

2022 Regular Session

SENATE BILL NO. 67

BY SENATOR FRED MILLS

ADMINISTRATIVE PROCEDURE. Provides for the reorganization and modernization of the Administrative Procedure Act. (8/1/22)

1 AN ACT
2 To amend and reenact R.S. 49:951(9), 953, the introductory paragraph of 953.1(A)(1),
3 953.1(A)(5), and (C), 954(A) and (B)(2), 954.1(A), 955(B), (C), (E), and (F),
4 959(A), 960(B), 964(A)(1), (F), and (G), 964.1(C), 966(A), 967, the introductory
5 paragraph of 968(B), 968(B)(24)(b), (C)(2) and (4), (D)(1)(a), and the introductory
6 paragraph of (D)(1)(b), (D)(1)(b)(i), and (c) and (3), (E)(1)(a), the introductory
7 paragraph of 968(F)(1), (G), (H), (J), and (K)(2), 969(A), 970(A), 971(A)(1) and (3)
8 and (B), 974(B), (C), and (E), 978.1, 978.4(A)(2), 978.5(B) and (C), the introductory
9 paragraph of 978.7, and 978.8(A) and (B), to enact R.S. 49:953.1(G), 963, and 964,
10 and to recodify Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 in
11 its entirety, relative to the Administrative Procedure Act; to make technical updates
12 to the Administrative Procedure Act; to provide for public hearings; to provide for
13 publication of executive orders; to provide for judicial review; to direct the Louisiana
14 State Law Institute to redesignate the current provisions of Chapter 13 of Title 49 of
15 the Louisiana Revised Statutes of 1950 into a new format and number scheme, to be
16 comprised of R.S. 49:950 through 978.3, without changing the text of the provisions
17 except as provided herein; to make technical and conforming changes to reflect the

1 format and number scheme provided herein; to direct the Louisiana State Law
 2 Institute to change references to segments of law in existing statutes and codes as
 3 necessary to reflect the redesignation of such segments as provided herein; and to
 4 provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 49:951(9), 953, the introductory paragraph of 953.1(A)(1),
 7 953.1(A)(5), and (C), 954(A) and (B)(2), 954.1(A), 955(B), (C), (E), and (F), 959(A),
 8 960(B), 964(A)(1), (F), and (G), 964.1(C), 966(A), 967, the introductory paragraph of
 9 968(B), 968(B)(24)(b), (C)(2) and (4), (D)(1)(a), the introductory paragraph of (D)(1)(b),
 10 (D)(1)(b)(i), and (c) and (3), (E)(1)(a), the introductory paragraph of 968(F)(1), (G), (H), (J),
 11 and (K)(2), 969(A), 970(A), 971(A)(1) and (3) and (B), 974(B), (C), and (E), 978.1,
 12 978.4(A)(2), 978.5(B) and (C), the introductory paragraph of 978.7, and 978.8(A) and (B)
 13 are hereby amended and reenacted and R.S. 49:953.1(G), 963, and 964 are hereby enacted
 14 to read as follows:

15 §951. Definitions

16 As used in this Chapter:

17 * * *

18 (9) "Rulemaking" means the process employed by an agency for the
 19 formulation of a rule. Except where the context clearly provides otherwise, the
 20 procedures for adoption of rules and of emergency rules as provided in ~~R.S. 49:953~~
 21 **R.S. 49:961** shall also apply to adoption, increase, or decrease of fees. The fact that
 22 a statement of policy or an interpretation of a statute is made in the decision of a case
 23 or in an agency decision upon or disposition of a particular matter as applied to a
 24 specific set of facts involved does not render the same a rule within this definition
 25 or constitute specific adoption thereof by the agency so as to be required to be issued
 26 and filed as provided in this Subsection.

27 ~~§966.~~**§952.** Construction and effect; judicial cognizance

28 A. Nothing in this Chapter shall be held to diminish the constitutional rights
 29 of any person or to limit or repeal additional requirements imposed by statute or

1 otherwise recognized by law. Notwithstanding the foregoing, and except as provided
 2 in ~~R.S. 49:967~~ R.S. 49:954, any and all statutory requirements regarding the
 3 adoption or promulgation of rules other than those contained in Sections 953, ~~954,~~
 4 ~~954.1, and 968~~ 961, 965, and 966 of this Title are hereby superseded by the
 5 provisions of this Chapter and are repealed. Except as otherwise required by law, all
 6 requirements or privileges relating to evidence or procedure shall apply equally to
 7 agencies and persons. Every agency is granted all authority necessary to comply with
 8 the requirements of this Chapter through the issuance of rules or otherwise.

9 * * *

10 ~~§954.1~~§953. Louisiana Administrative Code and Louisiana Register; publication;
 11 distribution; copies; index; interagency rules

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

22 * * *

23 ~~§967.~~§954. Exemptions from provisions of Chapter

24 A. Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 shall not
 25 be applicable to the Board of Tax Appeals, the Department of Revenue, with the
 26 exception of the Louisiana Tax Commission that shall continue to be governed by
 27 this Chapter in its entirety, unless otherwise specifically provided by law, and the
 28 administrator of the Louisiana Employment Security Law; however, the provisions
 29 of R.S. 49:951(2), (4), (5), (6), and (7), ~~952, 953, 954, 954.1, 968,~~ 956, 961, 965,

1 966, 969, and 970 shall be applicable to ~~such~~ the board, department, and
 2 administrator.

3 B.(1) The provisions of ~~R.S. 49:968(F)~~ R.S. 49:966(F) and 970 shall not be
 4 applicable to any rule promulgated by the State Civil Service Commission or the
 5 Public Service Commission.

6 (2) The provisions of this Chapter shall not be applicable to entities created
 7 as provided in Part V of Chapter 6 of Title 34 of the Louisiana Revised Statutes of
 8 1950.

9 C. The provisions of ~~R.S. 49:963, 964, and 965~~ R.S. 49:968, 978.2, and 979
 10 shall not be applicable to any rule, regulation, or order of any agency subject to a
 11 right of review under the provisions of R.S. 30:12.

12 ~~E.D.~~ The provisions of ~~R.S. 49:963, 964, and 965~~ R.S. 49:968, 978.2, and
 13 979 shall not apply to any rule, regulation, or policy and procedure statements issued
 14 by or for the Department of Public Safety and Corrections, corrections services,
 15 concerning:

16 (1) The internal management and daily operations of a correctional institute,
 17 probation and parole district office, or headquarters function.

18 (2) General law statements that are substantially repetitions of state or federal
 19 law.

20 (3) The implementation and processes for carrying out a court-ordered
 21 sentence of death and any and all matters related to the regulations for the sentence
 22 of death.

23 ~~F.E.~~ The provisions of ~~R.S. 49:963, 964, and 965~~ R.S. 49:968, 978.2, and
 24 979 shall apply only to the regulations and policies of the Department of Public
 25 Safety and Corrections, corrections services, that affect the substantial rights of, or
 26 administrative remedies available to, the public or any offender incarcerated in a
 27 state correctional facility or local jail facility.

28 ~~§967.1~~ §955. Application of Chapter to rules and fees

29 [Section redesignated from R.S. 49:967.1]

1 ~~§952.~~**§956.** Public information; adoption of rules; availability of rules and orders

2 [Section redesignated from R.S. 49:952]

3 ~~§974.~~**§957.** Internet publication of certain information concerning proposed rules
4 and fees; information required to be published; manner of
5 publication; deadlines

6 * * *

7 B. All of the following information shall be included on the website:

8 (1) A brief description of each rule or fee that the agency is in the process of
9 adopting, amending, or repealing. For each ~~such~~ rule or fee, links to the following
10 shall be included:

11 (a) The full text of the current rule or fee.

12 (b) A ~~copy of~~ **link to the Louisiana Register website showing** the proposed
13 rule or statement of the proposed fee ~~in the form required by R.S. 49:968(C)(1).~~

14 (c) The name and contact information of the ~~person within the agency who~~
15 **agency representative responsible** for responding to inquiries
16 about the intended action as required by ~~R.S. 49:953(A)(1)(a)(iv)~~ **R.S.**
17 **49:961(A)(1)(a)(iv).**

18 (d) The time when, the place where, and the manner in which interested
19 persons may present ~~their views~~ **public comment** concerning the intended action as
20 required by ~~R.S. 49:953(A)(1)(a)(v)~~ **R.S. 49:961(A)(1)(a)(v).**

21 (e) The anticipated effective date for the proposed rule or fee.

22 (f) A copy of the notice of intent submitted to the Louisiana Register pursuant
23 to ~~R.S. 49:953(A)(1)(b)~~ **R.S. 49:961(A)(1)(b)** and the date the notice of intent will
24 be published in the Louisiana Register.

25 (g) A copy of the report submitted to the legislative oversight subcommittees
26 pursuant to ~~R.S. 49:968(D)(1)(b)~~ **R.S. 49:966(D)(1)(b)** and a copy of the public
27 notice required by ~~R.S. 49:968(D)(1)(c)~~ **R.S. 49:966(D)(1)(c).**

28 (h) A copy of any announcement of a hearing and report made pursuant to
29 ~~R.S. 49:968(H)(2)~~ **R.S. 49:966(H)(2).**

1 (i) A copy of any report received by the agency from a legislative oversight
2 subcommittee pursuant to ~~R.S. 49:968(F)~~ **R.S. 49:966(F)** or from the governor
3 pursuant to ~~R.S. 49:968(I)~~ **R.S. 49:966(I)**.

4 (2) A copy of the annual report submitted to the legislative oversight
5 subcommittees by the agency pursuant to ~~R.S. 49:968(K)~~ **R.S. 49:966(K)**.

6 C.(1)(a) The information required to be published pursuant to Subparagraphs
7 (B)(1)(a) through (g) of this Section shall be published in the manner required by this
8 Section no later than five days after the date on which the agency submits the report
9 for the proposed rule or fee to the legislative oversight subcommittees pursuant to
10 ~~R.S. 49:968(B)~~ **R.S. 49:966(B)**.

11 (b) The copy of the announcement required to be published pursuant to
12 Subparagraph (B)(1)(h) of this Section shall be published in the manner required by
13 this Section no later than five days after the announcement is submitted to the
14 Louisiana Register in accordance with ~~R.S. 49:968(H)(2)~~ **R.S. 49:966(H)(2)**.

15 (c) The copy of the report required to be published pursuant to Subparagraph
16 (B)(1)(i) of this Section shall be published in the manner required by this Section no
17 later than five days after the report is received by the agency.

18 (d) The copy of the annual report required to be published pursuant to
19 Paragraph (B)(2) of this Section shall be published in the manner required by this
20 Section no later than five days after the report is submitted to the legislative
21 oversight subcommittees by the agency pursuant to ~~R.S. 49:968(K)~~ **R.S. 49:966(K)**.

22 (2) If an agency does not have an Internet website, the agency shall submit
23 the information required by this Section to be published to the department or to the
24 division of administration, as the case may be, in a manner which allows enough
25 time for the information to be published as required by this Section prior to the
26 applicable deadline provided in Paragraph (1) of this Subsection.

27 * * *

28 E. The provisions of this Section shall not be construed to require the
29 publication of information concerning the adoption, amendment, or repeal of any

1 rule or fee unless and until the agency gives notice of its intended action pursuant to
2 ~~R.S. 49:953(A)~~ **R.S. 49:961(A)**.

3 PART II. RULE PROMULGATION

4 ~~§953~~**§961**. Procedure for adoption of rules; ~~agency rule review~~

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

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

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

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

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

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

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

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

22 ~~(vii) The preamble, which explains the basis and rationale for the intended~~
23 ~~action; and summarizes the information and data supporting the intended action.~~

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

26 ~~(ix) A statement concerning the impact on child, individual, or family poverty~~
27 ~~in relation to individual or community asset development as set forth in R.S. 49:973.~~

28 ~~(x) A statement concerning the economic impact on small businesses, as set~~
29 ~~forth in R.S. 49:978.4, and the small business regulatory flexibility analysis, as set~~

1 ~~forth in R.S. 49:978.5.~~

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

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

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

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

18 ~~(2)(a) Afford all interested persons reasonable opportunity to submit data,~~
19 ~~views, comments, or arguments, orally or in writing. In case of substantive rules,~~
20 ~~opportunity for oral presentation or argument must be granted if requested within~~
21 ~~twenty days after publication of the rule as provided in this Subsection, by twenty-~~
22 ~~five persons, by a governmental subdivision or agency, by an association having not~~
23 ~~less than twenty-five members, or by a committee of either house of the legislature~~
24 ~~to which the proposed rule change has been referred under the provisions of R.S.~~
25 ~~49:968.~~

26 ~~(b)(i) Make available to all interested persons copies of any rule intended for~~
27 ~~adoption, amendment, or repeal from the time the notice of its intended action is~~
28 ~~published in the Louisiana Register. Any hearing pursuant to the provisions of this~~
29 ~~Paragraph shall be held no earlier than thirty-five days and no later than forty days~~

1 after the publication of the Louisiana Register in which the notice of the intended
2 action appears. The agency shall consider fully all written and oral comments and
3 submissions respecting the proposed rule.

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

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

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

27 (b) ~~For the purposes of this Subsection, the statement of economic impact~~
28 ~~shall be prepared by the proposing agency and submitted to the Legislative Fiscal~~
29 ~~Office for its approval. Such economic impact statements shall include an estimate~~

1 of the cost to the agency to implement the proposed action, including the estimated
2 amount of paperwork; an estimate of the cost or economic benefit to all persons
3 directly affected by the proposed action; an estimate of the impact of the proposed
4 action on competition and the open market for employment, if applicable; and a
5 detailed statement of the data, assumptions, and methods used in making each of the
6 above estimates.

7 A.(1) An agency shall give notice of its intention to adopt, amend, or
8 repeal any rule and a copy of the proposed rules at least ninety days prior to
9 taking action on the rule.

10 (2) The notice shall include all of the following:

11 (a) A statement by the agency clearly describing the proposed action
12 being taken.

13 (b) A statement by the legislative fiscal office on whether the proposed
14 action will result in a fiscal impact.

15 (c) A statement by the legislative fiscal office on whether the proposed
16 action will result in an economic impact.

17 (d) The name of the agency representative responsible for responding to
18 inquiries about the intended action.

19 (e) The time, place, and manner in which interested persons may present
20 public comment regarding the intended action.

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

23 (g) A preamble explaining the basis and rationale for the intended action
24 and summarizes the information and data supporting the intended action.

25 (h) All of the following statements concerning the proposed action:

26 (i) The impact on family formation, stability, and autonomy required by
27 R.S. 49:972.

28 (ii) The impact on child, individual, or family poverty in relation to
29 individual or community asset development required by R.S. 49:973.

1 (iii) The economic impact on small businesses required by R.S. 49:974.4.

2 (iv) The small business regulatory flexibility analysis required by R.S.
3 49:974.5.

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

8 (4) After the notice is published in the Louisiana Register, the agency
9 shall make available copies of the full text of the proposed rule no later than two
10 working days after receiving a written request.

11 (5) Notice of the intent of an agency to adopt, amend, or repeal any rule
12 and the approved fiscal and economic impact statements shall be transmitted
13 to all persons who have made timely request of the agency for notice. The notice
14 and statements shall be transmitted at the earliest possible date, but not later
15 than ten days after the date when the proposed rule change is submitted to the
16 Louisiana Register.

17 (6) For the purpose of this Subsection, the date of notice is the date of
18 publication of the issue of the Louisiana Register in which the notice appears as
19 stated on the outside cover or the first page of the issue.

20 B.(1) The agency shall afford all interested persons a reasonable
21 opportunity to submit data, views, comments, or arguments, orally or in
22 writing. In the case of substantive rules, the agency shall grant an opportunity
23 for oral presentation or argument if requested within twenty days after
24 publication of the rule pursuant to Subsection A of this Section by twenty-five
25 persons, by a governmental subdivision or agency, by an association having not
26 less than twenty-five members, or by a committee of either house of the
27 legislature to which the proposed rule change has been referred pursuant to
28 R.S. 49:966.

29 (2) Any hearing held pursuant to the provisions of Paragraph (1) of this

1 Subsection shall be held no earlier than thirty-five days and no later than
2 forty-five days after the publication of the Louisiana Register in which the
3 notice of the intended action appears.

4 (3) The agency shall consider fully all written and oral comments and
5 submissions respecting the proposed rule. The agency shall respond to the
6 comments and submissions describing the principal reasons for and against
7 adoption of any amendments or changes suggested in the written or oral
8 comments and submissions.

9 (4) The response required by Paragraph (3) of this Subsection shall be
10 furnished to the respective legislative oversight subcommittees at least five days
11 prior to the day the legislative oversight subcommittee hearing is to be held on
12 the proposed rule, and shall be made available to interested persons no later
13 than one day following their submission to the appropriate legislative oversight
14 subcommittee. If no legislative oversight hearing is to be held, the agency shall
15 respond to comments and submissions and preamble, if any, to any person who
16 presented comments or submissions on the rule and to any requesting person
17 not later than fifteen days prior to the time of publication of the final rule.

18 (5) The agency shall, upon request, make available to interested persons
19 the report submitted pursuant to R.S. 49:966(D) no later than one working day
20 following the submittal of such report to the legislative oversight
21 subcommittees.

22 ~~C.(1) An interested person may petition an agency requesting the adoption,~~
23 ~~amendment, or repeal of a rule. Each agency shall prescribe by rule the form for~~
24 ~~petitions and the procedure for their submission, considerations, and disposition.~~
25 ~~Within ninety days after submission of a petition, the agency shall either deny the~~
26 ~~petition in writing, stating reasons for the denial, or shall initiate rulemaking~~
27 ~~proceedings in accordance with this Chapter. Each agency with an appropriated~~
28 ~~operating budget of five million dollars or more shall include on its website a~~
29 ~~description of the procedure for submitting petitions in accordance with this~~

1 Paragraph:

2 ~~(2)(a) At least once prior to January 1, 2020, and at least once during every~~
3 ~~six-year period thereafter, each agency subject to Paragraph (1) of this Subsection~~
4 ~~which engages in rulemaking shall conduct a public hearing for the purpose of~~
5 ~~allowing any interested person the opportunity to comment on any rule of the agency~~
6 ~~which the person believes is contrary to law, outdated, unnecessary, overly complex,~~
7 ~~or burdensome. The agency shall publish notice of the meeting in the Louisiana~~
8 ~~Register, give notice of the meeting electronically to the appropriate legislative~~
9 ~~oversight committees, and shall provide notice of the meeting to all persons who~~
10 ~~have made timely request of the agency for notice of rule changes, all no later than~~
11 ~~thirty days prior to the meeting.~~

12 ~~(b) The notice of the meeting shall contain:~~

13 ~~(i) The name of the agency.~~

14 ~~(ii) The purpose of the meeting.~~

15 ~~(iii) The time and place of the meeting.~~

16 ~~(iv) The process for requesting reasonable accommodations for persons with~~
17 ~~disabilities.~~

18 ~~(v) The name and contact information of the person within the agency to~~
19 ~~whom interested persons should direct their views regarding the agency's rules, if in~~
20 ~~writing, and the deadline for submission of written comments.~~

21 ~~(c) The agency shall consider fully all written and oral comments and~~
22 ~~submissions concerning its rules. The agency shall advise persons who provide oral~~
23 ~~comments that in order to be submitted to the legislative oversight committees,~~
24 ~~comments must be submitted to the agency in writing. The agency shall issue a~~
25 ~~response to each submission describing the principal advantages and disadvantages~~
26 ~~of the rule changes suggested in the submission. In addition, the agency may prepare~~
27 ~~a statement explaining the basis and rationale for the rule in question identifying the~~
28 ~~data and evidence upon which the rule is based. All such statements and responses~~
29 ~~to submissions shall be furnished to the respective legislative oversight committees~~

1 in the manner provided by R.S. 49:968(K) and shall be made available to interested
2 persons as soon as possible but no later than one day following their submission to
3 the appropriate legislative oversight committees.

4 **C.(1) The statement of fiscal impact shall be prepared by the proposing**
5 **agency and submitted to the legislative fiscal office for its approval. The fiscal**
6 **impact statement shall include a statement of the receipt, expenditure, or**
7 **allocation of state funds or funds of any political subdivision of the state.**

8 **(2) The statement of economic impact shall be prepared by the proposing**
9 **agency and submitted to the legislative fiscal office for its approval. The**
10 **economic impact statement shall include an estimate of the cost to the agency**
11 **to implement the proposed action, including the estimated amount of**
12 **paperwork; an estimate of the cost or economic benefit to all persons directly**
13 **affected by the proposed action; an estimate of the impact of the proposed**
14 **action on competition and the open market for employment, if applicable; and**
15 **a detailed statement of the data, assumptions, and methods used in making each**
16 **of the above estimates.**

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

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

27 ~~E.(1) No agency shall adopt, amend, or repeal any rule if the accompanying~~
28 ~~fiscal and economic impact statement approved by the legislative fiscal office~~
29 ~~indicates that the rule change would result in any increase in the expenditure of state~~

1 funds, unless the rule is adopted as an emergency rule pursuant to the requirements
2 of R.S. 49:953.1 or unless the legislature has specifically appropriated the funds
3 necessary for the expenditures associated with the rule change.

4 (2) ~~The fiscal and economic impact statement shall be summarized by the~~
5 ~~agency as to the estimated costs or economic benefits or both, to directly affected~~
6 ~~persons, small businesses, or nongovernmental groups and the summary shall be~~
7 ~~published in the Louisiana Register.~~

8 (3) ~~No later than the tenth day of the month, the office of the state register~~
9 ~~shall electronically transmit to the commercial division of the Department of State,~~
10 ~~the summary of the fiscal and economic impact statement.~~

11 **E.(1) No agency shall adopt, amend, or repeal any rule if the**
12 **accompanying fiscal and economic impact statement approved by the legislative**
13 **fiscal office indicates that the rule change would result in any increase in the**
14 **expenditure of state funds, unless the rule is adopted as an emergency rule**
15 **pursuant to the requirements of R.S. 49:962 or unless the legislature has**
16 **specifically appropriated the funds necessary for the expenditures associated**
17 **with the rule change.**

18 **(2) The fiscal and economic impact statement shall be summarized by the**
19 **agency as to the estimated costs or economic benefits, or both, to directly**
20 **affected persons, small businesses, or nongovernmental groups and the**
21 **summary shall be published in the Louisiana Register.**

22 **(3) No later than the tenth day of the month, the office of the state**
23 **register shall electronically transmit to the commercial division of the**
24 **Department of State, the summary of the fiscal and economic impact statement.**

25 ~~F.(1) Notwithstanding any other provision of this Chapter to the contrary, if~~
26 ~~the Department of Environmental Quality proposes a rule that is not identical to a~~
27 ~~federal law or regulation or is not required for compliance with a federal law or~~
28 ~~regulation, the Department of Environmental Quality shall adopt and promulgate~~
29 ~~such proposed rule separately from any proposed rule or set of proposed rules that~~

1 is identical to a federal law or regulation or required for compliance with a federal
2 law or regulation. However, if the only difference between the proposed rule or set
3 of proposed rules and the corresponding federal law or regulation is a proposed fee,
4 the Department of Environmental Quality shall not be required to adopt and
5 promulgate such proposed rule or set of proposed rules separately. For purposes of
6 this Subsection, the term "identical" shall mean that the proposed rule has the same
7 content and meaning as the corresponding federal law or regulation.

8 (2) When the Department of Environmental Quality proposes a rule that is
9 not identical to a corresponding federal law or regulation, or is not required for
10 compliance with a federal law or regulation, the Department of Environmental
11 Quality shall provide a brief summary which explains the basis and rationale for the
12 proposed rule, identifies the data and evidence, if any, upon which the rule is based,
13 and identifies any portions of the proposed rule that differ from federal law or
14 regulation if there is a federal law or regulation which is not identical but which
15 corresponds substantially to the proposed rule. Such summary shall be provided
16 along with the notice of intent and shall be published in the Louisiana Register or
17 made available along with the proposed rule as provided in Item (A)(1)(b)(ii) of this
18 Section. The Department of Environmental Quality may also provide such a
19 summary when proposing a rule identical to a corresponding federal law or
20 regulation or proposing a rule which is required for compliance with federal law or
21 regulation to explain the basis and rationale for the proposed rule.

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

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

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

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

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

7 ~~(iv) The time, place, and manner in which interested persons may present~~
8 ~~their views thereon including the notice for a public hearing required by R.S.~~
9 ~~30:2011(D)(1).~~

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

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

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

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

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

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

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

16 ~~(h) No later than fifteen days prior to the time of publication of the final rule~~
17 ~~in the Louisiana Register, the secretary or any authorized assistant secretary of the~~
18 ~~department shall do each of the following:~~

19 ~~(i) Certify under oath, to the governor of the state of Louisiana, the attorney~~
20 ~~general of Louisiana, the speaker of the House of Representatives, the president of~~
21 ~~the Senate, the chairman of the House Committee on Natural Resources and~~
22 ~~Environment, the chairman of the Senate Committee on Environmental Quality, and~~
23 ~~the Office of the State Register that the proposed rule is identical to a specified~~
24 ~~federal law or regulation applicable in Louisiana.~~

25 ~~(ii) Furnish the chairman of the Senate Committee on Environmental Quality~~
26 ~~and the chairman of the House Committee on Natural Resources and Environment~~
27 ~~the response to comments and submissions required under Subparagraph (g) of this~~
28 ~~Paragraph, together with a copy of the notice required under Subparagraph (a) of this~~
29 ~~Paragraph.~~

1 ~~(i) Unless specifically requested, in writing, by the chairman of the House~~
2 ~~Committee on Natural Resources and Environment or the chairman of the Senate~~
3 ~~Committee on Environmental Quality within ten days of the certification provided~~
4 ~~under Subparagraph (h) of this Paragraph, there shall be no legislative oversight of~~
5 ~~the proposed rule. If, however, legislative oversight is properly requested, R.S.~~
6 ~~49:968 and Items (A)(2)(b)(ii) and (iii) of this Section shall thereafter apply with~~
7 ~~respect to the proposed rule.~~

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

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

18 **F.(1) No later than the tenth day of the month, the office of the state**
19 **register shall electronically transmit to the commercial division of the**
20 **Department of State, all of the following information:**

21 **(a) The small business economic impact statement prepared by the**
22 **agency pursuant to R.S. 49:974.4 and the small business regulatory flexibility**
23 **analysis prepared pursuant to R.S. 49:974.5.**

24 **(b) The summary of the estimated costs to small businesses, citizens, and**
25 **nongovernmental groups as provided in Subsection E of this Section.**

26 **(c) Any potpourri notices which are submitted to the office of the state**
27 **register pursuant to R.S. 49:974.4.**

28 **(2) Prior to electronically sending the information required in this**
29 **Subsection and Subsection E of this Section to the commercial division of the**

1 Department of State, the office of the state register shall divide the information
2 by agency.

3 ~~G.(1) Prior to or concurrent with publishing notice of any proposed policy,~~
4 ~~standard, or regulation pursuant to Subsection A of this Section and prior to~~
5 ~~promulgating any policy, standard, or final regulation whether pursuant to R.S.~~
6 ~~49:954 or otherwise under the authority of the Louisiana Environmental Quality Act,~~
7 ~~R.S. 30:2001 et seq., the Department of Environmental Quality, after August 15,~~
8 ~~1995, shall publish a report, or a summary of the report, in the Louisiana Register~~
9 ~~which includes:~~

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

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

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

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

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

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

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

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

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

3 ~~(d) Is an emergency rule under R.S. 49:953.1.~~

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

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

11 ~~H. The Department of Wildlife and Fisheries and the Louisiana Wildlife and~~
12 ~~Fisheries Commission may employ the timetables and provisions of Subsection B~~
13 ~~of this Section in promulgating rules and regulations relative to hunting seasons,~~
14 ~~trapping seasons, alligator seasons, shrimp seasons, oysters seasons, and finfish~~
15 ~~seasons and size limits, and all rules and regulations pursuant thereto. Rules adopted~~
16 ~~annually pursuant to this Subsection which open and close the offshore and fall~~
17 ~~shrimp seasons, the oyster seasons, the marine finfish seasons, the webless migratory~~
18 ~~game bird hunting season, and the trapping season shall be effective for the duration~~
19 ~~of the respective season. Notwithstanding the provisions of Paragraph (B)(4) of this~~
20 ~~Section, any legislative oversight hearing held on a rule proposed under the~~
21 ~~provisions of this Subsection shall be held no earlier than five days and no later than~~
22 ~~thirty days following the date of adoption of the rule.~~

23 ~~I.(1) No later than the tenth day of the month, the office of the state register~~
24 ~~shall electronically transmit to the commercial division of the Department of State,~~
25 ~~all of the following information:~~

26 ~~(a) The small business economic impact statement prepared by the agency~~
27 ~~pursuant to R.S. 49:978.4 and the small business regulatory flexibility analysis~~
28 ~~prepared pursuant to R.S. 49:978.5.~~

29 ~~(b) The summary of the estimated costs to small businesses, citizens, and~~

1 ~~nongovernmental groups as is provided in Subsection E of this Section.~~

2 ~~(c) Any potpourri notices which are submitted to the office of the state~~
3 ~~register pursuant to R.S. 49:978.4.~~

4 ~~(2) Prior to electronically sending the information required in this Subsection~~
5 ~~and Subsection E of this Section to the commercial division of the Department of~~
6 ~~State, the office of the state register shall divide the information by agency.~~

7 ~~§953.1.~~**§962.** Emergency rulemaking

8 A.(1) In extraordinary circumstances an agency may adopt an emergency rule
9 as an alternative to the rulemaking provisions provided for in ~~R.S. 49:953~~ **R.S.**
10 **49:961.** An emergency rule may be adopted by an agency without prior notice or a
11 public hearing for any of the following reasons:

12 * * *

13 (5) No emergency rule shall be adopted by an agency more than two
14 consecutive times unless the agency is operating under a state or federal declaration
15 of disaster, a state or federal public health emergency, or an ongoing emergency as
16 authorized by the legislature, governor, or other provision of law. However, the
17 agency may concurrently proceed with the adoption of an identical rule pursuant to
18 the procedure provided for in ~~R.S. 49:953(A)~~ **R.S. 49:961(A).**

19 * * *

20 C. The validity of an emergency rule may be determined in an action for
21 declaratory judgment in the district court of the parish in which the agency is located.
22 The agency shall be made a party to the action. An action for a declaratory judgment
23 under this Section may be brought only by a person to whom such emergency rule
24 is applicable or who would be adversely affected by such emergency rule and only
25 on the grounds that the emergency rule does not meet the criteria for adoption of an
26 emergency rule as provided in Paragraph (A)(1) of this Section. The court shall
27 declare the emergency rule invalid if it finds that there is not sufficient evidence that
28 such emergency rule must be adopted on an emergency basis for one or more of the
29 reasons for adoption of an emergency rule as provided in Subsection A of this

1 Section. Notwithstanding any provision of law to the contrary, the emergency rule
 2 shall remain in effect until such declaratory judgment is rendered. The provisions of
 3 ~~R.S. 49:963~~ **R.S. 49:968** shall not apply to any action brought pursuant to this
 4 Section. The provisions of this Section are in addition to ~~R.S. 49:963~~ **R.S. 49:968**
 5 and shall not limit any action pursuant to ~~R.S. 49:963~~ **R.S. 49:968**.

6 * * *

7 **G. The Department of Wildlife and Fisheries and the Louisiana Wildlife**
 8 **and Fisheries Commission may employ the timetables and provisions of this**
 9 **Section in promulgating rules and regulations relative to hunting seasons,**
 10 **trapping seasons, alligator seasons, shrimp seasons, oysters seasons, and finfish**
 11 **seasons and size limits, and all rules and regulations pursuant thereto. Rules**
 12 **adopted annually pursuant to this Subsection which open and close the offshore**
 13 **and fall shrimp seasons, the oyster seasons, the marine finfish seasons, the**
 14 **webless migratory game bird hunting season, and the trapping season shall be**
 15 **effective for the duration of the respective season. Notwithstanding the**
 16 **provisions of Subsection D of this Section, any legislative oversight hearing held**
 17 **on a rule proposed under the provisions of this Subsection shall be held no**
 18 **earlier than five days and no later than thirty days following the date of**
 19 **adoption of the rule.**

20 **§963. Department of Environmental Quality; procedure for adoption of rules**

21 **A.(1) Notwithstanding any other provision of this Chapter to the**
 22 **contrary, if the Department of Environmental Quality proposes a rule that is**
 23 **not identical to a federal law or regulation or is not required for compliance**
 24 **with a federal law or regulation, the Department of Environmental Quality shall**
 25 **do all of the following:**

26 **(a) Adopt and promulgate the proposed rule separately from any**
 27 **proposed rule or set of proposed rules that is identical to a federal law or**
 28 **regulation or required for compliance with a federal law or regulation, unless**
 29 **the only difference between the proposed rule or set of proposed rules and the**

1 corresponding federal law or regulation is a proposed fee. For purposes of this
2 Subsection, the term "identical" shall mean that the proposed rule has the same
3 content and meaning as the corresponding federal law or regulation.

4 (b)(i) Provide a brief summary which explains the basis and rationale for
5 the proposed rule, identifies the data and evidence, if any, upon which the rule
6 is based, and identifies any portions of the proposed rule that differ from
7 federal law or regulation if there is a federal law or regulation which is not
8 identical but which corresponds substantially to the proposed rule.

9 (ii) The summary shall be provided along with the notice of intent and
10 shall be published in the Louisiana Register or made available along with the
11 proposed rule as provided in R.S. 49:961(A)(4). The Department of
12 Environmental Quality may also provide the summary when proposing a rule
13 identical to a corresponding federal law or regulation or proposing a rule which
14 is required for compliance with federal law or regulation to explain the basis
15 and rationale for the proposed rule.

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

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

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

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

29 (iii) The name of the person within the department who has

1 responsibility for responding to inquiries about the intended action.

2 (iv) The time, place, and manner in which interested persons may
3 present their views including the notice for a public hearing required by R.S.
4 30:2011(D)(1).

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

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

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

21 (d) For the purposes of this Paragraph, the date of notice is the date of
22 publication of the issue of the Louisiana Register in which the notice appears as
23 stated on the outside cover or the first page of the issue.

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

29 (f) The department shall make available to all interested persons copies

1 of the proposed rule from the time the notice of its adoption is published in the
2 Louisiana Register.

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

11 (h) No later than fifteen days prior to the time of publication of the final
12 rule in the Louisiana Register, the secretary or any authorized assistant
13 secretary of the department shall do each of the following:

14 (i) Certify under oath, to the governor of the state of Louisiana, the
15 attorney general of Louisiana, the speaker of the House of Representatives, the
16 president of the Senate, the chairman of the House Committee on Natural
17 Resources and Environment, the chairman of the Senate Committee on
18 Environmental Quality, and the office of the state register that the proposed
19 rule is identical to a specified federal law or regulation applicable in Louisiana.

20 (ii) Furnish the chairman of the Senate Committee on Environmental
21 Quality and the chairman of the House Committee on Natural Resources and
22 Environment the response to comments and submissions required under
23 Subparagraph (g) of this Paragraph, together with a copy of the notice required
24 under Subparagraph (a) of this Paragraph.

25 (i) Unless specifically requested, in writing, by the chairman of the House
26 Committee on Natural Resources and Environment or the chairman of the
27 Senate Committee on Environmental Quality within ten days of the certification
28 provided under Subparagraph (h) of this Paragraph, there shall be no
29 legislative oversight of the proposed rule. If, however, legislative oversight is

1 properly requested, R.S. 49:961(B)(2) and (3) and 966 shall thereafter apply
2 with respect to the proposed rule.

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

8 (3) The procedures set forth in Paragraph (2) of this Subsection for the
9 adoption by the Department of Environmental Quality of rules identical to
10 federal laws or regulations applicable in Louisiana shall not be available for the
11 adoption of any rules creating or increasing fees.

12 B.(1) Prior to or concurrent with publishing notice of any proposed
13 policy, standard, or regulation pursuant to Subsection A of this Section and
14 prior to promulgating any policy, standard, or final regulation whether
15 pursuant to R.S. 49:965 or otherwise under the authority of the Louisiana
16 Environmental Quality Act, R.S. 30:2001 et seq., the Department of
17 Environmental Quality shall publish a report, or a summary of the report, in
18 the Louisiana Register which includes:

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

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

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

29 (d) An analysis and statement that, based on the best readily available

1 data, the proposed or final policy, standard, or regulation presents the most
 2 cost-effective method practically achievable to produce the benefits intended
 3 regarding the risks identified in Subparagraph (a) of this Paragraph.

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

6 (3) This provision shall not apply in those cases where the policy,
 7 standard, or regulation meets one or more of the following criteria:

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

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

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

12 (d) Is an emergency rule under R.S. 49:962.

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

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

20 ~~§954.3.~~**§963.1** Environmental Regulatory Code

21 [Section redesignated from R.S. 49:954.3]

22 **§964. Public request for the adoption, amendment, or repeal of a rule; agency**
 23 **rule review**

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

1 appropriated operating budget of five million dollars or more shall include on
2 its website a description of the procedure for submitting petitions in accordance
3 with this Subsection.

4 B.(1) At least once prior to January 1, 2020, and at least once during
5 every six-year period thereafter, each agency subject to Subsection A of this
6 Section which engages in rulemaking shall conduct a public hearing for the
7 purpose of allowing any interested person the opportunity to comment on any
8 rule of the agency which the person believes is contrary to law, outdated,
9 unnecessary, overly complex, or burdensome. The agency shall publish notice
10 of the meeting in the Louisiana Register, give notice of the meeting
11 electronically to the appropriate legislative oversight committees, and shall
12 provide notice of the meeting to all persons who have made timely request of the
13 agency for notice of rule changes, all no later than thirty days prior to the
14 meeting.

15 (2) The notice of the meeting shall contain:

16 (a) The name of the agency.

17 (b) The purpose of the meeting.

18 (c) The time and place of the meeting.

19 (d) The process for requesting reasonable accommodations for persons
20 with disabilities.

21 (e) The name and contact information of the person within the agency
22 to whom interested persons should direct their views regarding the agency's
23 rules, if in writing, and the deadline for submission of written comments.

24 (3) The agency shall consider fully all written and oral comments and
25 submissions concerning its rules. The agency shall advise persons who provide
26 oral comments that in order to be submitted to the legislative oversight
27 committees, comments must be submitted to the agency in writing. The agency
28 shall issue a response to each submission describing the principal advantages
29 and disadvantages of the rule changes suggested in the submission. In addition,

1 the agency may prepare a statement explaining the basis and rationale for the
 2 rule in question identifying the data and evidence upon which the rule is based.
 3 All such statements and responses to submissions shall be furnished to the
 4 respective legislative oversight committees in the manner provided by R.S.
 5 49:966(K) and shall be made available to interested persons as soon as possible
 6 but no later than one day following their submission to the appropriate
 7 legislative oversight committees.

8 ~~§954.~~§965. Filing; taking effect of rules

9 A. No rule adopted ~~on or after January 1, 1975,~~ is valid unless adopted in
 10 substantial compliance with this Chapter. Each rulemaking agency shall file a
 11 certified copy of its rules with the Office of the State Register. No rule, ~~whether~~
 12 ~~adopted before, on, or after January 1, 1975,~~ shall be effective, nor may it be
 13 enforced, unless it has been properly filed with the Office of the State Register. No
 14 rule adopted ~~on or after November 1, 1978,~~ shall be effective, nor may it be
 15 enforced, unless prior to its adoption a report relative to the proposed rule change is
 16 submitted to the appropriate standing committee of the legislature or to the presiding
 17 officers of the respective houses as provided in ~~R.S. 49:968~~ R.S. 49:966. No rule
 18 ~~adopted on or after September 12, 1980,~~ shall be effective, nor may it be enforced,
 19 unless the approved economic and fiscal impact statements, as provided in ~~R.S.~~
 20 ~~49:953(A)~~ R.S. 49:961, have been filed with the Office of the State Register and
 21 published in the Louisiana Register. The inadvertent failure to mail notice and
 22 statements to persons making request for such mail notice, as provided in ~~R.S.~~
 23 ~~49:953~~ R.S. 49:961, shall not invalidate any rule adopted hereunder. A proceeding
 24 under ~~R.S. 49:963~~ R.S. 49:968 to contest any rule on the grounds of noncompliance
 25 with the procedures for adoption, as given in this Chapter, must be commenced
 26 within two years from the date upon which the rule became effective.

27 B. * * *

28 (2) An emergency rule shall be considered effective pursuant to the
 29 provisions of ~~R.S. 49:953.1~~ R.S. 49:962.

1 ~~§968;~~§966. Review of agency rules; fees

2 * * *

3 B. Prior to the adoption, amendment, or repeal of any rule or the adoption,
4 increase, or decrease of any fee, the agency shall submit a report relative to ~~such~~ the
5 proposed rule change or fee adoption, increase, or decrease to the appropriate
6 standing committees of the legislature and the presiding officers of the respective
7 houses as provided in this Section. The report shall be ~~so~~ submitted on the same day
8 the notice of the intended action is submitted to the Louisiana Register for
9 publication in accordance with ~~R.S. 49:953(A)(1)~~ R.S. 49:961. The report shall be
10 submitted to each standing committee electronically if electronic means are
11 available. If no electronic means are available, the report shall be submitted to the
12 committee's office in the state capitol by certified mail with return receipt requested
13 or by messenger who shall provide a receipt for signature. The electronic receipt by
14 the committee, return receipt or the messenger's receipt shall be proof of receipt of
15 the report by the committee.

16 * * *

17 (24) * * *

18 (b) Whenever the fiscal impact or economic impact of the proposed rule
19 change or fee adoption, increase, or decrease is five hundred thousand dollars or
20 more as indicated by the statement of fiscal impact or the statement of economic
21 impact required by Subsection C of this Section, the agency shall transmit the report
22 provided for in Subsection C of this Section to each member of the legislature via
23 electronic mail on the same day the notice of the intended action is submitted to the
24 Louisiana Register for publication in accordance with ~~R.S. 49:953~~ R.S. 49:961.

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

26 * * *

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

1 proposed for amendment.

2 * * *

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

5 * * *

6 D.(1)(a) The chairman of each standing committee to which reports are
7 submitted shall appoint an oversight subcommittee, which may conduct hearings on
8 all rules that are proposed for adoption, amendment, or repeal and on all proposed
9 fee adoptions, increases, or decreases. Any ~~such~~ hearing shall be conducted after any
10 hearing is conducted by the agency pursuant to ~~R.S. 49:953(A)(2)~~ R.S. 49:961.

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

14 (i) A summary of all testimony at any hearing conducted pursuant to ~~R.S.~~
15 ~~49:953(A)(2)~~ R.S. 49:961.

16 * * *

17 (c) The agency shall publish on its website public notice that the report
18 required by Subparagraph (b) of this Paragraph has been delivered to the appropriate
19 standing committee as provided for in Subsection B of this Section within ~~one~~ five
20 business ~~day~~ days from submission of the report to the appropriate standing
21 committee. If the agency does not maintain a website, the agency may submit the
22 public notice to the Office of the State Register for publication on a website
23 maintained by the Office of the State Register.

24 * * *

25 (3) At ~~such~~ the hearings, the oversight subcommittees shall make all of the
26 following determinations:

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

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

4 (c) ~~Determine the~~ **The** advisability or relative merit of the rule change or
 5 action on fees.

6 (d) ~~Determine whether~~ **Whether** the rule change or action on fees is
 7 acceptable or unacceptable to the oversight subcommittee.

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

12 * * *

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

16 * * *

17 G. After receipt of the report of the subcommittee, the governor shall have
 18 ten calendar days in which to disapprove the action taken by the subcommittee. If the
 19 action of the subcommittee is not disapproved by the governor within ten calendar
 20 days from the day the subcommittee report is delivered to him, the rule change shall
 21 not be adopted by the agency until it has been changed or modified and subsequently
 22 found acceptable by the subcommittee, or has been approved by the standing
 23 committee, or by the legislature by concurrent resolution. If a proposed rule change
 24 is determined to be unacceptable by an oversight committee and ~~such~~ **the**
 25 determination is not disapproved by the governor as provided in this Section, the
 26 agency shall not propose a rule change or emergency rule that is the same or
 27 substantially similar to such disapproved proposed rule change nor shall the agency
 28 adopt an emergency rule that is the same or substantially similar to such disapproved
 29 proposed rule change within four months after issuance of a written report by the

1 subcommittee as provided in Subsection F of this Section nor more than once during
2 the interim between regular sessions of the legislature.

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

11 (2) Substantive changes to a rule proposed for adoption, amendment, or
12 repeal occur if the nature of the proposed rule is altered or if ~~such~~ **the** changes affect
13 additional or different substantive matters or issues not included in the notice
14 required by ~~R.S. 49:953(A)(1)~~ **R.S. 49:961**. Whenever an agency seeks to
15 substantively change a proposed rule after notice of intent has been published in the
16 Louisiana Register pursuant to ~~R.S. 49:953(A)(1)~~ **R.S. 49:961**, the agency shall hold
17 a public hearing on the substantive changes preceded by an announcement of the
18 hearing in the Louisiana Register. A notice of the hearing shall be mailed within ten
19 days after the date the announcement is submitted to the Louisiana Register to all
20 persons who have made request of the agency for ~~such~~ notice. Any hearing by the
21 agency pursuant to this Paragraph shall be held no earlier than thirty days after the
22 publication of the announcement in the Louisiana Register. The agency hearing shall
23 conform to ~~R.S. 49:953(A)(2)(b)~~ **R.S. 49:961**, and a report on the hearing shall be
24 made to the oversight committees in accordance with Subparagraph D(1)(b) of this
25 Section. The agency shall make available to interested persons a copy of ~~such~~ **the**
26 report no later than one working day following the submittal of such report to the
27 oversight committees. Any determination as to the rule by the oversight committees,
28 prior to gubernatorial review as provided in Subsection G of this Section, shall be
29 made no earlier than five days and no later than thirty days following the day the

1 report required by this Paragraph is received from the agency.

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

6 * * *

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

12 K. * * *

13 (2) The report required by Paragraph (1) of this Subsection shall also contain
14 a recitation of each petition and submission, if any, received by the agency pursuant
15 to ~~R.S. 49:953(C)~~ **R.S. 49:961** during the previous calendar year and the agency's
16 response to each petition and submission, if any were received.

17 * * *

18 ~~§968.1~~**§967**. Review of rules relative to state content standards; elementary and
19 secondary education

20 [Section redesignated from R.S. 49:968.1]

21 ~~§963~~**§968**. Judicial review of validity or applicability of rules

22 [Section redesignated from R.S. 49:963]

23 §969. Legislative veto, amendment, or suspension of rules, regulations, and fees

24 A. In addition to the procedures provided in ~~R.S. 49:968~~ **R.S. 49:966** for
25 review of the exercise of the rulemaking authority delegated by the legislature to
26 state agencies, as defined by this Chapter, the legislature, by Concurrent Resolution,
27 may suspend, amend, or repeal any rule or regulation or body of rules or regulations,
28 or any fee or any increase, decrease, or repeal of any fee, adopted by a state
29 department, agency, board, or commission. The Louisiana Register shall publish a

1 brief summary of any Concurrent Resolution adopted by the legislature pursuant to
 2 this Section. ~~Such~~ The summary shall be published not later than forty-five days
 3 after signing of such Resolution by the presiding officers of the legislature.

4 * * *

5 §970. Gubernatorial suspension or veto of rules and regulations

6 A. The governor, by executive order, may suspend or veto any rule or
 7 regulation or body of rules or regulations adopted by a state department, agency,
 8 board or commission, except as provided in ~~R.S. 49:967~~ R.S. 49:954, within thirty
 9 days of ~~their~~ adoption. Upon the execution of ~~such~~ an order, the governor shall
 10 transmit copies ~~thereof~~ of the order to the speaker of the House of Representatives
 11 and president of the Senate.

12 * * *

13 §971. Rejection of agency fee adoption, increases, or decreases; prohibition against
 14 fee increases and new fees; exceptions

15 A.(1) If either the House or Senate oversight subcommittees appointed
 16 pursuant to ~~R.S. 49:968~~ R.S. 49:966 determines that a proposed fee adoption,
 17 increase, or decrease is unacceptable, the respective subcommittee shall provide a
 18 written report containing the reasons ~~therefor~~ for the finding to the governor, the
 19 agency proposing the fee adoption, increase, or decrease, and the other house of the
 20 legislature. If the oversight subcommittee of the other house of the legislature
 21 likewise determines that the proposed fee adoption, increase, or decrease is
 22 unacceptable the fee action shall not be adopted by the agency.

23 * * *

24 (3) However, no state agency which has the authority to impose or assess fees
 25 shall increase any existing fee or impose any new fee unless the fee increase or fee
 26 adoption is expressly authorized pursuant to a fee schedule established by statute or
 27 specifically authorized by a federal law, rules, or regulations for the purpose of
 28 satisfying an express mandate of such federal law, rule, or regulation. No state
 29 agency shall adjust, modify or change the formula for any authorized fee in a manner

1 that would increase the fee paid by any person by more than five percent of the
 2 relevant fee paid by such person in the previous fiscal year. Proposed fee increases
 3 of less than five percent shall be subject to oversight as required by ~~R.S. 49:968~~ **R.S.**
 4 **49:966.**

* * *

6 B. Action by a subcommittee shall require **a quorum and** the favorable vote
 7 of a majority of the members of the subcommittee who are present and voting;
 8 ~~provided a quorum is present.~~

* * *

10 ~~§978.1.~~**§974.1.** Short title

11 ~~R.S. 49:978.1~~ **R.S. 49:974.1** through ~~978.8~~ **974.8** may be cited as the Small
 12 Business Protection Act and are referred to therein as "this Act".

13 ~~§978.2.~~**§974.2.** Intent; legislative findings

[Section redesignated from R.S. 49:978.2]

15 ~~§978.3.~~**§974.3.** Definitions

[Section redesignated from R.S. 49:978.3]

17 ~~§978.4.~~**§974.4.** Small business economic impact statements; potpourri notices

18 A. * * *

19 (2) The small business economic impact statement shall be submitted to the
 20 office of the state register pursuant to ~~R.S. 49:953~~ **R.S. 49:961.**

* * *

22 ~~§978.5.~~**§974.5.** Regulatory flexibility analysis

* * *

24 B. Prior to the adoption of any proposed rule by an agency which according
 25 to the economic impact statement required by ~~R.S. 49:978.4~~ **R.S. 49:974.4** and the
 26 results of the regulatory flexibility analysis required by this Section would have an
 27 adverse impact on small businesses, the agency shall notify the Department of
 28 Economic Development of its intent to adopt the proposed rule.

29 C. The agency shall submit the small business flexibility analysis with the

1 office of the state register, pursuant to ~~R.S. 49:953~~ **R.S. 49:961**.

2 ~~§978.6.~~**§974.6.** Conflicts of law

3 [Section redesignated from R.S. 49:978.6]

4 ~~§978.7.~~**§974.7.** Notification

5 Upon receiving the electronic transfer of information from the office of the
6 state register, as provided in ~~R.S. 49:953~~ **R.S. 49:961**, the commercial division of the
7 Department of State shall perform all of the following items:

8 * * *

9 ~~§978.8.~~**§974.8.** Small business advocate; posting of rules

10 A. The secretary of state shall designate a small business advocate from the
11 existing staff of the commercial division of the Department of State to implement
12 and maintain the notification duties and functions required of the Department of
13 State pursuant to ~~R.S. 49:978.7~~ **R.S. 49:974.7**.

14 B. The small business advocate shall coordinate the implementation and
15 maintenance of the website of the commercial division of the Department of State
16 relative to the receipt of information from the office of the state register, pursuant to
17 ~~R.S. 49:953~~ **R.S. 49:961**. The department shall enter into an agreement with the
18 office of the state register to arrange for the electronic receipt of the information on
19 an ongoing basis.

20 * * *

21 **PART III. ADJUDICATION**

22 ~~§955.~~**§975.** Adjudication; notice; hearing; records

23 * * *

24 B.(1) The notice shall include **all of the following**:

25 ~~(1)~~**(a)** A statement of the time, place, and nature of the hearing;

26 ~~(2)~~**(b)** A statement of the legal authority and jurisdiction under which the
27 hearing is to be held;

28 ~~(3)~~**(c)** A reference to the particular sections of the statutes and rules
29 involved;

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

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

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

10 * * *

11 E. The record in a case of adjudication shall include all of the following:

12 (1) All pleadings, motions, intermediate rulings;

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

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

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

17 (5) Proposed findings and exceptions;

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

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

25 * * *

26 ~~§956.1~~ §975.1. Rules of evidence; official notice; oaths and affirmations; subpoenas;
27 depositions and discovery; and confidential privileged information

28 [Section redesignated from R.S. 49:956]

29 ~~§956.1~~ §975.2. Administrative proceedings; member of the legislature or personnel

1 as witness

2 [Section redesignated from R.S. 49:956.1]

3 ~~§957.~~**§976.** Examination of evidence by agency

4 [Section redesignated from R.S. 49:957]

5 ~~§958.~~**§977.** Decisions and orders

6 [Section redesignated from R.S. 49:958]

7 ~~§959.~~**§977.1.** Rehearings

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

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

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

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

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

19 * * *

20 ~~§960.~~**§977.2.** Ex parte consultations and recusations

21 * * *

22 B. A subordinate deciding officer or agency member shall withdraw from any
23 adjudicative proceeding in which he cannot accord a fair and impartial hearing or
24 consideration. Any party may request the disqualification of a subordinate deciding
25 officer or agency member, on the ground of his inability to give a fair and impartial
26 hearing, by filing an affidavit, promptly upon discovery of the alleged
27 disqualification, stating with particularity the grounds upon which it is claimed that
28 a fair and impartial hearing cannot be accorded. The issue shall be determined
29 promptly by the agency, or, if it affects a member or members of the agency, by the

1 remaining members thereof, if a quorum. Upon the entry of an order of
 2 disqualification affecting a subordinate deciding officer, the agency shall assign
 3 another in his stead or shall conduct the hearing itself. Upon the disqualification of
 4 a member of an agency, the governor immediately shall appoint a member pro tem
 5 to sit in place of the disqualified member in that proceeding. In further action, after
 6 the disqualification of a member of an agency, the provisions of ~~R.S. 49:957~~ R.S.
 7 49:976 shall apply.

8 ~~§961.~~§977.3. Licenses

9 [Section redesignated from R.S. 49:961]

10 ~~§962.~~§977.4. Declaratory orders and rulings

11 [Section redesignated from R.S. 49:962]

12 ~~§962.1~~§978. Judicial review, rule to show cause for permit applicants

13 [Section redesignated from R.S. 49:962.1]

14 ~~§964.~~§978.1. Judicial review of adjudication

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

23 * * *

24 F. The review shall be conducted by the court ~~without a jury~~ exercising its
 25 appellate jurisdiction and shall be confined to the record. Nothing in this Section
 26 shall limit the utilization of or scope of judicial review available under the legal
 27 regime governing the agency. In cases of alleged irregularities in procedure before
 28 the agency, not shown in the record, ~~proof thereon may be taken in the court.~~ The
 29 court, upon request, shall hear oral argument and receive written briefs. The court

1 may remand the matter to the agency for receipt of proof and decision.

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

6 (1) In violation of constitutional or statutory provisions;

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

8 (3) Made upon unlawful procedure;

9 (4) Affected by other error of law;

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

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

20 ~~§964.1.~~ §978.2. Judicial review; attorney fees; court costs; report

21 * * *

22 C. All payments for litigation expenses required by this Section shall be paid
23 from the agency's regular operating budget. Each agency which has paid ~~such~~
24 litigation expenses shall submit a detailed report of all ~~such~~ payments from the prior
25 fiscal year to its legislative oversight committees and to the Joint Legislative
26 Committee on the Budget no later than November fifteenth of each year. For the
27 purposes of this Subsection and of R.S. 49:992(H), the term "litigation expenses"
28 shall mean court costs and attorney fees of the agency and of any other party if the
29 agency was required to pay ~~such~~ costs and fees.

1 ~~§965.~~§979. Appeals

2 [Section redesignated from R.S. 49:965]

3 ~~§965.1.~~§980. Expenses of administrative proceedings; right to recover

4 [Section redesignated from R.S. 49:965.1]

5 Section 2(A). The Louisiana State Law Institute is hereby directed to redesignate
6 R.S. 49:950 through 957, as provided in Section 1 of this Act, as Part I of Chapter 13 of Title
7 49 of the Louisiana Revised Statutes of 1950, to be entitled "General Provisions".

8 (B) The Louisiana State Law Institute is hereby directed to redesignate R.S. 49:961
9 through 974.8, as provided in Section 1 of this Act, as Part II of Chapter 13 of Title 49 of the
10 Louisiana Revised Statutes of 1950, to be entitled "Rule Promulgation".

11 (C) The Louisiana State Law Institute is hereby directed to redesignate R.S. 49:975
12 through 980, as provided in Section 1 of this Act, as Part III of Chapter 13 of Title 49 of the
13 Louisiana Revised Statutes of 1950, to be entitled "Adjudication".

14 Section 3. The Louisiana State Law Institute is hereby authorized to update any
15 citation references in Louisiana Law to conform with the changes made by this Act.

The original instrument was prepared by Brandi Cannon. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cheryl Serrett.

DIGEST

SB 67 Reengrossed

2022 Regular Session

Fred Mills

Proposed law reorganizes and recodifies the Administrative Procedure Act, Chapter 13 of Title 49 of present law.

Present law provides that an agency shall hold a public hearing no earlier than 35 days and no later than 40 days after the notice of the intended action is published in the La. Register.

Proposed law extends the maximum time for a hearing to no later than 45 days.

Present law provides for an agency to publish on its website public notice that the report summarizing public comments and the agency responses has been delivered to the appropriate standing committee within one business day from submission of the report to the appropriate standing committee. Proposed law expands the deadline to five business days after submission.

Present law provides for the La. Administrative Code to contain all executive orders issued by the governor which are in effect at the time the Code is published. Proposed law requires the Office of the State Register to publish all executive orders issued by the governor.

Present law provides that, except as provided in present law, a person who is aggrieved by a final decision or order in an administrative adjudication proceeding is entitled to judicial

review 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. Proposed law retains present law but relocates the language relative to no limitation on the utilization or scope of judicial review available pursuant to other provisions of law.

Proposed law directs the La. State Law Institute to take the following actions:

- (1) Redesignate provisions of present law into a new format and number scheme as provided in proposed law without changing the text of the provisions except as provided in proposed law.
- (2) Change references throughout present law as necessary to reflect the new citations provided for in proposed law.

Proposed law creates three parts in the current chapter of present law, to be numbered, entitled, and comprised as follows:

Part I. General Provisions

Comprising R.S. 49:950 through 957 of proposed law.

Part II. Rule Promulgation

Comprising R.S. 49:961 through 974.4 of proposed law.

Part III. Adjudication

Comprising R.S. 49:975 through 980 of proposed law.

Proposed law does not change the present law citations of R.S. 49:950, 951, and 973.

Proposed law changes only the citation of the following present law provisions:

R.S. 49:952, 954.3, 956, 956.1, 957, 958, 961, 962, 962.1, 963, 965, 965.1, 966, 967.1, 968.1, 978.2, 978.3, and 978.6.

Proposed law makes various technical changes to modernize present law.

Effective August 1, 2022.

(Amends R.S. 49:951(9), 953, 953.1(A)(1)(intro. para.), 953.1(A)(5), and (C), 954(A) and (B)(2), 954.1(A), 955(B), (C), (E), and (F), 959(A), 960(B), 964(A)(1), (F), and (G), 964.1(C), 966(A), 967, 968(B)(intro. para.), 968(B)(24)(b), (C)(2) and (4), (D)(1)(a), and (D)(1)(b)(intro. para.), (D)(1)(b)(i), and (c) and (3), (E)(1)(a), 968(F)(1)(intro. para.), (G), (H), (J), and (K)(2), 969(A), 970(A), 971(A)(1) and (3) and (B), 974(B), (C), and (E), 978.1, 978.4(A)(2), 978.5(B) and (C), 978.7(intro. para.), and 978.8(A) and (B); adds R.S. 49:953.1(G), 963, and 964)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Senate and Governmental Affairs to the original bill

1. Makes technical corrections.

Senate Floor Amendments to engrossed bill

1. Makes technical corrections.