

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

## 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), (10), and  
3 (11) and 229.2, 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 require certain annual audits of funding; to require annual reports; to provide for  
7 certain requirements and limitations; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

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

11 §229.1. Statewide prioritization process for the Highway Priority Program

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

15 \* \* \*

16 (9) Utilizes any new taxes levied on or after August 1, 2017, on gasoline,  
17 motor fuels, and special fuels which are deposited into the Transportation Trust Fund  
18 and dedicated solely and exclusively for the costs associated with construction and  
19 maintenance of state and federal roads and bridges and used by the Department of  
20 Transportation and Development in the most cost-effective manner to ensure that the

1 state is getting a positive return on the investment of state and federal funds in  
2 transportation projects.

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

7 (11) In cases where Priority A and Priority B mega-projects designated in  
8 the Department of Transportation and Development's Statewide Transportation Plan  
9 would be prioritized equally based on the criteria set forth in Paragraphs (1) through  
10 (10) of this Subsection, the department shall give consideration when prioritizing  
11 these projects to mega-projects that the match requirement is funded from non-  
12 federal or non-state sources.

13 B.(1) Beginning with the Highway Priority Program for Fiscal Year 2017-  
14 ~~2018~~ 2018-2019 and for each Highway Priority Program thereafter, the department  
15 shall provide the legislature and public with this program which shall list projects to  
16 be constructed in the ensuing fiscal year in an order of priority that is determined  
17 after projects selected pursuant to Subsection C of this Section are analyzed and  
18 prioritized based upon the factors set forth in Subsection A of this Section.

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

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

27 ~~(1)~~ (a) The condition of the roads, streets, and structures making up the state  
28 highway system and the relative urgency of the improvements considering in their  
29 order of general needs. For purposes of this Paragraph, "condition" shall include but

not be limited to the state of repair of the existing roadway and shoulder surfaces, structures and drainage, and other factors of the roadway, such as signs, signals, markings, and barriers.

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

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

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

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

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

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

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

(i) Whether or not 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 over a three-year period.

(2) The Department of Transportation and Development shall 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 Highway Priority Program. To the extent possible, such reports shall be submitted and maintained through the electronic performance

1 database maintained and used by the division of administration to track state agency  
2 performance standards as well as included on the department's webpage.

3 (3) Beginning with the Highway Priority Program for Fiscal Year 2018-2019  
4 and for each Highway Priority Program thereafter, the department shall apply the  
5 prioritization factors provided for in this Subsection and begin to prioritize all  
6 projects in the Highway Priority Program which are at the stage of construction  
7 where sources of funding are being identified.

8 (4) Beginning with the Highway Priority Program for Fiscal Year 2018-2019  
9 and for each Highway Priority Program thereafter, the department shall prioritize all  
10 projects included in the Highway Priority Program into two separate lists as follows:

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

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

23 (b) The second list shall include a three-year plan for all projects in the  
24 program that can be funded if additional revenues become available. Each year, as  
25 projects move from this list to the list required in Subparagraph (a) of this Paragraph,  
26 new projects shall be added to this list from prioritized projects in the Highway  
27 Priority Program starting with the highest level of priority.

(5)(a) In the case of non-interstate Pavement Preservation Projects,  
prioritizations within each Department of Transportation and Development district  
shall be provided by the district administrator for that district.

(b) No less than thirty-five percent of the avails of the taxes levied pursuant to the provisions of R.S. 47:818.12.1 shall be divided among the Department of Transportation and Development districts based on the state road mileage and average daily traffic in each district in accordance with a formula established by the department and shall be used for Pavement Preservation Projects. Projects for which these avails shall be used shall be selected by the administrator of each district after input from local government officials and metropolitan planning organizations located within the geographic boundary of each district.

(6) In an action for civil damages, the Highway Priority Program, including any source data and reports associated with the prioritization of projects in the program, shall not be discoverable or admissible as evidence in any civil trial.

\* \* \*

§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, Section 27(B) of the Constitution.

(2) The avails of the motor fuels tax are spent in appropriate categories as  
specified in Paragraph (1) of Subsection B of this Section and R.S. 47:818.12.1(D).

(3) 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) The avails of the motor fuels tax are spent in an efficient and effective  
manner showing improvement in program operations through performance measures

1        such as pavement conditions, bridge conditions, safety improvements,  
2        implementation of the Louisiana Statewide Transportation Plan, and other outcome  
3        measures as determined by the auditor.

4                B. The Department of Transportation and Development shall annually, or as  
5        requested, submit a report to the legislature and to the legislative auditor which  
6        contains the following information regarding the use of the avails of the motor fuel  
7        taxes:

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

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

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

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

20               (d) Program and project delivery including actual construction and  
21       construction engineering costs for projects.

22               (2) The methodology and outcomes of the Department of Transportation and  
23       Development's prioritization of projects in the applicable programs for prioritizing  
24       capital projects as compared to the expenditure of funds.

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

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

- 1           C. The legislative auditor shall annually certify that the audit of the avails  
2           of the motor fuels tax are in substantial compliance with R.S. 47:818.12.1.  
3           Notwithstanding any provision of law to the contrary, if in any three consecutive  
4           audits, the legislative auditor finds a lack of substantial compliance in the use of the  
5           avails of the tax levied pursuant to the provisions of R.S. 47:818.12.1, the Legislative  
6           Audit Advisory Council shall recommend appropriate action to the legislature.
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#### 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)]

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HB 598 Engrossed

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 on or after August 1, 2017 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 that have match monies from non-federal or non-state sources.

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 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 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.

Present law requires the following factors be considered when selecting projects to be included in the Highway Priority Program:

- (1) The condition of the roads, streets, and structures making up the state highway system and the relative urgency of the improvements considering their order of general needs.
- (2) The type and volume of traffic on a particular segment of roadway, highway, or bridge.
- (3) The crash records for a particular segment of roadway, highway, or bridge.
- (4) The technical difficulties in the preparation of plans and the procurement of rights-of-way for a particular segment of roadway, highway, or bridge.
- (5) Whether unforeseeable emergencies such as floods have created an immediate need for improvement or reconstruction.
- (6) Whether capacity improvements are warranted due to population or traffic volume increases in specific geographic areas.
- (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 such as hurricanes or flooding.
- (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 and adds whether the highway or bridge project will meet the needs to the local and regional planning organizations to ensure that there is an equitable distribution among the different regions of the state over a three year period as an additional factor to consider when selecting Highway Priority Program projects.

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 construction 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 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, 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 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 requires, 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. Proposed law specifies that in an action for civil damages, the Highway Priority 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 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 the state constitution.
- (2) That the avails of the motor fuels tax are spent in appropriate categories as outlined in proposed law and present 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. 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.

(Amends R.S. 48:229.1(B) and (C); Adds R.S. 48:229.1(A)(9), (10), and (11) 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.