the Department following completion  
12 and acceptance of the work authorized for loan assistance under  
13 the program. The funds shall be loaned with interest.

14 (g) The number of loans one disadvantaged business  
15 enterprise may receive under this program is limited to 3.  
16 Loans shall not be granted simultaneously. An applicant shall  
17 not be permitted to obtain a loan under this program for a  
18 different and additional project until payment in full of any  
19 outstanding loans granted under this program have been received  
20 by the Department.

21 (h) The rate of interest for any loan shall be set by rule.

22 (i) The loan amount to any successful applicant shall not  
23 exceed 55% percent of the contract or subcontract supporting  
24 the loan.

25 (j) Nothing in this Section shall impair the contractual  
26 rights of the Department and the prime contractor or the

1 contractual rights between a prime contractor and  
2 subcontractor.

3 (k) Nothing in this Section is intended nor shall be  
4 construed to vest applicants denied funds by the Department in  
5 accordance with this Section a right to challenge, protest, or  
6 contest the awarding of funds by the Department to successful  
7 applicants or any loan or agreement executed in connection with  
8 it.

9 (l) The debt delinquency prohibition under Section 50-11 of  
10 the Illinois Procurement Code applies to any future contracts  
11 or subcontracts in the event of a loan default.

12 (m) Investment income which is attributable to the  
13 investment of moneys in the Working Capital Revolving Loan Fund  
14 shall be retained in the Working Capital Revolving Loan Fund.

15 (n) By January 1, 2014 and January 1 of each succeeding  
16 year, the Department shall report to the Governor and the  
17 General Assembly on the utilization and status of the revolving  
18 loan program. The report shall, at a minimum, include the  
19 amount transferred from the Road Fund to the Working Capital  
20 Revolving Loan Fund, the number and size of approved loans, the  
21 amounts disbursed to and from the escrow account, the amounts,  
22 if any, repaid to the Working Capital Revolving Loan Fund, the  
23 interest and fees paid by loan recipients, and the interest  
24 earned on balances in the Working Capital Revolving Loan Fund,  
25 and the names of any contractors who are delinquent or in  
26 default of payment. The January 1, 2017 report shall include an

1 evaluation of the program by the Department to determine the  
2 program's viability and progress towards its stated purpose.

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

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

16 (30 ILCS 105/5.826 new)

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

18 (30 ILCS 105/8r new)

19 Sec. 8r. Transfer to the Working Capital Revolving Loan  
20 Fund.

21 (a) Except as provided in subsection (b), upon the written  
22 request of the Secretary of Transportation, the State  
23 Comptroller shall order and the State Treasurer shall transfer



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

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

9 Section 99. Effective date. This Act takes effect July 1,  
10 2013.".