



# OVERVIEW OF LAWS ON FISCAL ADMINISTRATION

**R.S. 39:1351 – 39:1357**

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# I NTRODUCTION

[R.S. 39:1351-1357](#)

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This white paper discusses the various laws regarding the appointment, selection, powers and duties, and removal of a Fiscal Administrator for political subdivisions of the State.

The Louisiana Legislature enacted various laws, R.S. 39:1351, et seq., in 1990 (Act 532), in order to provide for state intervention in situations where a political subdivision's fiscal stability is found to be in jeopardy. These legislative enactments brought about the creation of the Fiscal Review Committee comprised of the Legislative Auditor, State Treasurer, and the Attorney General and a formal process for the selection and judicial appointment of a Fiscal Administrator. These laws have been amended and expanded through Act 7 of 2005 Regular Session and Act 336 of 2013 Regular Session. The Legislature through Act 735 of the 2014 Regular Session created the Fiscal Administrator Revolving Loan Fund as a means of funding the costs of fiscal administration during periods of fiscal instability. Finally, the Legislature amended these laws through Act 358 of the 2020 Regular Session. (Effective June 12, 2020).

The Fiscal Administrator's primary goal is to assume control of a political subdivision's finances and to suggest and make necessary changes to return the political subdivision to a fiscally stable status. As a court appointed position, the Fiscal Administrator is answerable to the court which makes his/her appointment and any powers, which are not otherwise delineated by statute, are derived from the signed orders of the court.

## A. Appointment of Fiscal Administrator

[R.S. 39:1351](#)

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### Determining Necessity

The Fiscal Review Committee is charged with reviewing the financial stability of political subdivisions and determining whether the appointment of a Fiscal Administrator is warranted. The Fiscal Review Committee is comprised of the Legislative Auditor, the Attorney General, and the State Treasurer, or their designees.

The three members of the Fiscal Review Committee must reach a unanimous determination that a political subdivision is not financially stable and that one of the criteria outlined in R.S. 39:1351(A)(2)(a)&(b) is met in order for a petition to be filed with a court to appoint a Fiscal Administrator.

## Financial Stability

Financial Stability is defined in R.S. 39:1351(A)(1)(b) 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, restricting of debt, revision of operations, or similar actions.”**

In essence, if a political subdivision is unable to timely make its routine debt payments or anticipated expenditures without undertaking extreme measures, it is not financially stable.

## Criteria Used by Fiscal Review Committee

R.S. 39:1351(A)(2)(a) provides that the Fiscal Review Committee may seek appointment of a Fiscal Administrator if it determines that a political subdivision is reasonably certain not to maintain financial stability. The Fiscal Review Committee must be unanimous in its determination in order to proceed with seeking appointment of a Fiscal Administrator. R.S. 39:1351(A)(2)(a) provides illustrative examples of situations in which a political subdivision would be reasonably certain to not maintain financial stability. These examples include:

- The political subdivision is reasonably certain to have insufficient revenue to pay current expenditures, excluding civil judgments; or
- The political subdivision is reasonably certain to fail to make a debt service payment.

An additional criteria is provided under R.S. 39:1351(A)(2)(b) for city, parish, or other local public school boards. The Fiscal Review Committee, upon notification by the State Superintendent of Education as directed by the State Board of Elementary and Secondary Education (BESE), may proceed with seeking appointment of a Fiscal Administrator when it determines that the school board is reasonably certain to fail to resolve its status as “financially at risk,” as defined by BESE pursuant to R.S. 17:10.1(C).

A final criteria is provided under R.S. 39:1351(A)(2)(c) for political subdivisions and city, parish, or other local school boards. The failure of political subdivisions, city, parish, or other local school board to provide an audit as required by R.S. 24:513 to the Legislative Auditor for a period of three consecutive years shall automatically remove a political subdivision from being considered financially stable and place a city, parish, or other local school board into financially at risk status and shall constitute prima facie evidence.

## **Filing of Rule to Show Cause**

If the Fiscal Review Committee unanimously determines that a political subdivision is no longer financially stable and that one of the criteria for appointment of a Fiscal Administrator is met, the Attorney General is required to file a Petition for Rule to Show Cause against the political subdivision on motion in the District Court of the domicile of the political subdivision. The Rule to Show Cause shall require the political subdivision to show cause why a Fiscal Administrator should not be appointed for the political subdivision.

A hearing on the Rule to Show Cause is required to be held not less than ten nor more than twenty days from the filing of the motion. The hearing on the Rule to Show Cause may be tried out of term and in chambers, and shall always be tried by preference.

The time period established by R.S. 39:1351(A)(3) for the holding of hearing on the Rule to Show Cause, does not establish any form of deadline for the Attorney General in filing his Petition for Rule to Show Cause with the Court following a determination by the Fiscal Review Committee. *State ex. rel. Caldwell v. Town of Jonesboro*, 108 So.3d 217 (La. App. 2 Cir. 12/19/12).

If the political subdivision consents to the appointment of a fiscal administrator, the political subdivision and the Attorney General shall file a joint motion and a consent judgment with the district court in which the political subdivision is located within forty-five days of the Fiscal Review Committee's decision. The court shall appoint a fiscal administrator within twenty days of the filing of the joint motion and consent judgment according to the terms of the consent judgment.

## **Considerations by the Court**

In the absence of a joint motion and consent judgment, the Court, under R.S. 39:1351(B)(1) is charged with appointing a Fiscal Administrator for the political subdivision if it finds by a preponderance of the evidence from facts and evidence deduced at the hearing on the Rule to Show Cause that:

- The political subdivision is reasonably certain to not have sufficient revenue to pay current expenditures, excluding civil judgments; or
- The political subdivision is reasonably certain to fail to make a debt service payment; or
- The political subdivision has failed to provide an audit as required by R.S. 24:513 for three consecutive years; or
- In the case of a city, parish, or other local school board, the board is reasonably certain to fail to resolve its status as fiscally at risk, as defined by BESE in accordance with R.S. 17:10.1.

## **Selection of Fiscal Administrator**

If the Court determines that a Fiscal Administrator is to be appointed, the Legislative Auditor and Attorney General shall recommend an individual for approval by the Court. The individual recommended shall have sufficient education, experience, and qualifications to enable them to perform the duties of Fiscal Administrator.

## **Indemnification of Fiscal Administrator**

Any Fiscal Administrator appointed by a court under the provisions of R.S. 39:1351, et seq. is considered a covered person for the purposes of R.S. 13:5108.1, which provides that the state shall defend and indemnify officials for claims of negligence and other acts arising out of the performance of their official duties. The Attorney General is charged with representing the Fiscal Administrator in any such lawsuit covered by the provisions of R.S. 13:5108.1.

## **B. Duties and Powers of Fiscal Administration**

**R.S. 39:1352**

### **Investigation Powers and Access to Records**

**R.S. 39:1352(A)(1)**

The Fiscal Administrator is authorized to perform internal investigations of the financial affairs of the political subdivision as they consider necessary. Further, the Fiscal Administrator is granted a right of access to all papers, books, records, documents, films, tapes, and other forms of recordation of the political subdivision, as they relate to the political subdivision.

### **Written Interrogatories Concerning Debt Service Payments**

**R.S. 39:1352(A)(2)**

When it appears reasonably certain that a political subdivision will fail to make a debt service payment, the Fiscal Administrator's investigation is authorized to include written interrogatories (questions submitted to individuals, but unlike discovery in civil litigation) directed to the following individuals:

- The persons or entities who assisted the political subdivision in issuing and marketing the bonds;
- The bond trustee, if any;
- Representatives of the bond holders; and

- Any other person or entity with an interest in insuring that the political subdivision makes timely payment of debt service payments.

## **Direction of Fiscal Operations**

**R.S. 39:1352(A)(3)**

The Fiscal Administrator, subject to State law, shall have authority to direct all fiscal operations of the political subdivision, and to take whatever action the Fiscal Administrator deems necessary to return the political subdivision to financial stability.

The Fiscal Administrator's authority shall include, but is not limited to, authority to take one or more of the following actions:

- Amend, formulate, and execute the annual budget and supplemental budgets of the political subdivision;
- Implement and maintain uniform budget guidelines and procedures for all departments;
- Amend, formulate, and execute capital budgets, including authority to amend any borrowing authorization or finance or refinance any debt in accordance with law;
- Review and approve or disapprove all contracts for goods or services;
- Appoint, remove, supervise, and control all personnel;
- Alter or eliminate the responsibilities of officials, officers, or employees of the political subdivision as required by the fiscal emergency;
- Employ, retain, and supervise managerial, professional, and clerical staff as necessary to carry out the Fiscal Administrator's responsibilities;
- Reorganize, consolidate, or abolish departments, commissions, authorities, boards, offices, or functions of the political subdivision; and
- Make any appropriation, contract, expenditure, or loan, create any new position, or fill any vacancy, or approve or disapprove any such action.

Once a Fiscal Administrator is appointed by the Court to direct the fiscal operations of the political subdivision, the Fiscal Administrator assumes all powers regarding the day to day fiscal operations of the political subdivision, absent specific instructions from the Court to the contrary. This includes authority to supervise and control the operations of police departments under an

elected police chief. As the Fiscal Administrator is appointed by the Court, the Court is authorized to supervise the authority granted to the Fiscal Administrator.

## **Written Report on Investigation**

**R.S. 39:1352(B)**

Upon the conclusion of an initial investigation, the Fiscal Administrator is required to file a written report documenting their findings to the following:

- The Court;
- The Governing Authority of the Political Subdivision;
- The State Treasurer;
- The Attorney General; and
- The Legislative Auditor.

The written report is mandated to contain the following information:

- An estimate of the revenue and expenditures of the political subdivision for the remainder of its current fiscal year and the following fiscal year;
- Amendments to the comprehensive budget of the political subdivision previously adopted pursuant to the Local Government Budget Act, R.S. 39:1309, or if no budget has been adopted, a proposed budget, which will insure payment of debt service as a budget priority, timely payment of debts for the remainder of the current fiscal year, and to provide sufficient revenue to pay current expenditures, excluding civil judgments;
- Amendments or a proposed budget to resolve the financially at risk status of a city, parish, or other local public school board, if applicable;
- An estimate of the financial aid or new revenue which may be needed by the political subdivision if the Fiscal Administrator determines that revenues of the political subdivision are, or will be, insufficient to insure both timely payments of debt service as a priority over items in the budget, and a reduced, but adequate, funding level for other needs of the political subdivision, or as needed to have sufficient revenue to pay current expenditure, excluding civil judgments, or to resolve its status as financially at risk in the case of a city, parish or other local public school board;
- A Recommendation as to whether the political subdivision should be permitted to file a petition in a court of bankruptcy of the United States in order to provide for readjustment of the political subdivision's debts; and
- A proposed three-year plan with the goal of establishing and maintaining financial stability for the political subdivision once fiscal administration is terminated.

The Fiscal Administrator shall update this report on at least a quarterly basis during the term of fiscal administration.

The Court may mandate the Fiscal Administrator file other reports as it deems necessary.

Upon the termination of fiscal administration, the Fiscal Administrator shall submit a final plan for approval by the Treasurer, Attorney General, and Legislative Auditor. The approved plan shall remain in place for three years and shall be subject to periodic review by the Treasurer, Attorney General, and Legislative Auditor.

## **Other Duties and Powers**

The Court in appointing a Fiscal Administrator may delineate additional powers or duties beyond those enumerated in statute. Further, the Court may amend those additional powers and duties as necessary during the term of the Fiscal Administrator's appointment.

## **C. Role of Officials of Political Subdivisions during Fiscal Administration**

**R.S. 39:1352 & R.S. 39:1353**

### **Advisory Capacity**

**R.S. 39:1352(A)(4)**

Upon the appointment of a Fiscal Administrator, the officers, officials (elected and appointed), and employees of the political subdivision shall serve in an advisory capacity to the Fiscal Administrator. The Fiscal Administrator shall allow the officers, officials, and employees to serve their constituents and fulfill their duties by providing advice to the Fiscal Administrator on matters relating to the operation of the political subdivision.

If a conflict arises, the Fiscal Administrator's decision shall prevail. As an appointee of the court, the court may supervise the actions of the Fiscal Administrator.

Once a Fiscal Administrator is appointed by the Court, the Fiscal Administrator assumes all powers regarding the day to day fiscal operations of the political subdivision, absent specific instruction from the Court to the contrary. This includes authority to supervise and control the operations of police departments under an elected police chief.

Pursuant to Article X, § 23 of the Louisiana Constitution, elected officials of the political subdivision shall continue to receive their compensation without reduction during their term of office.



## **Assistance to the Fiscal Administrator**

**R.S. 39:1352(C)**

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/her 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, 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:

- A writ of mandamus to compel the officer or official to perform the mandatory or ministerial duties correctly; and/or
- 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.

## **Adoption of Recommended Budget or Budget Amendments**

**R.S. 39:1353**

In situations where additional action on the budget is needed, the governing authority of the political subdivision shall within seven days of receiving the initial written report submitted by the Fiscal Administrator adopt in an open meeting the budget or budget amendments as proposed in the Fiscal Administrator's written report.

If the governing authority of the political subdivision fails to adopt the budget or budget amendments, or if the revisions made do not meet the approval of the Fiscal Administrator, the Attorney General shall take a rule against the political subdivision as provided for in R.S. 39:1351 to show cause why the Court should not order the adoption and implementation of the budget without the revisions disapproved by the Fiscal Administrator. The Court shall order the adoption and implementation of the budget proposed by the Fiscal Administrator as revised by the governing authority of the political subdivision, except for those revisions which the Court finds will make it reasonably certain that the political subdivision will fail to make timely debt service payments or reasonably certain to fail to have sufficient revenue to pay current expenditures, excluding civil judgments. In the case of a city, parish, or other local public school board, the Court should reject any revisions it determines will make it reasonably certain that the school board will fail to resolve its financially at risk status.

## **D. Role of the Attorney General during Fiscal Administration**

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### **Legal Representation of the Fiscal Administrator**

**R.S. 39:1351(B)(3)**

The Attorney General is required to represent and defend the Fiscal Administrator as a covered person under R.S. 13:5108.1

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### **File Motions on Behalf of Fiscal Administrator**

The Attorney General is required to file all necessary motions with the Court in order to enforce the provisions of R.S. 39:1351, *et seq.* through petitions for Rule to Show Cause, Mandamus, etc.

## **F. Removal of Fiscal Administrator**

**R.S. 39:1351 & R.S. 39:1354**

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### **Request by Fiscal Administrator to Court**

**R.S. 39:1351(C)**

The Fiscal Administrator may seek removal of his/her appointment through request to the Court.

### **Fraud, Negligence, or Misconduct by Fiscal Administrator**

The Fiscal Administrator may be removed by the Court if it finds sufficient evidence to support complaints against the Fiscal Administrator regarding fraud, negligence, or misconduct.

### **Financial Stability**

**R.S. 39:1354(B)**

The appointment of the Fiscal Administrator shall terminate upon his own motion, or upon the motion of the Attorney General or political subdivision, if the Court finds that it is reasonably certain that the debt service payments of the political subdivision will be timely made during the remainder of the of the current fiscal year and for the fiscal year following, or there will be sufficient revenue to pay current expenditures, excluding civil judgments, or in the case of a city, parish, or other local public school board, its status as financially at risk, as defined by BESE, is resolved.

## G. Violations and Penalties

[R.S. 39:1355 & R.S. 39:1356](#)

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### Violations

[R.S. 39:1355](#)

It is considered a violation of the provisions of R.S. 39:1351, *et seq.* for any officer, official, or employee of a political subdivision 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;
- 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;
- Refuse, fail, or neglect to transmit to the Fiscal Administrator reports, statements of accounts, or other documents upon request as provided by law; or
- Obstruct or impede the Fiscal Administrator, in any manner, in making the examination authorized by law.

### Penalties

[R.S. 39:1356](#)

The following civil and criminal penalties are enumerated for violations of R.S. 39:1351, *et seq.*:

- Any person who violates any provision of R.S. 39:1351, *et seq.* shall be subject to 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;
- Any person who knowingly and willfully participates in a violation of any provision of R.S. 39:1351, *et seq.* shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000) per violation. The person shall be personally liable for payment of such penalty;
- Any person who violates any provision of R.S. 39:1351, *et seq.* shall be ordered to pay restitution to any political subdivision that suffers a loss as a result of the offense. Restitution shall include the payment of legal interest at the rate provided in R.S. 13:4202;

- Any person who violates any provision of R.S. 39:1355 shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisoned for not less than ten days nor more than six months, or both; and
- A violation of the provisions of R.S. 39:1351, et seq. is prima facie evidence of malfeasance in office, R.S. 14:134, and gross misconduct.

Neither costs nor 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 the political subdivision or an officer, official, or employee of a political subdivision shall be reimbursed to an officer, official, or employee of a political subdivision unless the officer, official, or employee is acquitted or the suit is dismissed.

## **H. Costs and Expenses of Fiscal Administration**

**R.S. 39:1351(B)(4) & R.S. 39:1357**

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### **Political Subdivision Bears Costs of Fiscal Administration**

In accordance with R.S. 39:1351(B)(4), once a political subdivision is placed under fiscal administration, the political subdivision becomes responsible for bearing the costs and expenses incurred by all of the following:

- The Fiscal Administrator;
- Legislative Auditor;
- Attorney General;
- State Treasurer; and
- Any other persons engaged in connection with the independent fiscal administration of the political subdivision.

### **Fiscal Administrator Revolving Loan Fund**

R.S. 39:1357 provides for the creation of the Fiscal Administrator Revolving Loan Fund (Fund). The Fund was created to provide a means of funding the costs of fiscal administration of political subdivisions during periods where the political subdivision lacks sufficient funds to compensate the Fiscal Administrator for his/her services.

The Fund is currently created within the State Treasury and is operated by the Department of the Treasury. The Fund is to be comprised of:

- Monies deposited or credited to the Fund through grants, gifts, and donations received for the purpose of fiscal administration;
- Monies appropriated by the Legislature;

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- The repayment of principal and interest on loans and other obligations made to political subdivisions financed from the Fund; and
- Other revenues as may be provided by law.

The Treasurer is authorized to invest the monies within the Fund in the same manner as money in the State General Fund. Any interest earned on investment of monies within the Fund shall be credited to the Fund after compliance with the requirements of Article VII, §9(B) relative to the Bond Security and Redemption Fund. All unexpended and unencumbered money in the Fund at the end of the fiscal year shall remain in the Fund.

Political subdivisions who are in the process of being placed under fiscal administration or who have already had a Fiscal Administrator appointed are authorized to borrow money and incur debt payable to the Fund subject to approval by all of the following:

- The Fiscal Review Committee (Legislative Auditor, Attorney General, and State Treasurer); and
- The Fiscal Administrator, if one has been appointed by the court; and
- The district court having jurisdiction over the fiscal administration; and
- The State Bond Commission.

Monies in the Fund shall be appropriated and used only for the purpose of providing financial assistance to a political subdivision for which a court has appointed a Fiscal Administrator under the provisions of R.S. 39:1351, *et seq.* by providing a source of funds from which the political subdivision may borrow in order to pay the costs and expenses associated with the independent fiscal administration of the political subdivision. These costs and expenses include, but are not limited to, all costs and expenses incurred by:

- The Fiscal Administrator;
- The Legislative Auditor;
- The Attorney General;
- The State Treasurer; and
- Any other persons engaged in connection with the independent fiscal administration of the political subdivision.

Each loan from the Fund shall be evidenced by a bond, note, or other evidence of indebtedness, and shall be authorized and issued pursuant to a resolution or ordinance of the governing authority of the political subdivision. The resolution or ordinance shall:

- Prescribe the form and details of the bond, note, etc., including:
  - The terms of the debt;
  - Security for the debt;
  - Manner of execution;

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- Repayment schedule; and
- Redemption features thereof.
  
- Set forth the maximum principal amount;
- Set forth the maximum interest rate (which shall be less than or equal to the market interest rate);
- Set forth the maximum redemption premium, if any;
- Set forth the maximum term of such indebtedness; and
- Be published in the official journal of the political subdivision (exhibits need not be published, but shall be made available for public inspection).

The resolution or ordinance may be contested within thirty days of the publication.

If no suit, action, or other proceedings is begun contesting the validity of the bonds, notes, or other evidence of indebtedness authorized pursuant to the resolution or ordinance within thirty days prescribed by statute, the following shall be conclusively presumed, and no court shall have authority or jurisdiction to inquire into any such matter:

- The authority to issue the bonds, notes, or other evidence of indebtedness,
- The authority to provide for the payment thereof,
- The legality thereof,
- All the provisions of the resolution or ordinance; and
- The evidence of indebtedness.

The Treasurer has promulgated rules concerning the Fiscal Administrator Revolving Loan Funds which can be found in the [Louisiana Administrative Code](#) at 71 La. ADC Pt IX, §101-107.