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BILL ANALYSIS

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House Bill 5830 (Substitute H-1 as reported without amendment) *(as enacted)*
House Bill 5831 (Substitute S-1 as reported) *(as enacted)*
Sponsor: Representative Eileen Kowall
House Committee: Appropriations
Senate Committee: Appropriations

CONTENT

House Bills 5830 (H-1) and 5831 (S-1) would amend the State Building Authority Act and the Management and Budget Act, respectively, to revise and streamline the process for State-funded capital outlay projects and State leases of private property.

The bills are described in detail below.

House Bill 5830 (H-1)

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 (H-1) would amend the State Building Authority Act to require SBA financing to be approved in appropriation acts, instead of in concurrent resolutions. This change would 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. (House Bill 5831 (S-1) would make a similar adjustment in the Management and Budget Act.) Also, the bill would extend the length of time in which an SBA lease can be executed, after legislative approval, from three years to five years. The time limit for executing leases for equipment and furnishings would be extended from two years to four years. This adjustment is necessary because the legislative authorization of financing would occur earlier in the process. (Secs. 3, 5, 7, and 8)

House Bill 5831 (S-1)

House Bill 5831 (S-1) would amend the Management and Budget Act to provide for the changes described below.

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 would require JCOS approval for all leases with an annual base cost of more than $500,000, without regard to total square footage. For rental agreements, the Department of Technology, Management, and Budget (DTMB) would be required to provide notification to JCOS and House and Senate Fiscal Agencies within five business days of rental agreements entered into in which the base cost was more than $500,000. (Sec. 221(2) & (3))

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

- **Leased Space.** Annual reports on State-owned and private leased space would be required and would have 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 bill would require additional information, including the name of the property owner, square footage rate, monthly and annual cost, and duration of the lease.
- **JCOS Private Lease Approval Process.** The bill would require 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 DTMB would have 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.** The bill would require an annual report on the status of all active SBA planning and construction projects. (Sec. 221a)

Self-Managed Projects. The bill would incorporate boilerplate providing for the DTMB oversight responsibilities of projects that are self-managed by universities and community colleges. Institutions would have to enter into agreements with the DTMB stating that the institution would construct the project within the total authorized cost, design, and program scope established by the Legislature. Also, the DTMB Director would have the authority to terminate projects if the public's financial and policy interests were in jeopardy. The DTMB Director would be required to provide notice to JCOS within 10 days of exercising authority under this provision. (Sec. 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 would require 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. (Sec. 238)

Low Bids. The House included 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 submitted bids that conformed in all material respects with the requirements of the bidding documents. The Senate substitute modified this section to require contract awards to be made to the responsive and responsible best value bidder. (Sec. 241(4))

Five-Year Capital Outlay Plans. Current law requires State agencies, community colleges, and universities to develop five-year capital outlay requests/plans. The bill specifies the information to be included in the five-year plans, and would require submission of documents in electronic format, and require plans to be submitted to members of JCOS and the Fiscal Agencies by November 1 of each year. The bill also would require the DTMB and the JCOS chairperson and vice-chairperson 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 use 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. (Sec. 242(1), (2), & (3))

SBA Legislative Lease Approval. The bill would require that the SBA lease approval be included in the same appropriation act as construction authorization. The Senate substitute also would require projected SBA rental payments to be appropriated in the bill. (Sec. 242(6))

SBA Outstanding Obligations. The bill would require JCOS and the DTMB to annually review the outstanding obligations of the SBA. The House-passed bill stated legislative intent that appropriations for SBA rental payments be $300.0 million in FY 2013-14, with the $300.0 million adjusted for inflation in subsequent years. The Senate substitute removed the $300.0 million limit. (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 would require that the cost and scope be established or revised only by specific reference in a budget act. (Sec. 246(1))

Release of Construction Appropriations. The bill would remove the requirement that the State Administrative Board approve the release of construction funds. (Sec. 246(2))

Duration of Planning and Construction Authorizations. Currently, planning and construction authorization extends 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 would revise the duration of planning and construction authorizations for all State agency, community college, and university capital outlay projects. Planning authorizations that had not received authorization for final design and construction within 24 months after the last day of the fiscal year in which the planning authorization was made would be terminated, unless the project was specifically reauthorized in a budget act. The project termination provision would not apply if the institution submitted program and schematic planning documents within the 24-month time period. Construction authorizations would be terminated if construction had not commenced within 36 months after the last day of the fiscal year in which the authorization was made, unless the project was specifically reauthorized in a budget act. A capital outlay project could be continued beyond the limitations specified if one or more of the following applied:

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

The bill would require 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 would continue beyond the limitations specified. Revisions to this section would apply to projects authorized after the enactment of this bill. (Sec. 248)

Matching Funds. The bill includes language, normally included with capital outlay appropriations, requiring institutions to take steps necessary to make available Federal or other money that may be available and to use all or part of the appropriations to meet matching requirements considered to be in the best interests of the State. Additional matching funds would have to be applied to the total authorized project cost, with State and institution shares adjusted proportionately. (Sec. 249(2))

Legislative Transfers. Current law requires JCOS approval, in addition to Appropriations Committee approval, of capital outlay transfers. The bill would eliminate the JCOS approval requirement. (Sec. 393(5))

MCL 830.413 et al. (H.B. 5830)
MCL 18.1115 et al. (H.B. 5831)

FISCAL IMPACT

The bills would have no direct impact on the amount of State funds appropriated for SBA-financed construction projects. The $2.7 billion bond cap contained in Public Act 183 of 1964 would not be changed by the bills. The appropriation for SBA rent depends on 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 number of future projects authorized and the amount of State committed funding will depend on future capital outlay appropriation acts. The bills would result in administrative efficiencies and would provide the Legislature with relevant information that would facilitate the selection of projects for State funding.

Date Completed: 12-5-12 Fiscal Analyst: Bill Bowerman

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