Legislative Analysis

Mary Ann Cleary, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

CAPITAL OUTLAY PROCESS REFORMS

House Bill 5830 (H-1)
House Bill 5831 (H-1)
Sponsor: Representative Eileen Kowall
Committee: Appropriations

Complete to 11-28-12

A SUMMARY OF HOUSE BILLS 5830 (H-1) AND 5831 (H-1) AS REPORTED BY THE HOUSE APPROPRIATIONS COMMITTEE November 28, 2012

House Bills 5830 and 5831 would amend the State Building Authority Act and the Management and Budget Act to revise and streamline the current process for state-funded capital outlay projects and state leases of private property.

The bills are described in detail below.

House Bill 5830

Legislative Approval of State Building Authority (SBA) Financing. Currently, state-funded capital outlay projects receive planning authorization and subsequent construction authorization in appropriation acts. Approval of SBA financing is the third legislative step for state-funded capital outlay projects, and is done through concurrent resolutions. House Bill 5830 amends the State Building Authority Act to require SBA financing to be approved in appropriation acts, instead of in concurrent resolutions. This change will allow for legislative approval of financing through the SBA in the same appropriation act that authorizes project construction, thereby eliminating the need for additional legislative action. (HB 5831 makes a similar adjustment in the Management and Budget Act.) Also, the bill extends the length of time in which an SBA lease can be executed, subsequent to legislative approval, from three years to five years. The time limit for executing leases for equipment and furnishings is extended from two years to four years. This adjustment is necessary because the legislative authorization of financing will occur earlier in the process. (Sections 3, 5, 7, and 8)

House Bill 5831

House Bill 5831 amends the Management and Budget Act to provide for the following changes:

- **Private Lease Approval and Notice Requirements.** Current law requires that a 30-day notice be given to the Joint Capital Outlay Subcommittee (JCOS) for rentals and leases of facilities or property that have an annual base cost of more than $1.0 million and consist of less than 25,000 gross square feet. For the lease of space where a facility exceeds 25,000 gross square feet or the annual base cost is more than $500,000, JCOS approval is required. The bill requires JCOS approval for all leases with an annual base cost of more than $500,000, without any regard to total square footage. For rental agreements, the Department of Technology, Management, and Budget (DTMB) will be required to provide notification to JCOS and the fiscal agencies within 5 business days of rental agreements entered into in which the base cost is more than $500,000. (Section 221 (2) & (3))

- **Annual Reports.** The bill includes reporting requirements that are mostly drawn from Capital Outlay and General Government appropriation bills and JCOS Rules and Policies. The bill sunsets these reporting requirements on March 31, 2015. The reports include:

    - **Leased Space.** Annual reports on state-owned and private leased space. The reports are required to include information on the department/agency occupying the space, building location, type of space, square footage, occupancy and usage of space compared to total space available, condition of the facility, and future special maintenance costs. For leased space, the report is required to include name of property owner, square footage rate, monthly and annual cost, and duration of the lease.

    - **JCOS Private Lease Approval Process.** Requires a two-week notice to be given to JCOS in order for a state lease proposal to be included on a JCOS meeting agenda. The State Budget Office is required to submit detailed information on the proposed lease, including lessor, cost, square footage, management fees, utility costs, taxes, operating costs, lease terms, a cost comparison to current leased space (justification for new lease), and the bid process.

    - **Status of Planning and Construction Projects.** Annual report on the status of all active SBA planning and construction projects. (Sec. 221a)

- **Self-Managed Projects.** The bill incorporates boilerplate providing for DTMB oversight responsibilities of projects that are self-managed by universities and community colleges. Institutions are required to enter into agreements with DTMB stating that the institution will construct the project within the total authorized cost, design, and program scope established by the legislature. Also, the DTMB director has authority to terminate projects if the public's financial and policy interests are in jeopardy. The director is required to provide notice to JCOS within 10 days of exercising authority under this provision. (Section 237a (6) & (7))

- **Use and Finance Process.** The bill includes a new section on the "Use and Finance" process, based on JCOS rule #8, for university and community college projects that are funded entirely with university and community college resources.

The bill requires universities and community colleges to provide biannual reports to JCOS on all contracts entered into for new construction of self-funded projects costing in excess of $1.0 million. (Section 238)

- **Disabled Veterans Preference.** Currently, DTMB is required to give a bid preference of up to 10% of the amount of a contract to a qualified disabled veteran. The bill limits the preference to not more than $35,000. (Section 241 (3))

- **Low Bids.** The bill includes new language requiring construction contract awards, for projects funded in whole or in part with state funds, to be made to the lowest responsive, responsible bidders who submit bids that conform with all material respects to the requirements of the bidding documents. (Section 241 (4))

- **Five-Year Capital Outlay Plans.** Current law requires state agencies, community colleges, and universities to develop 5-year capital outlay requests/plans. The bill clarifies the information that is to be included in the 5-year plans, requires submission of documents in electronic format, and requires plans to be submitted to members of JCOS and the fiscal agencies by November 1 of each year. The bill also requires DTMB and the JCOS Chair and Vice-Chair to review and evaluate capital outlay project requests by March 1 of each year, and to consider the following in the review: investment in existing facilities and infrastructure, life and safety deficiencies, occupancy and utilization of existing facilities, sustainable design and efficiencies, estimated cost, institutional support, operating costs, impact on tuition, impact on job creation in Michigan, and history of state appropriations to the institutions through the capital outlay process. (Section 242 (1), (2), & (3))

- **SBA Legislative Lease Approval.** The bill requires that SBA lease approval be included in the same appropriation act as construction authorization. (Section 242 (6))

- **SBA Outstanding Obligations.** The bill requires JCOS and DTMB to annually review outstanding obligations of the SBA. The bill states legislative intent that appropriations for SBA rent will be $300.0 million in FY 2013-14. The $300.0 million figure will be adjusted for inflation in subsequent years. (Sec. 242a)

- **Project Authorized Cost and Program Scope.** Currently, the authorized cost and scope of capital outlay projects can be established or revised by a specific reference in appropriation acts or concurrent resolutions, or inferred by the total amount of any appropriations made to complete project plans and construction. The bill requires that the cost and scope be established or revised only by specific reference in appropriation acts. (Section 246 (1))

- **Release of Construction Appropriations.** The bill removes the requirement that the State Administrative Board approve the release of construction funds. (Section 246 (2))

- **Duration of Planning and Construction Authorizations.** Currently, planning and construction authorizations each extend for three fiscal years after the year of the appropriation. There are statutory exceptions that allow projects to continue beyond these time limits. The bill revises the duration of planning and construction authorizations for all state agency, community college, and university capital outlay projects. Planning authorizations that have not received authorization for final design and construction within 12 months after the last day of the fiscal year in which the planning authorizations were made would be terminated, unless they are specifically reauthorized in a budget act. Construction authorizations are to be terminated if construction has not commenced within 24 months after the last day of the fiscal year in which the authorization was made, unless the project is specifically reauthorized in a budget act. A capital outlay project may be continued beyond the limitations specified if one or more of the following applies:

  - A bid for construction has been awarded or construction has commenced.
  - A capital outlay project for the purchase of property in which a contract is entered into, but the acquisition is not completed. (Only the amount necessary to complete the purchase of the property will be carried forward.)
  - A federal grant is pending release.
  - The project is subject to legal action.
  - Funds may be carried forward for 12 months after a project is substantially completed.

  The bill requires the DTMB director to notify JCOS and the fiscal agencies, not later than 45 days after the conclusion of each fiscal year, of planning and construction authorizations that will continue beyond the limitations specified. Revisions to this section will apply to projects authorized subsequent to the enactment of this bill. Projects authorized prior to the enactment of this bill will not be affected by these changes. (Section 248)

- **Matching Funds.** The bill includes language, normally included with capital outlay appropriations, requiring institutions to take necessary steps to make available federal or other monies to cover project costs. Additional funding made available is required to be applied to the total project cost, with the state's share and the institution's share being adjusted proportionately. (Section 249 (2))

- **Legislative Transfers.** Current law requires JCOS approval of capital outlay transfers, in addition to appropriation committee approval. The bill eliminates the JCOS approval requirement. (Section 393 (5))

FISCAL IMPACT:

The bills would have no direct impact on the amount of state funding appropriated for SBA-financed construction projects. While Section 242a of House Bill 5831 states the intent to limit annual appropriations for SBA rental payments to $300.0 million, the $2.7 billion bond cap contained in Public Act 183 of 1964 is not changed by the bills. The appropriation for SBA rent is dependent upon the outstanding principal obligations and the true rental values of SBA-financed facilities determined by appraisals of SBA construction projects once they are completed. The FY 2012-13 appropriation for SBA rent is $256.9 million GF/GP. It is estimated that SBA rent payments would be $281.4 million with the addition of projects approved in Public Act 192 of 2012.

The number of future projects authorized and the amount of state committed funding will depend on future capital outlay appropriation acts. The bills would potentially result in administrative efficiencies and would provide the legislature with relevant information that could facilitate the selection of projects for state funding.

Fiscal Analyst: Robin R. Risko

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.