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## DIGEST

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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)