

**ACT No. 393**

2018 Regular Session

HOUSE BILL NO. 573

BY REPRESENTATIVE ZERINGUE

1 AN ACT

2 To enact Part XI of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, to be  
3 comprised of R.S. 38:2320.1, relative to contracting for integrated coastal protection  
4 projects; to authorize political subdivisions to use outcome-based performance  
5 contracts for integrated coastal protection projects; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Part XI of Chapter 10 of Title 38 of the Louisiana Revised Statutes of  
8 1950, to be comprised of R.S. 38:2320.1, is hereby enacted to read as follows:

9 PART XI. OUTCOME-BASED PERFORMANCE CONTRACTS

10 FOR INTEGRATED COASTAL PROTECTION

11 PROJECTS BY POLITICAL SUBDIVISIONS

12 §2320.1. Outcome-based performance contracts

13 A. Notwithstanding any other provision of law to the contrary, political  
14 subdivisions may use the outcome-based performance contract alternative project  
15 delivery method to contract for integrated coastal protection projects as set forth in  
16 this Section and consistent with the purpose and intent set forth in R.S. 49:214.1 or  
17 consistent with Louisiana’s Comprehensive Master Plan for a Sustainable Coast.

18 B. This Section creates an alternative project delivery method, known as  
19 outcome-based performance contracts, for use by political subdivisions to award a  
20 contract to finance, design, construct, and monitor integrated coastal protection when  
21 considered in the public interest, beneficial to the state and political subdivisions,  
22 consistent with the purpose and intent set forth in R.S. 49:214.1, and in accordance

1 with the procedures set forth in this Section. The following are reasons to use  
2 outcome-based performance contracting; financing to construct integrated coastal  
3 protection projects; cost of integrated coastal protection projects expected to  
4 significantly increase over time; need to access or leverage future funds to construct  
5 integrated coastal protection projects more quickly; obtain better overall value,  
6 performance, and costs; and control and minimize risk to the political subdivision.

7 C. Outcome-based performance contracts shall not be used for any integrated  
8 coastal protection project that is estimated to cost more than twenty-five million  
9 dollars or exceeds a contract term of seven years.

10 D. When used in this Section, the following words and phrases shall have the  
11 meanings ascribed to them unless the context indicates a different meaning:

12 (1) "Outcome-based performance contract" means a delivery method by  
13 which the owner contracts with an entity for results-based, specific agreed-upon  
14 outcomes, goals, or outputs, with payment provided by an owner upon successful  
15 completion of the pre-agreed result, outcome, goal, output, or result. Outcome-based  
16 performance contracts shall include the following:

17 (a) A requirement that a substantial portion of the payment be conditioned  
18 on the achievement of specific outcomes based on defined performance targets. For  
19 purposes of this Subparagraph, "substantial portion" shall mean no less than seventy-  
20 five percent of the total project cost.

21 (b) A process through which performance indicators can be assessed by the  
22 owner to determine whether performance targets have been met.

23 (c) A schedule and calculation of consequences for contractors based on  
24 performance, to include payments that would be earned if performance targets are  
25 met or the imposition of penalties or other payment adjustments if performance  
26 targets are not met.

27 (2) "Outcome-based performance contractor" means a person, sole  
28 proprietorship, partnership, corporation, joint venture, or other legal entity, properly  
29 licensed, bonded, and insured, who is contractually responsible to the owner for

1 financing, designing, permitting, constructing, and monitoring, or any combination  
2 thereof, the integrated coastal protection project to be delivered.

3 (3) "Owner" means the political subdivision awarding the contract in  
4 cooperation with the Coastal Protection and Restoration Authority.

5 (4) "Licensed design professional" means an engineer, architect, or  
6 landscape architect who has secured a professional license from a Louisiana  
7 registration board as required by state law.

8 (5) "Resident business" means one authorized to do and doing business  
9 pursuant to the laws of this state, that meets one of the following criteria:

10 (a) Maintains its principal place of business in the state.

11 (b) Employs a minimum of two employees who are residents of the state.

12 (6) "Annual plan" means the state integrated coastal protection plan  
13 submitted annually to the legislature.

14 (7) "Coastal area" means the Louisiana Coastal Zone and contiguous areas  
15 subject to storm or tidal surge and the area comprising the Coastal Louisiana  
16 Ecosystem as defined in Section 7001 of P.L. 110-114.

17 (8) "Integrated coastal protection" means plans, projects, policies, and  
18 programs intended to provide hurricane protection or coastal conservation or  
19 restoration, and shall include but not be limited to coastal restoration; coastal  
20 protection; infrastructure; storm damage reduction; flood control; water resources  
21 development; erosion control measures; marsh management; diversions; saltwater  
22 intrusion prevention; wetlands and central wetlands conservation, enhancement, and  
23 restoration; barrier island and shoreline stabilization and preservation; coastal passes  
24 stabilization and restoration; mitigation; storm surge reduction; or beneficial use  
25 projects.

26 (9) "Master plan" or "comprehensive master coastal protection plan" means  
27 the long-term comprehensive integrated coastal protection plan combining coastal  
28 restoration, coastal zone management, storm damage reduction, hurricane protection,  
29 flood control, and the protection, conservation, restoration, and enhancement of  
30 coastal wetlands, marshes, cheniers, ridges, coastal forests, and barrier shorelines or

1           reefs, including amendments, as determined by the Coastal Protection and  
2           Restoration Authority Board to the plan. It shall include but not be limited to state  
3           and political subdivision operations plans.

4           E. The political subdivision shall not consider any unsolicited proposals for  
5           an outcome-based performance contract. However, nothing in this Subsection shall  
6           prohibit a private company from bringing to a political subdivision suggestions for  
7           new projects or alterations to solicited proposals. Any award of a contract shall be  
8           made only after issuance of a request for proposal and competitive bid process as  
9           required by the provisions of this Section.

10           F. The political subdivision may develop and adopt any guidelines, rules, or  
11           regulations necessary to effectuate the provisions of this Section.

12           G. Any financing of integrated coastal protection projects pursuant to this  
13           Section may be in such amounts and upon such terms and conditions as may be  
14           agreed upon by the owner and the outcome-based performance contractor.  
15           Additionally, the political subdivision may utilize any and all funding resources  
16           available to it.

17           H. If necessary and upon request from the outcome-based performance  
18           contractor, the political subdivision may exercise any statutorily created power for  
19           the purpose of acquiring lands or estates or interests in such, including but not  
20           limited to easements and access agreements, to the extent that the political  
21           subdivision finds that such action serves the public purpose of this Section.

22           I. An outcome-based performance contractor shall employ, or have as a  
23           partner, member, coventurer, or subcontractor, persons or a firm with persons who  
24           are duly licensed and registered to provide the services required to complete the  
25           project and to do business in the state. The standard professional engineer and land  
26           surveyor requirements provided for in R.S. 37:681 et seq., and the rules and  
27           regulations of the Louisiana Professional Engineering and Land Surveying Board,  
28           shall apply to the components providing design services, and the standard contractor  
29           qualifications as provided for in R.S. 37:2150 et seq., and the current rules and  
30           regulations of the State Licensing Board for Contractors shall apply to the

1 component providing construction services utilized by the outcome-based  
2 performance contractor, based upon the applicable categories for the specific project  
3 to be delivered and as specified by the political subdivision. All registrations and  
4 licenses for each component shall be obtained prior to the award of the project to the  
5 selected outcome-based performance contractor.

6 J.(1) The political subdivision shall solicit a request for statement of interest  
7 and qualifications or "RSIQ".

8 (2) The RSIQ shall include the following:

9 (a) Submittal criteria, deadlines, and requirements for proposal package.

10 (b) Scoring methodology and selection grading criteria.

11 (c) Statements of qualification and experience for key proposed management  
12 and staffing.

13 (d) Statements of qualification and experience of the financing members of  
14 the team.

15 (e) Statements of qualification and experience of design component members  
16 for the areas of expertise specific to the project.

17 (f) Statements of qualification, experience, and resources of the construction  
18 team component.

19 (g) A statement of the proposer's ability and intention to provide equal  
20 opportunities in recruitment, selection, appointment, promotion, training, and related  
21 employment areas in connection with the outcome-based performance contract.

22 (3) The political subdivision may request that proposers include the  
23 following in response to the RSIQ, as well as any other pertinent information relative  
24 to the qualifications of a proposer that the political subdivision determines needs to  
25 be submitted in a response to an RSIQ:

26 (a) The proposer's surety and any other financial assurances.

27 (b) Construction methodologies previously used by the proposer on other  
28 projects of similar size, type, and complexity.

29 (c) Extent to which the proposer intends to utilize resident businesses to  
30 perform the contract.

1                   (d) Extent to which the proposer intends to self-perform any work.

2                   (e) Past performance of the proposer, including timely and successful  
3 completion of other projects of similar size and complexity.

4                   (f) The proposer's safety record and safety plan.

5                   (g) Any other project-specific criteria as may apply to project needs.

6                   (4) Any response that does not meet all of the requirements contained in the  
7 RSIQ shall be deemed nonresponsive and shall not be considered by the political  
8 subdivision. False or misrepresented information furnished in response to an RSIQ  
9 shall be grounds for rejection. Additionally, the political subdivision reserves the  
10 right to cancel any solicitation at its discretion.

11                   (5)(a) The political subdivision may establish a qualification review  
12 committee for evaluation of the responses to the RSIQ. The qualification review  
13 committee shall evaluate the responses in accordance with the scoring methodology  
14 and criteria as identified and set forth in the RSIQ, and evaluate all aspects of the  
15 proposed project, including finance, design, construction, and monitoring  
16 components of any proposer.

17                   (b) Within sixty days of the deadline for receipt of responses, the  
18 qualification review committee shall select a short list of the highest-rated proposers  
19 in a number to be determined by the qualification review committee. However, if  
20 fewer than three eligible responses are received for review by the qualifications  
21 review committee, then the political subdivision may either approve proceeding with  
22 the outcome-based performance contracting process or readvertising in accordance  
23 with this Section.

24                   (c) The qualification review committee shall present a list of the highest-  
25 rated proposers to the political subdivision. The highest-rated proposers shall be  
26 invited by the political subdivision to submit a detailed technical and cost proposal  
27 for the proposed outcome-based performance project by means of an issued request  
28 for proposal or "RFP".

29                   K.(1) The political subdivision shall issue an RFP to the proposers making  
30 the list of the highest-rated proposers in accordance with Subsection J of this Section.

1                   (2) The RFP shall include, at a minimum, the following:

2                   (a) Submittal criteria, deadlines, and requirements for proposal package.

3                   (b) Scoring methodology and selection grading criteria.

4                   (c) The proposer's surety and financial assurances.

5                   (d) Design strategy and preliminary design concepts.

6                   (e) Construction sequencing, techniques, materials, methodology, schedule  
7 and phasing.

8                   (f) Proposed pricing and payment schedule for delivery of project.

9                   (3) The RFP may also include any other requirements that the political  
10 subdivision deems necessary.

11                   (4) The political subdivision may, at its discretion, compensate those  
12 unsuccessful and responsive highest-rated proposers for the expense of preparing the  
13 response to the RFP. The amount of compensation, if any, shall be predetermined  
14 by the political subdivision in its sole discretion and shall be included in the RFP.

15                   (5)(a) The political subdivision may establish a proposal review committee  
16 to review, score, and recommend award to an outcome-based performance  
17 contractor. The proposal review committee may consist of representatives of the  
18 owner, one of whom shall also serve as the chairman of the committee; a design  
19 professional with appropriate expertise; and a licensed contractor with appropriate  
20 expertise.

21                   (b) Within ninety days after the deadline for responses to the RFP, the  
22 proposal review committee shall make a written recommendation for award to the  
23 political subdivision. The results of the proposal review committee, inclusive of its  
24 findings, grading, score sheets, and recommendations, shall be available for review  
25 by all proposers and shall be deemed public records.

26                   L. Within sixty days of the award of the outcome-based performance  
27 contract, the political subdivision and the selected outcome-based performance  
28 contractor shall execute a contract. If the political subdivision and the  
29 outcome-based performance contractor are not able to agree upon a contract, then the

1 political subdivision reserves the right to readvertise the project in accordance with  
2 this Section or any other contracting method available to the political subdivision.

3 M. The political subdivision shall cancel any solicitation and decline to  
4 award any contract if a determination is made that it is in the best interest of the state  
5 and the political subdivision.

6 N. There shall be no challenge by any legal process to the choice of the  
7 successful outcome-based performance contractor except for fraud, bias for  
8 pecuniary or personal reasons not related to the taxpayers' interest, or arbitrary and  
9 capricious selection by the political subdivision.

10 O. The provisions of this Section shall supersede and control to the extent  
11 of any conflict with any other provisions of any law including but not limited to the  
12 requirements of R.S. 38:2181 through 2320 and R.S. 39:1751 through 1755.

13 Section 2. This Act shall become effective upon signature by the governor, or if not  
14 signed by the governor, upon expiration of the time for bills to become law without signature  
15 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If  
16 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
17 effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_