Regular Session, 2013

ENROLLED

ACT No. 336 HOUSE BILL NO. 725 (Substitute for House Bill No. 197 by Representative Greene)

BY REPRESENTATIVE GREENE

1	AN ACT
2	To amend and reenact R.S. 39:1351(A)(1) and (3) and (B) and to enact R.S.
3	39:1351(A)(2)(c), 1352(A)(3) and (4), (B)(3), and (C), 1355, and 1356, relative to
4	fiscal administrators for political subdivisions; to provide for appointment of fiscal
5	administrators and circumstances that provide evidence of the need for or require
6	such appointments; to provide relative to the powers and duties of fiscal
7	administrators; to provide for payment of costs associated with fiscal administration
8	of a political subdivision and for indemnification of fiscal administrators; to require
9	cooperation with and provision of information to fiscal administrators by officers,
10	officials, and employees of political subdivisions and to provide procedures for a
11	fiscal administrator to obtain information; to provide for violations; to provide for
12	penalties, including criminal penalties, for violation of provisions relative to fiscal
13	administrators; to provide relative to costs and attorney fees; and to provide for
14	related matters.
15	Be it enacted by the Legislature of Louisiana:
16	Section 1. R.S. 39:1351(A)(1) and (3) and (B) are hereby amended and reenacted
17	and R.S. 39:1351(A)(2)(c), 1352(A)(3) and (4), (B)(3), and (C), 1355, and 1356 are hereby
18	enacted to read as follows:
19	§1351. Appointment of a fiscal administrator
20	A.(1)(a) The legislative auditor, the attorney general, and the state treasurer,
21	or their designees, shall meet, as often as deemed necessary, to review the financial
22	stability of the political subdivisions of this state.

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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.

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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	А.
30	* * *

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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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1	В.
2	* * *
3	(3) The fiscal administrator shall file such other reports as required by the
4	<u>court.</u>
5	C. In order to perform the investigation and reporting required of the fiscal
6	administrator by this Chapter, the officers, officials, and employees of the political
7	subdivision shall cooperate in providing any and all information required by the
8	fiscal administrator in the performance of his statutorily required duties within three
9	business days of the fiscal administrator's request. If the officer, official, or
10	employee is unable to provide the information within the required time, then the
11	officer, official, or employee shall send a written notice to the fiscal administrator
12	within the three-business-day deadline explaining the reason the information is not
13	forthcoming. If the officer, official, or employee fails to respond by the three-
14	business-day deadline, or if the fiscal administrator fails to receive the requested
15	information, then the attorney general or his designee shall file either or both of the
16	following with the district court:
17	(1) A writ of mandamus to compel the officer or official to perform the
18	mandatory or ministerial duties correctly.
19	(2) A motion for injunctive relief seeking to compel the officer, official, or
20	employee to act or refrain from acting, pending final resolution of the issue.
21	* * *
22	<u>§1355. Violations</u>
23	In addition to other violations of this Chapter, it shall be a violation of this
24	Chapter for any officer, official, or employee of a political subdivision:
25	(1) To neglect, fail, or refuse to furnish the fiscal administrator with such
26	papers, accounts, books, documents, films, tapes, and other forms of recordation,
27	including but not limited to computer and recording devices, whether confidential,
28	privileged, or otherwise, that the fiscal administrator has the right to inspect and
29	examine.

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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	<u>§1356. Penalties</u>
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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____