

TRANSPORTATION: Reforms operations for the Louisiana Department of Transportation and Development

1. Makes technical changes.
2. Removes provisions from proposed law prohibiting the department from using monies in the Transportation Trust Fund or the Construction Subfund for any of the following: financing any of its employees, outsourcing department functions, or paying state sales and use taxes.
3. Removes provisions from proposed law prohibiting the inclusion in the capital budget of any costs not directly tied to third party contracts for preconstruction and construction services or any overhead percentage project costs.
4. Removes the repeal of provisions for Fiscal Year 2015-2016 and Fiscal Year 2016-2017 that capped monies from the Transportation Trust Fund that could be used by the Department of Public Safety and Corrections, office of state police.
5. Removes provision from proposed law modifying the purposes of the Louisiana Transportation Research Center to include promotion of new technology and serving the private sector in a timely and efficient manner that encourages innovation and collaboration.
6. Removes the definition of assistant secretary for project delivery from proposed law.
7. Requires the assistant secretary of project delivery to consult with the chief engineer on matters related to project planning and implementation.
8. Removes the obligation in proposed law for the Department of Transportation and Development to employ engineering and other services by January 1, 2026.
9. Removes a provision in proposed law authorizing the secretary to eliminate any position within the department deemed necessary to fulfilling the goals of the office of transformation and in transitioning any departmental function to the office of Louisiana Highway Construction.
10. Adds a provision to prioritize fostering reliability and efficiency of the state highway network for workforce development and access by enhancing connections to employment clusters and institutions of higher education through integration with local roads, transit, rail, and other intermodal options.
11. Removes a provision from proposed law allowing a single member of the House or Senate Transportation, Highways and Public Works Committees to petition the joint committees for inclusion of an eligible project by a two-thirds vote.

12	Removes the chief engineer from involvement in certain qualification and contract-related responsibilities provided in <u>present law</u> .
13.	Provides that requalification of a removed prequalified consultant within three years requires submission of a corrective action plan approved by the assistant secretary for project delivery, in consultation with the chief engineer.
14.	Modifies <u>present law</u> to increase the liquidated damages rate for utility relocation delays <u>from</u> 0.05% <u>to</u> .15% per day.
15.	Specifies that the assistant secretary for project delivery, in consultation with the chief engineer, may require a deposit or guaranty to protect the state's interests prior to issuing a permit.

Digest of Bill as Finally Passed by Senate

Present law (R.S. 48:23) specifies that in order to properly discharge its functions, the department may employ engineering, drafting, accounting, legal, and other help and labor, subject to any applicable civil service laws and regulations. Further, specifies that the department, at its discretion, may hire persons with disabilities in the position of Bridge Tender I.

Proposed law modifies present law by specifying that the department may employ professional assistance to the fullest extent permitted by law.

Present law (R.S. 48:76(C)) requires the accounting procedure or system used by the department, except as required by the Bureau of Public Roads, comply with the uniform accounting system used by the commissioner of administration.

Proposed law modifies present law by changing the Bureau of Public roads to the Federal Highway Administration.

Present law (R.S. 48:92) requires that chief engineer or his designated representative approve all plans, specifications, and estimates for the construction of all highways under the provisions of present law. Additionally, specifies that he also has such other duties as may be assigned to him by the secretary or by the provisions of present law and. Further, requires that the chief engineer have direct supervision of the maintenance of the highways and other facilities of the department.

Proposed law modifies present law by requiring the chief engineer to report the proceedings of his office annually to the secretary of project delivery.

Present law (R.S. 48:94) requires each dept. district office publish weekly on the department's internet website information by parish regarding the construction and maintenance work performed, including but not limited to a description and location of the construction project or maintenance work performed.

Proposed law (R.S. 48:94(B)) requires the dept. make available to the public an interactive online system to conveniently and accurately monitor the status of the projects statewide.

Present law (R.S. 48:105.1(C)) specifies that the rules and regulations may authorize the chief engineer or his duly authorized representative to assess reduced fees for governmental personnel and faculty and staff of colleges and universities, provided those entities meet all state and federal requirements for a fee reduction.

Proposed law modifies present law by replacing the chief engineer with the assistant secretary for project delivery, but otherwise retains present law.

Proposed law (R.S. 48:196(D)) requires, effective July 1, 2025, the State Hwys. Improvement Fund, its indebtedness, and all nonfederal aid routes within La. fall under the exclusive purview of the office of La. Hwy. Construction.

Proposed law (R.S. 48:196(E)) authorizes the office of La. Hwy. Construction to redeem any bonds of the State Hwy. Improvement Fund prior to their maturity date.

Present law (R.S. 48:203(B)) requires allotments unexpended during the fiscal year be carried over to the next fiscal year and remain allotted to the same project until completion of the project and liquidation of the costs.

Proposed law requires the dept. report to the Joint Legislative Committee on the Budget annually describing reasons for unexpended allotments and identifying delays experienced in the associated projects.

Present law (R.S. 48:207(A)) specifies that when recommended by the chief engineer, the assistant secretaries, or the executive directors of the various offices and divisions of the department and when in the opinion of the secretary the best interest of the state will be served, emergency purchases of commodities, materials, supplies, equipment and miscellany, or purchases or leases of noncompetitive or patented articles, devices, equipment, or commodities may be negotiated and made without requesting bids. Additionally, specifies that the essential documents authorizing these purchases or leases must have written on their face the explicit reasons supporting the necessity for these leases or purchases.

Proposed law modifies present law by changing the chief engineer to the assistant secretary for project delivery, but otherwise retains present law.

Proposed law (R.S. 48:224.1(E)) specifies that effective July 1, 2025, the office of La. Hwy. Construction have exclusive authority to enter into agreements provided for in proposed law for non-federal- aid eligible routes in the states' highway system.

Present law (R.S. 48:229.1(A)) specifies that the legislature declares it to be in the public interest that a prioritization process for construction be utilized to develop a Hwy. Priority Program that accomplishes the following:

- (1) Bringing the state highway system into a good state of repair and optimizes the usage and efficiency of existing transportation facilities.
- (2) Improving safety for motorized and nonmotorized highway users and communities.
- (3) Supporting resiliency in the transportation system, including safe evacuation of populations when necessitated by catastrophic events such as hurricanes and floods.
- (4) Increasing accessibility for people, goods, and services.
- (5) Fostering diverse economic development and job growth, international and domestic commerce, and tourism.
- (6) Fostering multimodalism, promotes a variety of transportation and travel options, and encourages intermodal connectivity.
- (7) Encouraging innovation and the use of technology.
- (8) Protecting the environment, reduces emissions, and improves public health and quality of life.

Proposed law modifies present law by adding and prioritizing above all else, transparency to the public and the accuracy of project delivery timelines, financial means, and the nature and scope of projects. Additionally, modifies present law by adding and prioritizing

fostering reliability and efficiency of the state highway network for workforce development and access by enhancing connections to employment clusters and institutions of higher education through integration with local roads, transit, rail, and other intermodal options.

Present law (R.S. 48:229.1(B)) specifies that beginning with the Highway Priority Program for Fiscal Year 2017-2018, the dept. must provide the legislature and public with this program which list projects to be constructed in the ensuing fiscal year in an order of priority that is determined after projects selected pursuant present law are analyzed and prioritized based upon the factors set forth in present law.

Proposed law modifies present law by removing the initial project list phase for Fiscal Year 2017-2018, but otherwise retains present law.

Present law (R.S. 48:229.1(D)) specifies that prior to selecting a project for inclusion in the program based on the factors set forth in present law, the dept. must screen all projects submitted for inclusion in the program to determine whether they are consistent with the most recent Statewide Transportation Plan and warrant inclusion in the program.

Proposed law modifies present law by specifying that the results must be published on the dept.'s website in a format that identifies submitted projects that were not included in the program, but otherwise retains present law.

Present law (R.S. 48:229.1(E)) requires that no later than Oct. first of each year, the dept. make public, in an accessible format, the results of the screening and analysis of projects pursuant to present law.

Proposed law modifies present law by requiring the format, in addition to being accessible, be accurate.

Present law (R.S. 48:229.1(F)) requires the dept. to initially identify prospective outcomes of each program and report these prospective outcomes to the legislature and make them available to the public on or before June 6, 2016. Additionally, requires the dept. evaluate the actual outcomes of each program and establish revised prospective outcomes of each program on a biennial basis. Further, specifies beginning in 2018, the dept. must report the results of these biennial evaluations to the legislature and make them available to the public on the dept. website on a biennial basis when the dept. presents a proposed program of construction to the Joint Highway Priority Construction Committee in accordance with present law.

Proposed law modifies present law by requiring the dept. include in its annual submission of the highway priority program a detailed list of changes to the previous year's program, along with an explanation of the reasons such changes were made. Specifies that the goal of the dept. is to ensure at least 90% of its projects progress as provided for in the previous years program submission. Additionally, requires the legislative auditor monitor the program and make an annual determination of the percentage of accuracy.

Present law (R.S. 48:229.1(G)) authorizes the dept. to consult with the La. Economic Development when fixing the priorities of projects as required by present law.

Proposed law modifies present law by requiring the dept. to consult with the La. Economic Development to understand and achieve site development goals.

Proposed law (R.S. 48:229.1(H)) requires the dept. provide an annual report on the status of projects included in the Hwy. Priority Program to the House and Senate committees on transportation, highways and public works.

Present law (R.S. 48:231(A)(1)) requires that beginning on Oct. 1, 2010, and not later than Oct. 1st of each year thereafter, the dept. provide a proposed program of construction for the coming fiscal year to the Joint Highway Priority Construction.

Proposed law modifies present law by removing the Oct. 1, 2010 start date and requires the dept. to provide a proposed program of construction to the Joint Committee on Transportation, Highways and Public Works.

Present law (R.S. 48:231(A)(5)) requires a report based on the testimony received at the hearings be sent to the dept. Additionally, requires the dept. to then create the final construction program for the coming fiscal year for submission to the legislature.

Proposed law modifies present law by requiring the report be sent to House and Senate committees on transportation, highways and public works and any projects discussed at the hearing that are not included in the final construction program for the upcoming fiscal year be given numerical identification and the dept. provide the aforementioned committees with a list of the projects along with written justification for the exclusion of each individual project.

Present law (R.S. 48:231(A)(6)) specifies that when this final construction program is communicated to the legislature for funding for the coming fiscal year, any project which the legislature determines is not in the proper order of priority in accordance with the factors stated in present law may be deleted by the legislature. Further, specifies that the legislature can not add any projects to this final construction program, nor can the legislature make substitutions for projects which have been removed.

Proposed law modifies present law by removing the provision that specifies that the legislature cannot add any projects to this final construction program, nor can the legislature make substitutions for projects which have been removed and adds any project discussed at the public hearing that is excluded from the final construction program by the dept. for more than one consecutive fiscal year will become eligible to be added to the program.

Present law (R.S. 48:250.3(E)(1)) specifies that the chief engineer, with concurrence of the secretary, must establish a design-build qualifications evaluation committee for evaluation of the responses to the request for qualifications received by the dept. Further, specifies the following general criteria used by the committee in evaluating responses must apply to both the design and construction components of any responding entity.

Proposed law modifies present law by requiring the assistant secretary for project delivery to carry out provisions in present law.

Present law (R.S. 48:250.3(E)(2)) requires the qualifications evaluation committee evaluate the qualifications of responding design-builders on the basis of the criteria identified in the request for qualifications and set forth in present law, and select a short list of the highest rated entities in a number to be determined by the dept. Additionally, specifies that if fewer than three responses are received, the secretary or designated representative may approve proceeding with the design-build process. Specifies, the qualifications evaluation committee may, at its discretion, be assisted by other dept. personnel in its evaluation of an entity's qualifications. Requires, that the design-build qualifications evaluation committee present its short list to the chief engineer for recommendation to the secretary. Additionally, requires the shortlisted entities be invited by the secretary or designated representative to submit a detailed technical and cost proposal for the design-build project and invitation to the shortlisted entities specify a deadline for submission of proposals.

Proposed law modifies present law by requiring the assistant secretary for project management carry out provisions in present law.

Present law (R.S. 250.3(G)) requires the chief engineer, with concurrence of the secretary, establish a proposal review committee for evaluation of design-build proposals. Additionally, requires the proposal review committee be identified in the request for proposals (RFP). Further, requires the chief engineer, with concurrence of the secretary, assign a project manager, who becomes the chairman of the proposal review committee for the project. Specifies, that an RFP must identify technical elements of the project, depending

on the characteristics of the project, to be included in the technical score. Additionally, the chief engineer, with concurrence of the secretary, may select additional dept. engineering and technical experts, and nationally recognized design-build experts to serve as committee members to score each technical element of the project and members of the proposal review committee must not have served as members of the qualifications evaluation committee. Specifies, that each member of the proposal review committee must make his scoring of assigned elements available for public review. Such scores must be considered public record.

Proposed law modifies present law by requiring the assistant secretary for project delivery to carry out provisions in present law.

Present law (R.S. 48:250.3.1(F)) specifies that the chief engineer, with the concurrence of the secretary, must establish a design-build qualifications evaluation committee for evaluation of the responses to the RFQ received by the dept. Further, requires the chief engineer, with the concurrence of the secretary, assign a project manager who becomes the chairman of the qualifications evaluation committee for the project. Additionally, the qualifications evaluation committee may, at its discretion, be assisted by other dept. personnel in its evaluation of a design-builder's SOQ.

Proposed law modifies present law by requiring the assistant secretary for project delivery to carry out provisions in present law.

Present law (R.S. 48:251(C)) requires every contract for the construction of or improvements to highways include a warranty by the contractor as to the quality of materials and workmanship for a duration of three years. Additionally, requires the dept. submit a report on its implementation of the warranty requirements to the Joint Legislative Committee on Transportation, Highways and Public Works no later than July 1, 1998.

Proposed law modifies present law by changing the duration from three years to one year, and removes the remainder of present law.

Present law (R.S. 48:255(B)(6)) specifies that if two or more responsive bids from responsible bidders are received for exactly the same price and no preference or other method exists to determine the lowest bidder, the chief engineer must notify the tied bidders of a time and place where the lowest bidder on the project will be chosen by flipping a coin or by lots, as appropriate in the determination of the chief engineer. Additionally, specifies that the dept. may readvertise the projects in its discretion.

Proposed law modifies present law by requiring the assistant secretary for project delivery to carry out provisions in present law.

Present law (R.S. 48:259) requires the dept. maintain the highways forming the state highway system, together with the other facilities of the dept. to the extent that the revenues of the dept. will permit. Additionally, requires the selection of the highways, facilities, or parts thereof to be maintained and the order of that selection be made by the secretary upon the recommendation of the chief engineer and may be changed from time to time as the case demands. Further, requires in this selection, these officials be guided by volume and character of traffic and the convenience, safety, and necessity of the traveling public.

Proposed law modifies present law by designating the district administrator to select the highways, facilities, or parts thereof.

Present law (R.S. 48:261(A)(1)) requires that all maintenance operations be performed by the employees of the dept. Additionally, specifies the dept. may, by contract or other means, arrange for the maintenance of any section or sections of highways or any of the facilities of the DOTD when, in the sole discretion of the secretary, there are not adequate employees to perform the maintenance work required by either federal or state law or sound engineering practices. Further, requires the secretary give due consideration to budgetary constraints and employment restrictions prior to entering into any contract to perform maintenance work.

Requires, all such contracts to individuals or private concerns, except individuals with disabilities or organizations serving individuals with disabilities, be in accordance with the public bid provisions of present law.

Proposed law modifies present law by requiring the dept. to maximize third-party contracts for the maintenance of the state hwy. system and removes the remainder of present law.

Present law (R.S. 48:261(B)) authorizes the dept. to contract with the Dept. of Public Safety and Corrections, for use of prison labor to perform maintenance in parishes that the dept. is unable to employ sufficient labor to perform the duties.

Proposed law removes the provision referencing parishes in which the dept. is unable to employ sufficient labor.

Present law (R.S. 48:261(C)) specifies that the use of prison labor must in no way reduce the work force of any highway maintenance gang or cause the layoff of any classified employee.

Proposed law removes present law.

Present law (R.S. 48:286) specifies the conditions of retaining consultants warranted authorization.

Proposed law modifies present law specifying that there are no conditions that limit or prohibit the retention of services of consultants by the dept.

Present law (R.S. 48:292(B)) requires that the section head, after ascertaining the need for a noncompetitive selection, request approval from the secretary or his authorized designee through the chief engineer, assistant secretary for operations, assistant secretary for planning and programming, or assistant secretary of public works, hurricane flood protection, and intermodal transportation, whichever is applicable to the project, to engage a specific firm to perform the required services.

Proposed law modifies present law by changing the chief engineer to the assistant secretary for project delivery in consultation with the chief engineer, assistant secretary for operations or the commissioner of the office of multimodal commerce.

Present law (R.S. 48:292.1(E)(1)(f)) specifies that a prequalified consultant firm requests removal from the program in writing. Further, specifies that written requests for removal be addressed to the department's chief engineer or his designee.

Proposed law modifies present law by requiring the written request be addressed to the departments assistant secretary for project delivery in addition to the chief engineer.

Present law (R.S. 48:292.1(E)(2)) specifies that a prequalified consultant removed from the program may not requalify for the program for a period of three years from the date of removal unless a written corrective action plan is submitted by the consultant to the department's project manager and the plan is approved by the chief engineer or his designee.

Proposed law modifies present law by requiring the assistant secretary for project delivery in consultation with the chief engineer approve the corrective action plan.

Present law (R.S. 48:295.1(3)) defines "debarment committee" as the committee consisting of the following persons acting upon a unanimous vote: the chief engineer of the dept. or his designee; the deputy secretary of the department or his designee; and the general counsel of the dept. or his designee.

Proposed law modifies the definition in present law by adding a designee of the chief engineer and the assistant secretary for project delivery.

Present law (R.S. 48:381(C)(3)) authorizes the chief engineer to negotiate utility relocation agreements with liquidated damages clauses equal to .05 percent per day of estimated relocation costs, regarding utility delays.

Proposed law modifies present law by increasing the liquidated damages rate from .05% to .15% per day.

Proposed law requires the dept. use all practical means in consultation with utility operators during the planning, design, and execution of highway projects to avoid the need for utility relocation. Additionally, requires the timeframe for operator response prior to the accrual of penalties not be determined through this consultation.

Present law (R.S. 48:381(D)) authorizes the chief engineer, or his duly authorized representative, may require a deposit in the form of a certified check or other guaranty in a form and in an amount deemed by him to be necessary for the proper protection of the state prior to the issuing of a permit when the installations require excavations, or at other times when he believes a deposit or guaranty is necessary to protect the dept's interests.

Proposed law modifies present law by requiring the assistant secretary for project delivery, in consultation with the chief engineer, discretion to require a deposit or guaranty to protect the state's interests prior to issuing a permit.

Present law (R.S. 48:381(E)(1)(a)) specifies that except for rural water districts, the chief engineer or his duly authorized representative may assess reasonable utility operator's annual permit fees in connection with the issuance of permits. 1 Additionally, requires that fees as determined by the dept. not exceed the maximum fees as set.

Present law (R.S. 48:381(E)(2)) authorizes the chief engineer or his duly authorized representative assess reasonable operator's fees for rural water districts in connection with the issuance of permits to defray the expense of inspections by the dept's employees.

Proposed law changes the chief engineer to the assistant secretary of project delivery.

Present law (R.S. 48:381(D)) specifies that the chief engineer may waive fees for governmental entities, political subdivisions, colleges and universities, provided that said entities derive no income directly from the use of highway rights-of-way, and provided that said entities meet any and all state and federal requirements for a fee waiver.

Proposed law changes the chief engineer to the assistant secretary for project delivery.

Present law (R.S. 48:381.4) authorizes the chief engineer or his duly authorized representative to enter into agreements with a wireless telecommunications tower manager to manage such towers for specified periods.

Proposed law changes the chief engineer to the assistant secretary for project delivery.

(Amends R.S. 48:23, 76(C), 92, 94, 105.1(C), 203(B), 207(A), 229.1(A), (B), and (D) through (G), 231(Section heading), (A)(1), 250.3.1(F), 251(C), 255(B)(6), 259, 261(A)(1), (B), and (C), 286, 292(B)(intro.para.), 292.1(E)(1)(f) and (2), 295.1(3), 381(C)(3)(a) and (D), and (E)(1)(a)(intro.para.) and (2), 381.1(D), and 381.4(intro.para); Adds R.S. 48:196(D) and (E), 224.1(E) and 229.1(H); Repeals R.S. 48:79)