

Regular Session, 2013

HOUSE BILL NO. 725 (Substitute for House Bill No. 197 by Representative Greene)

BY REPRESENTATIVE GREENE

LOCAL FINANCE: Provides relative to fiscal administrators for political subdivisions, including appointment, powers, and duties of political administrators and violations of law relative to political administrators and penalties therefor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

AN ACT

To amend and reenact R.S. 39:1351(A)(1) and (3) and (B) and to enact R.S. 39:1351(A)(2)(c), 1352(A)(3) and (4), (B)(3), and (C), 1355, and 1356, relative to fiscal administrators for political subdivisions; to provide for appointment of fiscal administrators and circumstances that provide evidence of the need for or require such appointments; to provide relative to the powers and duties of fiscal administrators; to provide for payment of costs associated with fiscal administration of a political subdivision and for indemnification of fiscal administrators; to require cooperation with and provision of information to fiscal administrators by officers, officials, and employees of political subdivisions and to provide procedures for a fiscal administrator to obtain information; to provide for violations; to provide for penalties, including criminal penalties, for violation of provisions relative to fiscal administrators; to provide relative to costs and attorney fees; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 39:1351(A)(1) and (3) and (B) are hereby amended and reenacted and R.S. 39:1351(A)(2)(c), 1352(A)(3) and (4), (B)(3), and (C), 1355, and 1356 are hereby enacted to read as follows:

1 §1351. Appointment of a fiscal administrator

2 A.(1)(a) The legislative auditor, the attorney general, and the state treasurer,
3 or their designees, shall meet, as often as deemed necessary, to review the financial
4 stability of the political subdivisions of this state.

5 (b) As used in this Chapter, "financial stability" is defined as a condition in
6 which the political subdivision is capable of meeting its financial obligations in a
7 timely manner as they become due without substantial disposition of assets outside
8 the ordinary course of business, substantial layoffs of personnel, or interruption of
9 statutorily or other legally required services of the political subdivision, restructuring
10 of debt, revision of operations, or similar actions.

11 (2)

12 * * *

13 (c)(i) Failure of a political subdivision to provide an audit required by R.S.
14 24:513 to the legislative auditor for a period of three consecutive fiscal years shall
15 automatically remove the political subdivision from the category of "financial
16 stability" as defined in this Chapter and shall be prima facie evidence that the
17 political subdivision is reasonably certain not to have sufficient revenue to pay
18 current expenditures, excluding civil judgments.

19 (ii) Failure of a city, parish, or other local public school board to provide an
20 audit required by R.S. 24:513 to the legislative auditor for a period of three
21 consecutive fiscal years shall automatically place that political subdivision in the
22 category of "financially at risk" and shall be prima facie evidence that the political
23 subdivision is reasonably certain to fail to resolve its status as financially at risk as
24 that status is defined by rule by the State Board of Elementary and Secondary
25 Education.

26 (3) Upon ~~the making of such the~~ decision authorized by Paragraph (2) of this
27 Subsection, the attorney general shall, on motion in the district court of the domicile
28 of the political subdivision, take a rule on the political subdivision to show cause ~~in~~
29 ~~not less than ten nor more than twenty days~~ why a fiscal administrator should not be

1 appointed for the political subdivision as provided for in this Chapter. The hearing
2 on the rule to show cause may be tried out of term and in chambers, ~~and~~ shall always
3 be tried by preference, and shall be held in not less than ten nor more than twenty
4 days from the date the motion is filed.

5 B.(1) The trial court shall appoint a fiscal administrator in the following
6 instances:

7 (a) If the court finds from the facts and evidence deduced at the hearing of
8 the rule that the political subdivision is reasonably certain to fail to make a debt
9 service payment or reasonably certain to not have sufficient revenue to pay current
10 expenditures, excluding civil judgments, or, in the case of a city, parish, or other
11 local public school board, reasonably certain to fail to resolve its status as financially
12 at risk as that status has been defined by rule by the State Board of Elementary and
13 Secondary Education, ~~the court shall appoint a fiscal administrator for the political~~
14 ~~subdivision.~~

15 (b) If a political subdivision has failed to provide an audit required by R.S.
16 24:513 to the legislative auditor for a period of three consecutive fiscal years, the
17 court shall appoint a fiscal administrator for the political subdivision unless the
18 political subdivision provides sufficient evidence to establish that the political
19 subdivision has an audit for one or more of three such years.

20 (2) The fiscal administrator shall be a person recommended by the legislative
21 auditor and the attorney general and approved by the court as having sufficient
22 education, experience, and qualifications to enable him to perform the duties of fiscal
23 administrator as provided for in this Chapter.

24 (3) The fiscal administrator appointed under this Chapter shall be
25 indemnified as a covered person as defined in R.S. 13:5108.1.

26 (4) All costs and expenses associated with the independent fiscal
27 administration of a political subdivision, including but not limited to all costs and
28 expenses incurred by the fiscal administrator, the legislative auditor, the attorney
29 general, the state treasurer, and any other persons engaged in connection with the

1 independent fiscal administration of a political subdivision shall be borne by the
2 political subdivision subject to independent fiscal administration.

3 * * *

4 §1352. Duties of a fiscal administrator

5 A.

6 * * *

7 (3) The fiscal administrator, subject to approval of the court, shall have
8 authority to direct all fiscal operations of the political subdivision and to take
9 whatever action he deems necessary to return the political subdivision to financial
10 stability in accordance with all applicable laws, rules, regulations, and policies with
11 which the political subdivision must comply. Such authority shall include but not
12 be limited to authority to take one or more of the following actions:

13 (a) Amend, formulate, and execute the annual budget and supplemental
14 budgets of the political subdivision.

15 (b) Implement and maintain uniform budget guidelines and procedures for
16 all departments.

17 (c) Amend, formulate, and execute capital budgets, including authority to
18 amend any borrowing authorization or finance or refinance any debt in accordance
19 with law.

20 (d) Review and approve or disapprove all contracts for goods or services.

21 (e) Appoint, remove, supervise, and control all personnel.

22 (f) Alter or eliminate the responsibilities of officials, officers, or employees
23 of the political subdivision as required by the fiscal emergency.

24 (g) Employ, retain, and supervise such managerial, professional, and clerical
25 staff as are necessary to carry out the fiscal administrator's responsibilities.

26 (h) Reorganize, consolidate, or abolish departments, commissions,
27 authorities, boards, offices, or functions of the political subdivision.

28 (i) Make any appropriation, contract, expenditure, or loan, create any new
29 position, or fill any vacancy, or approve or disapprove any such action.

1 (4) Upon the appointment of a fiscal administrator, the officers, officials, and
2 employees of the political subdivision shall serve in an advisory capacity to the fiscal
3 administrator. The fiscal administrator shall allow the officers, officials, and
4 employees to serve their constituents and fulfill their duties by providing advice to
5 the fiscal administrator on matters relating to the operation of the political
6 subdivision. If a conflict arises, the fiscal administrator's decision shall prevail.

7 B.

8 * * *

9 (3) The fiscal administrator shall file such other reports as required by the
10 court.

11 C. In order to perform the investigation and reporting required of the fiscal
12 administrator by this Chapter, the officers, officials, and employees of the political
13 subdivision shall cooperate in providing any and all information required by the
14 fiscal administrator in the performance of his statutorily required duties within three
15 business days of the fiscal administrator's request. If the officer, official, or
16 employee is unable to provide the information within the required time, then the
17 officer, official, or employee shall send a written notice to the fiscal administrator
18 within the three-business-day deadline explaining the reason the information is not
19 forthcoming. If the officer, official, or employee fails to respond by the three-
20 business-day deadline, or if the fiscal administrator fails to receive the requested
21 information, then the attorney general or his designee shall file either or both of the
22 following with the district court:

23 (1) A writ of mandamus to compel the officer or official to perform the
24 mandatory or ministerial duties correctly.

25 (2) A motion for injunctive relief seeking to compel the officer, official, or
26 employee to act or refrain from acting, pending final resolution of the issue.

27 * * *

1 §1355. Violations

2 In addition to other violations of this Chapter, it shall be a violation of this
3 Chapter for any officer, official, or employee of a political subdivision:

4 (1) To neglect, fail, or refuse to furnish the fiscal administrator with such
5 papers, accounts, books, documents, films, tapes, and other forms of recordation,
6 including but not limited to computer and recording devices, whether confidential,
7 privileged, or otherwise, that the fiscal administrator has the right to inspect and
8 examine.

9 (2) To deny the fiscal administrator access to the office, or to papers,
10 accounts, books, documents, films, tapes, and other forms of recordation, including
11 but not limited to computer and recording devices, whether confidential, privileged,
12 or otherwise, that the fiscal administrator has the right to inspect or examine.

13 (3) To refuse, fail, or neglect to transmit to the fiscal administrator reports,
14 statements of accounts, or other documents upon request as provided by law.

15 (4) To obstruct or impede the fiscal administrator, in any manner, in making
16 the examination authorized by law.

17 §1356. Penalties

18 A.(1) Any person who violates any provision of this Chapter shall be subject
19 to an action for recovery of any funds, property, or other thing of value lost as a
20 result of, and any other damages resulting from, such violation.

21 (2) Any person who knowingly and willfully participates in a violation of
22 this Chapter shall be subject to a civil penalty not to exceed one thousand dollars per
23 violation. The person shall be personally liable for the payment of such penalty.

24 B. In addition to the penalties provided for in this Chapter, any person who
25 violates any provision of this Chapter shall be ordered to pay restitution to any
26 political subdivision that suffers a loss as a result of the offense. Restitution shall
27 include the payment of legal interest at the rate provided in R.S. 13:4202.

28 C. In addition to the penalties provided in Subsections (A) and (B) of this
29 Section, it shall be unlawful for any person to violate a provision of R.S. 39:1355.

1 Whoever violates a provision of R.S. 39:1355 shall be fined not less than five
 2 hundred dollars nor more than five thousand dollars, or imprisoned for not less than
 3 ten days nor more than six months, or both.

4 D. A violation of any provision of this Chapter is prima facie evidence of
 5 malfeasance in office, R.S. 14:134, and gross misconduct.

6 E. Neither costs nor attorney fees related to any legal action pursuant to
 7 charges of misconduct or malfeasance or to any other matter related to or resulting
 8 from the appointment of a fiscal administrator initiated by either the political
 9 subdivision or an officer, official, or employee of a political subdivision shall be
 10 reimbursed to an officer, official, or employee of a political subdivision unless the
 11 officer, official, or employee is acquitted or the suit is dismissed.

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)]

Greene

HB No. 725

Abstract: Provides relative to fiscal administrators for political subdivisions, including provisions for circumstances that require such appointments, their powers and duties, payment of costs associated with and indemnification of fiscal administrators, procedures for a fiscal administrator to obtain information, and violations of provisions relative to fiscal administrators and penalties therefor.

Provides relative to fiscal administrators for political subdivisions as follows:

- (1) Present law requires the legislative auditor, attorney general, and state treasurer, or their designees, to meet as often as necessary to review the financial stability of the political subdivisions of the state.

Proposed law retains present law and defines "financial stability" as a condition in which the political subdivision is capable of meeting its financial obligations in a timely manner as they become due without substantial disposition of assets outside the ordinary course of business, substantial layoffs of personnel, or interruption of statutorily or other legally required services of the political subdivision, restructuring of debt, revision of operations, or similar actions.

- (2) Present law requires the attorney general to file a rule to appoint a fiscal administrator for the political subdivision, if the legislative auditor, the attorney general, and the state treasurer decide at a public meeting that a political subdivision is reasonably certain to: (a) not have sufficient revenue to pay current expenditures, excluding civil judgments, or (b) fail to make a debt service payment. For school boards, also provides that, upon notification by the state superintendent of education at the direction of the State Board of Elementary and Secondary Education (BESE), the attorney general shall file such a rule when he, the legislative auditor, and the

state treasurer decide at a public meeting that a local public school board is reasonably certain to fail to resolve its status as financially at risk as that status is defined by BESE rule.

Proposed law retains present law and additionally provides that failure of a political subdivision to provide an audit required by law to the legislative auditor for a period of three consecutive fiscal years shall automatically remove the political subdivision from the category of "financial stability" and shall be prima facie evidence that the political subdivision is reasonably certain not to have sufficient revenue to pay current expenditures, excluding civil judgments. Also provides that such failure by a local public school board automatically places that political subdivision in the category of "financially at risk" and shall be prima facie evidence that the political subdivision is reasonably certain to fail to resolve its status as financially at risk as that status has been defined by BESE rule.

- (3) Proposed law retains present law that requires the attorney general, when such a decision is made, to take a rule on the political subdivision to show cause why a fiscal administrator should not be appointed for the political subdivision.
- (4) Present law requires the trial court to appoint a fiscal administrator if the court finds that the political subdivision is reasonably certain to fail to make a debt service payment or reasonably certain to not have sufficient revenue to pay current expenditures, excluding civil judgments, or, in the case of a local public school board, reasonably certain to fail to resolve its status as financially at risk as that status has been defined by BESE rule.

Proposed law retains present law and additionally requires the court to appoint a fiscal administrator when a political subdivision has failed to provide an audit required by law to the legislative auditor for a period of three consecutive fiscal years, unless the political subdivision provides sufficient evidence to establish that the political subdivision has an audit for one or more of three such years.

- (5) Proposed law provides that a fiscal administrator shall be indemnified as a covered person under present law (R.S. 13:5108.1), relative to indemnification of state officers and employees.
- (6) Proposed law requires that costs and expenses associated with fiscal administration of a political subdivision, including those incurred by the fiscal administrator, the legislative auditor, the attorney general, the state treasurer, and other persons, shall be borne by the political subdivision.
- (7) Present law provides for the duties of a fiscal administrator, including investigating the financial affairs of the political subdivision. Grants him access to all records of the political subdivision and of the state as they relate to the political subdivision.

Proposed law grants the fiscal administrator, subject to approval of the court, authority to direct all fiscal operations of the political subdivision and to take whatever action he deems necessary to return the political subdivision to financial stability in accordance with laws, rules, regulations, and policies applicable to the political subdivision. Provides that this includes authority to:

- (a) Amend, formulate, and execute the annual budget and supplemental budgets.
- (b) Implement and maintain uniform budget guidelines and procedures for all departments.
- (c) Amend, formulate, and execute capital budgets, including authority to amend any borrowing authorization, or finance or refinance any debt in accordance with law.
- (d) Review and approve or disapprove all contracts for goods or services.

- (e) Appoint, remove, supervise, and control all personnel.
 - (f) Alter or eliminate the responsibilities of officials, officers, or employees of the political subdivision as required by the fiscal emergency.
 - (g) Employ, retain, and supervise such managerial, professional, and clerical staff as necessary to carry out the fiscal administrator's responsibilities.
 - (h) Reorganize, consolidate, or abolish departments, commissions, authorities, boards, offices, or functions.
 - (i) Make any appropriation, contract, expenditure, or loan, create any new position, or fill any vacancy, or approve or disapprove any such action.
- (8) Proposed law provides that the officers, officials, and employees of the political subdivision shall serve in an advisory capacity to the fiscal administrator and requires the fiscal administrator to allow them to serve their constituents and fulfill their duties by providing advice to the fiscal administrator. Specifies that in a case of conflict, the fiscal administrator's decision prevails.
- (9) Present law requires the fiscal administrator to file a report with the court after his investigation containing:
- (a) Estimates of revenues and expenditures.
 - (b) Amendments to the comprehensive budget or a proposed comprehensive budget, ensuring payments of debt service and sufficient revenue to pay current expenditures.
 - (c) An estimate of needed financial aid or new revenue.
 - (d) A recommendation of whether the political subdivision should be permitted to file for bankruptcy.

Proposed law specifies that the fiscal administrator shall file such other reports as required by the court.

- (10) Proposed law requires that the officers, officials, and employees of the political subdivision cooperate in providing all information the fiscal administrator requires within three business days of the fiscal administrator's request. Requires an officer, official, or employee who is unable to provide the information timely to send the fiscal administrator a written notice within the three business days explaining why. Requires, upon failure of a timely response or failure to receive the information, that the attorney general or his designee file either or both of the following with the district court:
- (a) A writ of mandamus to compel the officer or official to perform the mandatory or ministerial duties correctly.
 - (b) A motion for injunctive relief seeking to compel the officer, official, or employee to act or refrain from acting, pending final resolution of the issue.
- (11) Proposed law provides that any person who violates the law relative to fiscal administrators shall be subject to:
- (a) An action for recovery of any funds, property, or other thing of value lost as a result of, and any other damages resulting from, such violation.
 - (b) For knowingly and willfully participating in a violation, a civil penalty not to exceed \$1,000 per violation for which the violator shall be personally liable.
- (12) Proposed law requires that any person who violates the law relative to fiscal administrators shall be ordered to pay restitution to a political subdivision that suffers a loss as a result of the offense, including legal interest.

- (13) Proposed law provides that a violation of the law relative to fiscal administrators is prima facie evidence of malfeasance in office under present law (R.S. 14:134) and gross misconduct.
- (13) Proposed law provides, in addition to other violations of the law relative to fiscal administrators, that it shall be a violation of such law for any officer, official, or employee of a political subdivision to:
- (a) Neglect, fail, or refuse to furnish the fiscal administrator with such papers, accounts, books, documents, films, tapes, and other forms of recordation, including but not limited to computer and recording devices, whether confidential, privileged, or otherwise, that the fiscal administrator has the right to inspect and examine.
 - (b) Deny the fiscal administrator access to the office, or to papers, accounts, books, documents, films, tapes, and other forms of recordation, including but not limited to computer and recording devices, whether confidential, privileged, or otherwise, that the fiscal administrator has the right to inspect or examine.
 - (c) Refuse, fail, or neglect to transmit to the fiscal administrator reports, statements of accounts, or other documents upon request.
 - (d) Obstruct or impede the fiscal administrator, in any manner, in making the examination.

Proposed law provides that violators of such proposed law shall be subject to an additional criminal penalty of a fine of not less than \$500 nor more than \$5,000, or imprisonment for not less than 10 days nor more than six months, or both.

- (14) Proposed law prohibits reimbursement of an officer's, official's, or employee's costs or attorney fees related to any legal action pursuant to charges of misconduct or malfeasance or to any other matter related to or resulting from the appointment of a fiscal administrator, initiated by either a political subdivision or an officer, official, or employee thereof, unless the officer, official, or employee is acquitted or the suit is dismissed.

(Amends R.S. 39:1351(A)(1) and (3) and (B); Adds R.S. 39:1351(A)(2)(c), 1352(A)(3) and (4), (B)(3), and (C), 1355, and 1356)