



LAGC Legislative Wrap-Up Bulletin - 2017R/Special June 26, 2017

Because the regular fiscal legislative session was concluded on June 8 at 6 pm, and the special session began at 6:30 pm, this bulletin is inclusive of both sessions. The only legislation considered during the special session was the general appropriations bill, the capital outlay and omnibus bond bills and associated supplemental appropriations bills. So, please note that reports on the outcome of the non-fiscal legislative issues relate to the regular session.

* * * *

Louisiana's legislature adjourned its second special session in 2017 following the implosion of the 60-day regular session over the failure of the House and Senate, and Governor Edwards to negotiate a compromise over HB 1 -- the general appropriations bill, (operating budget) -- in time for final adjournment. HB 2 and HB 3, the capital outlay and omnibus bond bills, got caught up in the wrangling and time ran out on them too. Other miscellaneous supplemental funding legislation also died as time ran out.

SPECIAL SESSION:

PASSED HB 1, the \$29 billion operating budget was approved this time after a dramatic vote in the House when 14 moderate Republicans, 40 Democrats, and two Independents joined together to create a 56 vote majority and sent the bill to the Senate. HB 2 and HB 3 were also approved earlier during the special session.

How is HB 1 compromise language different? It authorizes spending all of the revenues anticipated from the REC, but directs state agencies to withhold \$60 million in anticipated spending for the creation of reserve fund if collections come up short. TOPS was fully funded for the full \$300 million projected need. House leadership wanted \$206 million held in reserves. The reserve was later changed to \$100 million, and the final bill contained the \$60 million compromise. Small pay raises for certain state employees are included. Higher education was not cut for the first time in a number of years; certain vital services at LDH, such as mental health and child welfare services were not eliminated (as was the case in the version of HB 1 from the regular session), and funding for Zika virus prevention was funded. The hospital public-private partnerships weren't cut as drastically as had originally been proposed.

PASSED HB 2, Rep. Abramson, the capital outlay bill and HB 3, also by Rep. Abramson, the omnibus bond bill, though caught up in the train wreck during the regular session, passed with little fanfare during the special session. Of course, there was much consternation during the regular session when it ended without a vote on these two bills of particular interest to the industry. Contractors with work in progress would not have been paid timely -- to the tune of hundreds of millions of dollars in unpaid progress payments -- if HB 2 had not been finally enacted.

What wasn't addressed in either session is the looming "fiscal crisis" when a number of temporary tax increases sunset in 2018. While some of the temporary cuts to tax credits and exemptions were made permanent, the revenue generated by those alone do very little to address the gap between state spending and state revenues.

Also, a few, if any, of the recommendations from the task force created in 2015, which has been meeting continuously during the interim, to streamline the tax code and bring it into uniformity with other states were adopted. There still seemed to be little consensus in solutions as was observed during the 2017 just completed regular and two special sessions. Some predict a special session in March of 2018 unless the “cliff” slides into the Gulf sooner.

AGC Legislation:

Gas Tax Increase Fails:

There were three bills in a package to increase the gas tax, to bring more accountability and transparency to DOTD and to allow the people to vote on whether they wish to remove State Police from being able to garner any gasoline taxes from the TTF.

DIED On Wednesday, May 24, the House had scheduled HB 632, Rep. Steve Carter, for debate. **HB 632 was the gas tax increase and indexing component of the infrastructure package.** To garner enough support to get the conservative-leaning Ways & Means Committee to “let the bill out” onto the House floor for debate, several amendments were accepted. Those included tying it to provisions in other bills providing that some projects (already in the Priority Program) be approved for earlier “jump aheads” for construction of mega projects under certain circumstances; more authority for legislators to have more say in what projects would be included; as well as coupling of the bills to a constitutional amendment eliminating state police from any funding and increased transparency legislation.

Despite the massive lobby, social media and grassroots efforts put together to obtain the needed super majority of 70+ votes in the House to pass it, on the night before the House vote was scheduled, we ascertained that it was impossible to get the final ten votes needed, even at a reduced tax rate. Rep. Steve Carter, the bill’s author, had announced early on that if final passage became impossible, he would not call for a vote on the bill. The arch-conservative, “anti-any-tax whatever it is” crowd (funded primarily from groups outside the state) opposing it played a pivotal role in the bill’s defeat.

PASSED Another bill in the package was **HB 598, Rep. Abramson and Rep. Jim Morris, was designed to bring additional accountability and transparency to the priority program and timelines for design and construction of projects.** However, it was amended in the Senate at the request of Transportation Committee Chairman Page Cortez to change current law, allowing legislators to not only delete projects from the priority list arrived at from public hearings around the state, but also to allow legislators to add additional projects once projects were deleted. When the bill came back to the House for concurrence some House members objected, stating that politics would become too much a part of developing priorities. However, the House approved the amendments and the bill was passed. It now awaits the governor’s signature.

KILLED SB 57, Sen. Cortez, **a constitutional amendment removing state police from any funding from TTF,** the third bill in the package, was passed by the Senate but was killed by the House. Some House members mounted the effort to kill the bill, thus allowing State Police to collect up to ten percent of the avails under legislation passed by Rep. Terry Landry in a recent legislative session.

KILLED HB 236, Rep. Shadoin, **a constitutional amendment to un-dedicate several constitutionally dedicated funds, including the TTF. KILLED.** The author voluntarily deferred the bill at the bill’s first hearing, but was able to get the necessary votes from the Appropriations Committee on Monday, May 15.

AGC lobbyists were the only group to speak in opposition to the legislation. The author brought it back up for consideration in the waning days of the session, succeeding in getting the bill approved by the House Appropriations Committee, but was unable to get the necessary 70 votes to advance it to the Senate. AGC opposed the legislation.

PASSED HB 354, Rep. Thibaut, **a constitutional amendment relative to the dedication of the proceeds of the tax levied on motor fuels, was passed by the House and Senate. It creates a “Construction Subfund”** as a special subfund in the TTF and into which any new taxes collected after July 1, 2017 would be deposited. The monies may not be used for anything but direct costs associated with actual project delivery, construction, and maintenance of transportation and capital transit infrastructure projects of the state and local government. No monies may be used by DOTD for payment of employee wages or related benefits.

* * * *

BILLS OF INTEREST TO THE INDUSTRY:

PASSED SB 104, Sen. Appel, legislation to **only require contractors’ license numbers on the bid envelope**, has been approved by the legislature and has been signed by Governor Edwards. The legislation was introduced to stop efforts by some awarding authorities to require more information than a bidder’s license number on his bid envelope. It has been signed by the governor, and became Act 49, and will become effective August 1. AGC sponsored and supported the legislation.

PASSED SB 140, Sen. Walsworth, and Rep. Broadwater, **a constitutional amendment to exempt from ad valorem taxation property subject to certain cooperative endeavor agreements**, was introduced to overturn a court decision involving a tax collector in Calcasieu Parish that assessed taxes on an exempted property under construction. The issue relates to a construction undertaken through a cooperative endeavor agreement and which is still in progress being assessed ad valorem taxes. AGC supported the legislation. Passed both the House and awaits governor’s signature.

PASSED HB 264, Stuart Bishop, adding **Guaranteed Maximum Price** contracts to the list of lump sum and unit price contracts in current law. Those contracts include any signed or in effect within a 90-day period of imposition of a new sales or use tax. The bill was passed by House and Senate and signed by the governor. It became effective on June 14, 2017, and is Act 206. AGC supported the legislation.

AMENDED AND PASSED HB 307, Lyons, on behalf of the Revenue Department, **would require any proposer/vendor doing business with the state be current in the filing of all applicable tax returns and reports**, and in payment of all taxes, interest, penalties and fees owed to the state and collected by LDR. AGC was the only group that testified against the bill as originally proposed (would have required public works contractors to receive pre-clearance of all taxes paid as a condition of bidding on projects, as well as vendors for procurement contracts). The author and LDR agreed to limit preclearance to procurement contracts only and remove construction projects under public bid law from the provisions of the bill and then AGC dropped its opposition. The bill was passed and signed into law by the governor and becomes Act 211.

PASSED HB 389, Rep. Carmody and Sen. Johns, authorizes the assistant secretary of the office of conservation of the **Louisiana Department of Natural Resources to regulate pipeline utilities and facilities**. Passed both the House and Senate and has been signed by the governor. The bill has been signed into law. Became Act 218, and is effective June 14, 2017. AGC supported the bill.

AMENDED AND PASSED HB 554, Rep. Schroder, **would allow for “reverse bid auctions” for procurement** of construction contracts under \$150,000 as well as other procurements by the state. AGC opposed the legislation because the nature of the construction process does NOT lend itself to reverse bid auctions. The **author removed any reference in the public bid law**, and the legislation then was passed by both the House and Senate. It was signed by the governor and became Act 226.

PASSED HB 582, Rep. Pat Smith, amends **the telecommunication tax** for the deaf. The bill reduced increased the tax from \$.05 to \$.04 per line for each wireline access line and adds the tax to every telephone number for wireless handset devices. This is one of the few tax increases passed during the session. **There will be an increase in business owners particularly who may have many employees with company-owned wireless phones.** Passed by both the House and Senate and signed by the governor. Became Act 273, and is **effective October 1, 2017.**

AMENDED AND PASSED HB 596, Rep. Leger and Rep. Stuart Bishop, allows the CPRA to utilize **“outcome-based performance contracts”**. These type of contracts are for large dredging, public-private partnerships utilizing private financing to be reimbursed for periods up to twenty-five years. AGC met with the authors and recommended that such contracts be limited to \$250 million (originally unlimited). Rules for the process will be promulgated under the state’s APA and with the approval of the Joint Legislative Natural Resources Committees. AGC recommended that the Joint Legislative Budget Committee have oversight over the contracts themselves but that recommendation was rejected and Natural Resources Committees were substituted. The bill passed both the House and Senate and awaits the governor’s signature.

PASSED HB 601, Rep. Stokes, establishing the **Louisiana Uniform Local Sales Tax Board** to bring uniform procedures and policies for the collection and administration of local sales and use taxes, creates an optional concursus process in which a dealer or taxpayer can remit the amount of tax to the Local Tax Division of the Board of Tax Appeals for deposit into their escrow account and request a determination by the board of the proper taxing jurisdiction. Passed both House and Senate and has been signed by the governor. Becomes Act 273

KILLED HB 628, Rep. Sam, Jones One of the bills not a part of the reform package was the **Corporate Activity Tax, or CAT tax**, HB 628, Rep. Sam Jones, which was introduced on behalf of the Edwards administration. The bill would change corporate income and franchise taxes to an “activity” or gross receipts tax. This one was never considered by the Task Force, and was roundly opposed by all in the business community. AGC opposed HB 628.

PASSED SB 199, Sen. Erdey, allows **public entities to borrow public equipment from each other without compensation**, and spells out the conditions under which cooperative endeavor agreements are implemented. Passed both the House and Senate and has been signed by the governor. Becomes Act 191.

AMENDED AND PASSED HR 149, Sen. Cortez, creates a **“Best Practices in Public Contracts Task Force”** to study best practices from other states to determine a fair method to evaluate bids on public works contracts based on best value instead of lowest cost. Passed by the Senate.

Please feel free to email Derrell Cohoon at derrell@capitolpartnersfirm.com with any questions or concerns regarding this Bulletin.