

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)

1 AN ACT

2 To enact Chapter 48 of Title 34 of the Louisiana Revised Statutes of 1950, to be comprised

3 of R.S. 34:3471 through 3483, relative to waterways; to provide for a priority

4 program for the deepening and dredging of waterways; to establish the Dredging and

5 Deepening Fund; to provide for certain terms, definitions, language, conditions,

6 procedures, and requirements; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 48 of Title 34 of the Louisiana Revised Statutes of 1950,

9 comprised of R.S. 34:3471 through 3483, is hereby enacted to read as follows:

10 **CHAPTER 48. WATERWAY DREDGING AND DEEPENING**

11 **PRIORITY PROGRAM**

12 **§3471. Definitions**

13 **As used in this Chapter, unless the context clearly indicates otherwise,**

14 **the following definitions shall apply:**

15 **(1) "Department" means the Department of Transportation and**

16 **Development.**

17 **(2) "Governmental entity" means the state or any political subdivision**

1 and the federal government as a cost share partner.

2 (3) "Joint committee" means the House Committee on Transportation,  
3 Highways and Public Works and the Senate Committee on Transportation,  
4 Highways and Public Works, functioning as a joint legislative committee.

5 (4) "Office" means the office of multimodal commerce within the  
6 Department of Transportation and Development.

7 (5) "Waterway" means any navigable bayou, canal, channel, or river,  
8 or portion thereof.

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

12 (7) "Waterway project" means a program, either new or continuing,  
13 that is planned and implemented with the primary goal of dredging and  
14 deepening waterways in the state to include cost share projects with the federal  
15 government.

16 §3472. Methodology for dredging and deepening project evaluation

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

25 (a) Description of the project and demonstration of immediate need for  
26 the project.

27 (b) Preliminary project design and cost estimate.

28 (c) Description of project area.

29 (2) Project applications shall not be subject to formal review and

1 evaluation until the information required in the application has been submitted.

2 B. Applications shall be reviewed by the office and any other  
3 appropriate state agencies within sixty days after receipt of such applications  
4 by the office.

5 C. Procedures for review and evaluation shall be developed by the office.  
6 Prior to implementing the review and evaluation procedures, the office shall  
7 secure the approval of these procedures by the oversight committees in  
8 accordance with the Administrative Procedure Act. The procedures and a set  
9 of guidelines for completing project applications shall be made available to  
10 eligible governmental entities upon request.

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

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

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

26 §3473. Priority list of projects; public hearings; final program

27 Each quarter, the office shall prepare and furnish to the joint committee  
28 a prioritized list of projects based on the applications received by the office  
29 during that quarter. The joint committee shall receive the prioritized list of

1 projects from the office for each of the first three quarters of the year, and shall  
2 call a public hearing within thirty days of receiving the list in order to receive  
3 public testimony regarding any project on the list. At such hearing, the joint  
4 committee shall vote to either accept, reject, or modify the list. Each quarter,  
5 the office shall reprioritize the list of projects to reflect the cumulative list of  
6 projects recommended by the office. After application recommendations for  
7 the last quarter are made by the office, the office shall submit the final  
8 waterway dredging and deepening priority program for the ensuing fiscal year  
9 to the joint committee for approval. Prior to the convening of the regular  
10 session of the legislature, the joint committee shall hold a public hearing for the  
11 purpose of reviewing the final program for the ensuing fiscal year. Prior to  
12 such hearing, the office shall publish the appropriate official notice on the  
13 department's website. The final program shall be based upon the anticipated  
14 revenues to be appropriated by the legislature or other funding obligation  
15 authority and the projects shall be listed in order of priority. When this final  
16 construction program is presented to the legislature for funding or funding  
17 obligation authority for the ensuing fiscal year, the legislature shall not add any  
18 projects to this final construction program. Any project recommended by the  
19 office and approved by the joint committee for which funds are unavailable in  
20 the fiscal year but for which it was approved shall remain on the prioritized list  
21 of projects and shall be carried forward to the next fiscal year. Such project  
22 shall retain its place on the prioritized list of projects.

23 **§3474. Supplemental list of projects**

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

29 **§3475. Projects undertaken by the office**

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

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

18          §3476. Commencement of projects; substitutions

19           The projects planned for the year for which appropriations have been  
20           made or which have funding obligation authority shall be commenced in that  
21           year; however, if a project cannot be commenced within the year for which it  
22           is authorized, the commissioner of multimodal commerce shall file with the  
23           project records a public statement as to the factors causing the delay. Projects  
24           which have been funded or which have obligation authority shall retain such  
25           funding or authority until the project is completed and the project costs are  
26           liquidated.

27          §3477. Allocation, reallocation of funds; deposit to Dredging and Deepening

28           Fund

29           A. The Dredging and Deepening Fund is hereby created within the state

1 treasury and shall be a source of state funds in addition to capital outlay  
2 projects, the general fund, and other sources, provided for any waterway  
3 project on the priority list approved pursuant to the provisions of this Chapter.

4 B. Prior to the commencement of any work, the office shall require the  
5 presiding officer of each governmental entity involved in a project to execute an  
6 agreement and statement of sponsorship to provide no less than a ten percent  
7 local match for the cost of the project.

8 C. A sponsoring authority may make application under the provisions  
9 of this Chapter to receive a portion of the funds required to participate in a  
10 federal matching program.

11 D. Any monies allocated for any project not needed for said project may  
12 be reallocated for the completion of any other project or projects specified. Any  
13 monies not needed for the completion of said projects shall be deposited in and  
14 credited to the Dredging and Deepening Fund.

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

25 §3478. Preparation of plans and specifications; letting of bids for construction;  
26 supervision of construction

27 The port authority shall be responsible for the preparation of plans and  
28 specifications for their respective project. The port authority shall also be  
29 responsible for the letting of bids, the public advertising, and the supervision of

1 work for all projects, all in accordance with the provisions of this Chapter.

2 §3479. Inspection

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

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

12 §3480. System of administration

13 Each governmental entity shall adopt a system of administration which  
14 shall require approval of the office for any expenditures made out of state and  
15 local matching funds, and no governmental entity shall expend any funds on an  
16 approved project without the approval of the office. Each governmental entity  
17 shall adopt a system of administration which shall include the development of  
18 a capital improvement program on a selective basis, centralized purchasing of  
19 equipment and supplies, centralized accounting, and selective maintenance and  
20 construction based upon engineering plans and inspections. All contracts for  
21 materials, construction, or services shall be advertised and awarded to the  
22 lowest responsible bidder in accordance with the provisions of R.S. 38:2212.

23 §3481. Audit of distribution to recipient governmental entities

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

1 any failure to comply with the recommendations for planning, design, and  
2 construction adopted by the office. The recipient governmental entity shall  
3 certify annually to the legislative auditor that the funds made available under  
4 this Chapter have been expended in accordance with the standards established  
5 by law.

6 §3482. Report of any misuse of funds

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

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

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

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



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

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

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

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

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

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## DIGEST

SB 148 Engrossed

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 on the department's website 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.

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 the Dredging and Deepening Fund within the state treasury as the source of state funds in addition to capital outlay funds, the general fund, and other sources, 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 allows a sponsoring authority to receive a portion of the funds required to participate in a federal matching program.

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)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Finance to the original bill

1. Makes technical changes.
2. Adds canals and channels to the definition of "waterway".

3. Eliminates language giving delayed projects highest priority for the next ensuing fiscal year.
4. Adds language to allow a sponsoring authority to make application to receive a portion of the funds required to participate in a federal matching program.
5. Changes responsibility for preparation of plans and specifications for projects from governmental entities and the office of multimodal commerce to port authorities.