

1983 WL 181884 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 13, 1983

***1 SUBJECT: Public Funds**

(1) The setting of priorities for capital improvement projects in conjunction with the requirements of subsections (a) and (b) of Section 4 of Act 179 of 1981, Acts and Joint Resolutions of South Carolina constitute approval for the establishment and implementation of projects.

(2) Pursuant to Section 4 of Act 179 of 1981, the Budget and Control Board has 2 years to approve an authorized project after which all projects must be submitted to the General Assembly for action.

(3) Pursuant to Section 4 of Act 179 of 1981, once projects are submitted to the General Assembly for action, no further action to approve a project may be taken by the Budget and Control until the General Assembly takes action.

(4) Act 179 of 1981 does not place a restriction on the amount of time it may take the General Assembly to confirm or nonconfirm a project.

Senator Horace C. Smith
Chairman
Joint Bond Review Committee

QUESTION:

1. Does the setting of priorities for capital improvement bond projects constitute approval for the establishment and implementation of such projects as set forth in Section 4 of Act No. 179 of 1981?
2. Pursuant to Section 4 of Act 179 of 1981, is the Budget and Control Board required to submit capital improvement projects subject to confirmation to the General Assembly before or after the expiration of the two years period?
3. If the Budget and Control Board in accordance with Section 4 of Act 179 of 1981 submits capital improvement projects for confirmation after the two years period, what is the status of those projects? In other words, can those projects be established and implemented after the two year period, but prior to final legislative action?
4. If capital improvement projects are submitted for confirmation after the two year period, in accordance with Section 4 of Act 179 of 1981, how long does the General Assembly have to confirm or nonconfirm the project?

AUTHORITIES:

Act 179 of the 1981 Acts and Joint Resolutions of South Carolina; Sutherland, Statutory Construction, Vol. 2A §§ 47.23 and 57.03, 4th ed.; 16 C.J.S. Const. Law, § 107; [Home Building & Loan Ass'n. v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139.

DISCUSSION:

1. Section 4 of Act 179 of the 1981 Acts and Joint Resolutions of South Carolina (The Act) provides in pertinent part: 'All projects not approved to be established and implemented prior to the last day of the second full calendar year following the project's authorization act, or for previously authorized projects the second full calendar year after the effective date of this section, shall be submitted to the General Assembly by the Budget and Control Board for legislative confirmation in a Joint Resolution.'

It appears that the clear language of this portion of Section 4 requires that approval not actual implementation of the capital improvement project (project) must be accomplished within the two year period or else the project must be submitted to the General Assembly for legislative confirmation. A project is approved for establishment and implementation by compliance with Section 4A of the Act which requires the Joint Bond Review Committee in consultation with the Budget and Control Board to establish priorities for the funding of the projects and by compliance with the requirements of subsections (a) and (b) of Section 4 of the Act.

*2 2. Pursuant to Section 4 of the Act, all authorized projects not approved within two years from the date of authorization or for those projects previously authorized from the effective date of Section 4, shall be submitted to the General Assembly for action. The use of the word 'shall' in a statute carries with in the presumption that it is used in the imperative rather than in the directory sense. Sutherland, Statutory Construction, Vol. 2A, § 57.03, 4th ed. While the requirement previously described is mandatory, there is no like requirement that the Budget and Control Board along with the Joint Bond Review Committee take a full two years to approve a project. Under general principles of statutory construction there is an inference that the omission of the two year requirement for approval should be understood as excluding that particular action from the mandatory two years. Sutherland, Statutory Construction, Vol. 2A, § 47.23, 4th ed.; [Home Building & Loan Ass'n. v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 \(1937\)](#). Therefore, the Section must be read to allow the Budget and Control Board to submit a project to the General Assembly at any time within the two year period, but to require that projects be submitted after the two year period regardless of whether any formal action has been taken.

3. Section 4 of the Act requires that all projects not approved to be established and implemented within the two year period described in Section 4 shall be submitted to the General Assembly by the Budget and Control Board for legislative confirmation in a Joint Resolution. The General Assembly has beyond question, the duty and authority to handle the finances of the State, whereas the Budget and Control Board as an arm of the executive branch is limited to the power given to it by the Act. 16 C.J.S. Const. Law, § 107. The mandatory portion of Section 4 places exclusive control over all projects after the two years period in the General Assembly. In fact, nonconfirmation of a project by the General Assembly means automatic deauthorization of any project. Therefore, when a project is submitted to the General Assembly after the two year period, the Budget and Control Board retains no authority over the project and cannot act to approve a project until final legislative action is taken.

4. Section 4 of the Act provides no time limit in which the General Assembly must act to confirm or reject a project submitted after the two year period. In the absence of a time restriction and in view of the continuing authority of the General Assembly over financial matters of the State, it is possible that the question of whether to confirm a project could be carried over from one session to the next of the General Assembly. It also seems possible that under its general authority the General Assembly would have the power to reauthorize a project within the two year period prior to official action by the Budget and Control Board.

CONCLUSIONS:

*3 1. The setting of priorities for capital improvement bond projects in conjunction with the requirements of subsections (a) and (b) of Section 4 of the Act constitute approval for the establishment and implementation of projects.

2. Pursuant to Section 4 of the Act, the Budget and Control Board has up to two years to approve a capital improvement project. After the expiration of the two year period described in Section 4 of the Act, all projects must be submitted to the General Assembly for action.

3. Capital improvement projects cannot be approved for establishment and implementation by the Budget and Control Board after the two year period unless and until the General Assembly takes action to confirm the project. The failure of the General Assembly to confirm a project results in automatic deauthorization of the project.
4. There is no restriction on the amount of time which the General Assembly has to confirm or nonconfirm a project.

B. J. Willoughby
Assistant Attorney General

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