
DIGEST

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HB 561 Reengrossed

2019 Regular Session

Abraham

Abstract: Creates the Calcasieu Parish Tolling Authority and provides relative to its purpose, powers, governance, and jurisdiction.

Proposed law designates proposed law as the "Calcasieu Parish Tolling Authority Act" and specifies that present law provides its statutory authority for creation and implementation.

Proposed law specifies that any provision not contained or addressed in the Calcasieu Parish Tolling Authority Act will be governed by the La. Transportation Development Act.

Proposed law provides that the legislature finds and declares that the development, construction, and maintenance of an efficient, safe, and well-maintained intermodal transportation system is essential to improve safety, relieve congestion, promote continued economic growth, and provide an increased quality of life for people of this state.

Proposed law provides that public revenue, including federal funds, have not kept pace with the state's growing transportation system needs and declares that it is a matter of public necessity to create the Calcasieu Parish Tolling Authority to pursue alternative and innovative funding sources, including but not limited to public private partnerships and tolls, to supplement public revenue sources and improve the state transportation system.

Proposed law declares that it is a matter of public necessity to authorize the Calcasieu Parish Tolling Authority to pursue public-private partnerships or other authorized methods to supplement public revenue sources and to pursue alternative and innovative funding sources to improve the state's transportation system by funding a six lane bridge, located parallel to the existing Interstate 10 Calcasieu River Bridge, with shoulders, a pedestrian walkway, and related ingress and egress through tolls.

Proposed law provides that authorizing the Calcasieu Parish Tolling Authority to contract with private entities for the development or operation of a tollway equipped with tolls will provide significant public benefit for the citizens of La. and minimize the need for the imposition of additional taxes. Provides that the public need for timely and cost-efficient development or operation of transportation facilities within the state may not be wholly satisfied by existing methods utilized by public entities to develop and operate qualifying transportation facilities.

Proposed law defines "act" as the Calcasieu Parish Tolling Authority Act.

Proposed law defines "authority" as the Calcasieu Parish Tolling Authority created by proposed law.

Proposed law defines "board" as the board of directors of the authority.

Proposed law defines "department" as the La. Dept. of Transportation and Development (DOTD).

Proposed law defines "federal government" as the U.S.A and any agency or instrumentality, corporate or otherwise, of the U.S.A.

Proposed law defines "person" as any individual, partnership, firm, corporation, company, cooperative, association, society, trust, or any other business unit or entity, including any state or federal agency.

Proposed law defines "private entity" as a corporation, limited partnership, general partnership, limited liability company, joint venture, business trust, or other business entity.

Proposed law defines "project" as any capital project undertaken pursuant to this Chapter, including the acquisition of real property, construction, reconstruction, improvement, extension, installation, development, landscaping, or operation of a tollway.

Proposed law defines "project costs" as all costs associated with and necessary to plan, design, acquire property rights, and construct a project, and such other expenses as may be necessary or incidental to the construction, financing, and operation of the project.

Proposed law defines "public utility facilities" as tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances which are either publicly or privately owned.

Proposed law defines "real property" as lands, waters, rights in lands or waters, structures, franchises, and interests in land, including lands under water, riparian rights, property rights in air space or subsurface, and any and all other things and rights usually included within said term, including any and all interests in such property less than full title.

Proposed law defines "revenue" as any income, revenue, toll, and receipt derived or to be derived from the construction and operation of projects by the authority or received by the authority from any other sources and monies generated by way of contract, pledge, donation, or bequest.

Proposed law defines "secretary" as the secretary of the DOTD.

Proposed law defines "state" as the state of La. or any agency or instrumentality of the state.

Proposed law defines "toll" as any fee or charge for the use of a tollway.

Proposed law defines "tollway" as any limited access highway, bridge, or other transportation facility constructed or operated by the authority.

Proposed law creates the Calcasieu Parish Tolling Authority possessing full corporate powers to promote, plan, finance, develop, construct, control, regulate, operate, and maintain any limited access

tollway or transitway to be constructed within its jurisdiction and designates its domicile as Calcasieu Parish.

Proposed law establishes the board of seven directors, identified as the governing body of the authority, with full power to promulgate rules and regulations for the maintenance and operation of the authority.

Proposed law establishes the composition of the board as follows: one person, selected by the governing authority of Jefferson Davis Parish, who resides in Jefferson Davis Parish; one person, selected by the governing authority of Calcasieu Parish, who resides in Calcasieu Parish; one person, selected by the municipal governing authority of the city of Lake Charles, who resides in Lake Charles; one person, selected by the municipal governing authority of the city of Sulphur, who resides in Sulphur; one person, selected by the municipal governing authority of the city of Westlake, who resides in Westlake; and two people selected by the state legislators who represent any part of Calcasieu Parish, one of whom must be of a minority race.

Proposed law requires that the board elect, from its directors, a chairman, a vice chairman, and a secretary-treasurer who will serve one year terms.

Proposed law provides that the directors must take and subscribe to the oath of office required of public officials, serve until their successors are appointed and sworn into office, and may be removed from office for cause by a district court having jurisdiction.

Proposed law provides that a majority of the directors will constitute a quorum, official actions of the authority require an affirmative vote of the directors present and voting at any meeting, and specifies that the authority must meet at least quarterly, but may meet more frequently upon the call of the chairman.

Proposed law prohibits the directors from collecting a salary for their service but authorizes reimbursement for actual expenses incurred in the performance of their duties.

Proposed law specifies that the mileage allowance must be fixed by the authority in an amount not to exceed the mileage allowance authorized under state travel regulations, at rates and standards as promulgated by the division of administration, subject to the availability of funds.

Proposed law specifies that the boundary and jurisdiction of the authority is coextensive with the boundaries of Calcasieu Parish.

Proposed law authorizes the authority to perform, procure from the DOTD with the consent of its secretary, or procure from outside service providers any service or portion of services necessary to fulfill the duties and obligations of the authority.

Proposed law specifies that the directors and officers of the authority are subject to the code of governmental ethics and requires that the authority comply with public records and open meetings laws.

Proposed law specifies that all reports, maps, or other technical documents produced in whole or in part by the authority may be utilized by the authority or any other public agency in any manner that it deems necessary and advisable in the conduct of its duties.

Proposed law provides that the authority may only construct new additional highway tolls or transitway toll facilities with the prior express written consent of the affected governing bodies within the geographic boundaries of the authority after public hearing, including but not limited to the department.

Proposed law specifies that prior to the creation of the authority and the initiation of environmental impact statements, feasibility studies must first be conducted under sponsorship or approval of the department or the metropolitan planning organization, if applicable, to substantiate project need and justification.

Proposed law specifies that the authority has powers granted by virtue of it being a nonprofit corporation and may exercise powers necessary, appurtenant, convenient, or incidental to the carrying out of its purposes, including but not limited to the following rights and powers:

- (1) To adopt and amend bylaws, rules, and regulations necessary to carry out the purposes of the authority, for the governance of its affairs, and for the conduct of its business.
- (2) To adopt, use, and alter at will an official seal.
- (3) To plan, construct, reconstruct, maintain, improve, install, extend, develop, repair, operate, own, or lease projects within its jurisdiction in the manner to be determined by the authority and to pay any project costs in connection therewith. Specifies that any authority project that includes the construction or reconstruction of an existing state or federal highway must have the express written consent of the department and federal government prior to the commencement of any development, construction, or reconstruction activities.
- (4) To sue and be sued in its own name.
- (5) To fix, impose, revise, and occasionally adjust tolls, fees, and charges in connection with its projects sufficient to pay all maintenance, operation, debt service and reserve or replacement costs, and other necessary or usual charges.
- (6) To regulate speed limits on the tollways consistent with state speed limits.
- (7) To contract with any person, partnership, association, or corporation desiring the use of any part of a project, including the right-of-way adjoining the paved portion, for placing thereon telephone, fiber optic, telegraph, electric light, or power lines, gas stations, garages, and restaurants, or for any other purpose, and to fix the terms, conditions, rents, and rates of charges for such use.
- (8) To acquire, hold, and dispose of real and personal property in the exercise of its powers and

the performance of its duties under proposed law and in accordance with present law.

- (9) To acquire public or private lands in the name of the authority by purchase, donation, exchange, foreclosure, lease, or otherwise, including rights or easements, in the manner provided by proposed law, as it may deem necessary for carrying out the provisions of proposed law.
- (10) To hold, sell, assign, lease, or otherwise dispose of any real or personal property or any interest therein; to release or relinquish any right, title, claim, lien, interest, easement, or demand however acquired, including any equity or right of redemption in property foreclosed by it; take assignments of leases and rentals; proceed with foreclosure actions; or take any other actions necessary or incidental to the performance of its corporate purposes.
- (11) To establish control of access, designate the location, and establish, limit, and control points of ingress and egress for each project as may be necessary or desirable in the judgment of the authority to ensure its proper operation and maintenance and to prohibit entrance to such projects from any point or points not so designated, subject to the prior written concurrence of the department, when the state highway system is affected.
- (12) To relocate parish, municipal, or other public roads affected or severed by authority projects with equal or better facilities at the expense of the authority.
- (13) To enter or authorize its agents to enter, upon any lands, waters, and premises within the geographic boundaries of the authority for the purpose of making surveys, soundings, drillings, and examinations as it may deem necessary or appropriate for the purposes of proposed law. Such entry will not be deemed a trespass or unlawful. The authority must make reimbursement for any actual damages resulting to such lands, waters, and premises as a result of such activities.
- (14) To procure insurance in such amount or amounts appropriate to the size of the project, as determined by the board, insuring the authority against all losses, risk, and liability arising out of the construction, operation, maintenance, and ownership of any project.
- (15) To apply for, receive, and accept grants, loans, advances, and contributions from any source of money, property, labor, or other things of value, to be held, used, and applied for its corporate purposes.
- (16) To open accounts at financial institutions necessary to conduct its business and to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement in such investments as may be provided in any financing document relating to the use of such funds, or, if not so provided, as the board may determine, subject to compliance with state laws relative to investments by political subdivisions.
- (17) To borrow money and issue bonds for any corporate purpose.

- (18) To enter into contracts and agreements and execute all instruments necessary or convenient for accomplishing the purposes of the authority.
- (19) To enter into agreements with a public or private entity to construct, maintain, repair, or operate authority projects.
- (20) To authorize the investment of public and private money to finance authority projects, subject to compliance with state law relative to the use of public funds.
- (21) To employ consultants, engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary for the accomplishment of its purposes and to fix their compensation.
- (22) To do all acts and perform things necessary or convenient to execute the powers granted to the authority by law.

Proposed law authorizes the authority to acquire private or public property and property rights by donation, purchase, or exchange in the transportation corridor designated by the authority, as the authority may deem necessary.

Proposed law authorizes the authority, in the acquisition of land and property rights, to acquire an entire lot, block, or tract of land, if, by so doing, the acquisition cost to the authority will be equal to or less than the cost of acquiring only that portion of the property necessary for the project.

Proposed law allows the authority to sell, lease, or otherwise dispose of all or any portion of a project, provided that the sale, lease, or other disposition of a state-designated project requires department approval. Further authorizes that any surplus property be sold in accordance with procedures adopted by the authority that maximize the price received for such property.

Proposed law provides that when the authority acquires property for a project, it is not subject to any liability imposed by preexisting conditions, but it does not, however, affect the rights or liabilities of any past or future owners of the acquired property, nor does it affect the liability of any governmental entity for the results of its actions which create or exacerbate a pollution source.

Proposed law authorizes the authority and the La. Dept. of Environmental Quality to enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

Proposed law authorizes the authority to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of any public utility, railroad, or pipeline company, in, on, along, over, or under a project.

Proposed law provides that if the authority determines that it is necessary for any public utility facilities to be relocated, removed, or carried along or across an authority project by grade separation, the owner or operator of such facilities must relocate or remove the same in accordance with the

order of the authority.

Proposed law specifies that the cost and expense of such relocation, removal, or grade separation, including the cost of installing such facilities in a new location or locations, and the cost of any land, or any rights or interest in lands, and any other rights acquired to accomplish such relocation or removal, must be paid as project costs by the authority.

Proposed law provides that if any relocation or removal must occur, the owners or operators of public utility facilities, their successors or assigns, may use and operate said public utility facilities in the new location or locations upon the same terms and conditions enjoyed prior to relocation or removal.

Proposed law specifies that any utility allowed to exist on an authority's right-of-way is responsible for any cost of relocation, removal, or grade separation and all expenses related thereto.

Proposed law provides that contracts of the authority for the construction, improvement, repair, or maintenance of any authority project must be made and awarded under the same conditions, terms, requirements, and provisions as are provided by present law with respect to contracts of the state, parish, or municipality.

Proposed law specifies that the authority may contract with a private entity to provide services for design, cost estimate, feasibility studies, operations, management, and construction management services, provided that any contract awarded for such services be awarded only after the authority drafts and uses a request for proposal seeking proposals from qualified providers.

Proposed law requires the authority to contract with either the state police, a law enforcement district, or municipal law enforcement agency to perform law enforcement and patrol functions on any authority project.

Proposed law authorizes the authority to issue bonds, pledge revenues, gifts, grants, donations, or other sums of money, aid, or assistance, unless otherwise restricted, and any part of the proceeds of bonds, credit agreements, instruments, or any other money of the authority, from any source derived, for the further securing of the payment of the principal and interest of the bonds.

Proposed law specifies that bonds issued in accordance with the provisions of proposed law are not deemed a pledge of the full faith and credit of the state or of any governmental unit of the state and requires that bonds contain a statement that neither the full faith and credit of the state nor the full faith and credit of any public entity of the state are pledged to the payment of the principal of or the interest on such bonds.

Proposed law specifies that the issuance of bonds will not directly, indirectly, or contingently obligate the state or any governmental unit of the state to levy any taxes or make any appropriation for their payment, other than obligations to make payments by the state or any public entity to the authority arising out of contracts authorized by proposed law.

Proposed law requires that a business plan be prepared detailing the estimated expenditures for and revenues from the operation of all capital improvements and the time schedule for such expenditures and receipts prior to the issuance of any bond.

Proposed law requires that the business plan be approved by the authority and considered fiscally sound by the financial advisor employed by the authority.

Proposed law requires that bonds be authorized by a resolution of the authority and be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates, including but not limited to fixed, variable, or zero rates, be payable at such time or times, be in such denominations, be in such form, carry such registration and exchangeability privilege, be payable in such medium of payment and at such place or places, be subject to such terms of redemption prior to maturity at such price or prices as determined by the authority, and be entitled to such priority on the revenues as such resolution or resolutions may provide.

Proposed law requires that bonds be sold by the authority at public sale by competitive bid or negotiated private sale and at such price as the authority may determine to be in the best interest of the authority.

Proposed law specifies that the issuance of bonds are not subject to any limitations, requirements, or conditions contained in any other law and bonds may be issued without obtaining the consent of the state or any political subdivision, or of any agency, commission, or instrumentality of the state or any political subdivision, except that the issuance must be subject to the approval of the State Bond Commission.

Proposed law requires that the bonds be issued in compliance with the provisions of proposed law.

Proposed law specifies that for a period of 30 days after the date of publication of a notice of intent to issue bonds in the official journal of the authority authorizing the issuance of bonds, any interested person has the right to contest the legality of the resolution and the legality of the bond issue for any cause and indicates that after that time, no one has any cause or right of action to contest the legality of the resolution or of the bonds or the security of the bonds for any cause.

Proposed law specifies that if no suit, action, or proceeding is initiated contesting the validity of the resolution, the bonds, or the security for the bonds within the 30 days, the authority to issue and provide for the payment and legality of the bonds and all provisions of the resolution or other proceedings authorizing the issuance of the bonds must be conclusively presumed, and no court will have authority to inquire into such matters.

Proposed law requires that any notice of intent published provide, in reasonable detail, the purpose of the bonds, the security for the bonds, and the parameters of amount, duration, and interest rates and authorizes the authority to designate any paper of general circulation in its geographical jurisdiction to publish the notice of intent or utilize electronic media available to the general public.

Proposed law specifies that any suit to determine the validity of bonds issued by the commission must be brought only in accordance with the provisions of present law and all bonds issued pursuant

to proposed law must have all the qualities of negotiable instruments under the commercial laws of the state.

Proposed law specifies that any pledge of revenues or other monies made by the authority must be valid and binding from the time the pledge is made. Requires the revenues or monies pledged and received by the authority be immediately subject to the lien of such pledge, without any physical delivery of the pledge or further act, and the lien of any pledge will be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, regardless of whether the parties received notice of the claims.

Proposed law provides that neither the members of the authority nor any person executing the bonds will be liable personally for the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

Proposed law specifies that bonds of the authority, their transfer, and the income arising from the bonds must, at all times, be exempt from all taxation by the state or any political subdivision of the state and may or may not be exempt for federal income tax purposes. Provides that the bonds issued pursuant to proposed law are considered legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and guardians.

Proposed law specifies that the bonds are eligible to secure the deposit of any and all public funds of the state and any and all public funds of municipalities, parishes, school districts, or other political corporations or subdivisions of the state and are deemed lawful and sufficient security for deposits to the extent of their value.

Proposed law authorizes the authority to provide for the issuance of refunding bonds, then outstanding and issued, by resolution. Specifies that the issuance of refunding bonds, the maturities, and other relevant details, the rights and remedies of the bondholders, and the rights, powers, privileges, duties, and obligations of the authority with respect to the same, will be governed by the provisions of present law.

Proposed law specifies that the holders of any bonds issued have all rights and remedies as may be provided in the resolution or trust agreement authorizing the issuance of the bonds, including but not limited to, appointment of a trustee for the bondholders and any other available civil action to compel compliance with the terms and provisions of the bonds and the resolution or trust agreement.

Proposed law specifies that the authority is authorized to employ all professionals it deems necessary in the issuance of its bonds and is considered a public entity for purposes of present law, which statutes must apply to bonds of the authority, provided that in the event of a conflict with the provisions of proposed law, the provisions of present law control.

Proposed law specifies that when the bonds issued for any project and the interest on any bond issued have been paid in full, or sufficient funds have been deposited in trust for that purpose, and the project is in a condition which meets department standards for structural condition and geometric

design and is in a condition of maintenance satisfactory to the department, the project and any property acquired for the project may be transferred by the authority in full ownership to the state. Specifies that the department will assume jurisdiction and control of the project as a part of the state highway system, provided that the legislature authorizes an increase in mileage of the state highway system equal to the length of the authority project to be transferred.

Proposed law specifies that any authority project transferred to and accepted by the department will be operated and maintained by the department as an integral part of the state highway system and the department, at the discretion of the secretary, may continue to collect any toll or fee for the purpose of maintenance of the project.

Proposed law specifies that any proposal to develop or operate a transportation facility as a public-private partnership project pursuant to proposed law must be approved by the authority and the department and prior to the authority approving a proposal to develop or operate a transportation facility as a public-private partnership, the authority must submit the proposal to the House and Senate committees on transportation, highways and public works.

Proposed law requires the chairman of each committee to call a public hearing within 30 days of receiving the proposal from the authority for the purpose of receiving information and public comments on the proposal and specifies that transportation facility proposals may be initiated by a private entity, the authority, or the department.

Proposed law authorizes a private entity to submit an unsolicited proposal to the authority to develop or operate a qualifying transportation facility; however, the private entity must apply to the authority for approval and the authority must advertise any unsolicited proposal submitted by a private entity for the purposes of receiving competitive proposals for the same proposed qualifying transportation facility.

Proposed law specifies that competitors have 90 days from the date of advertisement to submit competitive proposals to the authority and the authority must charge a reasonable fee to cover its costs to process, review, and evaluate an unsolicited proposal submitted by a private entity.

Proposed law requires that an unsolicited proposal for a qualifying transportation facility submitted by a private entity must include all the following:

- (1) A topographic map with a scale of 1:2,000, or other appropriate scale, that delineates the location of the proposed transportation facility.
- (2) A detailed description of the proposed qualifying transportation facility, including a conceptual design of the facility and all proposed interconnections with existing or planned transportation facilities.
- (3) The proposed date for acquisition, construction, or improvement of the proposed transportation facility.
- (4) A statement setting forth the private entity's planned method of acquisition of all property

interests required for the proposed qualifying transportation facility, including the nature of the property interests to be acquired and a description of any property the private entity expects to request the authority to acquire.

- (5) The transportation plan of each affected local jurisdiction, including a statement of the status of the proposed qualifying transportation facility.
- (6) A preliminary list of local, state, or federal agency permits or approvals expected to be required in order to develop or operate the proposed qualifying transportation facility and a projected schedule for obtaining such permits or approvals.
- (7) A preliminary list of public utility facilities expected to be crossed or relocated by the proposed qualifying transportation facility and a statement of the plans of the private entity to accommodate or relocate such crossings.
- (8) A statement detailing the private entity's plan to finance, develop, and operate the proposed qualifying transportation facility, including identification of dedicated revenue sources and proposed debt or equity investments by the private entity or applicable public entities.
- (9) The names and addresses of the persons who may be contacted for further information concerning the request.
- (10) Any additional material and information reasonably requested by the authority.

Proposed law authorizes the authority to request proposals from private entities to develop or operate a transportation facility and charge a reasonable fee to cover its costs to process, review, and evaluate solicited proposals received in response to solicited proposals.

Proposed law authorizes the authority to approve the proposal of a private entity to develop or operate a qualifying transportation facility after consultation with the department and a determination is made that the proposal serves a public purpose and requires the authority to consider the following factors to determine if a private entity proposal serves a public purpose:

- (1) There is a public need for a transportation facility or facilities of the type the private entity proposes to develop or operate as a transportation facility.
- (2) The transportation facility or facilities and the proposed interconnections with existing transportation facilities and the private entity's plans for operation of the qualifying transportation facility or facilities are reasonable and not incompatible with the state transportation plan and with the local governmental entity's comprehensive plan or plans.
- (3) The estimated cost of the transportation facility or facilities is reasonable in relation to other similar facilities.
- (4) The private entity's proposal will result in the timely development or more efficient operation

of the transportation facility.

Proposed law permits the authority to rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience when evaluating requests.

Proposed law specifies that the approval by the authority must be subject to the private entity's entering into a comprehensive agreement with the authority and requires the authority to establish a date to commence the acquisition of property for the construction of a new transportation facility or a date to commence construction of improvements to an established transportation facility.

Proposed law permits the authority, in its discretion, to grant extensions of such dates.

Proposed law requires that the authority take appropriate action to protect trade secrets and other confidential, privileged, and proprietary information received from a private entity, including but not limited to information exempt from disclosure under the federal Freedom of Information Act or the Public Records Law.

Proposed law authorizes the authority to enter into confidentiality agreements in connection with any private entity proposal, comprehensive agreement, service contract, lease, or agreement for a qualifying transportation facility.

Proposed law requires the authority to operate in accordance with the provisions of present law relative to public-private partnership projects.

(Adds R.S. 48:2191-2204)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the original bill:

1. Make technical changes.
2. Add one person selected by the governing authority of Calcasieu Parish who resides in Calcasieu Parish to the makeup of the board and remove one person that would have been selected by the Southwest La. Delegation.
3. Delete provisions relative to eminent domain.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.

2. Clarify that two people must be selected as a director of the board by the state legislators who represent any portion of Calcasieu Parish.
3. Delete the provision that requires the chairmanship for each successive term be alternated among the representatives of all municipalities.
4. Require any authority project that includes the construction or reconstruction of an existing state or federal highway have the express written consent of the department and federal government prior to the commencement of any development, construction, or reconstruction activities.
5. Clarify that any proposal to develop or operate a transportation facility as a public-private partnership project must be approved by the authority and the department and the transportation facility proposals may be initiated by a private entity, the authority, or the department.
6. Authorize the authority to approve the proposal of a private entity to develop or operate a qualifying transportation facility after consulting with the department and a determination is made that the proposal serves a public purpose.