

Regular Session, 2008

SENATE BILL NO. 527

BY SENATORS MARIONNEAUX AND MICHOT

CAPITAL OUTLAY. Provides relative to Capital Outlay Reform. (8/15/08)

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AN ACT

To amend and reenact R.S. 39:101(A)(1) and (B)(1)(a), (c), and (d) and (F)(1), 102(C), 103(A)(1) and (B)(1), 104(B), 111, 112, 113, 115, 121, 122(B)(1), 124, and 125, to enact R.S. 39:101(F)(3) and (G), and to repeal R.S. 39:105, relative to capital outlay; to provide relative to the priority and funding of projects to be included in the capital outlay bill; to provide relative to the development, enactment, and execution of the capital outlay process; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 39:101(A)(1) and (B)(1)(a), (c), and (d) and (F)(1), 102(C), 103(A)(1) and (B)(1), 104(B), 111, 112, 113, 115, 121, 122(B)(1), 124, and 125 are hereby amended and reenacted and R.S. 39:101(F)(3) and (G) are hereby enacted to read as follows:

§101. Capital outlay budget request; feasibility studies

A.(1) Except as provided in Paragraph (2) of this Subsection, no later than the first day of November each year, the head of each budget unit shall present to the **office of** facility planning and control ~~section~~ of the division of administration a request for all expenditures for capital projects falling within the definition contained in R.S. 39:2(9) **on forms provided by the office**. A copy of the request shall also

1 be provided by the head of each budget unit to the Legislative Fiscal Office, the Joint
 2 Legislative ~~Capital Outlay Committee~~ **Committee on Capital Outlay**, the House
 3 Committee on Appropriations, the House Committee on Ways and Means, the
 4 Senate Committee on Finance, and the Senate Committee on Revenue and Fiscal
 5 Affairs. Such annual requests shall contain **the information necessary for** and
 6 ~~constitute~~ the feasibility study required pursuant to Article VII, Section 11(C) of the
 7 Constitution of Louisiana and shall include projects proposed to be funded within the
 8 next five years.

9 * * *

10 B.(1)(a) All officials of political subdivisions, ports, levee districts, and other
 11 non-state entities shall submit their proposed capital projects through the senator and
 12 representative in whose district the proposed capital project will be located **on forms**
 13 **provided by the office of facility planning and control**. Each legislator shall
 14 forward the original request to the **office** ~~facility planning and control section of the~~
 15 ~~division of administration~~, and a copy of the original request to the Legislative Fiscal
 16 Office, the Joint Legislative Committee on Capital Outlay, the House Committee on
 17 Appropriations, the House Committee on Ways and Means, the Senate Committee
 18 on Finance, and the Senate Committee on Revenue and Fiscal Affairs, with his
 19 recommendation for approval or disapproval or without recommendations.

20 * * *

21 (c) Such requests shall be submitted to the **office of** facility planning and
 22 control ~~section~~ no later than the first day of November of each year.

23 (d)(i) **Except for projects subject to Subsection G of this Section, any**
 24 ~~Any~~ form for submission together with the legislative endorsement and other
 25 supporting information and documents for such projects shall contain and constitute
 26 the feasibility study required by Article VII, Section 11(C) of the Constitution of
 27 Louisiana.

28 (ii) **For projects subject to Subsection G of this Section, any form for**
 29 **submission together with the legislative endorsement and other supporting**

1 information and documents for such projects shall contain the information
2 necessary for the feasibility study required by Article VII, Section 11(C) of the
3 Constitution of Louisiana.

4 * * *

5 F.(1) The office of facility planning and control ~~section~~ shall assign a project
6 number to each project for which a budget request is received by that ~~section~~ office.
7 It shall also assign a project number to projects included in the enrolled version of
8 the capital outlay bill for which a project number has not been previously assigned.

9 * * *

10 (3) The office of facility planning and control shall classify each
11 requested project according to the following categories to facilitate a
12 comparative analysis of similar projects:

13 (a) Community Investment - cultural facilities, parks, museums, and
14 recreational facilities.

15 (b) Culture, Recreation and Tourism - state parks and museums.

16 (c) Economic Development/Infrastructure - jobs creation, roads, water,
17 and sewerage.

18 (d) Disaster Recovery - shelters and disaster damage repairs.

19 (e) Education - higher education, vocational-technical training,
20 post-secondary education.

21 (f) Health Care - hospitals, clinics, and equipment, rehabilitation
22 facilities, and mental health development facilities.

23 (g) Public Works - flood control and water resources.

24 (h) Statewide Programs - roofing, asbestos, mold, ADA, and major
25 repairs.

26 (i) Other - municipal facilities and public works buildings.

27 G.(1) In addition to feasibility study requirements set forth elsewhere
28 in this Part, each request for expenditure of funds for a capital project
29 submitted by the head of a budget unit and each such request submitted by an

1 writing by the secretary of the Department of Economic Development or is an
2 emergency project recommended in writing by the commissioner of administration.

3 ~~(ii)~~**(b)** For purposes of this Section, "economic development" means the
4 following:

5 ~~(aa)~~**(i)** Improvements on public or government owned property for the
6 purposes of attracting or retaining a specific new or existing manufacturing or
7 business operation that benefits Louisiana.

8 ~~(b)~~**(ii)** Facilities or improvements on public or government owned property
9 that generate new, permanent employment or which help retain existing employ ment.

10 ~~(cc)~~**(iii)** Facilities or infrastructure improvements on public or government
11 owned property necessary for the manufacturing plant or business to operate.

12 ~~(iii)~~**(c)** For purposes of this Subparagraph, "emergency" means essential to
13 alleviate conditions that are hazardous to life, health or property, and court mandates.

14 ~~(b)~~**(2)** The project has been approved by the Joint Legislative ~~Capital Outlay~~
15 ~~Committee~~ **Committee on Capital Outlay**; however, no action to approve a project
16 may be taken by the committee after the last day for introduction of a matter
17 intended to have the effect of law by either house of the legislature.

18 ~~(4)~~**D.** Any project **subject to R.S. 39:101(G) that is** deemed not feasible
19 after evaluation of the feasibility study required pursuant to Article VII, Section
20 11(C) of the Constitution of Louisiana shall not be included with the Capital Outlay
21 Act. The **office of** facility planning and control ~~section~~ shall submit a report to the
22 Joint Legislative ~~Capital Outlay Committee~~ **Committee on Capital Outlay**, the
23 House Committee on Appropriations, the House Committee on Ways and Means, the
24 Senate Committee on Finance, and the Senate Committee on Revenue and Fiscal
25 Affairs detailing its findings and evaluation of any project deemed not feasible. Such
26 report shall be submitted no later than twenty days after the determination that the
27 project is deemed not feasible.

28 **E. The Capital Outlay Act shall contain only four priorities:**

29 **(1) Priority 1 general obligation bond funding shall be for completion of**

1 plans and specifications, land acquisition, site preparation, or for construction
2 of projects that will require the sale of bonds or extension of lines of credit by
3 the State Bond Commission during the fiscal year. Priority 1 includes:

4 (a) Funding for projects and amounts which were previously authorized
5 by the Capital Outlay Act of the preceding year and which were granted cash
6 lines of credit by the State Bond Commission.

7 (b) Funding for the reauthorization of the portion of the outstanding
8 previous fiscal year Priority 4 non-cash lines of credit for projects which will
9 require cash expenditures in the fiscal year and therefore must be converted to
10 cash lines of credit in the fiscal year.

11 (2) Priority 2 general obligation bond projects are for the initiation or
12 completion of plans and specifications, land acquisition, site preparation, or for
13 construction which will begin in the fiscal year and will require the sale of bonds
14 or the granting of lines of credit by the State Bond Commission during the fiscal
15 year. The projects included in this priority shall be limited to the amount of the
16 estimated line of credit capacity available after Priority 1 projects have been
17 satisfied, as identified by the office when the bill is filed in the legislature. Of
18 the projects included in this priority, not more than twenty percent of the total
19 amount available shall consist of non-state projects added to the bill by the
20 legislature of which not more than one-half of the amount shall have been
21 included by the House of Representatives and not more than one-half of the
22 amount shall have been included by the Senate. Any project in this Priority 2
23 shall be included on the agenda of the State Bond Commission for receipt of a
24 line of credit.

25 (3) Priority 3 general obligation bond projects are for the initiation or
26 completion of plans and specifications, land acquisition, site preparation, or for
27 construction which will begin in the fiscal year and will require the sale of bonds
28 or the granting of lines of credit by the State Bond Commission during the fiscal
29 year, after Priority 2 projects have been satisfied. The projects included in this

1 priority shall not exceed forty percent of the amount of the estimated line of
 2 credit capacity available after Priority 1 projects have been satisfied. Of the
 3 projects included in this priority, not more than twenty percent of the amount
 4 available under this priority shall consist of non-state projects added to the bill
 5 by the legislature of which not more than one-half of the amount shall have been
 6 included by the House of Representatives and not more than one-half of the
 7 amount shall have been included by the Senate.

8 (4) Priority 4 general obligation bond funding shall be for funding the
 9 portion of construction contracts which will not require cash expenditures
 10 during the fiscal year. These funds, when combined with previously sold bonds
 11 or with higher priority bonds on lines of credit, or with funds appropriated
 12 from other sources, will provide sufficient appropriated funds to award
 13 contracts. Non-cash lines of credit granted by the State Bond Commission shall
 14 be required prior to the award of these contracts.

15 F. The Capital Outlay Act shall also contain the proposed capital outlay
 16 program of state projects for the remaining four years of the five-year capital
 17 outlay program which will require general bond funding for the preparation
 18 and completion of plans and specifications, land acquisition, site preparation,
 19 or for construction of projects which will begin in succeeding fiscal years and
 20 it is anticipated will require the sale of bonds or extension of lines of credit in
 21 the succeeding fiscal years of the five-year capital outlay program.

22 §113. Appropriations

23 A. All funds from whatever the source for state projects approved under the
 24 provisions of this Part shall be appropriated to the **office of** facility planning and
 25 control ~~section of the division of administration~~. This requirement shall not apply
 26 to appropriations made to the Department of Transportation and Development for
 27 highway or public works projects, the ~~Department of Military Affairs~~ **Military**
 28 **Department**, or the legislature.

29 B. All of the funds appropriated to state port commissions or districts, to

1 authorities created by the legislature, to political subdivisions of the state, or to local
2 governing authorities shall be administered by the **office of** facility planning and
3 control ~~section of the division of administration~~ under cooperative endeavor
4 agreements.

5 * * *

6 §115. Notice requirements

7 A. The **office of** facility planning and control ~~section~~ shall send notice to all
8 ~~nonstate~~ **non-state** entities of the need to resubmit a capital outlay budget request for
9 projects that do not receive a line of credit for the total amount of bond proceeds
10 authorized in the Capital Outlay Act for that fiscal year. The notice shall list all of
11 the ~~nonstate~~ **non-state** entity's projects which have not received lines of credit prior
12 to September fifteenth of the year for which notice is sent to the ~~nonstate~~ **non-state**
13 entity.

14 B. The **office of** facility planning and control ~~section~~ shall also send a notice
15 of the need to resubmit a capital outlay budget request to each state representative
16 and state senator who has any project in his geographic area that did not receive a
17 line of credit for the total amount of bond proceeds authorized in the Capital Outlay
18 Act for that year. The notice shall list all of the projects in the representative's or
19 senator's geographic area which have not received lines of credit prior to September
20 fifteenth of the year for which notice is sent to the representative or senator.

21 C. All notices required under this Section shall be sent by the **office of**
22 facility planning and control ~~section~~ between September fifteenth and October
23 fifteenth of each year.

24 * * *

25 §121. Division of administration powers, duties, and functions

26 The division of administration in accordance with the provisions of R.S.
27 39:1410 in order to exercise supervision over the expenditure of funds and the
28 construction projects, shall specifically:

- 29 (1) Have the authority to administer and enforce the provisions of the capital

1 outlay budget adopted by the legislature;

2 (2) Formulate necessary rules, regulations, and forms for proper enforcement
3 of the capital outlay budget;

4 (3) Expend the remaining funds for the construction of buildings, structures,
5 and other projects, wherever needed, including the construction, enlargement,
6 improvement, repair, remodeling, furnishing, or equipping of public buildings,
7 structures, facilities, and other physical improvements at the charitable, correctional,
8 penal, and other institutions of the state of Louisiana, and for the development,
9 improvement, and expansion of state parks and recreational facilities of the state of
10 Louisiana, including surveys, plans, and specifications and acquisition of any land
11 required to carry out the purpose of existing law with the approval of a majority of
12 the elected members of both houses of the legislature;

13 (4) Supervise construction, approve estimates, and select and employ
14 engineers, architects, and other personnel necessary in connection with the
15 administration of contracts for projects;

16 (5) Administer all contracts and agreements previously executed by the
17 Capital Construction and Improvement Commission, or by the State Bond
18 Commission, as its successor;

19 (6) Enter into and execute any contracts that the State Bond Commission was
20 authorized to enter into and execute as successor to the Capital Construction and
21 Improvement Commission; ~~and~~,

22 (7) Schedule the funding of projects in the event that there are more projects
23 ready for funding than there are funds available at that time from the proceeds of the
24 sale of bonds if such bonds are not sold at one time.

25 §122. Commencement of work

26 * * *

27 B.(1) Ports, levee districts, and other non-state entities shall wait until there
28 is a fully executed cooperative endeavor agreement and final approval has been
29 given by the **office of** facility planning and control ~~section of the division of~~

1 ~~administration~~, the Department of Transportation and Development, or the state
2 treasurer, whichever is applicable, before entering into contracts obligating state
3 funds.

4 * * *

5 §124. Periodic inspections

6 The **office of** facility planning and control ~~section~~ shall make periodic
7 inspections at all stages of construction of any facility constructed pursuant to this
8 Part and shall make detailed reports which shall be made available to the legislature
9 and to the public. Such inspections shall include but not be limited to the close
10 technical on-site examination of the materials, structure, and equipment and
11 surveillance of the workmanship and methods used to insure reasonably that the
12 project is accomplished in compliance with information given by the contract
13 documents and good construction practices.

14 §125. Acceptance of project; guarantee period

15 A. The **office of** facility planning and control ~~section~~ shall be responsible for
16 directing final payment for work done on each project. However, if upon final
17 inspection of any project it shall be found that the plans, specifications, contract, or
18 change orders for the project shall not have been fully complied with, the **office of**
19 facility planning and control ~~section~~ shall, until such compliance shall have been
20 effected or adjustments satisfactory to it shall have been made, refuse to direct such
21 payment.

22 B. Upon completion of the project the **office of** facility planning and control
23 ~~section~~ shall release it to the agency. The **office of** facility planning and control
24 ~~section~~ shall be responsible for making an inspection of the project prior to the
25 expiration of the guarantee period to observe any defects which may appear within
26 one year after completion of the contract. The **office of** facility planning and control
27 ~~section~~ shall give prompt written notice to the contractor of defects which are due
28 to faulty materials and workmanship.

29 Section 2. R.S. 39:105 is hereby repealed.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Martha S. Hess.

DIGEST

Present law provides for the development, enactment, and execution of the capital outlay budget. Present law references the facility planning and control section of the division of administration. Proposed law changes reference to the office of facility planning and control.

Present law provides for the submission of capital outlay requests to the office. Proposed law retains present law but requires that such requests be made on forms provided by the office.

Present law provides that any form for submission of a request together with the legislative endorsement and other supporting information and documents for such projects contain and constitute the feasibility study required by Article VII, Section 11(C) of the constitution.

Proposed law retains present law for non-state projects with an estimated cost of less than three million dollars. With respect to projects requested by budget units of the state and for non-state projects with an estimated cost of three million dollars or more, proposed law provides that in addition to feasibility study requirements set forth in present law, each such request shall contain such additional information as required by rules adopted by the office and approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Proposed law requires that the office classify each project request according to the following categories to facilitate a comparative analysis of similar projects:

- (1) Community Investment - cultural facilities, parks, museums, and recreational facilities.
- (2) Culture, Recreation and Tourism - state parks and museums.
- (3) Economic Development/Infrastructure - jobs creation, roads, water, and sewerage.
- (4) Disaster Recovery - shelters and disaster damage repairs.
- (5) Education - higher education, vocational-technical training, post-secondary education.
- (6) Health Care - hospitals, clinics, and equipment, rehabilitation facilities, and mental health development facilities.
- (7) Public Works - flood control and water resources.
- (8) Statewide Programs - roofing, asbestos, mold, ADA, and major repairs.
- (9) Other includes - municipal facilities and public works buildings.

Present law requires that not later than the eighth day of each regular session, the governor submit to the legislature his capital outlay budget, the proposed capital outlay bill implementing the first year of the five-year program, the bond authorization bill for the sale of bonds to fund projects included in the bond portion of the capital outlay bill, and the concurrent resolution for the adoption of the remaining four years of the five-year capital outlay program.

Proposed law deletes requirement of concurrent resolution and provides that proposed capital outlay bill also include a five-year capital outlay program. Otherwise retains present law.

Present law, in the Annual Capital Outlay Act, provides for five priorities of projects and funding. Proposed law provides for four priorities in the Capital Outlay Act as follows:

- (1) Priority 1 general obligation bond funding shall be for completion of plans and specifications, land acquisition, site preparation, or for construction of projects that will require the sale of bonds or extension of lines of credit by the State Bond Commission during the fiscal year. Priority 1 includes:
 - (a) Funding for projects and amounts which were previously authorized by the Capital Outlay Act of the preceding year and which were granted cash lines of credit by the State Bond Commission.
 - (b) Funding for the reauthorization of the portion of the outstanding previous fiscal year Priority 4 non-cash lines of credit for projects which will require cash expenditures in the fiscal year and therefore must be converted to cash lines of credit in the fiscal year.
- (2) Priority 2 general obligation bond projects are for the initiation or completion of plans and specifications, land acquisition, site preparation, or for construction which will begin in the fiscal year and will require the sale of bonds or the granting of lines of credit by the State Bond Commission during the fiscal year. The projects included in this Priority shall be limited to the amount of the estimated line of credit capacity available after Priority 1 projects have been satisfied, as identified by the office when the bill is filed in the legislature. Of the projects included in this priority, not more than 20% of the total amount available shall consist of non-state projects added to the bill by the legislature of which not more than one-half of the amount shall have been included by the House of Representatives and not more than one-half of the amount shall have been included by the Senate. Requires any project in this priority to be included on the agenda of the State Bond Commission for receipt of a line of credit.
- (3) Priority 3 general obligation bond projects are for the initiation or completion of plans and specifications, land acquisition, site preparation, or for construction which will begin in the fiscal year and will require the sale of bonds or the granting of lines of credit by the State Bond Commission during the fiscal year, after Priority 2 projects have been satisfied. The projects included in this Priority shall not exceed forty percent of the amount of the estimated line of credit capacity available after Priority 1 projects have been satisfied. Of the projects included in this priority, not more than 20% of the total amount available shall consist of non-state projects added to the bill by the legislature of which not more than one-half of the amount shall have been included by the House of Representatives and not more than one-half of the amount shall have been included by the Senate.
- (4) Priority 4 general obligation bond funding shall be for funding the portion of construction contracts which will not require cash expenditures during the fiscal year. These funds, when combined with previously sold bonds or with higher priority bonds on lines of credit, or with funds appropriated from other sources, will provide sufficient appropriated funds to award contracts. Non-cash lines of credit granted by the State Bond Commission shall be required prior to the award of these contracts.

Proposed law requires that the Capital Outlay Act shall also contain the proposed capital outlay program of state projects for the remaining four years of the five-year capital outlay program.

Present law requires that prior to each regular legislative session, and not later than March first, the governor submit a preliminary capital outlay budget which shall include a list of the proposed projects in priority order based on the evaluation of the feasibility studies submitted, together with a summary thereof outlining the maximum amount of monies to be spent in each department or political subdivision to the presiding officer of each house. Upon receipt of the preliminary capital outlay budget, it shall be referred for review to the appropriate standing committee(s) of the respective houses in accordance with their rules.

Proposed law repeals present law.

Effective August 15, 2008.

(Amends R.S. 39:101(A)(1) and (B)(1)(a), (c), and (d) and (F)(1), 102(C), 103(A)(1) and (B)(1), 104(B), 111, 112, 113, 115, 121, 122(B)(1), 124, and 125; adds R.S. 39:101(F)(3) and (G); repeals R.S. 39:105)