



Background

Public Affairs Research Council of Louisiana

June 2008

Louisiana's Capital Outlay Process

If all you know about the capital outlay process is what you read in existing state laws, rules, and policies and procedures, you probably would conclude that in theory, it's a good process. In fact in 1999, *Governing Magazine* surveyed the 50 states and produced a document called "The Government Performance Project Report Card," which gave Louisiana's capital budget process a grade of "B." The 50-state average for capital budgeting was a "B-." This was primarily a survey of how things look on paper. No doubt, if the surveyors had spent some time actually observing Louisiana's capital outlay process in practice they would have observed that Louisiana's "good capital budget process" can be easily hijacked or manipulated by "good politics" by both the governor and legislators.

How are projects selected?

The capital outlay program is necessarily complex to some degree because of the conflict between the state's annual budget cycle and the multi-year nature of construction projects. Construction projects usually require cash to flow at intervals over the course of several years, but a commitment (line of credit) for the entire cost has to be made before contracts can be signed. The multi-year nature enables the state to begin more projects in a year than it can fund through completion in that year. For that reason, the capital outlay bill is a combination of funding commitments and waiting lists.

Louisiana's capital outlay planning process begins and ends with heavy influence by the governor. The basic steps are as follows:

1. The governor generates a capital outlay budget proposal with a list of projects to be granted cash and non-cash lines of credit. The list is divided into five priorities, which determine the order in which the non-cash projects will receive funding when it becomes available.

Priority 1 is limited to the reauthorization of prior year lines of credit or Higher Education Desegregation Settlement Agreement projects. Legislators cannot just add anything to Priority 1. Currently, legislators can add to priorities 2, 3, 4 and 5 without limit.

Priority 2 projects are expected to require some funding to get started in the current fiscal year. Any funding provided has to fit under the debt issuance cap, but the cost of projects included in this list typically far exceeds available capacity. This enables the governor to decide which bond-funded projects to submit to the State Bond Commission for lines of credit after the legislative session ends. Legislators get political credit for getting a project in the bill even if it is never funded. But to earn those bragging rights, they sacrifice real power to set capital outlay priorities.

Priority 5 projects can be granted non-cash lines of credit and/or be shifted upward to a higher priority. This is essentially the waiting list

This backgrounder is a supporting document to accompany PAR's "Capital Outlay Reform Agenda for Louisiana." The report can be downloaded at www.la-par.org.

for future year cash lines of credit. The “over-commitment” problem is here, because the list amounts to a project backlog. Once a project receives a non-cash line of credit it is reasonably assured of eventually being granted full cash line of credit funding in a subsequent fiscal year.

2. Capital outlay requests are made by state and non-state entities and submitted to the governor’s office for inclusion in the bill. The Division of Administration has a professional staff of budget analysts, engineers and architects who participate in a well organized and objective process for reviewing and categorizing capital outlay requests to facilitate the selection of projects to be funded in accordance with the governor’s stated priorities.

3. The governor submits the capital outlay bill to the Legislature. The House Committee on Ways and Means, House Appropriations Committee, Senate Committee on Revenue and Fiscal Affairs and Senate Finance Committee have jurisdiction over the bill. Projects can be added by the Legislature to priority categories 2 through 5 regardless of capacity.

4. The governor has the opportunity to veto those projects added by the Legislature.

5. The Office of Facility Planning and Control in the Division of Administration manages the construction projects outlined in the act. Cash flow management plays an important role, because when projects are delayed or canceled for feasibility purposes, cash and non-cash lines of credit are made available to fund other projects in line. The governor recommends projects to the Bond Commission for funding approval.

6. The State Bond Commission’s role is to grant or rescind cash and non-cash lines of credit. It also can approve certificates of impossibility and impracticality to allow for Priority 1 projects to be passed over while Priority 2

projects are granted lines of credit. Language in the capital outlay bill basically says that no lower priority project can be funded with lines of credit unless all higher priority projects are either granted lines of credit or passed over with certificates of impossibility and impracticality.

The Interim Emergency Board’s (IEB) role in the capital outlay process, subject to mail ballot approval by a majority of the Legislature, is to designate a higher or lower bond priority for projects. Moving funding for a delayed or canceled project from Priority 1 down to Priority 5 can be an alternative to issuing a Priority 1 certificate of impossibility and impracticality. The IEB also can adjust the description of a project in the capital outlay act to correct, clarify or change the scope of a description.

Louisiana’s “good capital budget process” can be easily hijacked or manipulated by “good politics” by both the governor and legislators.

Final decisions regarding which projects are funded are firmly in the hands of the governor. The governor controls project selection at two critical stages: initial development of the annual capital outlay budget and submission of line-of-credit requests for bond-funded projects to the State Bond Commission. The governor, the commissioner of administration and the governor’s handpicked legislative leaders account for 10 of the 14 Bond Commission member votes.

In addition, the governor also has line-item veto authority to delete any cash or bond-funded project in the capital outlay budget passed by the Legislature. The process leaves little authority in the hands of the Legislature and essentially makes the capital outlay bill a legislative wish list for governors to use as a bargaining tool to obtain support for their agenda in other areas of government.

Governors typically rely heavily on the objective advice of the Division of Administration professional staff in the process of selecting

state agency projects for funding, but political considerations are also a major driving factor in the selection of both state and non-state projects. Non-state entities are ports, levee districts, parish governments, municipalities and other political subdivisions, and nonprofit organizations that provide a service to the public. Some non-state entity projects are selected based on their merit as infrastructure projects, economic development projects or because they are needed to protect life and property, but a review of projects funded in the past reveals a long list of investments that serve a narrow set of interests with arguably little regional or statewide impact. These projects often are treated as rewards for legislators who support the governor's agenda.

Why does the state fund non-state entity projects?

The state's multi-billion dollar backlog of deferred maintenance for highways, higher education facilities and other state buildings continues to grow each year as capital outlay dollars are shared with non-state entities. Non-state entities, especially in rural areas that don't have a state college, state hospital, state park or major state highway to help generate economic activity, argue that they do not have the ability to generate the revenue to provide for their capital outlay needs. The state Constitution limits local authorities' revenue generating capacity, which increases the local reliance on state resources. Local and non-governmental projects and programs are funded with both capital outlay dollars and general appropriations via member amendments to the budget bill.

At a recent legislative committee hearing, the Division of Administration testified that over the years, the non-state entities' share of capital outlay funding typically has ranged from 20

percent to 30 percent per year, but in some years it has been as high as 40 percent.

Who supports reform?

While various "reform" proposals are floated every year, this year the push for change is being embraced by a wider range of stakeholders. Unfortunately, most of these approaches appear to do more to consolidate and strengthen the governor's control over the process than to effect real reform.

In the past 25 years there have been two reform ideas adopted that could be called significant improvements to the process. One is the requirement that the capital outlay request form be filled out and submitted prior to the inclusion of a project in the capital outlay budget act. The other significant improvement was when the administration and the Legislature started limiting the amount of new cash lines of credit (new debt) issued for capital outlay projects in an attempt to restrain the state's per-capita debt load.

While various "reform" proposals are floated every year, this year the push for change is being embraced by a wider range of stakeholders. The governor issued an executive order calling for certain capital outlay reforms and submitted a budget that contained no new projects. In addition, several legislative leaders have put their names on bills seeking various reforms. Unfortunately, most of these approaches appear to do more to consolidate and strengthen the governor's control over the process than to effect real reform.