



# The Fiscal Administrator Law

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

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## Overview:

The following document is a summary of general principles and guidelines concerning the [Fiscal Administrator Law](#). This document is presented in a “frequently asked questions” (FAQ) format. While the FAQ is fairly detailed, remember that every situation is unique and that each situation deserves careful individual review.

To facilitate use of this document, numerous links within the document will direct your attention to specific areas within the document and to related documents posted on the Louisiana Legislative Auditor’s website and on external websites. For example, from the Index, you may go directly to any area of the FAQ by clicking the question you wish to view. Within the FAQ, several links will direct you to other areas of the FAQ and to relevant external documents. Clicking on an individual question number will return you to the index to allow selection of another question to view.

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**Q.1. What is the purpose of the fiscal administrator law?**

**A.1.** The Louisiana Legislature enacted several laws, including the Fiscal Administrator Law, in 1990 that enable State intervention if a political subdivision's fiscal stability is in jeopardy.

**Q.2. When does a fiscal administrator become necessary? [R.S. 39:1351](#)**

**A.2.** When a political subdivision loses “financial stability” it becomes eligible for fiscal administration.

“**Financial stability**” is defined 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.”**

In other words, if a political subdivision is no longer capable of meeting its current financial obligations, including debt service payments, it becomes eligible to be placed under fiscal administration.

For city, parish or other local public school boards, a fiscal administrator may be appointed when the State Superintendent of Education, as directed by the State Board of Elementary and Secondary Education (BESE), notifies the Fiscal Review Committee that the city, parish, or other local public school board is reasonably certain to fail to resolve its status as “financially at risk” as that status is defined by rule by BESE.

In addition, a political subdivision, including a city, parish or other local public school board, may be placed under fiscal administration if it fails to provide an audit to the Legislative auditor as required by R.S. 24:513 for a period of three consecutive fiscal years. Such failure to provide for three consecutive audits shall be prima facie evidence that the political subdivision is reasonably certain to not have sufficient revenue to pay its current expenditures, excluding civil judgments, and remove it from being considered financially stable.

A school board’s failure to provide three consecutive audits shall automatically classify the school board as “financially at risk” and serve as prima facie evidence that the board is reasonably certain to fail to resolve its status as financially at risk, as that status is defined by rule by BESE.

**Q.3. How is a fiscal administrator appointed?**

**R.S. 39:1351**

- A.3.** The Fiscal Review Committee, consisting of the Legislative Auditor, the Attorney General, and the State Treasurer, will publicly convene to review a struggling political subdivision's financial situation.

If the three committee members decide that a political subdivision is reasonably certain to not maintain financial stability, the Attorney General will file a rule to show cause, in a court in the entity's jurisdiction, to appoint a fiscal administrator to take over the entity's finances.

The Court, in the absence of a joint motion and consent judgment is required by law to appoint a fiscal administrator under two circumstances:

- 1. If the court finds by a preponderance of the evidence from the facts and evidence deduced at the hearing of the rule 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 city, parish, or other local public school board, reasonably certain to fail to resolve its status as financially at risk as that status has been defined by rule by the State Board of Elementary and Secondary Education.”**
- 2. If a political subdivision has failed to provide an audit required by R.S. 24:513 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.**

If the political subdivision consents to the appointment of a fiscal administrator, a joint motion by the attorney general and the political subdivision and a consent judgment shall be filed with the court within forty-five (45) days of the decision of the Legislative Auditor, Treasurer, and Attorney General to place the political subdivision into fiscal administration.

The court shall appoint a fiscal administrator within twenty days of filing of the joint motion and consent judgment according to the terms of the consent judgment.

**Q.4. Who should the court appoint as a fiscal administrator?**

**R.S. 39:1351**

- A.4.** The person appointed fiscal administrator by the court will be recommended by the Legislative Auditor and the Attorney General. The person should have sufficient education, experience, and qualifications to enable him or her to perform the duties of fiscal administrator.

**Q.5. Is the fiscal administrator indemnified? [R.S. 39:1351](#)**

**A.5.** Yes. The fiscal administrator is indemnified as a covered person as defined in [R.S. 13:5108.1](#), which provides indemnification of state officers and employees.

**Q.6. What are the duties of the fiscal administrator? [R.S. 39:1352](#)**

**A.6.** A newly appointed fiscal administrator will investigate the financial situation of the local government and report his or her findings to the Court, State Treasurer, Attorney General, and Legislative Auditor.

The fiscal administrator after their initial investigation shall submit a written report containing the expected revenue and obligations for the remainder of the fiscal year, recommended amendments to the budget to ensure payment of the debt, the estimated deficit in the budget, and a recommendation of whether the local government should be allowed to file for bankruptcy. The written report shall also contain a proposed three-year plan with a goal of the political subdivision establishing and maintaining financial stability once fiscal administration is terminated. This written report shall be updated on at least a quarterly basis during the term of fiscal administration.

Within seven days after the local government receives the initial report, it shall vote on the fiscal administrator's recommended budget changes. If it fails to adopt the recommended changes, the Attorney General shall ask the court to compel the local government to accept them ([R.S. 39:1353](#)). Once the new budget is enacted, the fiscal administrator monitors the local government entity until he or she determines that it is sufficiently fiscally healthy to meet its obligations for the current and upcoming years. At that point, the Attorney General, local government officials, or the fiscal administrator may move to terminate the fiscal administrator's appointment. [R.S. 39:1354](#)

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.

**Q.7. Once the fiscal administrator is appointed, what duties are placed on the political subdivision? [R.S. 39:1352](#)**

**A.7.** Upon appointment of a fiscal administrator, the elected officials, officers, and employees of the political subdivision serve in an advisory capacity to the fiscal administrator. They advise the fiscal administrator on matters relating to the operation of the political subdivision. If a conflict arises, the fiscal administrator's decision prevails.

In order to perform the investigation and reporting required of the fiscal administrator, the elected officials, officers, and employees of the entity are required to cooperate in providing within three business days all information sought by the fiscal administrator.

If the officer, official, or employee is unable to provide the information within the required time, then the officer, official, or employee is required to 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 actions 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.

**Q.8. What are the fiscal administrator’s powers regarding investigating the financial state of the political subdivision?**

**[R.S. 39:1352](#)**

**A.8.** The fiscal administrator is authorized to investigate the financial affairs of the political subdivision as he or she deems necessary.

The fiscal administrator is to be given access to all papers, books, records, documents, films, tapes, and other forms of recordation.

The fiscal administrator’s investigation may include written interrogatories in regard to the reasonable certainty of failure to make a debt service payment. These interrogatories may be directed to the persons or entities that assisted the political subdivision in issuing and marketing the bonds, including 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 debt service payments.

**Q.9. What information is required to be contained in the fiscal administrator’s report?**

**[R.S. 39:1352](#)**

**A.9.** After his or her initial investigation, the fiscal administrator shall file a written report with the Court, the governing authority of the political subdivision, the State Treasurer, the Attorney General, and the Legislative Auditor. The fiscal administrator’s report shall contain the following:

1. An estimate of the revenue and expenditures of the political subdivision for the remainder of its current fiscal year and the fiscal year following;
2. Amendments to the budget, or a proposed budget if not previously adopted, which will insure that payments of debt service are a priority budget item and that they will be timely made by the political subdivision during the remainder of the current fiscal year and the fiscal year following;
3. An estimate of the financial aid or new revenue that the political subdivision may need if the fiscal administrator determines that revenues of the political subdivision are, or will be, insufficient to insure both (1) timely payments of debt service as a priority over items in the budget, and (2) a reduced, but adequate, funding level for other needs of the political subdivision; and
4. A recommendation as to whether the political subdivision should be permitted to file Federal bankruptcy.
5. 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 and shall also file any other reports required by the appointing Court.

**Q.10. What are the responsibilities of the political subdivision regarding the fiscal administrator's report?**

**R.S. 39:1353**

- A.10.** Within seven days after receipt of the fiscal administrator's initial report, the governing authority of the political subdivision shall adopt in an open meeting an appropriate budget adoption instrument that contains the comprehensive budget, or amendments to the original comprehensive budget of the political subdivision, as proposed in the fiscal administrator's report.

If the governing authority of the political subdivision fails to adopt that budget or those budget amendments, or if the revisions made by the governing authority of the political subdivision do not meet the approval of the fiscal administrator, then the Attorney General shall take a rule against the political subdivision in the manner 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 that the court finds will make it (1) reasonably certain that the political

subdivision will fail to make timely debt service payments or (2) reasonably certain to fail to have sufficient revenue to pay current expenditures, excluding civil judgments, or (3) in the case of a city, parish, or other local public school board reasonably certain to fail to resolve its status as financially at risk.

**Q.11. What additional powers may the court authorize to the fiscal administrator in order to return the political subdivision to financial stability?**

**R.S. 39:1352**

**A.11.** In addition to investigating and reporting on the financial condition of the political subdivision, the fiscal administrator subject to State law shall be authorized to direct all fiscal operations of the political subdivision. The fiscal administrator may take whatever action he or she deems necessary to return the political subdivision to financial stability.

The fiscal administrator is statutorily authorized several other specific powers as well, including the power to:

- 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 employees as are 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 of these actions.



**Q.12. What are the duties of the fiscal administrator following adoption of a new budget? [R.S. 39:1354](#)**

**A.12.** The fiscal administrator shall monitor revenues and expenditures of the political subdivision under the adopted budget, issuing supplemental reports to the Court, Treasurer, Attorney General, Legislative Auditor, and governing authority of the political subdivision, as he or she considers necessary, but no less than quarterly as required by R.S. 39:1352(B)(1) until there is reasonable certainty that (1) debt service payments by the political subdivision will be timely made during the remainder of the current fiscal year and the fiscal year following (2) or there will be sufficient revenue to pay current expenditure, excluding civil judgments, (3) or, in the case of a city, parish, or other local public school board, its status as financially at risk is resolved. The supplemental reports shall be subject to adoption, approval, and court review required by R.S. 39:1353.

**Q.13. How is the appointment of a fiscal administrator terminated? [R.S. 39:1354](#)**

**A.13.** Once appointed, a fiscal administrator may only be removed (1) by the court at his own request, or (2) as provided for in R.S. 39:1354, or (3) for fraud, negligence, or misconduct (R.S. 39:1351).

The appointment of the fiscal administrator shall terminate upon his or her own motion, or upon the motion of the Attorney General or the political subdivision, if the court finds (1) that it is reasonably certain that the debt service payments of the political subdivision will be timely made during the remainder of the current fiscal year and for the fiscal year following or (2) that there will be sufficient revenue to pay current expenditures, excluding civil judgments, or, (3) in the case of a city, parish, or other local public school board, that its status as financially at risk is resolved.

**Q.14. What penalties exist for violating the fiscal administrator law?**

**A.14.** [R.S. 39:1355](#) defines the violations of the fiscal administrator law, and [R.S. 39:1356](#) defines the penalties for those violations.

**Violations – [R.S. 39:1355](#)**

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[R.S. 39:1355](#) provides that it is a violation of the law for any officer, official, or employee of the political subdivision to:

- (1) neglect, fail, or refuse to furnish the fiscal administrator with any 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;
- (2) 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;

(3) refuse, fail, or neglect to transmit to the fiscal administrator reports, statements of accounts, or other documents upon request as provided by law;

(4) obstruct or impede the fiscal administrator, in any manner, in making the examination authorized by law.

## **Penalties – [R.S. 39:1356](#)**

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[R.S. 39:1356](#) provides that any person who violates any provision of the fiscal administrator law 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, the violation.

Penalties for any person who knowingly and willfully participates in a violation include a civil penalty not to exceed one thousand dollars per violation. The person shall be personally liable for the payment of the penalty.

In addition to the penalties, any person who violates any of the provisions of the fiscal administrator law shall be ordered to pay restitution to any political subdivision that suffers a loss as a result of the offense. Restitution includes the payment of legal interest at the rate provided in [R.S. 13:4202](#).

In addition to these penalties, any person who violates a provision of [R.S. 39:1355](#) shall be fined not less than five hundred dollars nor more than five thousand dollars, or be imprisoned for no fewer than ten days nor more than six months, or both.

A violation of any provision of the fiscal administrator law 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 shall be reimbursed to an officer, official, or employee of a political subdivision unless that person is acquitted or the suit is dismissed.

### **Q.15. What case law interprets the fiscal administrator law?**

**A.15.** The Second Circuit Court of Appeals (writ denied by the Louisiana Supreme Court) held in 2012 that the State has a real and actual interest in ensuring the financial stability of its political subdivisions, and the statute governing appointment of a fiscal administrator for political subdivisions provides specific authority for the Attorney General at the request of the fiscal review committee to file a rule for appointment of a fiscal administrator.

*State ex rel. Caldwell v. Town of Jonesboro*, 47,896 (La. App. 2 Cir. 12/19/12), 108 So.3d 217 writ denied, 2013-0173 (La. 1/23/13), 105 So.3d 60.

**Q.16. Who pays the costs incurred as a result of the appointment of the fiscal administrator? [R.S. 39:1351](#)**

**A.16.** [R.S. 39:1351](#) provides that the political subdivision shall pay 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.

[R.S. 39:1357](#) creates a revolving fund in the state treasury called the "Fiscal Administrator Revolving Loan Fund". The Fund, created for the purpose of funding the fiscal administrator and managed by the secretary of the treasury, will contain deposits from (1) grants, gifts, and donations received by the state, (2) any money appropriated by the legislature to the fund, (3) the repayment of principal of and interest on loans and other obligations made to political subdivisions financed from the fund, and (4) other revenues as may be provided by law.

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

**Q.17. Is there additional information regarding the fiscal administrator law?**

**A.17.** For more information regarding the fiscal administrator law, please see the [LLA's White Paper on Fiscal Administration](#).