

GREEN SHEET REDIGEST

HB 598

2017 Regular Session

Abramson

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

**TRANSPORTATION: Provides for changes to the highway priority program.**

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DIGEST

Present law establishes a prioritization process for construction of highway and bridge projects utilized to develop a Highway Priority Program that accomplishes many goals including bringing the state highway system into a good state of repair and optimizes the usage and efficiency of existing transportation facilities.

Proposed law retains present law but adds to the goals of the prioritization process the development of a program to ensure that the taxes levied on motor fuels are used by the Department of Transportation and Development (DOTD) in the most cost-effective manner and that the state is maximizing state and federal funding on costs related to the actual construction and maintenance of highway and bridge projects and minimizing the use of these funds on administrative costs for DOTD.

Proposed law specifies that in cases where Priority A and B mega-projects would be prioritized equally in accordance with proposed law and present law, consideration must be given to mega-projects for which funding has been made available by sources other than the state or federal government.

Present law requires, beginning in FY 2017-2018, DOTD to provide the legislature and public with a program that lists projects to be constructed in the ensuing fiscal year in an order of priority that is determined after projects are analyzed utilizing a process based on an objective analysis that considers the following factors relative to the cost of the project and anticipated revenues to be appropriated by the legislature:

- (1) The condition of the roads, streets, and structures making up the state highway system and the urgency of the improvements considering their order of needs.
- (2) The type and volume of traffic on a roadway, highway, or bridge.
- (3) The crash records for a roadway, highway, or bridge.
- (4) The technical difficulties in the preparation of plans and the procurement of rights-of-way for a roadway, highway, or bridge.
- (5) Whether an unforeseeable emergency has created an immediate need for improvement or reconstruction.
- (6) Whether capacity improvements are warranted due to population or traffic volume increases in a geographic area.
- (7) Whether or not the highway or bridge is or will be on an evacuation route utilized to evacuate large populations due to catastrophic events.
- (8) Whether the improvement to or addition of a highway or bridge will benefit the economic development potential of the state.

Proposed law retains present law but changes the FY from 2017-2018 to FY 2018-2019 and adds a factor for whether the highway or bridge project will support the needs of the local and regional authorities with responsibility for transportation planning to ensure that there is an equitable distribution among and between the different regions of the state over a three year period.

Proposed law requires, in addition to the requirements of present law, for DOTD to establish a multi-year time line on the projects to be funded through the program each year including an indication of the source of monies from which project costs will be funded.

Proposed law requires DOTD to submit performance progress reports including the performance objectives, indicators, and standards used by the department to determine the efficiency and effectiveness of the priority of projects in the program. Further requires the report to be submitted and maintained through the electronic performance database maintained and used by the division of administration to track state agency performance standards and on DOTD's webpage.

Proposed law requires, beginning with the program for FY 2018-2019 and for each program thereafter, for DOTD to apply the prioritization factors provided for in present law and begin to prioritize all projects in the program which are at the stage of project delivery where sources of funding are being identified.

Proposed law further requires, beginning with the program for FY 2018-2019, the department to prioritize all projects included in the program into two separate lists. The first list shall include a three-year plan for all projects in the program where funding is programmed based on the anticipated and projected revenues available for projects in Stages 3 and 4 in that fiscal year. Requires DOTD to publish the list with notations regarding whether the scheduled letting date and estimated completion date for each project is on-schedule, ahead of schedule, or delayed.

Proposed law requires the department to include a detailed written explanation of any delay notated on the published list required by proposed law.

Proposed law requires that as projects are completed from the first list, they are deleted and replaced with projects from the second list beginning with the highest level of priority. Further requires DOTD to devise a detailed schedule of project delivery for all projects on this list which shall include at a minimum, the stage of project delivery, the estimated letting date, and estimated completion date for each phase of project delivery, associated costs, and funding sources for each phase.

Proposed law requires the second list to include a three-year plan for all projects in the program that can be funded if additional revenues become available. Each year, as projects move from this list to the first list, new projects must be added to the second list from prioritized projects in the program starting with the highest level of priority.

Proposed law requires the district administrator of each of the nine DOTD districts to determine the prioritization of the pavement preservation projects in their respective district.

Proposed law specifies that in an action for civil damages, the Highway Priority Program documents produced in order to comply with proposed law, including any source data and reports associated with the prioritization of projects in the program, is not discoverable or admissible as evidence in any civil trial.

Proposed law requires, beginning July 1, 2019, the legislative auditor to annually audit the avails of the taxes levied on gasoline, motor fuels, and special fuels, hereinafter "motor fuel taxes", to ensure compliance with the laws and regulations and adequacy of internal controls to ensure all of the following:

- (1) That the avails of the motor fuels tax are used in accordance with their restricted purposes as set forth in the state constitution.
- (2) That the avails of the motor fuels tax are spent in appropriate categories as outlined in proposed law.
- (3) That the avails of the motor fuels tax are spent on projects in compliance with the priorities set forth in the applicable programs for prioritizing capital projects.
- (4) That the avails of the motor fuels tax are spent in an efficient and effective manner showing improvement in program operations through performance measures such

as pavement conditions, bridge conditions, safety improvements, implementation of the La. Statewide Transportation Plan, and other outcome measures as determined by the auditor.

Proposed law requires DOTD to annually submit a report to the legislature and the legislative auditor which contains detailed information regarding the expenditure breakdown of the avails of the motor fuel taxes utilized by the department in accordance with the restricted purposes as set forth in the state constitution and the methodology and outcomes of DOTD's prioritization of projects, and all source documentation necessary to review any metrics determined by the legislative auditor. Proposed law provides for a detailed breakdown of additional information the report is required to include.

Proposed law requires the auditor to annually certify that the audit of the avails of the motor fuels tax are in substantial compliance with LA Const. Article VII, §27. Proposed law clarifies that if the legislative auditor finds a lack of substantial compliance with any three consecutive audits, then the Legislative Audit Advisory Council is required to make recommendations of appropriate action to the legislature.

Present law provides for annual public hearings on a proposed construction program presented by DOTD to and conducted by the Joint Highway Priority Construction Committee composed of all members of the House and Senate committees on transportation, highways and public works and each legislator representing parishes within the respective highway district and for submission of a report based on testimony received to be sent to the department.

Proposed law changes present law beginning February 1, 2018, and February first each year thereafter to require DOTD to present the proposed construction program and list of projects together with the summary of project requests from public hearings conducted under present law. Proposed law requires the Joint Committee on Transportation, Highways and Public Works to hold a public hearing, and authorizes the joint committee to delete any project its determines does not have priority in accordance with the factors in R.S. 48:229.1 and to add or substitute any projects to the proposed construction program for projects which have been removed. Proposed law requires the joint committee to communicate the approved proposed construction program to DOTD.

Proposed law changes present law to provide that the Joint Highway Priority Construction Committee includes legislators representing the parishes within the respective highway district solely for purposes of attending public hearings in each highway district.

Present law prohibits DOTD from undertaking any construction project other than those included in the priority listing for that fiscal year regardless of the source of funds for the project except project undertaken and financed out of the secretary's emergency fund and projects involving use of matching funds to meet federal requirements in order to receive federal aid funds.

Proposed law adds provisions that require DOTD to obtain specific approval of the Joint Committee on Transportation, Highways and Public Works prior to undertaking any project that changes the flow of traffic by closing an existing interchange or reduces the number of travel lanes.

Effective August 1, 2017.

(Amends R.S. 48:229.1(B) and (C), 231(A)(5) and (6) and (B), and 232; Adds R.S. 48:229.1(A)(9), (10), and (11) and (H), and 229.2)

#### 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 specification that the taxes referenced in proposed law are new taxes levied on or after Aug. 1, 2017.
3. Add that in cases where Priority A and B mega-projects would be prioritized equally in accordance with proposed law and present law, consideration must be given to mega-projects that have match monies from non-federal or non-state sources.
4. Change the fiscal year references in present law and proposed law from 2017-2018 to 2018-2019.
5. Add as a prioritization factor of the Highway Priority Program whether or not the project meets the needs of local and planning organizations that ensure equitable distribution among different regions of the state over a three-year period.
6. Require the district administrator of each of the nine DOTD districts to determine the prioritization of the pavement preservation projects in their respective district.
7. Require, after input from local government officials and metropolitan planning organizations, at least 35% of the avails of the new motor fuel tax to be divided among the DOTD districts based on state road mileage and average daily traffic in each district by a formula established by the department.
8. Specify that in an action for civil damages, the Highway Priority Program is not discoverable or admissible as evidence in any civil trial.
9. Require the legislative auditor to ensure new taxes are used in accordance with statutory provisions in addition to the provisions of the Transportation Trust Fund.
10. Change certain Highway Priority Program references to general language regarding applicable programs that require prioritization of projects.
11. Clarify that if the legislative auditor finds a lack of substantial compliance with any three consecutive audits, then the Legislative Audit Advisory Council is required to make recommendations of appropriate action to the legislature.
12. Delete all provisions relative to public-private partnerships.

The House Floor Amendments to the engrossed bill:

1. Require the department give consideration when prioritizing projects to mega-projects for which funding has been made available by sources other than the state or federal government.
2. Require the department submit and maintain performance progress reports, including the performance objectives, indicators, and standards used by the department to determine efficiency and effectiveness of the priority of projects, through an electronic performance database and include the reports on the department's webpage.
3. Require the department to include a detailed written explanation for delay if the letting year for any project is delayed according to the published list required by proposed law.
4. Prohibit documents that are produced in order to comply with the provisions of proposed law from being discoverable or admissible as evidence in any civil trial.
5. Make technical changes.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the reengrossed bill

1. Removes references in proposed law to House Bill 632 of the 2017 Regular Session of the Legislature relative to additional motor fuel taxes and applies proposed law to existing motor fuel taxes.
2. Adds requirements for DOTD, beginning February 1, 2018, and not later than February first each year thereafter, to provide a proposed construction program and list of projects together with the summary of project requests and report based on testimony from the public hearings held in each highway district to the Joint Committee on Transportation, Highways and Public Works and requires the committee to hold a public hearing. Allows the joint committee to delete any project it determines is not in proper order of priority in accordance with the factors in R.S. 48:229.1 and to add or substitute any projects to the proposed construction program for projects which have been removed. Requires the joint committee to communicate the approved proposed construction program to DOTD.
3. Adds requirements for DOTD, beginning March 1, 2018, and not later than March first of each year thereafter, to communicate the final approved construction program to the legislature for funding.
4. Provides that legislators who are not members of the House or Senate committees on transportation, highways and public works are members of the Joint Highway Priority Construction Committee solely for attending public hearings in each highway district.
5. Requires DOTD to receive specific approval from the Joint Committee on Transportation, Highways and Public Works prior to undertaking any project that changes the flow of traffic by closing an existing interchange or reduces the number of travel lanes.
6. Makes technical changes.