

2024 Regular Session

SENATE BILL NO. 318

BY SENATOR WOMACK

CAPITAL OUTLAY. Provides relative to the capital outlay process. (7/1/24)

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AN ACT

To amend and reenact R.S. 39:72.1(A)(1) and R.S. 39:112(E)(4) as enacted by Section 1 of Act 82 of the 2023 Regular Session of the Legislature of Louisiana, relative to capital outlay; to provide with respect to the capital outlay process; to require a nonstate entity to maintain an escrow account for certain projects; to provide for escrow account balance requirements; to provide relative to compliance with audit requirements; to require the commissioner of administration to promulgate rules; to provide for exemptions; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 39:72.1(A)(1) is hereby amended and reenacted to read as follows:

§72.1. Compliance with audit requirements

A.(1) Notwithstanding any contrary provision of law, no funds appropriated directly or indirectly in the general appropriations act, the capital outlay act, or other appropriation act, or awarded from the Louisiana Department of Health Drinking Water Revolving Loan Fund, the Department of Environmental Quality Clean Water State Revolving Fund, or from the office of community development programs for

1 Community Development Block Grants, local government assistance program,
2 disaster recovery grants, the Community Water Enrichment and Other Improvements
3 Fund, or similar programs, shall be released or provided to any recipient of an
4 appropriation if, when, and for as long as, the recipient fails or refuses to comply
5 with the provisions of R.S. 24:513 or R.S. 39:112(E)(4).

6 * * *

7 Section 2. R.S. 39:112(E)(4) as enacted by Section 1 of Act 82 of the 2023 Regular
8 Session of the Legislature of Louisiana is hereby amended and reenacted to read as follows:

9 §112. Capital Outlay Act

10 * * *

11 E.(1) * * *

12 (4)(a) ~~In~~ **Beginning on or after July 1, 2024, in** addition to the match
13 required pursuant to the provisions of Paragraph (2) of this Subsection, a nonstate
14 entity ~~applying for~~ **that receives** funding for construction of a new project through
15 the Capital Outlay Act shall ~~also provide documentation evidencing its ability to~~
16 ~~provide no less than three percent of the total requested amount of funding~~ **be**
17 **required to establish, fund, and maintain an escrow account** to be used
18 exclusively for costs associated with the long-term **major capital** maintenance of the
19 project.

20 **(b) The escrow account shall be a required condition of the cooperative**
21 **endeavor agreement between the nonstate entity and the office of facility**
22 **planning and control and shall be established prior to the first advertisement**
23 **for bids for the project.**

24 **(c) The escrow account shall contain no less than three percent of the**
25 **total project cost. Each year thereafter the nonstate entity shall deposit into the**
26 **escrow account an additional one-half percent of the total project cost until such**
27 **time the account balance reaches a minimum balance requirement of ten**
28 **percent of the total project cost. When the escrow account balance reaches the**
29 **ten percent threshold, no further deposits are required by the nonstate entity.**

1 **(d) The nonstate entity shall maintain the escrow account until either of**
2 **the following occurs:**

3 **(i) The project is unoccupied or disposed of by the nonstate entity or**
4 **thirty years, whichever is later.**

5 **(ii) After the escrow account balance reaches the minimum balance**
6 **requirement, all funds in the escrow account are expended on long-term major**
7 **capital maintenance of the project.**

8 **(e) The escrow account shall be a separate interest bearing bank account**
9 **denoted as a restricted asset to be used exclusively for costs associated with the**
10 **long-term major capital maintenance of the project.**

11 **(f) Failure of a nonstate entity to ~~provide this documentation at the time of~~**
12 **applying for funds through the Capital Outlay Act ~~establish, fund, and maintain~~**
13 **the escrow account pursuant to the provisions of this Paragraph** shall result in
14 the **following actions:**

15 **(i) The project being deemed not feasible by the office of facility planning**
16 and control, ~~and the project~~

17 **(ii) The project and all future projects submitted by the nonstate entity**
18 shall not be included in the Capital Outlay Act.

19 **(iii) An audit finding of noncompliance by the legislative auditor**
20 **pursuant to the provisions of R.S. 24:513 and R.S. 39:72.1.**

21 **(g) The division of administration shall promulgate rules and regulations**
22 **necessary for the implementation of this Paragraph.**

23 **(h) The provisions of this Paragraph shall not apply to certain land**
24 **acquisitions, large equipment acquisitions, and earthworks projects as**
25 **determined by rule.**

26 * * *

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

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

The original instrument was prepared by Curry Lann. The following digest, which does not constitute a part of the legislative instrument, was prepared by Emily Toler.

DIGEST

SB 318 Engrossed 2024 Regular Session Womack

Present law (R.S. 39:112(E)(4)) requires a nonstate entity, when applying for capital outlay funding for construction of a new project, to provide documentation evidencing its ability to provide no less than 3% of the total requested amount of funding for costs associated with the long-term maintenance of the project.

Proposed law instead requires a nonstate entity that receives funding for construction of a new project through the Capital Outlay Act to establish, fund, and maintain an escrow account to be used exclusively for costs associated with the long-term major capital maintenance of the project beginning on or after July 1, 2024.

Proposed law provides that the escrow account is a required condition of the cooperative endeavor agreement between the nonstate entity and the office of facility planning and control. Further requires that the escrow account be established prior to the first advertisement for bids for the project.

Proposed law requires the escrow account to contain no less than 3% of the total project cost. Each year thereafter the nonstate entity shall deposit into the escrow account an additional 0.5% of the total project cost until such time the account balance reaches a minimum balance requirement of 10% of the total project cost. When the escrow account balance reaches the 10% threshold, no further deposits are required by the nonstate entity.

Proposed law requires the nonstate entity to maintain the escrow account until either of the following occurs:

- (1) The project is unoccupied or disposed of by the nonstate entity or thirty years, whichever is later.
- (2) After the escrow account balance reaches the minimum balance requirement, all funds in the escrow account are expended on long-term major capital maintenance of the project.

Proposed law requires that the escrow account be a separate interest bearing bank account denoted as a restricted asset to be used exclusively for costs associated with the long-term major capital maintenance of the project.

Present law provides that noncompliance by the nonstate entity will result in the project being deemed not feasible by the office of facility planning and control and excluded from the Capital Outlay Act.

Proposed law provides that failure of a nonstate entity to establish, fund, and maintain the escrow account shall result in the following actions:

- (1) The project being deemed not feasible by the office of facility planning and control.
- (2) The project and all future projects submitted by the nonstate entity shall not be included in the Capital Outlay Act.
- (3) An audit finding of noncompliance by the legislative auditor.

Proposed law exempts certain land acquisitions, large equipment acquisitions, and

earthworks projects from the requirements of proposed law as determined by rule.

Proposed law requires the division of administration to promulgate rules for the implementation of proposed law.

Effective July 1, 2024.

(Amends R.S. 39:72.1 (A)(1) and R.S. 39:112(E)(4) as enacted by Acts 2023, No. 82, §1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Adds provisions relative to the maintenance of the escrow account.
2. Provides for technical corrections.