

2017 Regular Session

SENATE BILL NO. 148

BY SENATOR CHABERT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PORTS/HARBORS/TERMINALS. Creates the Waterway Dredging and Deepening Priority Program. (7/1/17)

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AN ACT

To enact Chapter 48 of Title 34 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 34:3471 through 3483, relative to waterways; to provide for a priority program for the deepening and dredging of waterways; to establish the Dredging and Deepening Fund; to provide for certain terms, definitions, language, conditions, procedures, and requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 48 of Title 34 of the Louisiana Revised Statutes of 1950, comprised of R.S. 34:3471 through 3483, is hereby enacted to read as follows:

CHAPTER 48. WATERWAY DREDGING AND DEEPENING

PRIORITY PROGRAM

§3471. Definitions

As used in this Chapter, unless the context clearly indicates otherwise, the following definitions shall apply:

(1) "Governmental entity" means the state or any political subdivision.

(2) "Joint committee" means the House Committee on Transportation, Highways and Public Works and the Senate Committee on Transportation,

1 Highways and Public Works, functioning as a joint legislative committee.

2 (3) "Office" means the office of multimodal commerce within the
3 Department of Transportation and Development.

4 (4) "Waterway" means any navigable bayou or river, or portion thereof.

5 (5) "Waterway dredging and deepening priority program" means the
6 priority list of projects submitted by the office and approved by the joint
7 committee pursuant to this Chapter.

8 (6) "Waterway project" means a program, either new or continuing,
9 that is planned and implemented with the primary goal of dredging and
10 deepening waterways in the state.

11 §3472. Methodology for dredging and deepening project evaluation

12 A.(1) Applications for funding of any waterway project may be
13 submitted by any governmental entity on a quarterly basis, except as provided
14 in R.S. 34:3476. Applications shall be submitted to the office no later than the
15 first of March, June, September, and December of each calendar year for
16 consideration of funding or funding obligation authority in the following fiscal
17 years. Applications submitted in accordance with the provisions of this Chapter
18 shall be subject to the provisions of R.S. 39:101 through 128. Information to be
19 provided in the application shall include but not be limited to the following:

20 (a) Description of the project and demonstration of immediate need for
21 the project.

22 (b) Preliminary project design and cost estimate.

23 (c) Description of project area.

24 (2) Project applications shall not be subject to formal review and
25 evaluation until the information required in the application has been submitted.

26 B. Applications shall be reviewed by the office and any other
27 appropriate state agencies within sixty days after receipt of such applications
28 by the office.

29 C. Procedures for review and evaluation shall be developed by the office.

1 Prior to implementing the review and evaluation procedures, the office shall
2 secure the approval of these procedures by the joint committee in accordance
3 with the Administrative Procedure Act. The procedures and a set of guidelines
4 for completing project applications shall be made available to eligible
5 governmental entities upon request.

6 D. The office may contract for any of the duties associated with the
7 development of the waterway dredging and deepening priority program,
8 including but not limited to the development, review, and evaluation of plans
9 and specifications, and the development of the waterway dredging and
10 deepening priority program list. However, development of and authority over
11 the final determination of the waterway dredging and deepening priority list
12 shall remain with the department and the joint committee as provided in this
13 Chapter.

14 E. The office shall insure that an inventory is maintained of waterways,
15 public and private, with respect to their location, capacities, and capabilities
16 and serve as a clearinghouse for inquiries for waterways information, data, and
17 technical and research assistance.

18 F. The office shall have prepared each year a summary report
19 containing projections of state, federal, local, and private financial requirements
20 for dredging and deepening waterways.

21 §3473. Priority list of projects; public hearings; final program

22 Each quarter, the office shall prepare and furnish to the joint committee
23 a prioritized list of projects based on the applications received by the office
24 during that quarter. The joint committee shall receive the prioritized list of
25 projects from the office for each of the first three quarters of the year, and shall
26 call a public hearing within thirty days of receiving the list in order to receive
27 public testimony regarding any project on the list. At such hearing, the joint
28 committee shall vote to either accept, reject, or modify the list. Each quarter,
29 the office shall reprioritize the list of projects to reflect the cumulative list of

1 projects recommended by the office. After application recommendations for
2 the last quarter are made by the office, the office shall submit the final
3 waterway dredging and deepening priority program for the ensuing fiscal year
4 to the joint committee for approval. Prior to the convening of the regular
5 session of the legislature, the joint committee shall hold a public hearing for the
6 purpose of reviewing the final program for the ensuing fiscal year. Prior to
7 such hearing, the office shall publish the appropriate official notice in the
8 necessary journals. The final program shall be based upon the anticipated
9 revenues to be appropriated by the legislature or other funding obligation
10 authority and the projects shall be listed in order of priority. When this final
11 construction program is presented to the legislature for funding or funding
12 obligation authority for the ensuing fiscal year, the legislature shall not add any
13 projects to this final construction program. Any project recommended by the
14 office and approved by the joint committee for which funds are unavailable in
15 the fiscal year but for which it was approved shall remain on the prioritized list
16 of projects and shall be carried forward to the next fiscal year. Such project
17 shall retain its place on the prioritized list of projects and shall receive a higher
18 priority over newly recommended projects in the next fiscal year.

19 §3474. Supplemental list of projects

20 The office also shall provide to the joint committee annually a
21 supplemental list of projects proposed to be commenced or authorized within
22 the ensuing four years which are in various stages of planning and preparation.
23 The supplemental list shall be subject to change by the office until the office
24 finally approves each project.

25 §3475. Projects undertaken by the office

26 A. After adoption of the office's recommendations by the joint
27 committee, the approved list of projects shall be forwarded to the office for
28 implementation. The approved list shall be implemented by the office by the
29 use of funds appropriated, funding obligation authority, or pursuant to the cash

1 management program as provided by R.S. 48:251(D). Funding or funding
2 obligation authority shall be allocated to projects in accordance with the
3 prioritized list of projects approved by the joint committee. Funding obligation
4 authority may be granted or authorized for a project from funds appropriated
5 or obligated for another project or projects within the Waterway Dredging and
6 Deepening Priority Program provided that such authority does not impede such
7 project or projects. Such funding obligation authority shall be extinguished for
8 a project at such time as funds are made available for obligation for the project.
9 The office shall not delete, add, or substitute any projects for those approved by
10 the joint committee, except as provided in R.S. 34:3476.

11 B. No waterway project shall be undertaken by the office except those
12 included in the approved program listing which are funded or which have
13 funding obligation authority for that fiscal year.

14 §3476. Commencement of projects; substitutions

15 The projects planned for the year for which appropriations have been
16 made or which have funding obligation authority shall be commenced in that
17 year; however, if a project cannot be commenced within the year for which it
18 is authorized, the commissioner of multimodal commerce shall file with the
19 project records a public statement as to the factors causing the delay, and the
20 next priority project shall be substituted therefor. When the delaying factors
21 have been overcome, the delayed project shall be placed in the highest priority
22 for the next ensuing fiscal year. Projects which have been funded or which have
23 obligation authority shall retain such funding or authority until the project is
24 completed and the project costs are liquidated.

25 §3477. Allocation, reallocation of funds; deposit to Dredging and Deepening

26 Fund

27 A. The Dredging and Deepening Fund is hereby created within the state
28 treasury and shall be the source of state funds provided for any waterway
29 project on the priority list approved pursuant to the provisions of this Chapter.

1 **B. Prior to the commencement of any work, the office shall require the**
 2 **presiding officer of each governmental entity involved in a project to execute an**
 3 **agreement and statement of sponsorship to provide a ten percent local match**
 4 **for the cost of the project.**

5 **C. Any monies allocated for any project not needed for said project may**
 6 **be reallocated for the completion of any other project or projects specified. Any**
 7 **monies not needed for the completion of said projects shall be deposited in and**
 8 **credited to the Dredging and Deepening Fund.**

9 **D. The sources of monies deposited into the fund shall be legislative**
 10 **appropriation and grants, gifts, and donations received by the state for the**
 11 **purposes of this Chapter. Monies in the fund shall be subject to appropriation**
 12 **by the legislature and shall be available exclusively for waterway projects. All**
 13 **unexpended and unencumbered monies in the fund at the end of the fiscal year**
 14 **shall remain in the fund. Such monies shall be invested by the treasurer in the**
 15 **same manner as the monies in the state general fund, and all interest earned**
 16 **shall be credited to the fund following compliance with the requirements of**
 17 **Article VII, Section 9(B) of the Constitution of Louisiana, relative to the Bond**
 18 **Security and Redemption Fund.**

19 **§3478. Preparation of plans and specifications; letting of bids for construction;**
 20 **supervision of construction**

21 **A. Governmental entities located in a parish with a population of fifty**
 22 **thousand persons or more shall be responsible for the preparation of plans and**
 23 **specifications for their respective project. These authorities shall also be**
 24 **responsible for the letting of bids, and the supervision of work for all projects,**
 25 **all in accordance with the provisions of this Chapter.**

26 **B. For governmental entities located in a parish with a population of less**
 27 **than fifty thousand persons, the office may prepare the necessary plans and**
 28 **specifications, may let the contract for bid, and may supervise the project work.**

29 **§3479. Inspection**

1 A. The office shall approve the engineering and construction plans for
2 any proposed projects that are prepared by consultant or contract engineers for
3 any recipient governmental entity. The office may inspect the construction of
4 a project at any time to assure project compliance.

5 B. The office shall inspect a completed project with the consultant or
6 contract engineer. The engineer shall certify that construction is in accordance
7 with plans and specifications. The office may inspect a completed project at any
8 time to assure that the project is being maintained in accordance with project
9 specifications and agreements.

10 §3480. System of administration

11 Each governmental entity shall adopt a system of administration which
12 shall require approval of the office for any expenditures made out of state and
13 local matching funds, and no governmental entity shall expend any funds
14 without the approval of the office. Each governmental entity shall adopt a
15 system of administration which shall include the development of a capital
16 improvement program on a selective basis, centralized purchasing of equipment
17 and supplies, centralized accounting, and selective maintenance and
18 construction based upon engineering plans and inspections. Funds appropriated
19 for a project shall not be expended for any other purpose. All contracts for
20 materials, construction, or services shall be advertised and awarded to the
21 lowest responsible bidder in accordance with the provisions of R.S. 38:2212.

22 §3481. Audit of distribution to recipient governmental entities

23 The state monies distributed to the governmental entity and the local
24 matching funds shall be audited by the legislative auditor or a certified public
25 accountant at least biennially pursuant to R.S. 24:513(A) and shall issue and
26 distribute all audit reports pursuant to R.S. 24:516(A). To the extent that funds
27 available to the legislative auditor permit, the audits of each recipient
28 governmental entity of the use of the monies shall include an investigation of
29 any failure to comply with the recommendations for planning, design, and

1 construction adopted by the office. The recipient governmental entity shall
2 certify annually to the legislative auditor that the funds made available under
3 this Chapter have been expended in accordance with the standards established
4 by law.

5 §3482. Report of any misuse of funds

6 If the legislative auditor determines that any expenditures by the
7 recipient governmental entity have not been made in accordance with this
8 Chapter, he shall promptly report the facts of such expenditure to the
9 Legislative Audit Advisory Council. The council shall make further
10 investigation of the matter as it deems necessary.

11 §3483. Misuse of funds; withholding of distribution; notification of district
12 attorney

13 A.(1) If, on the basis of the report of the legislative auditor, or from its
14 own investigation, the Legislative Audit Advisory Council, hereinafter referred
15 to as the "council", determines that there has been a misuse by a recipient
16 governmental entity of funds from the program, it shall then determine whether
17 a partial or total withholding of the governmental entity's appropriation for any
18 remaining portion of the current fiscal year shall be necessary. Should the
19 council determine that it is necessary to withhold all or any part of the
20 governmental entity's appropriation, the council shall send notification of its
21 determination to the co-chairmen of the joint committee and to each member
22 of the legislature who represents any portion of the governmental entity.

23 (2) If, thirty days after the co-chairmen and the members of the
24 legislature are notified, the council determines that the misuse has not yet
25 ceased, the council shall, by written resolution, instruct the state treasurer to
26 immediately suspend distributions to the governmental entity of funds
27 appropriated for the program. The suspension of funds shall remain in effect
28 until the Legislative Audit Advisory Council verifies, in writing, to the state
29 treasurer that the offending entity is again in compliance with this Chapter.

1 Such written verification shall be given when the legislative auditor certifies to
2 the council that, to the best of his knowledge, the entity is in compliance with
3 this Chapter or, in the absence of said certification, when the council determines
4 that the entity is in compliance with this Chapter. Upon receipt of the council's
5 written verification, the state treasurer shall reinstate the distribution of funds
6 and distribute all funds previously withheld to the affected recipient
7 governmental entity.

8 (3) The council shall report any action it has taken with regard to the
9 suspension of funds to the joint committee and to the legislature at the next
10 regular session, along with any recommendations it may have for forfeiture of
11 suspended funds by those entities that are still in noncompliance with this
12 Chapter. Forfeiture of funds can be authorized only by the legislature.

13 B. In any case where there has been a determination made by the
14 council that there has been a misuse by a recipient governmental entity of funds
15 appropriated for the program, the council shall furnish a copy of the written
16 resolution directing the state treasurer to withhold funds to the district attorney
17 of the parish or parishes where the misuse of funds occurred. The district
18 attorney shall, within thirty days, advise the chairman of the council as to action
19 he has taken or proposes to take in connection with the misuse of funds cited in
20 the resolution. Where future action is proposed by the district attorney, the
21 council shall set a date for receipt of further advice in the matter. Where such
22 advice is not forthcoming from the district attorney, or where it is evident that
23 suitable action has not been taken, the council shall report the matter to the
24 joint committee and to the legislature at its next regular session for whatever
25 action the joint committee and the legislature deems advisable under the
26 circumstances.

27 Section 2. This Act shall become effective on July 1, 2017.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Ben Huxen.

DIGEST

SB 148 Original

2017 Regular Session

Chabert

Proposed law creates the Waterway Dredging and Deepening Priority Program for the purpose of deepening, dredging, or maintaining waterways in the state.

Proposed law requires applications for funding of any port construction or development project to be submitted to the office of multimodal commerce within the Dept. of Transportation and Development (office) by any governmental entity by the first of March, June, September, and December of each year for consideration of funding or funding obligation authority in the following fiscal years. Further requires applications to be reviewed by the office and any other state agencies within 60 days of receipt of such applications.

Proposed law requires the office, with approval of the House and Senate transportation committees, to develop procedures in accordance with the APA for review and evaluation of applications. The procedures and guidelines for completing project applications shall be made available to eligible governmental entities.

Proposed law provides that the office may contract for any of the duties associated with the development of the program and the priority list. However, development of and authority over the final determination of the priority list shall remain with the department and the joint committee.

Proposed law requires the office to maintain an inventory of waterways, public and private, with respect to their location, capacities, and capabilities and serve as a clearinghouse for inquiries for waterways information, data, and technical and research assistance.

Proposed law requires the office to prepare each year a summary report containing projections of state, federal, local, and private financial requirements for dredging and deepening waterways.

Proposed law provides that prior to the convening of each regular session of the legislature, the office shall prepare and furnish the priority list of projects to the committees. The committees shall jointly hold a public hearing for the purpose of reviewing the priority list of projects for the coming fiscal year. Prior to each hearing, the office shall publish official notice of the hearing in the necessary journals.

Proposed law provides that after the committee hearing, but before the convening of the regular session, the office shall prepare the final construction program for the ensuing fiscal year and submit it to the committees.

Proposed law requires the office to prepare and furnish a prioritized list of projects based on the applications received by the office during each quarter to the committees. The joint committee shall hold a public hearing within 30 calendar days of receiving the prioritized list for the purpose of reviewing the priorities. At such hearing, the joint committee shall vote to either accept, reject, or modify the list.

Proposed law requires the office to re-prioritize the list of projects to reflect the cumulative list of projects recommended by the department and approved by the committees.

Proposed law provides that after applications for the last quarter are approved by the office and presented to the committees, the department shall submit the final priority program for the ensuing fiscal year to the legislature for approval. Prior to the convening of the regular

session of the legislature, the joint committee shall hold a public hearing for the purpose of reviewing the final program for the ensuing fiscal year. Further requires the office to publish the appropriate official notice in the necessary journals prior to such hearing.

Proposed law requires the final program be based on the anticipated revenues to be appropriated by the legislature or other funding obligation authority and the projects shall be listed in order of priority.

Proposed law requires a project recommended by the office and approved by the joint committee but for which funds are unavailable in the fiscal year for which it was approved to remain on the prioritized list of projects and to be carried forward to the next fiscal year. Such project shall retain its place on the prioritized list and shall receive a higher priority over newly recommended projects in the next fiscal year.

Proposed law requires the office to annually provide a supplemental list of projects to be commenced or authorized within the ensuing four years which are in various stages of planning and preparation. The supplemental list may be changed by the office until it finally approves each project for construction.

Proposed law provides that after adoption of the approved list of projects by the joint committee, the list is forwarded to the office for implementation. Further requires the approved list to be implemented by office using appropriated funds, funding obligation authority, or pursuant to the cash management program.

Proposed law provides that no waterway project shall be undertaken by the office except those included in the approved program listing which are funded or which have funding obligation authority for that fiscal year.

Proposed law provides that projects planned for the year for which appropriations have been made or which have funding obligation authority shall be commenced in that year and provides procedures for commencing substitute projects.

Proposed law creates Dredging and Deepening Fund within the state treasury as the source of state funds provided for any waterway project on the priority list.

Proposed law provides for certain requirements for the preparation of plans and specifications and letting of bids for and supervision of construction.

Proposed law requires that distributions to recipient governmental entities be audited biennially.

Proposed law provides for requirements and procedures pertaining to the misuse of funds.

Effective July 1, 2017.

(Adds R.S. 34:3471-3483)