

Regular Session, 2013

# ACT No. 336

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

BY REPRESENTATIVE GREENE

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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:

§1351. Appointment of a fiscal administrator

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

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

7           (2)

8   \*       \*       \*

9           (c)(i) Failure of a political subdivision to provide an audit required by R.S.  
 10          24:513 to the legislative auditor for a period of three consecutive fiscal years shall  
 11          automatically remove the political subdivision from the category of "financial  
 12          stability" as defined in this Section and shall be prima facie evidence that the  
 13          political subdivision is reasonably certain not to have sufficient revenue to pay  
 14          current expenditures, excluding civil judgments.

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

22          (3) ~~Upon the making of such the~~ decision authorized by Paragraph (2) of this  
 23          Subsection, the attorney general shall, on motion in the district court of the domicile  
 24          of the political subdivision, take a rule on the political subdivision to show cause in  
 25          ~~not less than ten nor more than twenty days~~ why a fiscal administrator should not be  
 26          appointed for the political subdivision as provided for in this Chapter. The hearing  
 27          on the rule to show cause may be tried out of term and in chambers, ~~and~~ shall always  
 28          be tried by preference, ~~and shall be held in not less than ten nor more than twenty~~  
 29          days from the date the motion is filed.

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

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

11                   (b) If a political subdivision has failed to provide an audit required by R.S.  
 12                   24:513 to the legislative auditor for a period of three consecutive fiscal years, unless  
 13                   the political subdivision provides sufficient evidence to establish that the political  
 14                   subdivision has an audit for one or more of three such years.

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

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

21                   (4) All costs and expenses associated with the independent fiscal  
 22                   administration of a political subdivision, including but not limited to all costs and  
 23                   expenses incurred by the fiscal administrator, the legislative auditor, the attorney  
 24                   general, the state treasurer, and any other persons engaged in connection with the  
 25                   independent fiscal administration of a political subdivision shall be borne by the  
 26                   political subdivision subject to independent fiscal administration.

27     \*      \*      \*

28                   §1352. Duties of a fiscal administrator

29     A.

30     \*      \*      \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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

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

9           (b) Implement and maintain uniform budget guidelines and procedures for  
10          all departments.

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

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

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

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

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

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

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

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

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

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

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

(2) 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.

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§1355. Violations

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

(1) To 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.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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

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

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

9           §1356. Penalties

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

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

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

20           C. In addition to the penalties provided in Subsections A and B of this  
21           Section, any person who violates a provision of R.S. 39:1355 shall be fined not less  
22           than five hundred dollars nor more than five thousand dollars, or imprisoned for not  
23           less than ten days nor more than six months, or both.

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

26           E. Neither costs nor attorney fees related to any legal action pursuant to  
27           charges of misconduct or malfeasance or to any other matter related to or resulting  
28           from the appointment of a fiscal administrator initiated by either the political  
29           subdivision or an officer, official, or employee of a political subdivision shall be

1            reimbursed to an officer, official, or employee of a political subdivision unless the  
2            officer, official, or employee is acquitted or the suit is dismissed.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

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