



Rep. William Davis

Filed: 3/19/2013

09800HB3267ham001

LRB098 11170 MLW 43250 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 (d) Loan funds shall be disbursed to the escrow account,
11 subject to appropriation, from the Working Capital Revolving
12 Loan Fund established as a special fund in the State treasury.
13 Loaned funds that are repaid to the Department shall be
14 deposited into the Working Capital Revolving Loan Fund. Other
15 appropriations, grants, awards, and donations to the
16 Department for the purpose of the revolving loan program
17 established by this Section shall be deposited into the Working
18 Capital Revolving Loan Fund.

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

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

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

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

20 (2) payment of non-current taxes;

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

24 (4) the purchase or lease of non-construction motor
25 vehicles or equipment.

26 The loan agreement shall provide for the terms and

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

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

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

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

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

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

26 (l) The debt delinquency prohibition under Section 50-11 of

1 the Illinois Procurement Code applies to any future contracts
2 or subcontracts in the event of a loan default.

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

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

18 (o) The Department's authority to execute additional loans
19 or request transfers to the Working Capital Revolving Loan Fund
20 expires on June 1, 2018. The Comptroller shall order
21 transferred and the Treasurer shall transfer any available
22 balance remaining in the Working Capital Revolving Loan Fund to
23 the Road Fund on January 1, 2019, or as soon thereafter as may
24 be practical. Any loan repayments, interest, or fees that are
25 by the terms of a loan agreement payable to the Working Capital
26 Revolving Loan Fund after June 20, 2018 shall instead be paid

1 into the Road Fund as the successor fund to the Working Capital
2 Revolving Loan Fund.

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

5 (30 ILCS 105/5.826 new)

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

7 (30 ILCS 105/8r new)

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

10 (a) Except as provided in subsection (b), upon the written
11 request of the Secretary of Transportation, the State
12 Comptroller shall order and the State Treasurer shall transfer
13 amounts not to exceed \$3,000,000 in aggregate during a fiscal
14 year, for a period of 5 years, from the Road Fund to the
15 Working Capital Revolving Loan Fund as requested by the
16 Secretary of Transportation or as soon thereafter as may be
17 practical.

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

21 Section 99. Effective date. This Act takes effect July 1,
22 2013."