

2023 Regular Session

HOUSE BILL NO. 336

BY REPRESENTATIVE BISHOP

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CAPITAL OUTLAY: Provides relative to the capital outlay process and reporting requirements

1 AN ACT

2 To amend and reenact R.S. 39:100.121(A)(1) and (2)(b), 105(A), 112(C)(1)(introductory

3 paragraph) and (c), (E)(1) and (2)(introductory paragraph), and (G)(1), and 115(A)

4 and (B), to enact R.S. 39:112(E)(4) and (H), 121.1, and 125.1, and to repeal R.S.

5 39:112(E)(2)(b), relative to capital outlay; to provide with respect to the capital

6 outlay process; to provide for certain requirements for nonstate projects; to provide

7 with respect to the local match requirements for certain projects; to provide for

8 certain notifications; to require certain reports; to provide for limitations; to require

9 the inclusion of certain information concerning state indebtedness within the Capital

10 Outlay Act; to require certain projects to be included in the Capital Outlay Act or to

11 obtain legislative approval; to require the appropriation for certain projects to be

12 deposited into the Capital Outlay Savings Fund; to require the timely submission of

13 certain invoices; to limit the disposal of projects which received capital outlay

14 funding; to require certain approval before a project is disposed of or sold; to provide

15 for applicability; to provide for an effective date; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 39:100.121(A)(1) and (2)(b), 105(A), 112(C)(1)(introductory

18 paragraph) and (c), (E)(1) and (2)(introductory paragraph), and (G)(1), and 115(A) and (B)

19 are hereby amended and reenacted and R.S. 39:112(E)(4) and (H), 121.1, and 125.1 are

20 hereby enacted to read as follows:

1 §100.121. Capital Outlay Savings Fund

2 A.(1) There is hereby created in the state treasury, as a special fund, the
3 Capital Outlay Savings Fund, hereinafter referred to as the "fund". The fund shall
4 be comprised of both recurring and nonrecurring state general fund revenues.

5 (2)

6 * * *

7 (b) In the event that a project included in the comprehensive capital outlay
8 budget that has a state general fund direct ~~nonrecurring revenue~~ appropriation,
9 regardless of whether the appropriation is from recurring or nonrecurring revenue,
10 is deemed null by the division of administration or is vetoed by the governor, the
11 state treasurer is authorized and directed to deposit into the fund an amount equal to
12 the amount of the appropriation for the project that is deemed null or vetoed from the
13 recurring or nonrecurring revenues, whichever is applicable, in the state general
14 fund.

15 * * *

16 §105. Capital Outlay reports to Joint Legislative Committee on Capital Outlay

17 A.(1) The office of facility planning and control and any state agency
18 authorized to administer capital outlay appropriations shall submit to the Joint
19 Legislative Committee on Capital Outlay, an annual written report no later than the
20 first day of February, ~~of.~~ The report shall include the following information for each
21 project included in the prior year's capital outlay budget ~~which includes the~~
22 ~~following information:~~

23 ~~(1)~~(a) The title of the project.

24 ~~(2)~~(b) The total budget for the project from all means of financing.

25 ~~(3)~~(c) A breakdown of the funding of the project including all cash and
26 general obligation bond funding of the project.

27 ~~(4)~~(d) The amount of state and local funds, including local match funds,
28 expended on the project.

1 (~~5~~)(e) The amount of project funding that has been encumbered, including
2 all cash and general obligation bond cash and noncash lines of credit approved for
3 the project.

4 (~~6~~)(f) The total amount of funds the project will need to spend in the next
5 fiscal year.

6 (~~7~~)(g) The current status of the project as either active or complete.

7 (~~8~~)(h) If the project is complete, the total amount of unspent appropriations
8 remaining on the project, including the means of finance of the funds.

9 (2) Each project which is funded through a cash means of finance or which
10 received advance funding in a bond sale shall also be included in the annual report
11 required in Paragraph (1) of this Subsection regardless of whether the project was in
12 the prior year's capital outlay budget. Additionally, the office of facility planning
13 and control shall continue to include each such project in the annual report until a
14 certificate of completion for the project has been issued by the entity administering
15 the project.

16 * * *

17 §112. Capital ~~outlay act~~ Outlay Act

18 * * *

19 C.(1) Capital outlay budget requests submitted after November first may be
20 included within the ~~capital outlay act~~ Capital Outlay Act if the capital outlay budget
21 request meets all of the applicable requirements as provided in R.S. 39:101 and 102
22 except for time of submission and if any of the following conditions have been met:

23 * * *

24 (c) The project is for a ~~non-state~~ nonstate entity, has a total project cost of
25 less than one million dollars, and has been approved by the Joint Legislative
26 Committee on Capital Outlay; however, no action to approve any such project may
27 be taken by the Joint Legislative Committee on Capital Outlay after the first day of
28 February.

29 * * *

1 E.(1) General obligation bond funding of ~~non-state~~ nonstate projects shall
2 be limited to no more than twenty-five percent of the cash line of credit capacity for
3 projects in any fiscal year. ~~Non-state~~ Nonstate projects are those projects not owned
4 and operated by the state except those projects determined by the commissioner of
5 administration to be a regional economic development initiative or regional health
6 care facility operated in cooperation with the state.

7 (2) ~~Non-state~~ Nonstate entity projects shall require a match of not less than
8 twenty-five percent of the total requested amount of funding except:

9 * * *

10 (4) In addition to the match required pursuant to the provisions of Paragraph
11 (2) of this Subsection, a nonstate entity applying for funding through the Capital
12 Outlay Act shall also provide documentation evidencing its ability to provide no less
13 than three percent of the total requested amount of funding to be used exclusively for
14 costs associated with the long-term maintenance of the project. Failure of a nonstate
15 entity to provide this documentation at the time of applying for funds through the
16 Capital Outlay Act shall result in the project being deemed not feasible by the office
17 of facility planning and control, and the project shall not be included in the Capital
18 Outlay Act.

19 G.(1) Projects to be funded through the ~~sale of bonds~~ issuance of debt or
20 other agreements including but not limited to agreements of lease, lease-purchase,
21 or third party financing and secured by or payable from state appropriation shall
22 either be included in the ~~capital outlay act~~ Capital Outlay Act or shall obtain
23 legislative approval as set forth in this Subsection.

24 * * *

25 H. The Capital Outlay Act shall include a statement concerning the total
26 outstanding net state tax supported debt as defined in R.S. 39:1367, as reported in the
27 most recent report by the state treasurer concerning net state tax supported debt. The
28 amounts of principal and interest payable on this indebtedness shall be reported
29 separately. Further, the Capital Outlay Act shall contain an estimate of debt service

1 costs associated with the amount of new general obligation bond cash line of credit
2 capacity for that fiscal year, pursuant to Subsection F of this Section. The net state
3 tax supported debt model shall be used in the calculation of the estimate.

4 * * *

5 §115. Notice requirements

6 A. The office of facility planning and control shall send notice to all ~~non-~~
7 state nonstate entities of the need to resubmit a capital outlay budget request for
8 projects that do not receive a line of credit for the total amount of bond proceeds
9 authorized in the ~~capital outlay act~~ Capital Outlay Act for that fiscal year. The notice
10 shall list all of the ~~non-state~~ nonstate entity's projects which have not been
11 recommended for lines of credit or have not received lines of credit prior to
12 September fifteenth of the year for which notice is sent to the ~~non-state~~ nonstate
13 entity.

14 B. The office of facility planning and control shall also send a notice of the
15 need to resubmit a capital outlay budget request to each state representative and state
16 senator who has any project in his geographic area that ~~did not receive~~ has not been
17 recommended for a line of credit or has not received a line of credit for the total
18 amount of bond proceeds authorized in the ~~capital outlay act~~ Capital Outlay Act for
19 that year. The notice shall list all of the projects in the representative's or senator's
20 geographic area which have not received lines of credit prior to September fifteenth
21 of the year for which notice is sent to the representative or senator.

22 * * *

23 §121.1. Timely submission of invoices

24 Any entity administering a capital outlay project included in the
25 comprehensive capital outlay budget shall require all parties performing any portion
26 of planning and designing, including engineers and architects, or parties contracted
27 with for the construction of a capital outlay project to submit invoices for the
28 payment of services rendered or performed within one hundred twenty days of the
29 date the services were rendered or performed. Failure of a party to timely submit an

1 invoice for services rendered or performed shall result in the party's claim for
2 reimbursement or payment from the state being denied.

3 * * *

4 §125.1. Disposal of projects which received funding through the capital outlay
5 budget; limitations; requirements

6 A. For projects included in the capital outlay budget for fiscal years
7 beginning on or after July 1, 2023, the owner of a project that received funding
8 through the sale of general obligation bonds for acquiring lands, buildings,
9 equipment, or other permanent properties, or for the preservation or development of
10 permanent improvements through the capital outlay budget shall not sell or otherwise
11 dispose of the project while repayment of the bonds, including debt service, by the
12 state is outstanding unless all of the following conditions are met:

13 (1) The property owner obtains, at his own cost, an opinion from current
14 bond counsel to the state that the sale will not affect the tax exempt status of the
15 bonds.

16 (2) The property owner receives prior written approval by the commissioner
17 of administration.

18 (3) All other conditions required for the disposal of the project by the
19 property owner have been met.

20 B. If the commissioner of administration approves a property owner
21 disposing of a project that received funding through the sale of general obligation
22 bonds, the commissioner shall notify the House Committee on Ways and Means and
23 the Senate Committee on Revenue and Fiscal Affairs in writing, within ten days of
24 such approval.

25 Section 2. R.S. 39:112(E)(2)(b) is hereby repealed in its entirety.

26 Section 3. The provisions of this Act shall apply to the funding of all projects
27 included in the capital outlay budget for fiscal years commencing on or after July 1, 2024.

28 Section 4. This Act shall become effective on July 1, 2024.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 336 Engrossed

2023 Regular Session

Bishop

Abstract: Adds reporting requirements for capital outlay projects, requires projects funded through the issuance of debt to be included in the Capital Outlay Act, adds application requirements, requires the timely submission of invoices, and eliminates the needs-based exemption from the local match requirement for nonstate entity projects.

Present law requires the governor to submit his capital outlay budget which implements the first year of the five-year capital outlay program and the bond authorization bill for the sale of bonds to fund projects included in the bond portion of the capital outlay bill to the legislature no later than the 8th day of each regular session.

Present law requires capital outlay budget requests to be submitted by Nov. 1st, but authorizes a capital outlay budget request submitted after Nov. 1st to be included in the Capital Outlay Act if the budget request meets all of the applicable requirements as provided in present law, except for time of submission, and the project is an economic development project recommended in writing by the secretary of the Dept. of Economic Development, the project is an emergency project recommended in writing by the commissioner of administration, the project is for a nonstate entity which meets certain present law requirements, or the project is located in a designated disaster area and it meets certain present law requirements.

Proposed law retains present law.

Present law requires the office of facility planning and control and any state agency which administers capital outlay appropriations to submit an annual report to the Joint Legislative Committee on Capital Outlay (JLCCO) of each project included in the prior year's capital outlay budget. The report is required to include information such as the project title, the total project budget from all means of financing, including state and local funds, local match information, information on funds expended and encumbered on the project, and the project's status.

Proposed law retains present law but adds a requirement that the information required to be reported in present law shall also be reported for projects which are no longer in the prior year's capital outlay budget because the project received funding through a cash means of finance or from advance bond sales. Further requires this information to continue to be reported until a certificate of completion has been issued by the entity administering the project.

Present law requires nonstate entities applying for capital outlay funding to provide a match of not less than 25% of the total requested funding amount with the following exceptions:

- (1) Projects deemed to be an emergency by the commissioner of administration and approved by JLCCO.
- (2) Projects for which a nonstate entity has demonstrated its inability to provide a local match. Present law requires the establishment of a needs-based formula for determining the inability of a nonstate entity to provide the required local match.
- (3) Projects for a water or sewer system servicing 1,250 or fewer connections.

- (4) Projects undertaken by a governmental entity to provide natural gas utility services for a system that services 1,250 or fewer connections.

Proposed law repeals the present law exception for nonstate entity projects for which the nonstate entity has demonstrated its inability to provide a local match. Otherwise retains present law.

Proposed law requires a nonstate entity, when applying for capital outlay funding, to provide documentation evidencing its ability to provide no less than 3% of the total requested amount of funding to be used exclusively for costs associated with the long-term maintenance of the project. Failure to provide this documentation shall result in the project being deemed not feasible by the office of facility planning and control and the project not being included in the Capital Outlay Act.

Present law requires projects funded through the sale of bonds and secured by or payable from state appropriation to be included in the Capital Outlay Act or if not included in the Capital Outlay Act to be approved between sessions by the division of administration submitting those projects to the Interim Emergency Board for approval by a majority vote of the elected members of each house of the legislature. Further requires, following legislative approval, that requests to sell bonds be submitted to the State Bond Commission (SBC) for review and approval.

Proposed law retains present law regarding legislative approval and submission to the SBC for review and approval but changes the projects which are required to go through this approval process from projects funded through the sale of bonds to projects funded through the issuance of debt or other agreements including agreements of lease, lease-purchase, or third party financing.

Present law requires the office of facility planning and control to send notice to all nonstate entities of the need to resubmit a capital outlay budget request for projects that do not receive a line of credit prior to Sept. 15th for the total amount of bond proceeds authorized in the Capital Outlay Act for that fiscal year. Further requires the notice to also be sent to each state representative and state senator who represents the geographic area of the project.

Proposed law retains present law but specifies that the notice is to be sent if the project has not received or been recommended for a line of credit prior to Sept. 15th of each year.

Present law establishes various requirements for content to be included in the Capital Outlay Act.

Proposed law retains present law and adds a requirement that the Capital Outlay Act include a statement concerning the total outstanding net state tax supported debt, including the specific amount of principle and interest, as defined in present law. Further, the Capital Outlay Act shall contain an estimate of debt service costs associated with the amount of new general obligation (GO) bond cash line of credit capacity for that fiscal year, as provided in proposed law.

Present law provides a procedure for the development of a list of recommended projects to be presented to the SBC for consideration for a GO bond cash line of credit.

Proposed law retains present law and requires that for each project presented to the SBC for this purpose there be included an estimate of debt service costs associated with the sale of debt for the total project cost.

Present law provides for the Capital Outlay Savings Fund as a special fund in the state treasury and restricts use of the monies in the fund to capital outlay projects and to allocate or appropriate funds into the Budget Stabilization Fund. Further provides that if a project included in the capital outlay budget that has a state general fund (SGF) direct non-recurring

revenue appropriation is deemed null or is vetoed, the state treasurer is directed to deposit into the fund an amount equal to the amount of the appropriation deemed null or vetoed from the nonrecurring revenues in the SGF.

Proposed law retains present law but adds a requirement that a general fund appropriation, regardless of whether it is recurring or non-recurring revenue, for a project deemed null or vetoed be deposited into the fund.

Proposed law requires any entity administering a capital outlay project to require all parties performing any portion of planning and designing or personnel contracted with for the construction of a capital outlay project to submit invoices for the payment of services rendered or performed within 120 days of the date the services were rendered or performed. Failure of a party to timely submit an invoice for services rendered or performed shall result in the party's claim for reimbursement or payment from the state being denied.

Proposed law prohibits the owner of a project that received GO bond funding through the capital outlay budget from selling or otherwise disposing of the project while repayment of the bonds, including debt service, is outstanding without the prior approval of the commissioner of administration.

Proposed law requires the property owner to obtain an opinion from state bond counsel, at the owner's cost, that the sale would not have affected the tax exempt status of the bonds. Further requires the property owner to meet any conditions or requirements prior to selling or disposing of the project.

Proposed law requires the commissioner of administration to notify the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs in writing, within 10 days of his approval of a property owner to dispose of a project that received funding through the sale of GO bonds.

Proposed law applies to the funding of all nonstate entity projects included in the capital outlay budget for fiscal years commencing on or after July 1, 2024.

Effective July 1, 2024.

(Amends R.S. 39:100.121(A)(1) and (2)(b), 105(A), 112(C)(1)(introductory paragraph) and (c), (E)(1) and (2)(intro. para.), and (G)(1), and 115(A) and (B); Adds R.S. 39:112(E)(4) and (H), 121.1, and 125.1; Repeals R.S. 39:112(E)(2)(b))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Change the applicability and effective date for the provisions of proposed law from July 1, 2023, to July 1, 2024.