

2017 Regular Session

HOUSE BILL NO. 598

BY REPRESENTATIVES ABRAMSON (BY REQUEST) AND JIM MORRIS

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

TRANSPORTATION: Provides for changes to the highway priority program and authorizes public-private partnership agreement under certain circumstances

1 AN ACT

2 To amend and reenact R.S. 48:229.1(B) and (C) and to enact R.S. 48:229.1(A)(9) and (10),
3 229.2, and 236, relative to the construction and funding of highways; to provide with
4 respect to the Highway Priority Program; to require that certain information be
5 included in the Highway Priority Program; to provide for the priority process; to
6 authorize the Department of Transportation to enter into certain agreements for the
7 construction of certain projects; to require certain annual audits of funding; to require
8 annual reports; to provide for certain requirements and limitations; and to provide
9 for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 48:229.1(B) and (C) are hereby amended and reenacted and R.S.
12 48:229.1(A)(9) and (10), 229.2, and 236 are hereby enacted to read as follows:

13 §229.1. Statewide prioritization process for the Highway Priority Program

14 A. The legislature declares it to be in the public interest that a prioritization
15 process for construction be utilized to develop a Highway Priority Program that
16 accomplishes the following:

17 * * *

18 (9) Utilizes the taxes levied on gasoline, motor fuels, and special fuels which
19 are deposited into the Transportation Trust Fund and dedicated solely and
20 exclusively for the costs associated with construction and maintenance of state and

1 federal roads and bridges and used by the Department of Transportation and
2 Development in the most cost-effective manner to ensure that the state is getting a
3 positive return on the investment of state and federal funds in transportation projects.

4 (10) Maximizes state and federal transportation funding on costs related to
5 the actual construction and maintenance of highway and bridge projects and
6 minimizes the use of these funds on administrative costs of the Department of
7 Transportation.

8 B.(1) Beginning with the Highway Priority Program for Fiscal Year 2017-
9 2018 and for each Highway Priority Program thereafter, the department shall provide
10 the legislature and public with this program which shall list projects to be
11 constructed in the ensuing fiscal year in an order of priority that is determined after
12 projects selected pursuant to Subsection C of this Section are analyzed and
13 prioritized based upon the factors set forth in Subsection A of this Section.

14 (2) In addition to the requirements of Paragraph (1) of this Subsection, the
15 department shall establish a multi-year time line on the projects to be funded through
16 the Highway Priority Program each year including an indication of the source of
17 monies from which construction costs will be funded.

18 C.(1) The projects to be included in the Highway Priority Program shall be
19 selected utilizing a process based on an objective analysis that considers, at
20 minimum, the following factors relative to the cost of the project and anticipated
21 revenues to be appropriated by the legislature:

22 ~~(1)~~ (a) The condition of the roads, streets, and structures making up the state
23 highway system and the relative urgency of the improvements considering in their
24 order of general needs. For purposes of this Paragraph, "condition" shall include but
25 not be limited to the state of repair of the existing roadway and shoulder surfaces,
26 structures and drainage, and other factors of the roadway, such as signs, signals,
27 markings, and barriers.

28 ~~(2)~~ (b) The type and volume of traffic on a particular segment of roadway,
29 highway, or bridge.

1 ~~(3)~~ (c) The crash records for a particular segment of roadway, highway, or
2 bridge.

3 ~~(4)~~ (d) The technical difficulties in the preparation of plans and the
4 procurement of rights-of-way for a particular segment of roadway, highway, or
5 bridge.

6 ~~(5)~~ (e) Whether unforeseeable emergencies such as floods have created an
7 immediate need for improvement or reconstruction.

8 ~~(6)~~ (f) Whether capacity improvements are warranted due to population or
9 traffic volume increases in specific geographic areas.

10 ~~(7)~~ (g) Whether or not the highway or bridge is or will be on an evacuation
11 route utilized to evacuate large populations due to catastrophic events such as
12 hurricanes or flooding.

13 ~~(8)~~ (h) Whether the improvement to or addition of a highway or bridge will
14 benefit the economic development potential of the state.

15 (i) Whether or not the highway or bridge project will meet the needs of the
16 local and regional planning organizations to ensure that there is an equitable
17 distribution among and between the different regions of the state.

18 (2) The Department of Transportation and Development shall submit
19 performance progress reports including the performance objectives, indicators, and
20 standards used by the department to determine the efficiency and effectiveness of the
21 priority of projects in the Highway Priority Program. To the extent possible, such
22 reports shall be submitted and maintained through the electronic performance
23 database maintained and used by the division of administration to track state agency
24 performance standards as well as included on the department's webpage.

25 (3) Beginning with the Highway Priority Program for Fiscal Year 2017-2018
26 and for each Highway Priority Program thereafter, the department shall apply the
27 prioritization factors provided for in this Subsection and begin to prioritize all
28 projects in the Highway Priority Program which are at the stage of construction
29 where sources of funding are being identified.

(4) Beginning with the Highway Priority Program for Fiscal Year 2017-2018
and for each Highway Priority Program thereafter, the department shall prioritize all
projects included in the Highway Priority Program into two separate lists as follows:

(a)(i) The first list shall include a three-year plan for all projects in the program where funding is secured based on the anticipated and projected revenues available for construction in that fiscal year. Each year, as projects are completed from this list, they shall be deleted and replaced with projects from the list required in Subparagraph (b) of this Paragraph beginning with the highest level of priority. The department shall devise a detailed schedule of construction for all projects on this list which shall include at a minimum, the stage of construction, the estimated start date, and estimated end date for each phase of construction, associated costs, and funding sources for each phase.

(ii) Each year, the department shall publish the list required in Subparagraph (a) of this Paragraph with notations regarding whether the project is on-time, ahead of schedule, or delayed.

(b) The second list shall 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 list required in Subparagraph (a) of this Paragraph, new projects shall be added to this list from prioritized projects in the Highway Priority Program starting with the highest level of priority.

* * *

§229.2 Audit requirements; annual reports; adjustment in levy of gas taxes

A. Beginning July 1, 2019, the legislative auditor shall annually audit the
avails of the additional tax levied pursuant to the provisions of R.S. 47:818.12.1 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:

(1) The avails of the motor fuels tax are used in accordance with their
restricted purposes as set forth in Article VII, Sections 27(B)(2) of the Constitution.

1 (2) The avails of the motor fuels tax are spent in appropriate categories as
2 specified in Paragraph (1) of Subsection B of this Section.

3 (3) The avails of the motor fuels tax are spent on projects in compliance with
4 the priorities set forth in the Highway Priority Program.

5 (4) The avails of the motor fuels tax are spent in an efficient and effective
6 manner showing improvement in program operations through performance measures
7 such as pavement conditions, bridge conditions, safety improvements,
8 implementation of the Louisiana Statewide Transportation Plan, and other outcome
9 measures as determined by the auditor.

10 B. The Department of Transportation and Development shall annually, or as
11 requested, submit a report to the Legislature and to the legislative auditor which
12 contains the following information regarding the use of the avails of the motor fuel
13 taxes:

14 (1) Detailed information regarding the expenditure breakdown of the avails
15 of the motor fuel taxes utilized by the department in accordance with the restricted
16 purposes as set forth in Article VII, Section 27(B)(2) of the Constitution. In addition
17 the report shall include details of expenditures in the following categories:

18 (a) Administration and support services which include staff costs associated
19 with executive level oversight and administrative supervision of the various business
20 support functions of the Department of Transportation and Development.

21 (b) Transportation funding used for other multimodal programs such as
22 ports, aviation, freight, transit, and public works.

23 (c) Operations and maintenance expenses which include non-administrative
24 costs for activities such as repair and maintenance of pothole patching, mowing,
25 ditch cleaning, striping, signal repair and installation, bridge repair, and maintenance.

26 (d) Program and project delivery including actual construction and
27 construction engineering costs for projects.

(2) The methodology and outcomes of the Department of Transportation and Development's prioritization of projects in the Highway Priority Plan as compared to the expenditure of funds.

(3) All source documentation necessary to review any metrics determined by the legislative auditor, including those included in Paragraph (4) of Subsection A of this Section.

(4) Any other information or data requested by the legislative auditor.

C. The legislative auditor shall annually certify that the audit of the avails
of the motor fuels tax are in substantial compliance.

* * *

§236. Agreements with public-private partnerships; prior approval; reports;
audits

A.(1) The Department of Transportation may enter into an agreement with a public entity or private entity to form a public-private partnership for the purpose of financing, planning, designing, constructing, and operating highway and bridge projects. The public-private partnership agreement may include terms relative to the project costs associated with any phase of the planning, designing, and constructing of the project including the acquisition of real property or the reconstruction or improvement to existing highway or bridge infrastructure.

(2) All public-private partnerships shall be subject to review and approval by the Joint Legislative Committee on the Budget prior to entering into the public-private agreement.

(3) All public-private partnerships shall be subject to audit by the legislative auditor.

(4) All private entities seeking to participate in a public-private partnership that will be requesting or receiving state monies or assistance through such partnership agreement shall submit information and documents to the legislative auditor to verify qualifications and experience for this type of work. The legislative auditor shall maintain a list of private entities which are approved for participation

1 after verification of the private entities qualifications and experience in this type of
2 work.

3 B. For purposes of this Section, the following words shall have the following
4 meanings unless the context clearly indicates otherwise:

5 (1) "Private entity" shall mean a corporation, limited partnership, general
6 partnership, limited liability company, joint venture, business trust, or other business
7 entity.

8 (2) "Project" shall mean any capital highway or bridge project included in
9 the Louisiana Statewide Transportation Plan, including projects from the statewide
10 A and B mega project list. Projects undertaken through public-private partnership
11 agreements shall be approved by regional planning officials and metropolitan
12 planning organizations from the area in which all or a portion of the project is to be
13 located.

14 (3) "Project costs" means all costs associated with and necessary to plan,
15 design, acquire property rights, and to construct a project, construction costs, and
16 other expenses as may be necessary or incidental to the construction, financing, and
17 operation of the project.

18 (4) "Public entity" means and includes the state of Louisiana, or any agency,
19 authority, board, commission, department, district or public corporation of the state,
20 created by the constitution or statute, or any local governmental subdivision or
21 political subdivision as defined in Article VI Section 44 of the Constitution of
22 Louisiana. Public entity shall not include any public service company.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 598 Original

2017 Regular Session

Abramson

Abstract: Provides for changes to the Highway Priority Program and requires the reporting and auditing of certain information regarding the program and the use of the avails of the taxes levied on certain motor fuels.

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.

Present law requires, beginning in FY17-18, DOTD to provide the legislature and public with a program that list 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 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 adds a factor for whether the highway or bridge project will meet the needs of the local and regional planning organizations to ensure that there is an equitable distribution among and between the different regions of the state.

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 construction 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 FY17-18 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 construction where sources of funding are being identified.

Proposed law further requires, beginning with the program for FY17-18, 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 secured based on the anticipated and projected revenues available for construction in that fiscal year. Requires DOTD to publish the list with notations regarding whether the project is on-time, ahead of schedule, or delayed.

Proposed law requires, that as projects are completed from the first list, that 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 construction for all projects on this list which shall include at a minimum, the stage of construction, the estimated start date, and estimated end date for each phase of construction, 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 shall be added to the second list from prioritized projects in the program starting with the highest level of priority.

Proposed law requires, beginning July 1, 2019, the legislative auditor to annually audit the avails of the additional tax levied pursuant to the provisions of proposed law 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 state constitution.
- (2) That the avails of the motor fuels tax are spent in appropriate categories.
- (3) That the avails of the motor fuels tax are spent on projects in compliance with the priorities set forth in the program.
- (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. 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.

Proposed law authorizes DOTD to enter into an agreement with a public entity or private entity to form a public-private partnership for the purpose of financing, planning, designing, constructing, and operating highway and bridge projects. All public-private partnerships shall be subject to review and approval by the Joint Legislative Committee on the Budget prior to entering into the public-private agreement and all public-private partnerships shall be subject to audit by the legislative auditor.

Proposed law requires all private entities seeking to participate in a public-private partnership that will be requesting or receiving state monies or assistance to submit information and documents to the legislative auditor to verify qualifications and experience for this type of work. The auditor shall maintain a list of private entities which are approved for participation after verification of the private entities qualifications and experience in this type of work.

(Amends R.S. 48:229.1(B) and (C); Enacts R.S. 48:229.1(A)(9) and (10), 229.2, and 236)