

SB3113



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3113

Introduced 2/15/2018, by Sen. Mattie Hunter

SYNOPSIS AS INTRODUCED:

20 ILCS 2705/2705-610

Amends the Department of Transportation Law of the Civil Administrative Code of Illinois. Makes a technical change in a Section concerning the disadvantaged business revolving loan and grant program.

LRB100 19154 LNS 34419 b

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 changing
6 Section 2705-610 as follows:

7 (20 ILCS 2705/2705-610)

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

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

17 (b) 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 disadvantaged 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 subsection (f) below.

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

9 The Department shall establish a loan selection committee
10 to review applications and select eligible disadvantaged
11 business enterprises for low-interest loans under this
12 program. A selection committee shall be comprised of at least 3
13 members appointed by the Secretary of the Department and shall
14 include at least one public member from the construction or
15 financing industry. The public member may not be employed or
16 associated with any disadvantaged business enterprise holding
17 a contract with the Department nor may the public member's firm
18 be considered for a contract with the Department while he or
19 she is serving as a public member of the committee. Terms of
20 service for public members shall not exceed 5 years. No public
21 member of the loan selection committee shall hold consecutive
22 terms, nor shall any member receive any compensation other than
23 for reasonable expenses for service related to this committee.

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

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

21 (e) A funds control process shall be established to serve
22 as an intermediary between the Department and the contractor to
23 verify payments and to ensure paperwork is properly filed. The
24 Fund Control Agent and contractor shall enter into an agreement
25 regarding the control and disbursement of all payments to be
26 made by the Fund Control Agent under the contract. The

1 Department shall authorize and direct the Fund Control Agent to
2 review all disbursement requests and supporting documents
3 received from the contractor. The Fund Control Agent shall
4 direct the escrow account to disburse escrow funds to the
5 subcontractor, material supplier, and other appropriate
6 entities by written request for the disbursement. The
7 disadvantaged business enterprise shall maintain control over
8 its business operations by directing the payments of the loan
9 funds through its relationship with the Funds Control Agent.
10 The funds control process shall require the Fund Control Agent
11 to intercept payments made from a contractor to a subcontractor
12 receiving a loan made under this Act and allow the Fund Control
13 Agent to deduct any unpaid loan repayments owed to the State
14 before releasing the payment to the subcontractor.

15 (f) Loan assistance funds shall be allowed for current
16 liabilities or working capital expenses associated with
17 participation in the performance of contracts procured and
18 awarded by the Department for transportation construction and
19 construction-related purposes. Loan funds shall not be used
20 for:

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

22 (2) payment of non-current taxes;

23 (3) payments, advances, or loans to stockholders,
24 officers, directors, partners, or member owners of limited
25 liability companies; or

26 (4) the purchase or lease of non-construction motor

1 vehicles or equipment.

2 The loan agreement shall provide for the terms and
3 conditions of repayment which shall not extend repayment longer
4 than final payment made by the Department following completion
5 and acceptance of the work authorized for loan assistance under
6 the program. The funds shall be loaned with interest.

7 (g) The number of loans one disadvantaged business
8 enterprise may receive under this program is limited to 3.
9 Loans shall not be granted simultaneously. An applicant shall
10 not be permitted to obtain a loan under this program for a
11 different and additional project until payment in full of any
12 outstanding loans granted under this program have been received
13 by the Department.

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

15 (i) The loan amount to any successful applicant shall not
16 exceed 55% percent of the contract or subcontract supporting
17 the loan.

18 (j) Nothing in this Section shall impair the contractual
19 rights of the Department and the prime contractor or the
20 contractual rights between a prime contractor and
21 subcontractor.

22 (k) Nothing in this Section is intended nor shall be
23 construed to vest applicants denied funds by the Department in
24 accordance with this Section a right to challenge, protest, or
25 contest the awarding of funds by the Department to successful
26 applicants or any loan or agreement executed in connection with

1 it.

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

5 (m) Investment income which is attributable to the
6 investment of moneys in the Working Capital Revolving Loan Fund
7 shall be retained in the Working Capital Revolving Loan Fund.

8 (n) By January 1, 2014 and January 1 of each succeeding
9 year, the Department shall report to the Governor and the
10 General Assembly on the utilization and status of the revolving
11 loan program. The report shall, at a minimum, include the
12 amount transferred from the Road Fund to the Working Capital
13 Revolving Loan Fund, the number and size of approved loans, the
14 amounts disbursed to and from the escrow account, the amounts,
15 if any, repaid to the Working Capital Revolving Loan Fund, the
16 interest and fees paid by loan recipients, and the interest
17 earned on balances in the Working Capital Revolving Loan Fund,
18 and the names of any contractors who are delinquent or in
19 default of payment. The January 1, 2017 report shall include an
20 evaluation of the program by the Department to determine the
21 program's viability and progress towards its stated purpose.

22 (o) The Department's authority to execute additional loans
23 or request transfers to the Working Capital Revolving Loan Fund
24 expires on June 1, 2018. The Comptroller shall order
25 transferred and the Treasurer shall transfer any available
26 balance remaining in the Working Capital Revolving Loan Fund to

1 the Road Fund on January 1, 2019, or as soon thereafter as may
2 be practical. Any loan repayments, interest, or fees that are
3 by the terms of a loan agreement payable to the Working Capital
4 Revolving Loan Fund after June 20, 2018 shall instead be paid
5 into the Road Fund as the successor fund to the Working Capital
6 Revolving Loan Fund.

7 (Source: P.A. 98-117, eff. 7-30-13.)