Legislation

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Administrative Procedure Act (R.S. 49:950 et seq.)

Editor's Note: The following Act is the finished version of the APA as stored in the House of Representatives' Database.

Title 49. STATE ADMINISTRATION
Chapter 13. Administrative Procedure

§950. Title and Form of Citation

This Chapter shall be known as the Administrative Procedure Act and may be cited as the Administrative Procedure Act.

Added by Acts 1982, No. 129, §1

§951. Definitions

As used in this Chapter:

(1) "Adjudication" means agency process for the formulation of a decision or order.

(2) "Agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof, any political subdivision, as defined in Article VI, Section 44 of the Louisiana Constitution, and any board, commission, department, agency, officer, or other entity thereof, and the courts.

(3) "Decision" or "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for an agency hearing, and including non-revenue licensing, when the grant, denial, or renewal of a license is required by constitution or statute to be preceded by notice and opportunity for hearing.

(4) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency, except that an agency is a "person" for the purpose of appealing an administrative ruling in a disciplinary action brought pursuant to Title 37 of the Louisiana Revised Statutes of 1950 prior to the final adjudication of such disciplinary action.

(6) "Rule" means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. "Rule" includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

(7) "Rulemaking" means the process employed by an agency for the formulation of a rule. Except where the context clearly provides otherwise, the procedures for adoption of rules and of emergency rules as provided in R.S. 49:953 shall also apply to adoption of fees. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts involved does not render the same a rule within this definition or constitute specific adoption thereof by the agency so as to be required to be issued and filed as provided in this Subsection.

Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date applicable to Dept. of Health and Hospitals only); Acts 1997, No. 1224, §1.

§952. Public Information; Adoption of Rules; Availability of Rules and Orders

Each agency which engages in rulemaking shall:

(1) File with the Department of the State Register a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

(3) Make available for public inspection all rules, preambles, responses to comments, and submissions and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions and publish an index of such rules, preambles, responses to comments, submissions, statements, and interpretations on a regular basis.

(4) Make available for public inspection all final orders, decisions, and opinions.

Acts 1966, No. 382, §2, eff. July 1, 1967. Amended by Acts 1978, No. 252, §1; Acts 1979, No. 578, §1, eff. July 18, 1979; Acts 1990, No. 1085, §1, eff. July 31, 1990; Acts 1993, No. 386, §1.

§953. Procedure for Adoption of Rules

A. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1)(a) Give notice of its intended action and a copy of the proposed rules at least ninety days prior to taking action on the rule. The notice shall include:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved;

(ii) A statement, approved by the legislative fiscal office, of the fiscal impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no fiscal impact will result from such proposed action;

(iii) A statement, approved by the legislative fiscal office, of the economic impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no economic impact will result from such proposed action;

(iv) The name of the person within the agency who has the responsibility for responding to inquiries about the intended action;

(v) The time when, the place where, and the manner in which interested persons may present their views thereon; and

(vi) A statement that the intended action complies with the statutory law administered by the agency, including a citation of the enabling legislation.

(vii) A statement indicating whether the agency has prepared a preamble which explains the basis and rationale for the intended action, summarizes the information and data supporting the intended action, and provides information concerning how the preamble may be obtained.

(viii) A statement concerning the impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

(b)(i) The notice shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least one hundred days prior to the date the agency will take action on the rule.

(ii) Upon publication of the notice, copies of the full text of the proposed rule shall be available from the agency proposing the rule upon written request within two working days.

(c) Notice of the intent of an agency to adopt, amend, or repeal any rule and the approved fiscal and economic impact statements, as provided for in this Subsection, shall be mailed to all persons who have made timely request of the agency for such notice, which notice and statements shall be mailed at the earliest possible date, and in no case later than ten days after the date when the proposed rule change is submitted to the Louisiana Register.

(d) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

(2)(a) Afford all interested persons reasonable opportunity to submit data, views, comments, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument must be granted if requested within twenty days after publication of the rule as provided in this Subsection, by twenty-five persons, by a governmental subdivision or agency, by an association having not less than twenty-five members, or by a committee of either house of the legislature to which the proposed rule change has been referred under the provisions of R.S. 49:968.

(b)(i) Make available to all interested persons copies of any rule intended for adoption, amendment, or repeal from the time the notice of its intended action is published in the Louisiana Register. Any hearing pursuant to the provisions of this Paragraph shall be held no earlier than thirty-five days and no later than forty days after the publication of the Louisiana Register in which the notice of the intended action appears. The agency shall consider fully all written and oral comments and submissions respecting the proposed rule.

(ii) The agency shall issue a response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written or oral comments and submissions. In addition to the response to comments, the agency may prepare a preamble explaining the basis and rationale for the rule, identifying the data and evidence upon which the rule is based, and responding to comments and submissions. Such preamble and response to comments and submissions shall be furnished to the respective legislative oversight subcommittees at least five days prior to the day the legislative oversight subcommittee hearing is to be held on the proposed rule, and shall be made available to interested persons no later than one day following their submission to the appropriate legislative oversight subcommittee. If no legislative oversight hearing is to be held, the agency shall issue a response to comments and submissions and preamble, if any, to any person who presented comments or submissions on the rule and to any requesting person not later than fifteen days prior to the time of publication of the final rule.

(iii) The agency shall, upon request, make available to interested persons the report submitted pursuant to R.S. 49:968(D) no later than one working day following the submittal of such report to the legislative oversight subcommittees.

(3)(a) For the purposes of this Subsection, the statement of fiscal impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such fiscal impact statement shall include a statement of the receipt, expenditure, or allocation of state funds or funds of any political subdivision of the state.

(b) For the purposes of this Subsection, the statement of economic impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such economic impact statements shall include an estimate of the cost to the agency to implement the proposed action, including the estimated amount of paperwork; an estimate of the cost or economic benefit to all persons directly affected by the proposed action; an estimate of the impact of the proposed action on competition and the open market for employment, if applicable; and a detailed statement of the data, assumptions, and methods used in making each of the above estimates.

B.(1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided in Subsection A of this Section and within five days of adoption states in writing to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Department of the State Register, its reasons for that finding,

it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The provisions of this Paragraph also shall apply to the extent necessary to avoid sanctions or penalties from the United States, or to avoid a budget deficit in the case of medical assistance programs or to secure new or enhanced federal funding in medical assistance programs. The agency statement of its reason for finding it necessary to adopt an emergency rule shall include specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public health, safety, or welfare, or specific reasons why the emergency rule meets other criteria provided in this Paragraph for adoption of an emergency rule.

(2) Notice of the emergency rule shall be mailed to all persons who have made timely request of the agency for notice of rule changes, which notice shall be mailed within five days of adoption of the emergency rule. The office of the state register may omit from the Louisiana Register any emergency rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the emergency rule in printed or processed form is made available on application to the adopting agency, and if the Louisiana Register contains a notice stating the general subject matter of the omitted emergency rule, the reasons for the finding of the emergency submitted by the agency, and stating how a copy thereof may be obtained.

(3) The validity of an emergency rule or fee may be determined in an action for declaratory judgment in the district court of the parish in which the agency is located. The agency shall be made a party to the action. An action for a declaratory judgment under this Paragraph may be brought only by a person to whom such rule or fee is applicable or who would be adversely affected by such rule or fee and only on the grounds that the rule or fee does not meet the criteria for adoption of an emergency rule as provided in Paragraph (1) of this Subsection. The court shall declare the rule or fee invalid if it finds that there is not sufficient evidence that such rule or fee must be adopted on an emergency basis for one or more of the reasons for adoption of an emergency rule as provided in Paragraph (1) of this Subsection. Notwithstanding any other provision of law to the contrary, the emergency rule or fee shall remain in effect until such declaratory judgment is rendered. The provisions of R.S. 49:963 shall not apply to any action brought pursuant to this Paragraph. The provisions of this Paragraph are in addition to R.S. 49:963 and shall not limit any action pursuant to R.S. 49:963.

(4)(a) Within sixty days after adoption of an emergency rule or fee, an oversight subcommittee of either house may conduct a hearing to review the emergency rule or fee and make a determination of whether such rule or fee meets the criteria for an emergency rule or fee as provided in Paragraph (1) of this Subsection and those determinations as provided in R.S. 49:968(D)(3). If within such time period an oversight subcommittee finds an emergency rule or fee unacceptable, it shall prepare a written report containing a copy of the proposed rule or proposed fee action and a summary of the determinations made by the committee and transmit copies thereof as provided in R.S. 49:968(F)(2).

(b) Within sixty days after adoption of an emergency rule or fee, the governor may review such rule or fee and make the determinations as provided in Subparagraph (a) of this Paragraph. If within such time period the governor finds an emergency rule or fee unacceptable, he shall prepare a written report as provided in Subparagraph (a) and transmit copies thereof to the agency proposing the rule change and the Louisiana Register no later than four days after the governor makes his determination.

(c) Upon receipt by the agency of a report as provided in either Subparagraph (a) or (b) of this Paragraph, the rule or fee shall be nullified and shall be without effect.

C. An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, considerations, and disposition. Within ninety days after submission of a petition, the agency shall either deny the petition in writing, stating reasons for the denial, or shall initiate rule making proceedings in accordance with this Chapter.

D. When a rule is adopted, amended, or repealed in compliance with federal regulations, the adopting agency's notice of intent and the actual text of the rule as published in the Louisiana Register, must be accompanied by a citation of the Federal Register issue in which the determining federal regulation is published, such citation to be by volume, number, date, and page number.

E. Beginning January 1, 1987, no agency shall adopt, amend, or repeal any rule if the accompanying fiscal impact statement approved by the Legislative Fiscal Office indicates that said rule change would result in any increase in the expenditure of state funds, unless said rule is adopted as an emergency rule pursuant to the requirements of this Section or unless the legislature has specifically appropriated the funds necessary for the expenditures associated with said rule change.

F.(1) Notwithstanding any other provision of this Chapter to the contrary, if the Department of Environmental Quality proposes a rule that is not identical to a federal law or regulation or is not required for compliance with a federal law or regulation, the Department of Environmental Quality shall adopt and promulgate such proposed rule separately from any proposed rule or set of proposed rules that is identical to a federal law or regulation or required for compliance with a federal law or regulation. However, if the only difference between the proposed rule or set of proposed rules and the corresponding federal law or regulation is a proposed fee, the Department of Environmental Quality shall not be required to adopt and promulgate such proposed rule or set of proposed rules separately. For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

(2) When the Department of Environmental Quality proposes a rule that is not identical to a corresponding federal law or regulation, or is not required for compliance with a federal law or regulation, the Department of Environmental Quality shall provide a brief summary which explains the basis and rationale for the proposed rule, identifies the data and evidence, if any, upon which the rule is based, and identifies any portions of the proposed rule that differ from federal law or regulation if there is a federal law or regulation which is not identical but which corresponds substantially to the proposed rule. Such summary shall be

provided along with the notice of intent and shall be published in the Louisiana Register or made available along with the proposed rule as provided in Item A(1)(b)(ii) of this Section. The Department of Environmental Quality may also provide such a summary when proposing a rule identical to a corresponding federal law or regulation or proposing a rule which is required for compliance with federal law or regulation to explain the basis and rationale for the proposed rule.

(3) Notwithstanding any other provision of this Chapter to the contrary, when the Department of Environmental Quality proposes a rule that is identical to a federal law or regulation applicable in Louisiana, except as provided in Paragraph (4) of this Subsection, it may use the following procedure for the adoption of the rule:

(a) The department shall publish a notice of the proposed rule at least sixty days prior to taking action on the rule as provided below. The notice, which may include an explanation of the basis and rationale for the proposed rule, shall include all of the following:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved.

(ii) A statement that no fiscal or economic impact will result from the proposed rule.

(iii) The name of the person within the department who has responsibility for responding to inquiries about the intended action.

(iv) The time, place, and manner in which interested persons may present their views thereon including the notice for a public hearing required by R.S. 30:2011(D)(1).

(v) A statement that the intended action complies with the law administered by the department, including a citation of the specific provision, or provisions, of law which authorize the proposed rule.

(b) Notice of the proposed rule shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least seventy days prior to the date the department proposes to formally adopt the rule. The office of the state register may omit from the Louisiana Register any such proposed rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the Louisiana Register contains a notice stating the general subject matter of the omitted proposed rule, the process being employed by the department for adoption of the proposed rule, and stating how a copy of the proposed rule may be obtained.

(c) Notice of the intent of the department to adopt the rule shall be mailed to all persons who have made timely request for such notice, which notice shall be mailed at the earliest possible date, and in no case later than ten days after the date when the proposed rule is submitted to the Louisiana Register.

(d) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

(e) The department shall afford all interested persons an opportunity to submit data, views, comments, or arguments related to the proposed rule, in writing, during a period of no less than thirty days. The department shall consider fully all written comments and submissions respecting the proposed rule.

(f) The department shall make available to all interested persons copies of the proposed rule from the time the notice of its adoption is published in the Louisiana Register.

(g) The department shall issue a response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written comments and submissions and specifically addressing any assertion that the proposed rule is not identical to the federal law or regulation upon which it is based. The department shall issue such response to comments and submissions to any person who presented comments or submissions on the rule and to any requesting person no later than fifteen days prior to the time of publication of the final rule.

(h) No later than fifteen days prior to the time of publication of the final rule in the Louisiana Register, the secretary or any authorized assistant secretary of the department shall (i) certify, under oath, to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, the chairman of the House Committee on the Environment, the chairman of the Senate Committee on Environmental Quality, and the office of the state register that the proposed rule is identical to a specified federal law or regulation applicable in Louisiana and (ii) furnish the chairman of the Senate Committee on Environmental Quality and the chairman of the House Committee on the Environment the response to comments and submissions required under Subparagraph (g) of this Paragraph, together with a copy of the notice required under Subparagraph (a) of this Paragraph.

(i) Unless specifically requested, in writing, by the chairman of the House Committee on the Environment or the chairman of the Senate Committee on Environmental Quality within ten days of the certification provided under Subparagraph (h) of this Paragraph, there shall be no legislative oversight of the proposed rule. If, however, legislative oversight is properly requested, R.S. 49:968 and Items A(2)(b)(ii) and (iii) of this Section, shall thereafter apply with respect to the proposed rule.

(j) In the absence of legislative oversight, the proposed rule may be adopted by the Department of Environmental Quality no earlier than sixty days, nor later than twelve months, after the official notice of the proposed rule was published in the Louisiana Register; provided, however, that the proposed rule shall be effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption.

(4) The procedures set forth in Paragraph (3) of this Subsection for the adoption by the Department of Environmental Quality of rules identical to federal laws or regulations applicable in Louisiana shall not be available for the adoption of any rules creating or increasing fees.

G.(1) Prior to or concurrent with publishing notice of any proposed policy, standard, or regulation pursuant to Subsection A of this Section and prior to promulgating any policy, standard, or final regulation whether pursuant to R.S. 49:954 or otherwise under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the Department of Environmental Quality, after August 15, 1995, shall publish a report, or a summary of the report, in the Louisiana Register which includes:

(a) A statement identifying the specific risks being addressed by the policy, standard, or regulation and any published, peer-reviewed scientific literature used by the department to characterize the risks.

(b) A comparative analysis of the risks addressed by the policy, standard, or regulation relative to other risks of a similar or analogous nature to which the public is routinely exposed.

(c) An analysis based upon published, readily available peer-reviewed scientific literature, describing how the proposed and final policy, standard, or regulation will advance the purpose of protecting human health or the environment against the specified identified risks.

(d) An analysis and statement that, based on the best readily available data, the proposed or final policy, standard, or regulation presents the most cost-effective method practically achievable to produce the benefits intended regarding the risks identified in Subparagraph (a) of this Paragraph.

(2) No regulation shall become effective until the secretary complies with the requirements of Paragraph (1) of this Subsection.

(3) This provision shall not apply in those cases where the policy, standard, or regulation:

(a) Is required for compliance with a federal law or regulation.

(b) Is identical to a federal law or regulation applicable in Louisiana.

(c) Will cost the state and affected persons less than one million dollars, in the aggregate, to implement.

(d) Is an emergency rule under Subsection B of this Section.

(4) For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

(5) In complying with this Section, the department shall consider any scientific and economic studies or data timely provided by interested parties which are relevant to the issues addressed herein and the proposed policy, standard, or regulation being considered.

Acts 1966, No. 382, §3, eff. July 1, 1967. Amended by Acts 1974, No. 284, §1, eff. Jan. 1, 1975; Acts 1975, No. 730, §1; Acts 1976, No. 279, §1; Acts 1978, No. 252, §1; Acts 1980, No. 392, §1. Acts 1983, No. 713, §1; Acts 1984, No. 953, §1; Acts 1985, No. 371, §1, eff. July 9, 1985; Acts 1986, 1st Ex. Sess., No. 11, §1, eff. Jan. 1, 1987; Acts 1987, No. 853, §1; Acts 1990, No. 1063, §1; Acts 1990, No. 1085, §§1 and 2, eff. July 31, 1990; Acts 1991, No. 104, §1, eff. June 30, 1991; Acts 1993, No. 119, §1; Acts 1993, No. 274, §1; Acts 1993, No. 386, §1; Acts 1995, No. 512, §1; Acts 1995, No. 642, §1; Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date applicable to Dept. of Health and Hospitals only); Acts 1996, 1st Ex. Sess., No. 36, §3, eff. May 7, 1996; Acts 1999, No. 1183, §1.

§954. Filing; Taking Effect of Rules

A. No rule adopted on or after January 1, 1975, is valid unless adopted in substantial compliance with this Chapter. Each rule making agency shall file a certified copy of its rules with the Department of the State Register. No rule, whether adopted before, on, or after January 1, 1975, shall be effective, nor may it be enforced, unless it has been properly filed with the Department of the State Register. No rule, adopted on or after November 1, 1978, shall be effective, nor may it be enforced, unless prior to its adoption a report relative to the proposed rule change is submitted to the appropriate standing committee of the legislature or to the presiding officers of the respective houses as provided in R.S. 49:968. No rule, adopted on or after September 12, 1980, shall be effective, nor may it be enforced, unless the approved economic and fiscal impact statements, as provided in R.S. 49:953A, have been filed with the Department of State Register and published in the Louisiana Register. The inadvertent failure to mail notice and statements to persons making request for such mail notice, as provided in R.S. 49:953, shall not invalidate any rule adopted hereunder. A proceeding under R.S. 49:963 to contest any rule on the grounds of noncompliance with the procedures for adoption, as given in this Chapter, must be commenced within two years from the date upon which the rule became effective.

B. Each rule hereafter adopted shall be effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption, except that:

(1) If a later date is required by statute or specified in the rule, the later day is the effective date.

(2) Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective on the date of its adoption, or on a date specified by the agency to be not more than sixty days future from the date of its adoption, provided written notice is given within five days of the date of adoption to the governor of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, and the president of the Senate, and the Department of the State Register as provided in R.S. 49:953(B). Such emergency rule shall not remain in effect beyond the publication date of the Louisiana Register published in the month following the month in which the emergency rule is adopted, unless such rule and the reasons for adoption thereof are published in said issue; provided, however, that any emergency rule so published shall not be effective for a period longer than one hundred twenty days, except as provided by R.S. 49:967(D), but the adoption of an identical rule under Paragraphs (1), (2) and (3) of Subsection A of R.S. 49:953 is not precluded. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

Acts 1966, No. 382, §4, eff. July 1, 1967. Amended by Acts 1968, No. 474, §1; Acts 1974, No. 284, §1, eff. Jan. 1, 1975; Acts 1975, No. 730, §1; Acts 1978, No. 252, §1; Acts 1980, No. 392, §1; Acts 1990, No. 248, §1; Acts 1990, No. 1085, §1, eff. July 31, 1990.

§954.1. Louisiana Administrative Code and Louisiana Register; Publication; Distribution; Copies; Index; Interagency Rules

A. The Department of the State Register shall compile, index, and publish a publication to be known as the Louisiana Administrative Code, containing all effective rules adopted by each agency subject to the provisions of this Chapter, and all boards, commissions, agencies and departments of the executive branch, notwithstanding any other provision of law to the contrary. The Louisiana Administrative Code shall also contain all executive orders issued by the governor on or after May 9, 1972, which are in effect at the time the Louisiana Administrative Code is published. The Louisiana Administrative Code shall be supplemented or revised as often as necessary and at least once every two years.

B. The Department of the State Register shall publish at least once each month a bulletin to be known as the Louisiana Register which shall set forth the text of all rules filed during the preceding month and such notices as shall have been submitted pursuant to this Chapter. It shall also set forth all executive orders of the governor issued during the preceding month and a summary or digest of and fiscal note prepared for each such order as required by the provisions of R.S. 49:215. In addition, the Department of the State Register may include in the Louisiana Register digests or summaries of new or proposed rules; however, if any conflict should arise between the written digest of a rule and the rule, the rule shall take precedence over the written digest.

C. The Department of the State Register shall publish such rules, notices, statements, and other such matters as submitted by the rulemaking agency without regard to their validity. However, the State Register may omit from the Louisiana Register or Louisiana Administrative Code any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency, and if the Louisiana Register or Louisiana Administrative Code, as the case may be, contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

D. One copy, or multiple copies if practical, of the Louisiana Register and Louisiana Administrative Code shall be made available upon request to state depository libraries free of charge, and to other agencies or persons at prices fixed by the department of the state register to recover all or a portion of the mailing and publication costs. Notwithstanding the provisions of R.S. 49:951(2) of this Chapter to the contrary, the department of the state register shall provide free copies of the Louisiana Register and the Louisiana Administrative Code to the David R. Poynter Legislative Research Library, the Senate Law Library, and the Huey P. Long Memorial Law Library.

E. The Department of the State Register shall prescribe a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Louisiana Administrative Code.

F. The Department of the State Register may publish advertisements for bids and other legal notices in the Louisiana Register in addition to other publications thereof required by law.

G. The Department of the State Register is hereby authorized and empowered to promulgate and enforce interagency rules for the implementation and administration of this Section.

H. The governor shall be the publisher of the Louisiana Administrative Code and Louisiana Register provided for through the Department of the State Register.

Added by Acts 1974, No. 284, §1, eff. Jan. 1, 1975. Amended by Acts 1975, No. 730, §1; Acts 1976, No. 279, §1; Acts 1978, No. 252, §1; Acts 1982, No. 687, §1, eff. Aug. 2, 1982; Acts 1988, No. 604, §1, eff. July 14, 1988; Acts 1988, No. 937, §1, eff. July 26, 1988; Acts 1990, No. 9, §2; Acts 1993, No. 119, §1.

§954.2. Unified Oil and Gas Development Regulatory Index; Summary

A. All regulatory agencies which have authority to issue or promulgate any general or special rule or regulation, or which issue, monitor compliance with, or otherwise regulate any permit or license, relative to oil and gas development, all as defined in this Section, shall index and summarize the rules or regulations in a manner which, if the language of the rule or regulation has general applicability to other types of businesses or other situations, plainly state or otherwise indicate:

(1) The extent of their applicability to oil and gas development.

(2) The types of permits or licenses which will be required, or which may be required, of any entity in the oil and gas development business.

B. Such index and summaries shall be filed with the office of the commissioner of conservation within the Department of Natural Resources, hereafter referred to as "the commissioner," by December 1, 1992. The commissioner shall make a written acknowledgement of his receipt of the index and summaries and the date thereof.

C. Any agency required to index and summarize its rules and regulations related to oil and gas development shall also file with the commissioner the information required in Subsection A regarding any agency rule or regulation which is finally promulgated or adopted after December 1, 1992, within twenty days of such final promulgation or adoption, along with an indication of its place in the index and summary previously filed with the commissioner.

D. The commissioner may make a written critique of any submission of an index and summaries which the commissioner determines to be unclear or confusing as it relates to oil and gas development, which critique shall contain reasons and/or clarifying questions. The agency shall respond to the critique in a form acceptable to the commissioner within twenty days. It is the intention of this Section that the various departments and offices which have authority to issue rules and regulations under law retain that authority. The commissioner shall only have the authority under this Section to critique submitted indexes and summaries so as to require a satisfactory response to his written reasons or questions concerning how they relate to oil and gas development.

E. After the commissioner has received and approved all of the indexes and summaries required to be received by December 1, 1992, he shall then proceed to merge and compile the indexes and summaries received so as to create a Unified Oil and Gas Regulatory Index. The commissioner

shall complete the index within six months. Upon completion of such unified index, the commissioner shall proceed to promulgate such index, and any subsequent amendments, in the manner provided for in this Chapter. However, the commissioner shall only make such technical revisions of the index during such procedure as is authorized by the agency which promulgated the original rule or regulation.

F. One copy of the Unified Oil and Gas Development Regulatory Index shall be made available to each of the regulatory agencies and to other persons at a reasonable price to be set by the commissioner.

G. Notwithstanding any other law to the contrary, no rule or regulation or permit or license provided for in Subsection A shall be effective, nor shall it be enforced, nor shall its content be considered by any court or any administrative hearing officer or board or other judicial or quasi-judicial body as a valid administrative construction or interpretation of any law, to the detriment of any applicant for a permit related to oil and gas development after December 1, 1992, in any civil or criminal action or proceeding if the filing, or the response to a critique by the secretary, of the index and summaries containing such rule or regulation or license or permit has not been timely made as required in this Section.

H. For purposes of this Section, the following terms shall have the following definitions:

(1) "Index and summaries" means a list of all rules and regulations in numerical order which have general or specific applicability to oil and gas development and environmental matters, with accompanying summaries indicating how the rule applies to oil and gas development.

(2) "Oil and gas development" means the activity of exploring for, locating, transporting property to an oil or gas well drilling site, and the constructing, operating, or maintaining of the land, equipment, buildings, structures, or other property at such site until the well is completed and capable of producing.

(3) "Permit or license" means any permit, license, variance, registration, compliance schedule, order, or any other grant of right or privilege, or any change, renewal, or extension thereof, relative to oil and gas development.

(4) "Regulatory agency" means any office or unit of the Department of Environmental Quality, the Department of Natural Resources, the Department of Revenue, the Mineral Board, and the Wildlife and Fisheries Commission or Department.

(5) "Rule or regulation" means any general or special rule, as that term is defined in R.S. 49:951(6), relative to oil and gas development.

Acts 1991, No. 735, §1, eff. July 18, 1991; Acts 1992, No. 589, §1, eff. July 15, 1992.

§954.3. Environmental Regulatory Code

The Department of Environmental Quality shall codify its rules and regulations in effect on March 1, 1992, in the Environmental Regulatory Code, and thereafter, shall update such codification of its rules and regulations on a quarterly basis. The secretary shall complete and offer for sale at cost the initial codification within one hundred and eighty days from March 1, 1992.

Acts 1991, No. 735, §2, eff. July 18, 1991.

§955. Adjudication; Notice; Hearing; Records

A. In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

B. The notice shall include:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved;

(4) A short and plain statement of the matters asserted.

If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

D. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default.

E. The record in a case of adjudication shall include:

(1) All pleadings, motions, intermediate rulings;

(2) Evidence received or considered or a resume thereof if not transcribed;

(3) A statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;

(4) Offers of proof, objections, and rulings thereon;

(5) Proposed findings and exceptions;

(6) Any decision, opinion, or report by the officer presiding at the hearing.

F. The agency shall make a full transcript of all proceedings before it when the statute governing it requires it, and, in the absence of such requirement, shall, at the request of any party or person, have prepared and furnish him with a copy of the transcript or any part thereof upon payment of the cost thereof unless the governing statute or constitution provides that it shall be furnished without cost.

G. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Acts 1966, No. 382, §5, eff. July 1, 1967.

§956. Rules of Evidence; Official Notice; Oaths and Affirmations; Subpoenas; Depositions and Discovery; and Confidential Privileged Information

In adjudication proceedings:

(1) Agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. Agencies may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(2) All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

(3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(4) Any agency or its subordinate presiding officer conducting a proceeding subject to this Chapter shall have the power to administer oaths and affirmations, regulate the course of the hearings, set the time and place for continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider the simplification of the issues.

(5)(a) Any agency or its subordinate presiding officer shall have power to sign and issue subpoenas in the name of the agency requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence. No subpoena shall be issued until the party who wishes to subpoena the witness first deposits with the agency a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671.

(b) A subpoena issued pursuant to this Section shall be served by any agent of the agency, by the sheriff, by any other officer authorized by law to serve process in this state, by certified mail, return receipt requested, or by any person who is not a party and who is at least eighteen years of age. Witnesses subpoenaed to testify before an agency only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witness as may be fixed by the agency with reference to the value of the time employed and the degree of learning or skill required.

(c) Whenever any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the agency may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt. It shall be the duty of the judge to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him, to proceed to a hearing of the case; and upon such hearing, the judge shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(6) The agency or a subordinate presiding officer or any party to a proceeding before it may take the depositions of witnesses, within or without the state and may conduct discovery in all manners as provided by law in civil actions. Depositions so taken and admissions, responses, and evidence produced pursuant to discovery shall be admissible in any proceeding affected by this Chapter. The admission of such depositions, admissions, responses, and evidence may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by the agency or presiding officer in accordance with the rules of evidence provided in this Chapter.

(7) Repealed by Acts 1995, No. 760, §2, eff. June 27, 1995.

(8)(a) Records and documents, in the possession of any agency or of any officer or employee thereof including any written conclusions drawn therefrom, which are deemed confidential and privileged shall not be made available for adjudication proceedings of that agency and shall not be subject to subpoena by any person or other state or federal agency.

(b) Such records or documents shall only include any private contracts, geological and geophysical information and data, trade secrets and commercial or financial data, which are obtained by an agency through a voluntary agreement between the agency and any person, which said records and documents are designated as confidential and privileged by the parties when obtained, or records and documents which are specifically exempt from disclosure by statute.

(c) Any violation of this prohibition shall be a waiver of governmental immunity from suit for damage resulting from any such disclosure.

(d) Notwithstanding the provisions of Subparagraphs (a) and (c) of this Paragraph the state boards and agencies identified in R.S. 13:3715.1(J) may make available and use records and documents, including any written conclusions drawn therefrom, which are otherwise deemed confidential or privileged and which are in the possession of such board or agency or any officer, employee, or agent thereof, or any attorney acting on its behalf in any adjudication proceedings of such agency, provided that in any case involving medical or patient records, the identity of any patient shall be maintained in confidence. Any such records shall be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates. Disclosure by such board or agency or any officer, employee, agent, or attorney acting on behalf of any of them, of any material otherwise deemed privileged or confidential under state law, which is made in response to a federal subpoena, shall not constitute a waiver of governmental immunity from suit for damages resulting from such disclosure. Such boards and agencies, including their officers, employees, agents, and attorneys, shall nevertheless assert any privilege which is recognized and applicable under federal law when responding to any such federal subpoena.

Acts 1966, No. 382, §6, eff. July 1, 1967. Amended by Acts 1976, No. 524, §1, eff. Aug. 5, 1976; Acts 1989, No. 156, §1; Acts 1995, No. 760, §1, 2, eff. June 27, 1995; Acts 1999, No. 416, §1; Acts 1999, No. 765, §1.

§957. Examination of Evidence by Agency

When in an adjudication proceeding a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, or the proposed order is not prepared by a member of the agency, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made final until a proposed order is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposed order shall be accompanied by a statement of the reasons therefor and of the disposition of each issue of fact or law necessary to the proposed order, prepared by the person who conducted the hearing or by one who has read the record. No sanction shall be imposed or order be issued except upon consideration of the whole record and as supported by and in accordance with the reliable, probative, and substantial evidence. The parties by written stipulation may waive, and the agency in the event there is no contest may eliminate, compliance with this Section.

Acts 1966, No. 382, §7, eff. July 1, 1967.

§958. Decisions and Orders

A final decision or order adverse to a party in an adjudication proceeding shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record. The parties by written stipulation may waive, and the agency in the event there is no contest may eliminate, compliance with this Section.

Acts 1966, No. 382, §1, eff. July 1, 1967.

§959. Rehearings

A. A decision or order in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the agency, within ten days from the date of its entry. The grounds for such action shall be either that:

(1) The decision or order is clearly contrary to the law and the evidence;

(2) The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

(3) There is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter; or

(4) There is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration, or review, and the order of the agency granting it, shall set forth the grounds which justify such action. Nothing in this Section shall prevent rehearing, reopening or reconsideration of a matter by any agency in accordance with other statutory provisions applicable to such agency, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening, or rehearing, the matter may be heard by the agency, or it may be referred to a subordinate deciding officer. The hearing shall be confined to those grounds upon which the reconsideration, reopening, or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

Acts 1966, No. 382, §9, eff. July 1, 1967.

§960. Ex Parte Consultations and Recusations

A. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

B. A subordinate deciding officer or agency member shall withdraw from any adjudicative proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a subordinate deciding officer or agency member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a subordinate deciding officer, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the governor immediately shall appoint a member pro tem to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of R.S. 49:957 shall apply.

Acts 1966, No. 382, §10, eff. July 1, 1967.

§961. Licenses

A. When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Chapter concerning adjudication shall apply.

B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

C. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or

welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Acts 1966, No. 382, §11, eff. July 1, 1967.

§962. Declaratory Orders and Rulings

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders and rulings as to the applicability of any statutory provision or of any rule or order of the agency. Declaratory orders and rulings shall have the same status as agency decisions or orders in adjudicated cases.

Acts 1966, No. 382, §12, eff. July 1, 1967; Acts 1995, No. 947, §6, eff. Jan. 1, 1996.

§962.1. Judicial Review, Rule to Show Cause for Permit Applicants

A. If the secretary does not grant or deny a permit, license, registration, variance, or compliance schedule for which the applicant had applied within the time period as provided for in R.S. 30:26 and 2022(C), R.S. 49:214.30(C)(2), and R.S. 56:6(26), the applicant has the authority, on motion in a court of competent jurisdiction, to take a rule on the secretary to show cause in not less than two nor more than thirty days, exclusive of holidays, why the applicant should not be granted the permit, license, registration, variance, or compliance schedule for which the applicant had applied. The rule may be tried out of term and in chambers.

B. In any trial or hearing on the rule, the applicant shall be entitled to a presumption that the facts as stated in the affidavit of the applicant, which shall be attached to the rule are true. The rule of the applicant shall be denied by the court only if the secretary provides clear and convincing evidence of an unavoidable cause for the delay. However, in denying the rule, the court shall decree that the secretary shall grant or deny the application within a time set by the court, or the application shall be granted without further action of the secretary or the court.

C. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the applicant granting the applicant the permit, license, registration, variance, or compliance schedule for which the applicant had applied.

D. The provisions of Subsections A, B, and C of this Section shall not apply to permit applications submitted under the Louisiana Pollutant Discharge Elimination System (LPDES) program under the Louisiana Department of Environmental Quality.

Acts 1991, No. 828, §2; Acts 1995, No. 601, §2.

§963. Judicial Review of Validity or Applicability of Rules

A.(1) The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court of the parish in which the agency is located.

(2) The agency shall be made a party to the action.

B.(1) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court.

(2) The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

C. The court shall declare the rule invalid or inapplicable if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without substantial compliance with required rulemaking procedures.

D. An action for a declaratory judgment under this Section may be brought only after the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question and only upon a showing that review of the validity and applicability of the rule in conjunction with review of a final agency decision in a contested adjudicated case would not provide an adequate remedy and would inflict irreparable injury.

E. Upon a determination by the court that any statement, guide, requirement, circular, directive, explanation, interpretation, guideline, or similar measure constitutes a rule as defined by R.S. 49:951(6) and that such measure has not been properly adopted and promulgated pursuant to this Chapter, the court shall declare the measure invalid and inapplicable. It shall not be necessary that all administrative remedies be exhausted.

Acts 1966, No. 382, §13, eff. July 1, 1967; Acts 1991, No. 639, §1, eff. July 17, 1991; Acts 1997, No. 1043, §1, eff. July 11, 1997.

§964. Judicial Review of Adjudication

A.(1) Except as provided in R.S. 15:1171 through 1177, a person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review under this Chapter whether or not he has applied to the agency for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy and would inflict irreparable injury.

(2) No agency or official thereof, or other person acting on behalf of an agency or official thereof shall be entitled to judicial review under this Chapter.

B. Proceedings for review may be instituted by filing a petition in the district court of the parish in which the agency is located within thirty days after mailing of notice of the final decision by the agency or, if a rehearing is requested, within thirty days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

C. The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay ex parte upon appropriate terms, except as otherwise provided by Title 37 of the Louisiana Revised Statutes of 1950, relative to professions and occupations. The court may require that the stay be granted in accordance with the local rules of the reviewing court pertaining to injunctive relief and the issuance of temporary restraining orders.

D. Within thirty days after the service of the petition, or within further time allowed by the court, the agency shall

transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

E. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

F. The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

G. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

(7) In cases covered by R.S. 15:1171 through 1177, manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

Acts 1966, No. 382, §14, eff. July 1, 1967; Acts 1995, No. 1105, §1, eff. June 29, 1995; Acts 1997, No. 128, §1, eff. June 12, 1997; Acts 1997, No. 1216, §2; Acts 1997, No. 1224, §1; H.C.R. No. 89, 1997 R.S., eff. June 2, 1997; Acts 1999, No. 1332, §1, eff. July 12, 1999.

§965. Appeals

An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appropriate circuit court of appeal. The appeal shall be taken as in other civil cases.

Acts 1966, No. 382, §15, eff. July 1, 1967.

§965.1. Expenses of Administrative Proceedings; Right to Recover

A. When a small business files a petition seeking: (1) relief from the application or enforcement of an agency rule or regulation, (2) judicial review of the validity or applicability of an agency rule, (3) judicial review of an adverse declaratory order or ruling, or (4) judicial review of a final decision or order in an adjudication proceeding, the petition may include a claim against the agency for the recovery of reasonable litigation expenses. If the small business prevails and the court determines that the agency acted without substantial justification, the court may award such expenses, in addition to granting any other appropriate relief.

B. A small business shall be deemed to have prevailed in an action when, in the final disposition, its position with respect to the agency rule or declaratory order or ruling is maintained, or when there is no adjudication, stipulation, or acceptance of liability on its part. However, a small business shall not be deemed to have prevailed, if the action was commenced at the instance of, or on the basis of a complaint by, anyone other than an officer, agent, or employee of the agency and was dismissed by the agency on a finding of no cause for the action or settled without a finding of fault on the part of the small business.

C. An agency shall pay any award made against it pursuant to this Section from funds in its regular operating budget and shall, at the time of its submission of its proposed annual budget, submit to the division of administration and to the presiding officer of each house of the legislature a report of all such awards paid during the previous fiscal year.

D. As used in this Section:

(1) "Reasonable litigation expenses" means any expenses, not exceeding seven thousand five hundred dollars in connection with any one claim, reasonably incurred in opposing or contesting the agency action, including costs and expenses incurred in both the administrative proceeding and the judicial proceeding, fees and expenses of expert or other witnesses, and attorney fees.

(2) "Small business" means a small business as defined by the Small Business Administration, which for purposes of size eligibility or other factors, meets the applicable criteria set forth in 13 Code of Federal Regulations, Part 121, as amended.

Added by Acts 1982, No. 497, §1.

§966. Construction and Effect; Judicial Cognizance

A. Nothing in this Chapter shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Notwithstanding the foregoing, and except as provided in R.S. 49:967, any and all statutory requirements regarding the adoption or promulgation of rules other than those contained in Sections 953, 954, 954.1

and 968 of this Title are hereby superseded by the provisions of this Chapter and are repealed. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this Chapter through the issuance of rules or otherwise.

B. If any provision of this Chapter or the application thereof is held invalid, the remainder of this Chapter or other applications of such provision shall not be affected. No subsequent legislation shall be held to supersede or modify the provisions of this Chapter except to the extent that such legislation shall do so expressly.

C. The courts of this state shall take judicial cognizance of rules promulgated in the State Register under the provisions of this Chapter.

D. Repealed by Acts 1978, No. 252, §3.

Acts 1966, No. 382, §16, eff. July 1, 1967. Amended by Acts 1979, No. 578, §§1, 2, eff. July 18, 1979.

§967. Exemptions from Provisions of Chapter

A. Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 shall not be applicable to the Board of Tax Appeals, the Department of Revenue, with the exception of the Louisiana Tax Commission that shall continue to be governed by this Chapter in its entirety, unless otherwise specifically provided by law, and the administrator of the Louisiana Employment Security Law; however, the provisions of R.S. 49:951(2), (4), (5), (6), and (7), 952, 953, 954, 954.1, 968, 969, and 970 shall be applicable to such board, department, and administrator.

B.(1) The provisions of R.S. 49:968(F) and 970 shall not be applicable to any rule promulgated by the State Civil Service Commission or the Public Service Commission.

(2) The provisions of this Chapter shall not be applicable to entities created as provided in Part V of Chapter 6 of Title 34 of the Louisiana Revised Statutes of 1950.

C. The provisions of R.S. 49:963, 964, and 965 shall not be applicable to any rule, regulation, or order of any agency subject to a right of review under the provisions of R.S. 30:12.

D.(1) The provisions of R.S. 49:968 shall not apply to any rule or regulation promulgated by the Department of Wildlife and Fisheries or the Wildlife and Fisheries Commission relative to hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oyster seasons, finfish seasons and size limits, and all rules and regulations pursuant thereto. The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission may employ the provisions of R.S. 49:953(B) in promulgating rules and regulations relative to hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oyster seasons, and finfish seasons and size limits, and all rules and regulations pursuant thereto.

(2) Those rules adopted annually pursuant to this Subsection by the Department of Wildlife and Fisheries which open and close the offshore and fall shrimp seasons, the oyster season, the marine finfish seasons, the webless migratory game bird hunting season, and the trapping season shall be effective for a period of time equal to the length of the respective season.

Acts 1983, No. 409, §2. Acts 1984, No. 244, §1; Acts 1985, No. 869, §1, eff. July 23, 1985; Acts 1986, No. 494, §1; Acts 1990, No. 248, §1; Acts 1992, No. 53, §1; Acts 1997, No. 1172, §9, eff. June 30, 1997; Acts 1997, No. 1484, §1, eff. July 16, 1997.

§968. Review of Agency Rules; Fees

A. It is the declared purpose of this Section to provide a procedure whereby the legislature may review the exercise of rule-making authority and the adoption, increasing, or decreasing of fees, extensions of the legislative lawmaking function, which it has delegated to state agencies.

B. Prior to the adoption, amendment, or repeal of any rule or the adoption, increasing, or decreasing of any fee, the agency shall submit a report relative to such proposed rule change or fee adoption, increase, or decrease to the appropriate standing committees of the legislature and the presiding officers of the respective houses as provided in this Section. The report shall be so submitted on the same day the notice of the intended action is submitted to the Louisiana Register for publication in accordance with R.S. 49:953(A)(1). The report shall be submitted to each standing committee at the committee's office in the state capitol by certified mail with return receipt requested or by messenger who shall provide a receipt for signature. The return receipt or the messenger's receipt shall be proof of receipt of the report by the committee.

(1) The Department of Economic Development, all of the agencies made a part of it, and those agencies transferred to or placed within the office of the governor pursuant to R.S. 36:4.1 shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce and Consumer Protection.

(2) Corrections services of the Department of Public Safety and Corrections and all the agencies of the department related to corrections and concealed weapons and concealed weapon permits, except as otherwise provided in this Subsection, the Louisiana State Board of Private Security Examiners, and the gaming enforcement section of the office of state police within the Department of Public Safety and Corrections shall submit all reports other than reports on proposed rule changes affecting prison enterprise programs, to the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary, Section C; however, the Crime Victims Reparation Board shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section B.

(3) The Department of Culture, Recreation and Tourism and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Commerce and Consumer Protection.

(a) The office of the state library, the office of the state museum, the State Board of Library Examiners, the Louisiana Archaeological Survey and Antiquities Commission, the Board of Directors of the Louisiana State Museum, the Board of Commissioners of the State Library of Louisiana, the Louisiana State Arts Council, the Louisiana State Capitol Fiftieth Anniversary Commission, and the Louisiana National Register Review Committee shall submit the report to the House Committee on Municipal, Parochial

and Cultural Affairs and the Senate Committee on Education.

(b) The office of state parks and the State Parks and Recreation Commission shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Natural Resources.

(c) The office of tourism and promotion, the Louisiana Tourist Development Commission, and the Mississippi River Road Commission shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce and Consumer Protection.

(4) The Department of State and all of the agencies made a part of it shall submit a report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

(5) The Department of Labor and all of the agencies made a part of it shall submit the report to the House Committee on Labor and Industrial Relations and the Senate Committee on Labor and Industrial Relations.

(6) The Department of Transportation and Development and all of the agencies made a part of it shall submit the report, to the House Committee on Transportation, Highways and Public Works and the Senate Committee on Transportation, Highways and Public Works. The department shall also submit to the standing committees any policies or priorities developed for the expenditure or distribution of any monies from the Transportation Trust Fund as created by Article VII, Section 27 of the Constitution of Louisiana. The policies and priorities shall be submitted for review purposes only.

NOTE: Paragraph (7) repealed by Acts 2001, No. 451, §5, eff. Jan. 12, 2004, or when a vacancy occurs in the office of commissioner of elections.

(7) The Department of Elections and Registration and all of the agencies made a part of it shall submit the report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

(8) The Department of Justice and all of the agencies made a part of it shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section C.

(9) The Department of Civil Service and all of the agencies made a part of it shall submit the report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

(10) The Department of Revenue and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs; however, the office of charitable gaming shall submit the report to the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary, Section B.

(11) The Department of Natural Resources and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and the Senate Committee on Natural Resources.

(12) Public Safety Services of the Department of Public Safety and Corrections and all the agencies of the department related to public safety, except as otherwise provided in this Subsection, shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section B; however, the office of motor vehicles shall submit the report to the House Committee on Transportation, Highways and Public Works and the Senate Committee on the Judiciary, Section B.

(13) The Department of Wildlife and Fisheries and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and the Senate Committee on Natural Resources.

(14) The Department of Insurance and all of the agencies made a part of it shall submit the report to the House Committee on Insurance and the Senate Committee on Insurance.

(15)(a) The Department of the Treasury and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Appropriations and the Senate Committee on Finance.

(b) Each retirement system made a part of the Department of the Treasury shall submit the report to the House Committee on Retirement and the Senate Committee on Retirement.

(16) The Department of Health and Hospitals and all of the agencies made a part of it shall submit the report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare.

(17) The Department of Social Services and all of the agencies made a part of it shall submit the report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare.

(18) The Department of Agriculture and all of the agencies made a part of it shall submit all reports, and the Department of Public Safety and Corrections and all the agencies made a part of it shall submit reports on proposed rule changes affecting prison enterprise programs, to the House Committee on Agriculture and the Senate Committee on Agriculture.

(19) The Department of Education and all of the agencies made a part of it shall submit the report to the House Committee on Education and the Senate Committee on Education.

(20) The Department of Public Service and all of the agencies made a part of it shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce.

(21)(a) Except as provided in Paragraph (1) of this Subsection, the office of the governor and the office of the lieutenant governor and all of the agencies within or part of either and any other agency for which provisions are not otherwise made in this Subsection, shall submit the report to the speaker of the House of Representatives and the president of the Senate, except that executive orders duly issued by the governor and attested to by the secretary of state are exempt from the provisions of this Chapter. The speaker of the House of Representatives and the president of the Senate shall promptly forward the report to the appropriate standing committee of their respective houses.

(b) The Louisiana Workforce Commission shall submit the report to the House Committee on Labor and Industrial Relations and the Senate Committee on Labor and Industrial Relations.

(c) The Office of Group Benefits shall submit the report to the House Committee on Appropriations and the Senate Committee on Finance.

(22) The Department of Environmental Quality and all of the agencies made a part of it shall submit the report to the House Committee on the Environment and the Senate Committee on Environmental Quality.

(23) The Louisiana Sentencing Commission shall submit the report to the House Committee on the Administration of Criminal Justice and the Senate Committee on the Judiciary, Section C.

(24) In addition to the submission of a report relative to a proposed rule change or fee adoption, increase, or decrease by an agency to the appropriate standing committee as specified in Paragraphs (1) through (23) of this Subsection, whenever the fiscal impact of the rule or fee adoption, increase, or decrease, as indicated by the statement of fiscal impact required by R.S. 49:968(C)(5), exceeds one million dollars, the report on the proposed rule change or fee adoption, increase, or decrease shall also be submitted to the Senate Committee on Finance and the House Committee on Appropriations and shall be subject to review by those committees in the same manner and to the same extent as the review of the standing committees provided for in Paragraphs (1) through (23) of this Subsection.

C. The report, as provided for in Subsection B of this Section, shall contain:

(1) A copy of the rule as it is proposed for adoption, amendment, or repeal and a statement of the amount of the fee to be adopted or the amount of the proposed increase or decrease.

(2) A statement of the proposed action, that is, whether the rule is proposed for adoption, amendment, or repeal; a brief summary of the content of the rule if proposed for adoption or repeal; and a brief summary of the change in the rule if proposed for amendment.

(3) The specific citation of the enabling legislation purporting to authorize the adoption, amending, or repeal of the rule or purporting to authorize the adoption, increasing, or decreasing of the fee.

(4) A statement of the circumstances which require adoption, amending, or repeal of the rule or the adoption, increasing, or decreasing of the fee.

(5) A statement of the fiscal impact of the proposed action and a statement of the economic impact of the proposed action, both approved by the Legislative Fiscal Office.

D.(1)(a) The chairman of each standing committee to which reports are submitted shall appoint an oversight subcommittee, which may conduct hearings on all rules that are proposed for adoption, amendment, or repeal and on all proposed fee adoptions, increases, or decreases. Any such hearing shall be conducted after any hearing is conducted by the agency pursuant to R.S. 49:953(A)(2).

(b) The agency shall submit a report to the subcommittee, in the same manner as the submittal of the report provided for in Subsection B of this Section, which shall include:

(i) A summary of all testimony at any hearing conducted pursuant to R.S. 49:953(A)(2).

(ii) A summary of all comments received by the agency, a copy of the agency's response to the summarized comments, and a statement of any tentative or proposed action of the agency resulting from oral or written comments received.

(iii) A revision of the proposed rule if any changes to the rule have been made since the report provided for in Subsection B of this Section was submitted, or a statement that no changes have been made.

(iv) A concise statement of the principal reasons for and against adoption of any amendments or changes suggested.

(2)(a) Except as provided in Paragraph H(2) of this Section, any subcommittee hearing on a proposed rule shall be held no earlier than five days and no later than thirty days following the day the report required by Subparagraph (1)(b) of this Subsection is received by the subcommittee.

(b) The oversight subcommittee may consist of the entire membership of the standing committee and shall consist of at least a majority of the membership of the standing committee, at the discretion of the chairman of the standing committee, with the concurrence of the speaker of the House of Representatives or the president of the Senate. House and Senate oversight subcommittees may meet jointly or separately to conduct hearings for purposes of rules review.

(3) At such hearings, the oversight subcommittees shall:

(a) Determine whether the rule change or action on fees is in conformity with the intent and scope of the enabling legislation purporting to authorize the adoption thereof.

(b) Determine whether the rule change or action on fees is in conformity and not contrary to all applicable provisions of law and of the constitution.

(c) Determine the advisability or relative merit of the rule change or action on fees.

(d) Determine whether the rule change or action on fees is acceptable or unacceptable to the oversight subcommittee.

E.(1)(a) Each such determination shall be made by the respective subcommittees of each house acting separately. Action by a subcommittee shall require the favorable vote of a majority of the members of the subcommittee who are present and voting, provided a quorum is present.

(b) No later than three weeks before the deadline for legislative oversight action, the chairman of the subcommittee may request, by letter, the consent of the subcommittee members to have a mail ballot instead of a meeting to consider a proposed rule or proposed fee action. If no objection is received within ten days of the chairman's request, the chairman shall cause a mail ballot to be sent to the members of the subcommittee. In order for the subcommittee to reject a proposed rule or proposed fee action, a majority of ballots returned to the chairman at least twenty-four hours prior to the deadline for legislative oversight action must disapprove the change. Any determination by the subcommittee shall be made within the period provided for oversight hearings in Paragraph D(2) of this Section.

(2) Failure of a subcommittee to conduct a hearing or to make a determination regarding any rule proposed for adoption, amendment, or repeal shall not affect the validity of a rule otherwise adopted in compliance with this Chapter.

F.(1) If either the House or Senate oversight subcommittee determines that a proposed rule change or proposed fee action is unacceptable, the respective subcommittee shall provide a written report which contains the following:

(a) A copy of the proposed rule or a statement of the amount of the proposed fee action.

(b) A summary of the determinations made by the subcommittee in accordance with Subsections D and E of this Section.

(2) The written report shall be delivered to the governor, the agency proposing the rule change, and the Louisiana Register no later than four days after the committee makes its determination.

G. After receipt of the report of the subcommittee, the governor shall have ten calendar days in which to disapprove the action taken by the subcommittee. If the action of the subcommittee is not disapproved by the governor within ten calendar days from the day the subcommittee report is delivered to him, the rule change shall not be adopted by the agency until it has been changed or modified and subsequently found acceptable by the subcommittee, or has been approved by the standing committee, or by the legislature by concurrent resolution. If a proposed rule change is determined to be unacceptable by an oversight committee and such determination is not disapproved by the governor as provided in this Section, the agency shall not propose a rule change or emergency rule that is the same or substantially similar to such disapproved proposed rule change nor shall the agency adopt an emergency rule that is the same or substantially similar to such disapproved proposed rule change within four months after issuance of a written report by the subcommittee as provided in Subsection F of this Section nor more than once during the interim between regular sessions of the legislature.

H.(1) If both the House and Senate oversight subcommittees fail to find a proposed rule change unacceptable as provided herein, or if the governor disapproves the action of an oversight subcommittee within the time provided in R.S. 49:968(G), the proposed rule change may be adopted by the agency in the identical form proposed by the agency or with technical changes or with changes suggested by the subcommittee, provided at least ninety days and no more than twelve months have elapsed since notice of intent was published in the State Register.

(2) Substantive changes to a rule proposed for adoption, amendment, or repeal occur if the nature of the proposed rule is altered or if such changes affect additional or different substantive matters or issues not included in the notice required by R.S. 49:953(A)(1). Whenever an agency seeks to substantively change a proposed rule after notice of intent has been published in the Louisiana Register pursuant to R.S. 49:953(A)(1), the agency shall hold a public hearing on the substantive changes preceded by an announcement of the hearing in the Louisiana Register. A notice of the hearing shall be mailed within ten days after the date the announcement is submitted to the Louisiana Register to all persons who have made request of the agency for such notice. Any hearing by the agency pursuant to this Paragraph shall be held no earlier than thirty days after the publication of the announcement in the Louisiana Register. The agency hearing shall conform to R.S. 49:953(A)(2)(b), and a report on the hearing shall be made to the oversight committees in accordance with Subparagraph D(1)(b) of this Section. The agency shall make available to interested persons a copy of such report no later than one working day following the submittal of such report to the oversight committees. Any determination as to the rule by the oversight committees, prior to gubernatorial review as provided in Subsection G of this Section, shall be made no earlier than five days and no later than thirty days following the day the report required by this Paragraph is received from the agency.

(3) If a rule or part of a rule that is severable from a larger rule or body of rules proposed as a unit is found unacceptable, the rules or parts thereof found acceptable may be adopted by the agency in accordance with Paragraph (1) of this Subsection.

I. If the governor disapproves the action of an oversight subcommittee, he shall state written reasons for his action and shall deliver a copy of his reasons to the House and Senate oversight subcommittees, the agency proposing the rule change, and the State Register.

J. The State Register shall publish a copy of the written report of an oversight subcommittee and the written report of the governor in disapproving any such action, or if unduly cumbersome, expensive, or otherwise inexpedient, a notice stating the general subject matter of the omitted report and stating how a copy thereof may be obtained.

K. Each year, thirty days prior to the beginning of the regular session of the legislature, each agency which has proposed the adoption, amendment, or repeal of any rule or the adoption, increase, or decrease of any fee during the previous year, shall submit a report to the appropriate committees as provided for in Subsection B of this Section. This report shall contain a statement of the action taken by the agency with respect to adoption, amendment, or repeal of each rule proposed for adoption, amendment, or repeal and a report of the action taken by the agency with respect to any proposed fee adoption, increase, or decrease.

L. After submission of the report to the standing committee, a public hearing may be held by the committee for the purpose of reviewing the report with representatives of the proposing agency.

M. No later than the second legislative day of the regular session of the legislature, a standing committee to which proposed rule changes or proposed fee changes are submitted may submit a report to the legislature. This report shall contain a summary of all action taken by the committee or the oversight subcommittee with respect to agency rules and fees during the preceding twelve months. The report shall also contain any recommendations of the committee for statutory changes concerning the agency, particularly in statutes authorizing the making and promulgation of rules and fees of the agency.

N. A standing committee may, at any time, exercise the powers granted to an oversight subcommittee under the provisions of this Section.

Acts 1990, No. 312, §1; Acts 1990, No. 938, §1; Acts 1990, No. 1085, §1, eff. July 31, 1990; Acts 1991, No. 21, §2, eff. June 14, 1991; Acts 1991, No. 938, §5; Acts 1992, No. 377, §4, eff. June 17, 1992; Acts 1992, No. 447, §3, eff. June 20, 1992; Acts 1993, No. 119, §1; Acts 1993, No. 733, §1; Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date is applicable to Dept. of Health and

Hospitals only); Acts 1996, 1st Ex. Sess., No. 36, §3, eff. May 7, 1996; Acts 1997, No. 1, §5, eff. April 30, 1997; Acts 1997, No. 1001, §1; Acts 1999, No. 568, §2, eff. June 30, 1999; Acts 2001, No. 8, §16, eff. July 1, 2001; Acts 2001, No. 9, §8, eff. July 1, 2001; Acts 2001, No. 300, §3; Acts 2001, No. 451, §5, eff. Jan. 12, 2004; Acts 2001, No. 1178, §7, eff. June 29, 2001.

NOTE: See Acts 1999, No. 568, §§5 and 7.

NOTE: See Acts 2001, No. 300, §5.

NOTE: See Acts 2001, No. 451, '8(A) relative to effective date.

§969. Legislative Veto, Amendment, or Suspension of Rules, Regulations, and Fees

In addition to the procedures provided in R.S. 49:968 for review of the exercise of the rulemaking authority delegated by the legislature to state agencies, as defined by this Chapter, the legislature, by Concurrent Resolution, may suspend, amend, or repeal any rule or regulation or body of rules or regulations, or any fee or any increase, decrease, or repeal of any fee, adopted by a state department, agency, board, or commission. The Louisiana Register shall publish a brief summary of any Concurrent Resolution adopted by the legislature pursuant to this Section. Such summary shall be published not later than forty-five days after signing of such Resolution by the presiding officers of the legislature.

Added by Acts 1980, No. 660, §1. Acts 1995, No. 1109, §1, eff. Oct. 1, 1995.

§970. Gubernatorial Suspension or Veto of Rules and Regulations

The governor, by executive order, may suspend or veto any rule or regulation or body of rules or regulations adopted by a state department, agency, board or commission, except as provided in R.S. 49:967, within thirty days of their adoption. Upon the execution of such an order, the governor shall transmit copies thereof to the speaker of the House of Representatives and president of the Senate.

Added by Acts 1981, No. 453, §1.

§971. Rejection of Agency Fee Adoption, Increases, or Decreases; Prohibition against Fee Increases and New Fees; Exceptions

A.(1) If either the House or Senate oversight subcommittees appointed pursuant to R.S. 49:968 determines that a proposed fee adoption, increase, or decrease is unacceptable, the respective subcommittee shall provide a written report containing the reasons therefor to the governor, the agency proposing the fee adoption, increase, or decrease, and the other house of the legislature. If the oversight subcommittee of the other house of the legislature likewise determines that the proposed fee adoption, increase, or decrease is unacceptable the fee action shall not be adopted by the agency.

(2) If a proposed fee adoption, increase, or decrease is found unacceptable as provided in this Section, the agency shall not propose a fee or a fee change or an emergency fee or an emergency fee change that is the same or substantially similar to the disapproved fee action nor shall the agency adopt an emergency fee or fee change that is the same or substantially similar to the disapproved fee action within four months after issuance of the subcommittee report nor more than once during the interim between regular sessions of the legislature.

(3) However, no state agency which has the authority to impose or assess fees shall increase any existing fee or impose any new fee unless the fee increase or fee adoption is expressly authorized pursuant to a fee schedule established by statute or specifically authorized by a federal law, rules, or regulations for the purpose of satisfying an express mandate of such federal law, rule, or regulation. No state agency shall adjust, modify or change the formula for any authorized fee in a manner that would increase the fee paid by any person by more than five percent of the relevant fee paid by such person in the previous fiscal year. Proposed fee increases of less than five percent shall be subject to oversight as required by R.S. 49:968.

(4)(a) The provisions of Paragraph (3) of this Subsection shall not apply to any department which is constitutionally created and headed by an officer who is duly elected by a majority vote of the electorate of the state.

(b) The provisions of Paragraph (3) of this Subsection shall not apply to any state professional and occupational licensing boards.

B. Action by a subcommittee shall require the favorable vote of a majority of the members of the subcommittee who are present and voting, provided a quorum is present.

Acts 1987, No. 240, §1; Acts 1995, No. 1005, §1, eff. Aug. 15, 1995; Acts 1995, No. 1057, §1, eff. June 29, 1995, and Jan. 8, 1996 (1/8/96 date is applicable to Dept. of Health and Hospitals only).

§972. Family Impact Statement; Issues to be Considered; Procedure; Penalty

A. Prior to the adoption and implementation of rules, each state agency shall consider and state in writing the impact of such rules on family formation, stability, and autonomy. This written consideration shall be known as the "family impact statement."

B. The family impact statement will consider and respond in writing to the following regarding the proposed rule:

(1) The effect on the stability of the family.

(2) The effect on the authority and rights of parents regarding the education and supervision of their children.

(3) The effect on the functioning of the family.

(4) The effect on family earnings and family budget.

(5) The effect on the behavior and personal responsibility of children.

(6) The ability of the family or a local government to perform the function as contained in the proposed rule.

C. All family impact statements must be in writing and kept on file in the state agency which has adopted, amended, or repealed a rule in accordance with the applicable provisions of law relating to public records.

D. For the purposes of this Section, "family" shall mean a group of individuals related by blood, marriage, or adoption who live together as a single household.

Acts 1999, No. 1183, §1.

Chapter 13-A. Revision of Louisiana's Administrative Code

§981. Continuous Revision under Supervision of Division of Administration, Office of the State Register

The office of the state register, as the official entity to receive, compute, index, and publish the Louisiana Register and Louisiana Administrative Code, shall direct and

supervise the continuous revision, clarification, and coordination of the Louisiana Register and Louisiana Administrative Code in a manner not inconsistent with the provisions of this Chapter.

Acts 1993, No. 379, §1.

§982. New Regulation; Incorporation in Louisiana Register and Louisiana Administrative Code; Resolution of Conflicting Rules

A. Upon receipt of any rules promulgated under the Administrative Procedure Act, the office of the state register shall prepare the "Louisiana Register," containing the rules to be promulgated in the Louisiana Administrative Code as they may have been amended or repromulgated and omitting therefrom those sections that have been repealed. There shall also be incorporated therein, in an appropriate place and classification, the text of all the new rules of a general and public nature, assigning to these rules an appropriate title, part, chapter, and section number, and indicating the statutory authority of the rules from which they are taken.

B. When a conflict between two or more rules affecting the same subject matter in the same provision or regulation cannot be resolved for the purpose of incorporating the text into the Louisiana Administrative Code, the office of the state register shall so notify the secretary of the department or administrative officer charged with the promulgation of the rule prior to preparing the Louisiana Administrative Code. The secretary or administrative officer shall be notified of the proposed correction. If no written disapproval of the secretary or administrative officer, or his designee, of the proposed correction is received by the office of the state register within seven days after the secretary or administrative officer receives the notice, the office of the state register shall then direct the printer to incorporate into the Louisiana Administrative Code the text of the provision of the rule properly promulgated.

Acts 1993, No. 379, §1.

§983. Incorporation of Current Rules and Regulations Procedure

A. In preparing the Louisiana Register or the Louisiana Administrative Code as provided for in R.S. 49:981, the office of the state register shall not alter the sense, meaning, or effect of any rule properly promulgated under the Administrative Procedure Act, but it may:

(1) Renumber and rearrange sections or parts of sections.

(2) Transfer sections or divide sections so as to give to distinct subject matters a separate section number, but without changing the meaning.

(3) Insert or change the wording of headnotes.

(4) Change reference numbers to agree with renumbered parts, chapters, or sections.

(5) Substitute the proper section, chapter, or part number for the terms "this part," "the preceding section," and the like.

(6) Strike out figures where they are merely a repetition of written words and vice-versa.

(7) Change capitalization for the purpose of uniformity.

(8) Correct manifest typographical and grammatical errors.

(9) Make any other purely formal or clerical changes in keeping with the purpose of the revision.

B. The office of the state register shall notify the secretary or administrative officer charged with promulgation of the rule prior to making any proposed revision authorized by this Section. If no written disapproval of the secretary or administrative officer, or his designee, of the proposed revision is received by the office of the state register within seven days after the secretary or administrative officer receives the notice, the office of the state register shall proceed with the revision.

Acts 1993, No. 379, §1.

§984. Alphabetical or Numerical Sequence of Laws

A. Whenever a rule defines terms, enumerates provisions or items, or otherwise sets forth provisions of a rule in a numerical or alphabetical listing or sequence, and such provision, as promulgated, fails to establish or fails to maintain an existing alphabetical or numerical sequence, the office of the state register, in preparing the Louisiana Register and the Louisiana Administrative Code as provided for by R.S. 49:983, shall rearrange and renumber or redesignate the provisions to the extent necessary to place all of them in consistent order.

B. The office of the state register shall notify the secretary or administrative officer charged with promulgation of the rule prior to making any proposed revision authorized by this Section. If no written disapproval of the secretary or administrative officer, or his designee, is received by the office of the state register within seven days after the secretary or administrative officer receives the notice, the office of the state register shall proceed with the revision.

C. This requirement is in addition to any other authority granted to the office of the state register in the preparation of the Louisiana Register or the Louisiana Administrative Code, particularly by R.S. 49:983.

Acts 1993, No. 379, §1.

§985. Submitting Copy to the Proper Party

A draft of the Louisiana Administrative Code prepared by the office of the state register shall be submitted to the appropriate secretary or administrative officer charged with the promulgation of any rule prior to transmittal to the printer.

Acts 1993, No. 379, §1.

§986. Filing of Copy with Commissioner of Administration; Certificate of Correctness; Printing

Any edition of the Louisiana Administrative Code, or of any supplement thereto, prepared in the manner provided in R.S. 49:982 and 983, shall be certified by the office of the state register that each section therein has been compared with the original sections in the official copy of the Louisiana Register with the final provisions of the promulgated rules from which the sections were derived, and that with the exception of the changes of form permitted in R.S. 49:983, the sections are correct. The office of the state register shall order the printing of an edition sufficient in number to supply the demand. When the edition has been printed, the office of the state register shall affix to one copy of the printed edition the office of the state register's original certificate and file the same for record in his office. All other copies of the same edition may contain a printed facsimile of the office's certificate.

Acts 1993, No. 379, §1.

§987. Printing and Publication of Louisiana Register; Proof of Certified Edition

The office of the state register may enter into contracts with private publishers for the printing, publication, sale, and distribution of any edition of the Louisiana Register and the Louisiana Administrative Code prepared by the office of the state register and certified by it pursuant to the provisions of this Chapter. Those editions so authorized by the office of the state register and containing the printed facsimile of the office of the state register's certificate of correctness shall be admissible as prima facie evidence of the rules contained therein.

Acts 1993, No. 379, §1.

Chapter 13-B. Division of Administrative Law

Part A. Administrative Law

§991. Creation of Division of Administrative Law

The division of administrative law, hereafter referred to as "division," is created in the Department of State Civil Service.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 1997, No. 1162, §2, eff. July 1, 1998.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

§992. Applicability; Exemptions

A.(1) Prior to October 1, 1996, the provisions of the Administrative Procedure Act shall apply to all adjudications as defined by that Act.

(2) On and after October 1, 1996, the division shall commence and handle all adjudications in the manner required by the Administrative Procedure Act provided that the provisions of that Act are not inconsistent with the provisions of this Chapter.

B.(1) Notwithstanding any other provision of the law to the contrary except as provided by R.S. 49:967 and the provisions of this Section, all adjudications shall be resolved exclusively as required by the provision of this Chapter and the Administrative Procedure Act.

(2) In an adjudication commenced by the division, the administrative law judge shall issue the final decision or order, whether or not on rehearing, and the agency shall have no authority to override such decision or order.

(3) Nothing in this Section shall affect the right to or manner of judicial appeal in any adjudication, irrespective of whether or not such adjudication is commenced by the division or by an agency. However, no agency or official thereof, or other person acting on behalf of an agency or official thereof, shall be entitled to judicial review of a decision made pursuant to this Chapter.

C. The positions appointed by the director pursuant to this Chapter shall be in the classified service.

D.(1) Except as provided in Paragraphs (2) through (8) of this Subsection, the provisions of this Chapter shall apply to any board, commission, department, or agency of the executive branch of state government.

(2) Any board, commission, department, or agency which is required, pursuant to a federal mandate and as a condition of federal funding, to conduct or to render a final order in an adjudication proceeding shall be exempt from the provisions of this Chapter to the extent of the federal mandate.

(3) The office of workers' compensation administration in the Department of Labor shall be exempt from the provisions of this Chapter.

(4) The office of regulatory services in the Department of Labor shall be exempt from this Chapter.

(5) State professional and occupational licensing boards shall be exempt from the provisions of this Chapter.

(6) The Department of Agriculture shall be exempt from the provisions of this Chapter.

(7) All adjudications by the assistant secretary of the office of conservation pursuant to Chapter 1 and 7 of Subtitle 1 of Title 30 of the Louisiana Revised Statutes, except determinations of violations of laws, rules, regulations and orders, and determinations of penalties for such violations, shall be exempt from the provisions of this Chapter.

(8) The Public Service Commission and any entity which by law has its adjudications handled by the Public Service Commission shall be exempt from the provisions of this Chapter.

E. In the event that a person files a civil action to require that a state department, division, office, agency, board, commission, or other entity of state government conduct an adjudication as required by this Chapter and judgment is rendered in his favor, he shall be entitled to an award of reasonable attorney fees to be taxed as costs in the matter.

F. The provisions of this Chapter shall apply to all adjudications as defined in the Administrative Procedure Act pursuant to the Procurement Code.

G. Any board or commission authorized by law to conduct hearings may continue to hold such hearings.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 1997, No. 1172, §9, eff. June 30, 1997; Acts 1997, No. 1484, §1, eff. July 16, 1997; Acts 1999, No. 1332, §1, eff. July 12, 1999; Acts 2001, No. 527, §1.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

NOTE: See Acts 1999, No. 1332, §2 relative to the remedial nature of Act.

§993. Definitions; Rules

A. The definitions for terms as provided by R.S. 49:951 shall apply to such terms used in this Chapter.

B. The division may promulgate rules according to the Administrative Procedure Act to insure compliance with the provisions of this Chapter.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

§994. Administrative Law Judges

A. The director of the division shall employ the administrative law judges for the division, each of whom shall have the following qualifications:

(1) An administrative law judge shall be a resident of Louisiana.

(2) An administrative law judge shall be licensed to practice law in Louisiana.

(3) An administrative law judge shall have been engaged in the actual practice of law for at least five years prior to his appointment.

B. An administrative law judge shall be an employee of the division.

C. Notwithstanding the provisions of this Section, all persons employed in affected agencies on October 1, 1996, who handle adjudications and whether or not they meet the qualifications of this Chapter shall, unless the person declines, be transferred to and employed in the division created by this Chapter to handle adjudications in the

manner provided in this Chapter. However, no person other than those provided for in this Subsection shall be employed as an administrative law judge who does not meet the requirements of this Section.

D. The administrative law judge shall have the authority to:

(1) Regulate the adjudicatory proceedings assigned to him.

(2) Issue such decisions and orders as are necessary to promote a fair, orderly, and prompt adjudication.

(3) Exercise those powers vested in the presiding officer in the Administrative Procedure Act.

(4) If the parties do not object, conduct adjudications or conferences in person or by telephone, video conference, or similar communication equipment, and administer oaths in such proceedings.

(5) Continue an adjudication in any case when a party or subpoenaed necessary witness has been called to service in the uniformed services as defined in R.S. 29:403(9), including but not limited to a proceeding pursuant to R.S. 32:667.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2001, No. 84, §1; Acts 2001, 2nd Ex. Sess., No. 7, §2, eff. Oct. 16, 2001.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

§995. Director

A. The governor shall appoint, and the Senate shall confirm, a director for the division, who shall have the following qualifications:

(1) The director shall be a resident of Louisiana.

(2) The director shall be licensed to practice law in Louisiana.

(3) The director shall have been engaged in the actual practice of law for at least five years prior to his appointment.

B.(1) The director shall serve a six-year term and may be reappointed and confirmed for subsequent six-year terms without limitation.

(2) If a vacancy occurs during the director's term, the governor shall appoint a successor to fill the remainder of the vacant term.

(3) The first director shall be appointed on July 1, 1996, and shall take such action in compliance with this Chapter as necessary to ensure that the provisions of this Chapter are implemented by October 1, 1996.

C. The director shall be a full-time unclassified employee of the division and he shall not accept or engage in additional employment of any kind.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

§996. Duties of the Director

The director of the division shall take the following actions:

(1) Administer and cause the work of the division to be performed in such a manner and pursuant to such a program as may be appropriate.

(2) Organize the division into such sections as may be appropriate.

(3) Assign administrative law judges as appropriate to perform duties vested in or required by the division.

(4) Develop and maintain a program for the continual training and education of administrative law judges and agencies in regard to their responsibilities under this Chapter and the Administrative Procedure Act.

(5) Secure, compile, and maintain all records of adjudications held pursuant to this Chapter or the Administrative Procedure Act, and such reference materials and supporting information as may be appropriate.

(6) Develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether or not a summary or ordinary hearing should be held, to regulate the conduct of adjudications.

(7) Promulgate and enforce rules for the prompt implementation and coordinated administration of this Chapter as may be appropriate.

(8) Administer and supervise the conduct of adjudications.

(9) Assist agencies in the preparation, consideration, publication, and interpretation of rules as appropriate pursuant to the Administrative Procedure Act.

(10) Access information concerning the several agencies to assure that they properly promulgate rules required by law.

(11) Employ the services of the several agencies and their employees in such manner and to such extent as may be agreed upon by the director and the chief executive officer of such agency.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

§997. Program of Judicial Evaluation

A. The director shall develop and implement a program of judicial evaluation to aid in the performance of his duties.

B. The judicial evaluation shall focus on three areas of judicial performance including competence, productivity, and demeanor. It shall include consideration of the following:

(1) Industry and promptness in adhering to schedules.

(2) Tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses, and counsel and in presiding over adjudications.

(3) Legal skills and knowledge of the law and new legal developments.

(4) Analytical talents and writing abilities.

(5) Settlement skills.

(6) Quantity, nature, and quality of caseload disposition.

(7) Impartiality and conscientiousness.

C. The director shall develop standards and procedures for the judicial evaluation which shall include taking comments from randomly selected litigants and lawyers who have appeared before the administrative law judge under evaluation.

D. The judicial evaluation shall include a review of the methods used by the administrative law judge. The judicial evaluation shall not include a review of any result as determined by an administrative law judge in any adjudication.

E. Before implementing any action based on the findings of the judicial evaluation, the director shall discuss the findings and the proposed action with the affected judge.

F. The judicial evaluation and supporting documents shall be confidential and shall not be subject to open records provisions of R.S. 44:1 et seq.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

§998. Prehearing Conference

A. The administrative law judge may conduct a prehearing conference pursuant to a motion of any party or on his own motion.

B. The administrative law judge shall set the time and place for the prehearing conference.

C. The administrative law judge shall give reasonable notice of the prehearing conference to all parties.

D. The prehearing conference may be conducted for the purpose of dealing with one or more of the following matters:

(1) Exploration of settlement possibilities.

(2) Preparation of stipulations.

(3) Clarification of issues.

(4) Rulings on the identities and limitation on the number of witnesses.

(5) Objections to proffers of evidence.

(6) Order of presentation of evidence and cross-examination.

(7) Rulings regarding issuance of subpoenas and protective orders.

(8) Schedules for the submission of written briefs.

(9) Schedules for the conduct of a hearing.

(10) Any other matter to promote the orderly and prompt conduct of the adjudication.

E. The administrative law judge shall issue a prehearing order, which he may direct one or more of the parties to prepare, incorporating the matters determined at the prehearing conference.

F. An administrative law judge assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

§999. Disqualification and Withdrawal of Administrative Law Judge

A. An administrative law judge shall voluntarily disqualify himself and withdraw from any adjudication in which he cannot accord a fair and impartial hearing or consideration, or when required to by applicable rules governing the practice of law in Louisiana.

B.(1) Any party may request the disqualification of an administrative law judge by filing an affidavit, promptly upon learning of the basis for the disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.

(2) The director shall promptly determine whether or not to disqualify an administrative law judge based on the request, or alternatively, he may hold a preliminary hearing at least ten calendar days prior to the hearing date for the purpose of receiving evidence relating to the grounds alleged for disqualification.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

§999.1. Contract for Adjudication Services; Other Governmental Entities

The division is authorized to provide administrative law judges on a contractual basis to any governmental entity not covered by this Chapter, and to conduct administrative hearings for such entity.

Acts 1999, No. 416, §1.

Part B. Suspension and Revocation of License or Permit for Felonious Activity

§999.21. Suspension and Ultimate Revocation of License or Permit; Felony Conviction

A. As used in this Part, the following terms shall have the following definitions:

(1) "Enforcing authority" means any of the following who have authority to enforce the provisions of this Part:

(a) The issuing agency which issued the license or permit.

(b) The attorney general.

(2) "Holder of a license or permit" means the natural person or other entity in whose name a license or permit is issued and who holds such license or permit.

(3) "Issuing agency" means a state agency, board, commission, department, or other entity of the state which issues a license or permit.

(4) "License or permit" means any license or permit issued to any person or other entity by a state agency, except for any license or permit issued pursuant to any provisions of the law in Title 37 or Title 3 of the Louisiana Revised Statutes of 1950.

B. Notwithstanding any other provision of law to the contrary, and in addition to any other sanction or penalty which may be imposed, any license or permit issued by any issuing agency may be suspended and ultimately revoked in accordance with the procedures provided for in this Part if the natural person who is the holder of such permit or license, the natural person who owns in excess of fifty percent of an entity which holds the license or permit, or the natural person who is the chief executive officer of an entity which holds the license or permit has been convicted of, or has entered a plea of guilty or nolo contendere to, any crime which is a felony under state or federal law related to obtaining or keeping the license or permit.

C. The license or permit may be suspended and its revocation shall be recommended to the courts by the issuing agency which has issued the license or permit upon its determination in the manner provided for in this Part that a person provided for in this Section has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony under state or federal law related to obtaining or keeping the license or permit.

D. Such license or permit shall be revoked upon a final judgment by a court that the action of the issuing agency in suspending the license was in accord with the facts and law.

Acts 1997, No. 1162, §1, eff. July 1, 1998.

§999.22. Enforcing Authority; Initiation of Action

A. Any enforcing authority may bring an action against the holder of a license or permit to suspend and ultimately revoke such license or permit in the manner and according to

the procedure provided for in this Part if the enforcing authority obtains knowledge that the natural person who is the holder of the permit or license, or the natural person who owns in excess of fifty percent of the entity which holds the license or permit, or the natural person who is the chief executive officer of the entity which holds the license or permit has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime which is a felony under state or federal law related to obtaining or keeping the license or permit.

B. The enforcing authority may initiate the action by providing written notice by certified mail of its intention to suspend and ultimately revoke the license or permit of the holder pursuant to this Part, sent to the holder of the license or permit, the person alleged to have been convicted of, or to have entered a plea of guilty or nolo contendere to, a felony under state or federal law related to obtaining or keeping the license or permit, and to the issuing agency which issued the license or permit, if different from the enforcing authority.

Acts 1997, No. 1162, §1, eff. July 1, 1998.

§999.23.Hearing before the Issuing Agency

A. An action to enforce the provisions of this Part shall be initiated by written application made by the enforcing authority to the issuing agency issuing the license or permit requesting such agency to order the suspension and recommend to the courts the revocation of the license or permit.

B. No determination shall be made and no license shall be ordered suspended and ultimately revoked without an adjudicatory hearing conducted in accordance with the Administrative Procedure Act and Part A of this Chapter.

C. Notwithstanding the provisions of R.S. 49:992 or any other law to the contrary, any hearing conducted pursuant to this Part may, at the request of the issuing agency, be conducted by an administrative law judge in an adjudicatory hearing pursuant to Part A of this Chapter.

D. For purposes of this Part, the enforcing authority shall prove by a preponderance of the evidence that a person has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime which is a felony under state or federal law related to the obtaining or keeping of the license at issue.

Acts 1997, No. 1162, §1, eff. July 1, 1998.

§999.24.Revocation

A.(1) Within thirty days after the issuance of a written determination and order by an administrative law judge or an issuing agency that the license or permit of a holder should be suspended, and a recommendation to the courts that such license or permit should be revoked, the enforcing authority shall file a petition in the Nineteenth Judicial District Court requesting such judge or court to uphold the determination of such issuing agency and order the revocation of the license or permit.

A copy of the written determination and order of the administrative law judge or the issuing agency and a certified transcript of all proceedings had, if any, shall be filed with the court at the same time as the petition of the enforcing authority.(2) The holder of the license or permit that has been ordered suspended may also file a petition requesting that the order of the administrative law judge or the issuing agency be set aside at any time after it is issued.

B.(1) After or in conjunction with the filing of a petition as provided for in Subsection A of this Section, the holder of the license or permit that has been ordered suspended may file an application with the court with supporting affidavits requesting the court to make an initial determination as to whether the suspension of the license or permit by the administrative law judge or the issuing agency should be upheld.

(2) The court shall assign a hearing on the application for the initial determination not less than two nor more than ten days after the filing of such application, in open court or in chambers.

(3) The court shall review the written determination and order of the administrative law judge or issuing agency, any affidavits which were filed with the application, and the transcript of the proceedings, if any.

(4) If the court upon a review of such documents and consideration of the issues involved finds both that it is not probable that the order of the administrative law judge or the issuing agency will be upheld and that the suspension of the license or permit will result in irreparable injury, loss, or damage to the holder of the license or permit, the court shall issue an order enjoining the suspension until it renders a final judgment on the matter.

C.(1) Except for the procedure as provided in Subsection B of this Section, all of the cases provided for in this Section shall be tried in the same manner as civil cases and shall be heard and determined as speedily as possible.

(2) If the court finds that the action of the administrative law judge or the issuing agency is in accordance with the facts and law, the court shall render a judgment upholding the order of the administrative law judge or the issuing agency and revoking the license or permit of the holder. If not, the court shall either dismiss the order of the administrative law judge or the issuing agency and enjoin the suspension of the license or permit, or it shall remand the case to the administrative law judge or the issuing agency for further proceedings either with or without maintaining the suspension of the license or permit.

Acts 1997, No. 1162, §1, eff. July 1, 1998.

§999.25.Additional Ground or Cause

Notwithstanding any other law to the contrary, the provisions of this Part shall provide an additional ground or cause of action for suspension or revocation of a license or permit issued by an issuing agency and shall be in addition to any other sanction or penalty which such agency is specifically authorized to impose.

Acts 1997, No. 1162, §1, eff. July 1, 1998.

TIMETABLE FOR ADOPTION OF RULES, FEES, EMERGENCY RULES AND EMERGENCY FEES BY LOUISIANA STATE AGENCIES

DAY	TIME REQUIREMENT	ACTION
Agency Rule and Fee Proposal 10 days prior to Day 1	10 days prior to publication date of State Register in which notice of rulemaking or fee setting intent is published (always 10th day of month) (R.S. 49:951(7), 953(A)(1)(b)(i) and 968(B)).	Last day for agency to submit notice of intent of rulemaking or feesetting to State Register and legislative committee and presiding officers.
Day 1	State Register publication date (always the 20th day of month)	Notice of intent is published. By this date, also must submit notice to interested persons who have requested notice.
Day 36-41	Agency hearing, if requested, no earlier than 35 days and no later than 40 days after notice publication (R.S. 49:953(A)(2)).	The agency must conduct a hearing on the proposed rule or fee, if requested as specified in the law, and must provide for written comments.
* * *	Prior to legislative oversight, agency report to legislative committees (R.S. 49:968(D)). *"A Summary Report"*	A report of the hearing, summary of comments received, and of any proposed revision must be provided to the legislative committee, with an explanation of agency action on changes suggested.
Legislative Oversight of Rules and Fees Day 1	Delivery of agency report to legislative committee (R.S. 49:968(D)) *"A Summary Report"*	When the agency has completed its report and is ready for oversight, the report is submitted to the legislative committees. This starts the time-table for legislative oversight hearings.
Day 6-31	Legislative hearing no earlier than 5 days and no later than 30 days after agency report of hearing, comments, and/or revision (R.S. 49:968(D)(2) and 953(A)(2)(b)(ii)).	The legislative committees having jurisdiction may conduct a hearing to review and determine if the rule change or fee action is acceptable or unacceptable.
4th day after determination	Committee report to the governor, the agency, and the State Register not later than 4th day after committee determination, if the rule or fee is found unacceptable (R.S. 49:968(F)).	If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the State Register summarizing its determination.
10th day after receipt by governor	The governor has 10 days after receipt of committee report to disapprove committee action (R.S. 49:968(G)).	The governor may disapprove committee action. If he does not disapprove committee action the agency may not adopt rule unless modified and approved by committee. If he does disapprove committee action, the agency may adopt rule.
Legislative and Gubernatorial Oversight for Emergency Rules and Emergency Fees Day 1	Adoption of emergency rule or emergency fee (R.S. 49:953(B)(4)(a) and (b)).	Adoption of emergency rule or emergency fee begins time period for review by oversight subcommittee or by governor.
Day 2-61	Oversight subcommittee hearing or gubernatorial review within 60 days of adoption of emergency rule or emergency fee (R.S. 49:953(B)(4)(a) and (b)).	Oversight subcommittee may conduct a hearing or governor may review to determine if such rule or fee meets criteria as emergency and determinations as provided in R.S. 49:968(D)(3).
4th Day after determination	Committee report to the governor, the agency, and the State Register and gubernatorial report to the agency and State Register not later than 4th day after committee or gubernatorial determination, if the rule is found unacceptable (R.S. 49:953(B)(4)(a) and (b) and 968(F)).	If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the State Register or the governor must submit a report to the agency and State Register summarizing their determination. Upon agency receipt of report from committee or governor, rule is null and ineffective.
Adoption and Effectiveness Rules and Fees 90 days after publication	First day agency may adopt rule or fee is 90 days after publication of notice in State Register and after compliance with rulemaking and oversight requirements (Last day for adoption is 12 months after notice publication) (R.S. 49:953(A)(1) and 968(H)).	Agency may adopt rule if the legislative committees of both houses fail to find the rule unacceptable or, if found unacceptable by a legislative committee of either house, if the governor disapproves committee action. Otherwise, it may not adopt the rule unless changed and approved by the committee. Agency may adopt fee if a legislative committee of one house fails to find the fee unacceptable. The governor has no authority to disapprove.
* * *	Effective date of adopted rule or fee is date of State Register publication of such rule or fee, unless rule or law provides later date	Final rules or fees are effective after adoption by the agency and upon publication in the State Register, unless a later date is provided in the rule, fee, or by law.

Emergency Rules and Emergency Fees Adoption or 60 days from adoption	Emergency rule or emergency fee is effective on date of adoption, or date specified by agency not more than 60 days from adoption provided written notice is given within 5 days of adoption to governor, attorney general, speaker, president, and Department of State Register (R.S. 49:951(7) and 954(B)(2)).	Agency may adopt emergency rule or emergency fee if emergency criteria are met. Emergency rule may be invalidated by declaratory judgment that it does not meet emergency criteria. (R.S. 49:953(B)(3)) Emergency rule is null upon agency receipt of report from oversight committee or governor that the rule is unacceptable. (R.S. 49:953(B)(4))
* * *	Not effective beyond publication date of State Register published in month following the month adopted, unless such rule or fee and the reasons for adoption are published (however, not effective for longer than 120 days) (R.S. 49:954(B)(2)).	Agency must publish emergency rule or emergency fee and the reasons for adoption in the State Register published the month after the month of adoption to continue effectiveness, provided not effective longer than 120 days.
Agency Rule and Fee Proposal 10 days prior to Day 1	10 days prior to publication date of State Register in which notice of rulemaking or fee setting intent is published (always 10th day of month) (R.S. 49:951(7), 953(A)(1)(b)(i) and 968(B)).	Last day for agency to submit notice of intent of rulemaking or fee setting to State Register and legislative committee and presiding officers.
Day 1	State Register publication date (always the 20th day of month)	Notice of intent is published. By this date, also must submit notice to interested persons who have requested notice.
Day 36-41	Agency hearing, if requested, no earlier than 35 days and no later than 40 days after notice publication (R.S. 49:953(A)(2)).	The agency must conduct a hearing on the proposed rule or fee, if requested as specified in the law, and must provide for written comments.
* * *	Prior to legislative oversight, agency report to legislative committees (R.S. 49:968(D)). *"A Summary Report"*	A report of the hearing, summary of comments received, and of any proposed revision must be provided to the legislative committee, with an explanation of agency action on changes suggested.
Legislative Oversight of Rules and Fees Day 1	Delivery of agency report to legislative committee (R.S. 49:968(D)) *"A Summary Report"*	When the agency has completed its report and is ready for oversight, the report is submitted to the legislative committees. This starts the timetable for legislative oversight hearings.
Day 6-31	Legislative hearing no earlier than 5 days and no later than 30 days after agency report of hearing, comments, and\or revision (R.S. 49:968(D)(2) and 953(A)(2)(b)(ii)).	The legislative committees having jurisdiction may conduct a hearing to review and determine if the rule change or fee action is acceptable or unacceptable.
4th day after determination	Committee report to the governor, the agency, and the State Register not later than 4th day after committee determination, if the rule or fee is found unacceptable (R.S. 49:968(F)).	If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the State Register summarizing its determination.
10th day after receipt by governor	The governor has 10 days after receipt of committee report to disapprove committee action (R.S. 49:968(G)).	The governor may disapprove committee action. If he does not disapprove committee action the agency may not adopt rule unless modified and approved by committee. If he does disapprove committee action, the agency may adopt rule.
Legislative and Gubernatorial Oversight for Emergency Rules and Emergency Fees Day 1	Adoption of emergency rule or emergency fee (R.S. 49:953(B)(4)(a) and (b)).	Adoption of emergency rule or emergency fee begins time period for review by oversight subcommittee or by governor.
Day 2-61	Oversight subcommittee hearing or gubernatorial review within 60 days of adoption of emergency rule or emergency fee (R.S. 49:953(B)(4)(a) and (b)).	Oversight subcommittee may conduct a hearing or governor may review to determine if such rule or fee meets criteria as emergency and determinations as provided in R.S. 49:968(D)(3).
4th Day after determination	Committee report to the governor, the agency, and the State Register and gubernatorial report to the agency and State Register not later than 4th day after committee or gubernatorial determination, if the rule is found unacceptable (R.S. 49:953(B)(4)(a) and (b) and 968(F)).	If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the State Register or the governor must submit a report to the agency and State Register summarizing their determination. Upon agency receipt of report from committee or governor, rule is null and ineffective.

Adoption and Effectiveness *Rules and Fees* 90 days after publication	First day agency may adopt rule or fee is 90 days after publication of notice in State Register and after compliance with rulemaking and oversight requirements (Last day for adoption is 12 months after notice publication) (R.S. 49:953(A)(1) and 968(H)).	Agency may adopt rule if the legislative committees of both houses fail to find the rule unacceptable or, if found unacceptable by a legislative committee of either house, if the governor disapproves committee action. Otherwise, it may not adopt the rule unless changed and approved by the committee. Agency may adopt fee if a legislative committee of one house fails to find the fee unacceptable. The governor has no authority to disapprove.
* * *	Effective date of adopted rule or fee is date of State Register publication of such rule or fee, unless rule or law provides later date	Final rules or fees are effective after adoption by the agency and upon publication in the State Register, unless a later date is provided in the rule, fee, or by law.
Emergency Rules and Emergency Fees Adoption or 60 days from adoption	Emergency rule or emergency fee is effective on date of adoption, or date specified by agency not more than 60 days from adoption provided written notice is given within 5 days of adoption to governor, attorney general, speaker, president, and Department of State Register (R.S. 49:951(7) and 954(B)(2)).	Agency may adopt emergency rule or emergency fee if emergency criteria are met. Emergency rule may be invalidated by declaratory judgment that it does not meet emergency criteria. (R.S. 49:953(B)(3)) Emergency rule is null upon agency receipt of report from oversight committee or governor that the rule is unacceptable. (R.S. 49:953(B)(4))
* * *	Not effective beyond publication date of State Register published in month following the month adopted, unless such rule or fee and the reasons for adoption are published (however, not effective for longer than 120 days) (R.S. 49:954(B)(2)).	Agency must publish emergency rule or emergency fee and the reasons for adoption in the State Register published the month after the month of adoption to continue effectiveness, provided not effective longer than 120 days.

This table uses the term legislative committee to include oversight committees of legislative committee. It should be noted that the APA authorizes and provides for oversight subcommittees of legislative committees to conduct hearings and make determinations; however, it also provides that the full committee may exercise this authority.

This table is a summary and does not purport to fully reflect the law. Please refer to the APA at LSA R.S. 49:950 et seq.

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