

2023 Regular Session

SENATE BILL NO. 122

BY SENATOR FRED MILLS

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

WATER QUALITY. Creates and provides for the Community Sewerage System Infrastructure Sustainability Act. (1/1/24)

1 AN ACT

2 To enact R.S. 30:2075.4, relative to community sewerage systems; to create and provide for

3 the Community Sewerage System Infrastructure Sustainability Act; to provide for

4 public purpose; to provide for definitions; to provide for compliance status

5 verification and fiscal status verification requirements for certain community

6 sewerage systems; to provide for the duties of the Department of Environmental

7 Quality, the Louisiana Department of Health, and the legislative auditor; to provide

8 for prohibited uses of sewerage system funds; to provide for penalties; to provide for

9 rulemaking; to provide for an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 30:2075.4 is hereby enacted to read as follows:

12 **§2075.4. Community sewerage system infrastructure accountability**

13 **A. This Section shall be known and may be cited as "The Community**

14 **Sewerage System Infrastructure Sustainability Act" which has been enacted by**

15 **the legislature to provide:**

16 **(1) For the development and implementation of a community sewerage**

17 **system accountability process which supports sewerage system infrastructure**

1 sustainability for the citizens of Louisiana.

2 (2) Assurance to the citizens that the quality of sewage treatment is  
3 monitored and maintained at levels essential for health, safety, welfare, and  
4 long-term sustainability.

5 (3) Accountability of local government authorities and other entities  
6 operating community sewerage systems.

7 (4) Consequences for community sewerage systems that do not achieve  
8 state and federal standards.

9 (5) Transparent regulatory compliance and fiscal accountability  
10 information presented to the State Bond Commission, the division of  
11 administration for the capital outlay program, and rate setting authorities for  
12 consideration in approving additional debt, capital outlay, or a rate increase.

13 B.(1) "Community sewerage system" means any treatment works,  
14 whether publically or privately owned, which serves multiple connections and  
15 consists of a collection or pumping and transport system or a treatment facility.  
16 For the purposes of this Section, "community sewerage system" shall include  
17 any local governing authority which operates a community sewerage system.

18 (2) "Community water system" has the same meaning as provided for  
19 in R.S. 40:5.8.

20 C.(1)(a) Applications to the State Bond Commission. Except as provided  
21 in Subparagraph (b) of this Paragraph, any community sewerage system that  
22 seeks approval from the State Bond Commission to incur any additional debt  
23 for anything not directly related to the improvement and sustainability of the  
24 community sewerage system or a related community water system shall submit  
25 with the application to the commission a compliance status verification from the  
26 Department of Environmental Quality, a compliance status verification from  
27 the Louisiana Department of Health, and a fiscal status verification from the  
28 legislative auditor in accordance with Subsection F of this Section.

29 (b) The provisions of this Subsection shall not apply to any application

1 to the State Bond Commission seeking approval for financing involving:

2 (i) Cash flow loans.

3 (ii) Dedicated tax or bond revenue streams.

4 (iii) Emergency financing as determined by the State Bond Commission.

5 (iv) Refinancing of existing debt.

6 (2) After consideration of the information provided pursuant to  
7 Paragraph (1) of this Subsection, the State Bond Commission may prohibit the  
8 community sewerage system from incurring any additional debt for anything  
9 not directly related to the improvement and sustainability of the community  
10 sewerage system or a related community water system.

11 (3) Notwithstanding any provision of law to the contrary, the community  
12 sewerage system shall not be precluded from obtaining funding for the  
13 improvement and sustainability of the community sewerage system or a related  
14 community water system based upon the information provided pursuant to  
15 Paragraph (1) of this Subsection or R.S. 40:5.9.1.

16 D.(1) Applications to the capital outlay program. Any community  
17 sewerage system that receives notification of a capital outlay appropriation  
18 from the division of administration, office of facility planning and control shall  
19 submit to the division of administration a compliance status verification from  
20 the Department of Environmental Quality, a compliance status verification  
21 from the Louisiana Department of Health, and a fiscal status verification from  
22 the legislative auditor in accordance with Subsection F of this Section.

23 (2) After consideration of the information provided pursuant to  
24 Paragraph (1) of this Subsection, the division of administration may prohibit  
25 the community sewerage system from participating in the capital outlay  
26 program for anything not directly related to the improvement and sustainability  
27 of the community sewerage system or a related community water system.

28 (3) The provisions of this Subsection notwithstanding, the community  
29 sewerage system shall not be precluded from obtaining funding for the

1 improvement and sustainability of the community sewerage system or a related  
2 community water system based upon the information provided pursuant to  
3 Paragraph (1) of this Subsection.

4 E.(1) Applications to a rate setting authority. Any community sewerage  
5 system that seeks approval for a rate adjustment from the appropriate rate  
6 setting authority not directly related to the improvement and sustainability of  
7 the community sewerage system or a related community water system shall  
8 submit with the application to the rate setting authority a compliance status  
9 verification from the Department of Environmental Quality, a compliance  
10 status verification from the Louisiana Department of Health, and a fiscal status  
11 verification from the legislative auditor in accordance with Subsection F of this  
12 Section.

13 (2) After consideration of the information provided pursuant to  
14 Paragraph (1) of this Subsection, the rate setting authority may prohibit the  
15 community sewerage system from adjusting rates for anything not directly  
16 related to the improvement and sustainability of the community sewerage  
17 system or a related community water system.

18 (3) The provisions of this Subsection notwithstanding, the community  
19 sewerage system shall not be precluded from receiving approval for a rate  
20 adjustment for the improvement and sustainability of the community sewerage  
21 system or a related community water system based upon the information  
22 provided pursuant to Paragraph (1) of this Subsection.

23 F.(1)(a) Not later than ten calendar days after receiving a request from  
24 a community sewerage system, the Department of Environmental Quality shall  
25 review the department's records and provide a compliance status verification  
26 based upon criteria determined by the department, including but not limited the  
27 following:

28 (i) Federal water quality significant violation history.

29 (ii) State violation history.

1           **(b) The compliance status verification provided by the Department of**  
2           **Environmental Quality shall clearly state whether the community sewerage**  
3           **system is "NOT IN COMPLIANCE – Found on a federal or state significant**  
4           **noncompliance list" or "IN COMPLIANCE – Not found on a federal or state**  
5           **significant noncompliance list" as appropriate.**

6           **(2)(a) Not later than ten calendar days after receiving a request from a**  
7           **community sewerage system, the Louisiana Department of Health shall review**  
8           **the department's records and provide a compliance status verification based**  
9           **upon criteria determined by the department, including but not limited the**  
10           **following:**

11                   **(i) State violation history.**

12                   **(ii) Operation and maintenance performance history.**

13                   **(iii) Infrastructure violations.**

14           **(b) The compliance status verification provided by the Louisiana**  
15           **Department of Health shall clearly state the community sewerage system's**  
16           **compliance status using the phrase "IN COMPLIANCE" or "NOT IN**  
17           **COMPLIANCE" as appropriate.**

18           **(3) Not later than ten calendar days after receiving a request from a**  
19           **community sewerage system, the legislative auditor shall review its records and**  
20           **provide a fiscal status verification regarding the community sewerage system's**  
21           **financial sustainability based upon criteria determined by the auditor. The**  
22           **fiscal status verification shall clearly state in plain language the community**  
23           **sewerage system's level of financial sustainability.**

24           **(4)(a) A compliance status verification provided by the Department of**  
25           **Environmental Quality or the Louisiana Department of Health pursuant to this**  
26           **Section shall be either of the following:**

27                   **(i) On an official certification form supplied by the department.**

28                   **(ii) On the department's official letterhead and signed by a member of**  
29           **the department's staff who is qualified to verify the compliance status of the**

1           community sewerage system.

2                   **(b) A fiscal status verification provided pursuant to this Section shall be**  
 3           **on the legislative auditor's official letterhead and signed by a member of the**  
 4           **auditor's staff who is qualified to verify the fiscal status of the community**  
 5           **sewerage system.**

6                   **G. Notwithstanding any provision of law to the contrary, a local**  
 7           **governing authority that operates a community sewerage system shall not**  
 8           **expend any money raised through payments made by customers for sewerage**  
 9           **services or from any other sewerage system revenue for any item, debt payment,**  
 10          **or public purpose other than the improvement and sustainability of the**  
 11          **community sewerage system. A violation of this Subsection shall be grounds for**  
 12          **a court to appoint a receiver or fiscal administrator. The provisions of this**  
 13          **Subsection shall not be construed to prohibit the payment of bonded**  
 14          **indebtedness secured by the sewerage system's revenue prior to August 1, 2023.**

15                  **H. Any community sewerage system that is indicated as not in**  
 16          **compliance on the compliance status verification or is considered not financially**  
 17          **sustainable in the fiscal status verification provided pursuant to this Section**  
 18          **may be subject to receivership in accordance with R.S. 30:2075.3 and**  
 19          **R.S. 33:42.**

20                  Section 2. The Department of Environmental Quality and the Louisiana Department  
 21          of Health shall individually promulgate, in accordance with the Administrative Procedure  
 22          Act, any rules necessary to implement the provisions of this Act relevant to that department.

23                  Section 3. This Act shall become effective on January 1, 2024.

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The original instrument was prepared by Brandi Cannon. The following  
 digest, which does not constitute a part of the legislative instrument, was  
 prepared by Jacob Wilson.

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Proposed law creates the "Community Sewerage System Infrastructure Sustainability Act" and provides for legislative intent to develop a community sewerage system accountability process which supports sewerage system infrastructure sustainability for the citizens of Louisiana.

Proposed law defines "community sewerage system" as any treatment works, whether publically or privately owned, which serves multiple connections and consists of a collection or pumping and transport system or a treatment facility. For the purposes of proposed law, "community sewerage system" includes any local governing authority which operates a community sewerage system.

Proposed law provides that a community sewerage system shall submit a status verification from the Department of Environmental Quality (DEQ), a status verification from the La. Department of Health (LDH), and a sewer fiscal status verification from the legislative auditor if the community sewerage system does any of the following:

- (1) Seeks approval from the State Bond Commission to incur any additional debt not directly related to the improvement and sustainability of the community sewerage system or a related community water system.
- (2) Receives from the division of administration, office of facility planning and control a notification of a capital outlay appropriation.
- (3) Seeks approval for a rate adjustment from the appropriate rate setting authority not directly related to the improvement and sustainability of the community sewerage system or a related community water system.

Proposed law provides that the application and verification requirements provided for in proposed law do not apply to any application to the State Bond Commission seeking approval for the following:

- (1) Cash flow loans.
- (2) Dedicated tax or bond revenue streams.
- (3) Emergency financing as determined by the State Bond Commission.
- (4) Refinancing of existing debt.

Proposed law provides that, after consideration of the compliance and fiscal status verifications, the State Bond Commission, the division of administration, and the rate setting authority may deny the request of the community sewerage system.

Proposed law provides that the community sewerage system shall not be precluded from obtaining funding, participating in the capital outlay program, or obtaining approval for a rate increase for the purpose of improvement and sustainability of the community sewerage system or a related community water system based upon the compliance and fiscal status verifications provided in accordance with proposed law.

Proposed law provides that not later than ten days after receipt of a request from a community sewerage system, DEQ and LDH shall each review its own records and provide a compliance status verification, with a clear statement of compliance status, based upon criteria determined by that department.

Proposed law provides that not later than ten days after receipt of a request from a community sewerage system, the legislative auditor shall review its records and provide a fiscal status verification, with a clear statement of the system's level of financial sustainability, based upon criteria determined by the auditor.

Proposed law provides that a compliance status verification provided by DEQ or LDH shall be on an official certification form or on department letterhead and signed by a qualified department staff member. Proposed law further provides that a fiscal status verification provided by the legislative auditor shall be on official letterhead and signed by a qualified

member of the auditor's staff.

Proposed law prohibits a local governing authority that operates a community sewerage system from expending any money raised through customer payments or from any other sewerage system revenue for any item, debt payment, or public purpose other than the improvement and sustainability of the community sewerage system. Proposed law shall not be construed to prohibit the payment of bonded indebtedness secured by the sewerage system's revenue incurred prior to the effective date of proposed law.

Proposed law provides that any community sewerage system indicated as not in compliance or not financially sustainable may be subject to receivership in accordance with present law.

Proposed law provides for rulemaking by DEQ and LDH.

Effective January 1, 2024.

(Adds R.S. 30:2075.4)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Environmental Quality to the original bill

1. Changes the term "report" to "status verification" throughout.
2. Provides exceptions to application requirements for cash flow loans, dedicated tax or bond revenue streams, emergency financing, and refinancing of existing debt.
3. Provides for the application procedure for community sewerage systems seeking funding through the capital outlay program.
4. Removes the requirement to submit a plan of correction when applying for a rate change.
5. Requires DEQ and LDH to respond to a community sewerage system's request for records and status verification within 10 calendar days.
6. Provides that a status verification provided by DEQ or LDH must include a clear statement of the system's compliance status.
7. Requires the legislative auditor to provide a fiscal status verification to the community sewerage system within 10 calendar days, and that the verification must clearly state the system's level of financial sustainability.
8. Provides that DEQ and LDH status verifications must either be on an official certification form or on department letterhead and signed by a qualified department official.