

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 (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: _____