

SENATE BILL NO. 218

BY SENATOR APPEL

1 AN ACT

2 To enact R.S. 9:4815, relative to the Private Works Act; to provide for the escrow of funds  
3 due under certain contracts; to provide for the duties of an escrow agent; to provide  
4 for the release of funds from escrow; to provide for exceptions; to provide for a  
5 limitation of liability; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:4815 is hereby enacted to read as follows:

8 **§4815. Escrow of funds due under contract; procedures**

9 **A. When, under the provisions of this Part, a contract in the amount of**  
10 **fifty thousand dollars or more is entered into between an owner and a**  
11 **contractor and if in accordance with the terms of such contract funds earned by**  
12 **the contractor are withheld as retainage by the owner from periodic payments**  
13 **due to the contractor then such funds shall be deposited by the owner into an**  
14 **interest bearing escrow account. The provisions of this Section shall not apply**  
15 **to a contract for a single family residence or double family residence. The**  
16 **provisions of this Section also shall not apply to a contract for the construction**  
17 **or improvement of the following types of industrial facilities that are, or will be,**  
18 **engaged in activities defined or classified under one or more of the following**  
19 **subsectors, industry groups, or industries of the 1997 North American Industry**  
20 **Classifications System (NAICS):**

21 **(1) 22111 electric power generation.**

22 **(2) 321 wood products manufacturing.**

23 **(3) 322 paper manufacturing.**

24 **(4) 324 petroleum and coal products manufacturing.**

25 **(5) 325 chemical manufacturing.**

26 **(6) 326 plastics and rubber products manufacturing.**

27 **(7) 331 primary metals manufacturing.**

1                   **(8) 562211/562212 hazardous and solid waste landfills.**

2                   **(9) 422710 bulk stations and materials.**

3                   **(10) 486110 crude oil pipelines.**

4                   **(11) 486910 refined petroleum products pipelines.**

5                   **(12) 486210 natural gas pipelines.**

6                   **(13) 486990 other pipelines.**

7                   **(14) 211112 natural gas processing plants.**

8                   **B. An escrow account under the provisions of this Section shall be**  
9                   **located at a qualified financial institution and shall be under the control of an**  
10                   **escrow agent. The escrow account and escrow agent shall be selected by mutual**  
11                   **agreement between the owner and the contractor.**

12                   **C. Upon completion of the work that is the subject of the contract, the**  
13                   **funds, including any interest located in the escrow account shall be released**  
14                   **from escrow under the following conditions:**

15                   **(1) If there are no existing claims by the owner, the whole amount shall**  
16                   **be paid to the contractor within three business days upon receipt by the escrow**  
17                   **agent of a written release signed by the contractor and the owner.**

18                   **(2) If there is a dispute between the owner and contractor and the**  
19                   **contract does not provide for binding arbitration of such dispute:**

20                   **(a) Undisputed amounts shall be released by the escrow agent within**  
21                   **three business days of receipt of a notarized request of the contractor.**

22                   **(b) Disputed amounts that are the subject of a judicial proceeding shall**  
23                   **be released by the escrow agent within three business days of the receipt of a**  
24                   **final order by the court. Upon receipt of the order of the court, the escrow**  
25                   **agent shall pay the contractor or owner such amounts as are determined by the**  
26                   **court.**

27                   **(3) If there is a dispute between the owner and contractor and the**  
28                   **contract provides for binding arbitration of such dispute, the following shall**  
29                   **occur:**

30                   **(a) Undisputed amounts shall be released by the escrow agent within**

1 three business days of receipt of a notarized request of the contractor.

2 (b) Disputed amounts that are the subject of binding arbitration under  
3 the contract shall be released by the escrow agent within three business days of  
4 the receipt of a final order by the arbitrator who has been selected by mutual  
5 agreement between the owner and the contractor. Upon receipt of the order of  
6 the arbitrator, the escrow agent shall pay the contractor or owner such amounts  
7 as are determined by the arbitrator under the rules as defined in the contract  
8 between the owner and the contractor.

9 D. Receipt by the escrow agent or the qualified financial institution in  
10 which the escrow account is maintained of what purports to be a written release  
11 signed by the contractor and owner, or an order by a court or arbitrator, shall  
12 be a full release and discharge of the escrow agent for transfer of funds to the  
13 contractor. Neither the escrow agent nor the qualified financial institution in  
14 which the escrow account is maintained shall be held liable to any party based  
15 on any claim that the written release is unauthorized, forged, or otherwise  
16 fraudulent.

17 E. Neither the escrow agent nor the qualified financial institution in  
18 which the escrow account is maintained pursuant to the provisions of this  
19 Section shall have any liability to the owner, contractor, or any other person  
20 when complying with the provisions of this Section.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_