

SENATE BILL NO. 54

BY SENATOR MIZELL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact R.S. 39:1351(A)(1)(b), (2)(a) and (c), (3), (B)(1)(a) and (b), 1355,
3 1356(E) and 1357(A), (C), (D), (H) and (I) and to enact R.S. 39:1358, 1358.1,
4 1358.2, and 1358.3, relative to fiscal administrators; to provide relative to financial
5 stability; to provide relative to the appointment of a limited jurisdiction fiscal
6 administrator; to provide for the duties of a limited jurisdiction fiscal administrator;
7 to provide relative to budget amendments to address emergencies; to provide for the
8 termination of the appointment of limited jurisdiction fiscal administrator; to provide
9 relative to violations by an officer, official, or employee of a political subdivision;
10 to provide relative to penalties; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 39:1351(A)(1)(b), (2)(a) and (c), (3), (B)(1)(a) and (b), 1355, 1356(E)
13 and 1357(A), (C), (D), (H) and (I) are hereby amended and reenacted and R.S. 39:1358,
14 1358.1, 1358.2, and 1358.3 are hereby enacted to read as follows:

15 §1351. Appointment of a fiscal administrator

16 A.(1)(a) * * *

17 (b) As used in this Chapter, "financial stability" is defined as a condition in
18 which the political subdivision is capable of meeting its financial obligations in a
19 timely manner as they become due without substantial disposition of assets outside
20 the ordinary course of business, substantial layoffs of personnel, or interruption of
21 statutorily or other legally required services of the political subdivision, restructuring
22 of debt, revision of operations, or similar actions. **A political subdivision shall not**
23 **be considered financially stable if any of the conditions described in**
24 **Subparagraph (2)(a)(i) through (x) of this Section exist. The existence of a single**
25 **such condition is sufficient to remove a political subdivision from the category**
26 **of "financial stability" regardless of its other financial metrics or**

1 circumstances.

2 (2)(a) The attorney general shall file a rule to show cause to appoint a
3 fiscal administrator for the political subdivision as provided for in this Chapter
4 if ~~if~~ it is determined by the unanimous decision of the legislative auditor, the attorney
5 general, and the state treasurer at a public meeting to consider such matters that a
6 political subdivision is reasonably certain to not maintain financial stability including
7 but not limited to any of the following conditions:

8 (i) ~~having~~ **Having** insufficient revenue to pay ~~current~~ **twelve months of**
9 **operating** expenditures, excluding civil judgments, ~~or,~~

10 (ii) ~~failing~~ **Failure** to make a debt service payment, ~~;~~

11 (iii) **Material fraud, misappropriation, or intentional misrepresentation**
12 **in financial records that has been discovered by any regulatory body, law**
13 **enforcement agency, auditor, or governmental entity.**

14 (iv) **File or maintain false public records including knowingly filing,**
15 **maintaining, or certifying false, fraudulent, or materially misleading financial**
16 **documents, reports, or records.**

17 (v) **Receive an audit opinion other than an unmodified opinion, or having**
18 **a material weakness, significant deficiency, or growing concern, or uncertainty**
19 **identified in the independent audit.**

20 (vi) **Violate or is in technical default of bond covenants or financing**
21 **agreements.**

22 (vii) **Recurring or significant reliance on nonrecurring sources of**
23 **revenue to cover routine operating expenditures. "Significant reliance" includes**
24 **cashing certificates or deposits or other long-term investments to pay operating**
25 **expenses, or using funds from loans that are intended for a purpose other than**
26 **paying operating expenses.**

27 (viii) **Failure to timely adopt a balanced annual budget or repeated mid-**
28 **year budget adjustments indicative of structural financial imbalance.**

29 (ix) **Failure to make timely payments to retirement systems or health**
30 **benefit programs for employees.**

1 (x) Failure to make timely payments to the Internal Revenue Service or
2 the Louisiana Department of Revenue for employees' payroll taxes ~~the attorney~~
3 ~~general shall file a rule to appoint a fiscal administrator for the political subdivision~~
4 ~~as provided for in this Chapter.~~

5 * * *

6 (c)(i) Failure of a political subdivision to provide an audit required by R.S.
7 24:513 to the legislative auditor for a period of ~~three~~ two consecutive fiscal years
8 shall automatically remove the political subdivision from the category of "financial
9 stability" as defined in this Section and shall be prima facie evidence that the
10 political subdivision is reasonably certain not to have sufficient revenue to pay
11 current expenditures, excluding civil judgments.

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

19 (3) Upon making the decision authorized by Paragraph (2) of this Subsection,
20 the attorney general shall, on motion in the district court of the domicile of the
21 political subdivision, ~~take~~ file a rule on the political subdivision to show cause why
22 a fiscal administrator should not be appointed for the political subdivision as
23 provided for in this Chapter. The hearing on the rule to show cause ~~may~~ shall be
24 tried out of term ~~and in chambers~~, shall always be tried by preference, and shall be
25 held in not less than ten nor more than twenty days from the date the motion is filed.
26 If the political subdivision consents to the appointment of a fiscal administrator, a
27 joint motion by the attorney general and the political subdivision, along with a
28 consent judgment, shall be filed in the district court of the domicile of the political
29 subdivision within forty-five days of the decision authorized by Paragraph (2) of this
30 Subsection. The court shall appoint a fiscal administrator within twenty days of filing

1 the joint motion and consent judgment according to the terms of the consent
2 judgment.

3 B.(1) * * *

4 (a) If the court finds by a preponderance of the evidence from the facts and
5 evidence deduced at the hearing of the rule that the political subdivision is
6 reasonably certain to fail to make a debt service payment or reasonably certain to not
7 have sufficient revenue to pay current expenditures, excluding civil judgments, or
8 any of the conditions set forth in Paragraph (A)(2)(a)(iii) through (x) of this
9 Section exists or, in the case of a city, parish, or other local public school board,
10 reasonably certain to fail to resolve its status as financially at risk as that status has
11 been defined by rule by the State Board of Elementary and Secondary Education.

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

16 * * *

17 §1355. Violations

18 In addition to other violations of this Chapter, it shall be a violation of this
19 Chapter for any officer, official, or employee of a political subdivision or public
20 water system:

21 (1) To neglect, fail, or refuse to furnish the fiscal administrator or limited
22 jurisdiction fiscal administrator with such papers, accounts, books, documents,
23 films, tapes, and other forms of recordation, including but not limited to computer
24 and recording devices, whether confidential, privileged, or otherwise, that the fiscal
25 administrator or limited jurisdiction fiscal administrator has the right to inspect
26 and examine.

27 (2) To deny the fiscal administrator, receiver, or limited jurisdiction fiscal
28 administrator access to the office, or to papers, accounts, books, documents, films,
29 tapes, and other forms of recordation, including but not limited to computer and
30 recording devices, whether confidential, privileged, or otherwise, that the fiscal

1 administrator, receiver, or judicial administrator has the right to inspect or
 2 examine.

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

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

9 §1356. Penalties

10 * * *

11 E. Neither costs nor attorney fees related to any legal action pursuant to
 12 charges of misconduct or malfeasance or to any other matter related to or resulting
 13 from the appointment of a fiscal administrator, receiver, or limited jurisdiction
 14 fiscal administrator initiated by either the political subdivision or an officer,
 15 official, or employee of a political subdivision or public water system shall be
 16 reimbursed to an officer, official, or employee of a political subdivision or public
 17 water system unless the officer, official, or employee is acquitted or the suit is
 18 dismissed.

19 §1357. Fiscal Administrator Revolving Loan Fund

20 A. There is hereby established a revolving fund in the state treasury to be
 21 known as the "Fiscal Administrator and Receiver Revolving Loan Fund",
 22 hereinafter referred to as the "fund", which shall be maintained and operated by the
 23 Department of the Treasury. The source of monies deposited in and credited to the
 24 fund shall be all grants, gifts, and donations received by the state for the purpose of
 25 funding fiscal administrators, limited fiscal administrators or receivers; any
 26 money appropriated by the legislature to the fund; the repayment of principal of and
 27 interest on loans and other obligations made to political subdivisions or public
 28 water system financed from the fund; and other revenues as may be provided by
 29 law.

30 * * *

1 C. Notwithstanding any provisions of law to the contrary, and in addition to
2 the authority to borrow money or incur debt under any other provisions of law, any
3 political subdivision **or public water system** for which a fiscal administrator,
4 **limited fiscal administrators or receiver** is in the process of being appointed or
5 which has been appointed as provided in this Chapter, **R.S. 40:5.9, or R.S. 40:5.9.1,**
6 is hereby authorized to borrow money from and incur debt payable to the fund in
7 accordance with the provisions of this Section. Such borrowing shall be subject to
8 the approval of:

9 * * *

10 (2) The fiscal administrator, **limited fiscal administrators, or receiver** if
11 one has been appointed by the court.

12 * * *

13 D. The monies in the fund shall be appropriated and used only for the
14 purpose of providing financial assistance to a political subdivision **or public water**
15 **system** for which a court has appointed a fiscal administrator, **limited fiscal**
16 **administrators, or receiver** as provided in this Chapter, **R.S. 40:5.9, or R.S.**
17 **40:5.9.1** by providing a source of funds from which the political subdivision **or**
18 **public water system** may borrow in order to pay the costs and expenses associated
19 with the independent fiscal administration **or receivership** of the political
20 subdivision **or public water system**, including but not limited to all costs and
21 expenses incurred by the fiscal administrator, **limited fiscal administrators or**
22 **receiver** the legislative auditor, the attorney general, the state treasurer, and any
23 other persons engaged in connection with the independent fiscal administration,
24 **limited fiscal administrators or receiver.**

25 * * *

26 H. Monies in, credited to the account of, or to be received by the Fiscal
27 Administrator **and Receiver** Revolving Loan Fund shall be expended in a manner
28 consistent with the terms and conditions of the loans made from the fund.

29 I. The repayment of principal of and interest on loans and other obligations
30 made to political subdivisions **or public water systems** financed from the Fiscal

1 Administrator **and Receiver** Revolving Loan Fund shall be deposited into the Fiscal
2 Administrator **and Receiver** Revolving Loan Fund and may be used to finance loans
3 and obligations to other political subdivisions **or public water systems** for which a
4 fiscal administrator, **limited fiscal administrators or receiver** is appointed pursuant
5 to this Chapter, **R.S. 40:5.9, or R.S. 40:5.9.1**, provided that reserves for expenditures
6 for the administration of the fund that the Department of the Treasury deems
7 necessary and prudent may be retained in the fund.

8 * * *

9 **§1358. Appointment of a limited jurisdiction fiscal administrator**

10 **A.(1) The legislative auditor, the attorney general, and the state**
11 **treasurer, or his designee, shall meet to review the necessity for the appointment**
12 **of a limited jurisdiction fiscal administrator for political subdivisions of the**
13 **state to address emergencies affecting the fiscal stability and public health,**
14 **safety, and welfare of the citizens of a political subdivision or the state.**

15 **(2) As used in this Chapter, a limited jurisdiction fiscal administrator**
16 **shall be a fiscal administrator whose oversight is limited to a specific**
17 **department or functions of a political subdivision necessary to address the**
18 **emergency affecting the fiscal stability and public health, safety, and welfare of**
19 **citizens of a political subdivision of the state.**

20 **(3) Grounds for appointment of a limited jurisdiction fiscal**
21 **administrator pursuant to this Chapter shall include but not be limited to the**
22 **inability of the political subdivision pursuant to R.S. 39:72.1 to receive state and**
23 **local funds or federal funds due to noncompliance with the audit law, R.S.**
24 **24:513 et seq.**

25 **(4) If it is determined by unanimous decision of the legislative auditor,**
26 **attorney general, and state treasurer at a public meeting to consider matters**
27 **that the appointment of a limited jurisdiction fiscal administrator is required**
28 **in order to address an emergency, the attorney general shall file a rule to**
29 **appoint a limited jurisdiction fiscal administrator as provided in this Chapter.**

30 **B. Upon making the decision authorized in Subsection A of this Section,**

1 the attorney general shall, upon motion in the district court of the domicile of
2 the political subdivision, file a rule to show cause why a limited jurisdiction
3 fiscal administrator should not be appointed for the political subdivision as
4 provided in this Chapter. The hearing on the rule to show cause may be tried
5 out of term and in chambers, shall always be tried by preference, and shall be
6 held not less than ten, nor more than twenty days from the date the motion was
7 filed. If the political subdivision consents to the appointment of a limited
8 jurisdiction fiscal administrator, then the parties shall file a joint motion and
9 a consent judgment for the appointment of a limited jurisdiction fiscal
10 administrator for the political subdivision within forty-five days. The court shall
11 appoint a limited jurisdiction fiscal administrator according to the terms of the
12 consent judgment within twenty days from the date that the joint motion and
13 consent judgment were filed.

14 C.(1) The trial court, in the absence of a joint motion and consent
15 judgment, shall appoint a limited jurisdiction fiscal administrator in the
16 following instances:

17 (a) If after a hearing, the court finds by a preponderance of the evidence
18 from the facts and evidence that the political subdivision is reasonably certain
19 to be unable to address an emergency affecting the fiscal stability and public
20 health, safety, and welfare of the citizens of a political subdivision or the state.

21 (b) If a political subdivision is prohibited from receiving state or local
22 assistance or federal funds necessary to address an emergency affecting public
23 health, safety, or welfare of the citizens of a political subdivision or the state
24 pursuant to R.S. 39:72.1.

25 (2) The limited jurisdiction fiscal administrator shall be recommended
26 by the legislative auditor and attorney general and approved by the court as
27 having sufficient education, experience, and qualifications to perform the duties
28 of limited jurisdiction fiscal administrator as provided in this Chapter.

29 (3) The limited jurisdiction fiscal administrator appointed pursuant to
30 this Chapter shall be subject to indemnification as a covered individual as

1 defined in R.S. 13:5108.1.

2 (4) All costs and expenses associated with the independent limited
3 jurisdiction fiscal administration of a political subdivision, including but not
4 limited to all costs and expenses incurred by the limited jurisdiction fiscal
5 administrator, legislative auditor, attorney general, state treasurer, and any
6 other person involved with the independent limited jurisdiction fiscal
7 administration of a political subdivision shall be assessed to the political
8 subdivision subject to independent limited jurisdiction fiscal administration.

9 D. A limited jurisdiction fiscal administrator may be removed by the
10 court only by request of the fiscal administrator, or as provided in R.S. 39:1354,
11 or for fraud, negligence, or misconduct.

12 §1358.1. Duties of a limited jurisdiction fiscal administrator

13 A.(1) The limited jurisdiction fiscal administrator shall have access to all
14 papers, books, records, documents, films, tapes, and other forms of recordation
15 of the political subdivision or, as related to the political subdivision of the state
16 or emergency.

17 (2) The limited jurisdiction fiscal administrator, subject to state law,
18 shall have authority to direct all fiscal operations of departments and functions
19 of the political subdivision and to take whatever action he considers necessary
20 to address an emergency affecting public health, safety, or welfare of the
21 citizens of a political subdivision or the state. The limited jurisdiction fiscal
22 administrator's authority shall include but not be limited to, authority to take
23 one or more of the following actions as necessary to address the emergency:

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

26 (b) Amend, formulate, and execute capital budgets, including authority
27 to amend borrowing authorization or finance or refinance debt in accordance
28 with law.

29 (c) Review and approve or disapprove all contracts for goods or services.

30 (d) Appoint, remove, supervise, and control all personnel.

1 (e) Alter or eliminate the responsibilities of officials, officers, or
2 employees of the political subdivision as required by the emergency.

3 (f) Employ, retain, and supervise managerial, professional, and clerical
4 staff necessary to carry out the limited jurisdiction fiscal administrator's
5 responsibilities.

6 (g) Reorganize, consolidate, or abolish departments, commissions,
7 authorities, boards, offices, or functions of the political subdivision.

8 (h) Make an appropriation, contract, expenditure, or loan, create a new
9 position, or fill a vacancy, or approve or disapprove any such action.

10 (3) Upon the appointment of a limited jurisdiction fiscal administrator,
11 the officer, officials, and employees of the political subdivision shall serve in an
12 advisory capacity to the limited jurisdiction fiscal administrator concerning the
13 departments and functions necessary to address the emergency. The limited
14 jurisdiction fiscal administrator shall allow the officers, officials, and employees
15 to serve constituents and fulfill duties by providing advice to the fiscal
16 administrator on matters relating to the emergency. If a conflict arises, the
17 decision of the limited jurisdiction fiscal administrator shall prevail.

18 B.(1) Upon appointment by the court, the limited jurisdiction fiscal
19 administrator shall perform an investigation and file a written report of his
20 findings with the court, the governing authority of the political subdivision,
21 state treasurer, attorney general, and legislative auditor. The report shall be
22 updated quarterly during the term of fiscal administration.

23 (2) The report shall contain the following:

24 (a) Amendments to the comprehensive budget of the political
25 subdivisions adopted pursuant to R.S. 39:1309, or a proposed comprehensive
26 budget if the budget has not been previously adopted, which insures
27 appropriation of funds to address the emergency.

28 (b) An estimate of the financial aid or new revenue needed by the
29 political subdivision if the limited jurisdiction fiscal administrator determines
30 that revenues and available funds of the political subdivision are, or will be,

1 insufficient to address the emergency.

2 (3) The final report shall also contain a proposed two-year plan with the
3 goal of resolving and addressing any further matters concerning the emergency.

4 (4) The limited jurisdiction fiscal administrator shall file any other
5 reports required by the court.

6 C. In order to perform the investigation and reporting required of the
7 limited jurisdiction fiscal administrator pursuant to this Chapter, the officers,
8 officials, and employees of the political subdivision shall provide within three
9 business days, all information the limited jurisdiction fiscal administrator
10 requests in the performance of his duties. If the officer, official, or employee is
11 unable to provide the information within the required time, then the officer,
12 official, or employee shall send a written notice to the limited jurisdiction fiscal
13 administrator within the three business days of the reason why the information
14 has not been provided. If the officer, official, or employee fails to respond within
15 the three business days, or if the limited jurisdiction fiscal administrator fails
16 to receive the requested information, then the attorney general or his designee
17 shall file either or both of the following with the district court:

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

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

22 §1358.2. Adoption of budget amendments to address emergencies

23 A. Within seven days after receipt of the initial report, the governing
24 authority of the political subdivision shall adopt in an open meeting the
25 comprehensive budget, or amendments to the original comprehensive budget
26 of the political subdivision, as proposed in the report of the limited jurisdiction
27 fiscal administrator, which are necessary to address the emergency during the
28 remainder of the current fiscal year and the following fiscal year.

29 B. If the governing authority of the political subdivision fails to adopt the
30 budget or budget amendments, or if the revisions made by the governing

1 authority of the political subdivision are not approved by the limited
2 jurisdiction fiscal administrator, then the attorney general shall file a rule to
3 show cause in the manner provided in R.S. 39:1351, why the court should not
4 order the adoption and implementation of the budget without the unapproved
5 revisions. The court shall order the adoption and implementation of the budget
6 proposed by the limited jurisdiction fiscal administrator which includes the
7 revisions by the governing authority of the political subdivision, except the
8 revisions which the court finds with reasonable certainty that the political
9 subdivision will not have sufficient funds to address the emergency.

10 §1358.3. Termination of appointment of limited jurisdiction fiscal
11 administrator

12 A. The limited jurisdiction fiscal administrator shall monitor revenues
13 and expenditures of the political subdivision under the adopted budget and
14 make supplemental reports which he considers necessary, but not less than
15 required pursuant to R.S. 39:1352(B)(1), until the emergency has been resolved.
16 The supplemental reports shall be subject to adoption, approval, and court
17 review as provided in R.S. 39:1352.

18 B. The appointment of the limited jurisdiction fiscal administrator shall
19 terminate upon his own motion, or upon the motion of the attorney general or
20 the political subdivision, if the court finds that the emergency has been resolved.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____