

RÉSUMÉ DIGEST

ACT 764 (SB 318)

2024 Regular Session

Womack

Prior law (R.S. 39:112(E)(4)), effective July 1, 2024, would have required 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.

New law instead requires a nonstate entity that receives funding for the acquisition or construction of buildings 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.

New law provides that the construction of buildings includes major repairs and renovations, fixed equipment connected to buildings, and equipment and furnishings of new buildings.

New 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.

New 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 as the account balance totals 10% of the total project cost or \$1,000,000, whichever is less. When the escrow account balance reaches the minimum threshold, no further deposits are required by the nonstate entity.

New law provides that once the minimum threshold in the escrow account is achieved, if a nonstate entity uses monies deposited into the escrow account for long-term major capital maintenance expenses and the escrow account balance decreases to less than 5% of the total project costs, the entity shall only be required to deposit monies into the escrow account until the escrow account balance reaches a minimum balance of 5% of the total project costs.

New law requires the nonstate entity to maintain the escrow account until the project is unoccupied or disposed of by the nonstate entity or 25 years, whichever is later.

New law requires the escrow account to 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.

Prior law (R.S. 39:112(E)(4)), effective July 1, 2024, would have provided that noncompliance by the nonstate entity would result in the project being deemed not feasible by the office of facility planning and control and excluded from the Capital Outlay Act.

New law provides that failure of a nonstate entity to establish, fund, and maintain the escrow account will 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.

New law exempts from the requirements of new law certain land acquisitions, large equipment acquisitions, and earthworks projects as determined by rule and nonstate entity projects exempt from local match requirements.

New law requires the division of administration to promulgate rules for the implementation of new law, including rules establishing criteria of what constitutes long-term major capital maintenance of a project. New law requires promulgation of the rules and regulations in accordance with the APA subject to the oversight of the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Applicable to any project included in the capital outlay budget for which a cooperative endeavor agreement with the state is fully executed on or after July 1, 2024.

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)