

AN ACT concerning State government.

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

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

(20 ILCS 2705/2705-610 new)

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

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

(b) For the purposes of this Section:

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

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

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

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

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

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

enterprise under this program for the purposes set forth in subsection (f) below.

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

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

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

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

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

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

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

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

(f) Loan assistance funds shall be allowed for current liabilities or working capital expenses associated with participation in the performance of contracts procured and awarded by the Department for transportation construction and construction-related purposes. Loan funds 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.

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

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

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

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

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

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

it.

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

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

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

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

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

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

(30 ILCS 105/5.826 new)

Sec. 5.826. The Working Capital Revolving Loan Fund.

(30 ILCS 105/8r new)

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

(a) Except as provided in subsection (b), upon the written request of the Secretary of Transportation, the State Comptroller shall order and the State Treasurer shall transfer amounts not to exceed \$3,000,000 in aggregate during a fiscal 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 or as soon thereafter as may be practical.

(b) No transfer may be requested or ordered if the available balance in the Working Capital Revolving Loan Fund is

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equal to or greater than \$6,000,000.

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