SENATE BILL NO. 67
BY SENATOR FRED MILLS

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

AN ACT

To amend and reenact R.S. 49:951(9), 953, the introductory paragraph of 953.1(A)(1), 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, the introductory paragraph of 968(B), 968(B)(24)(b), (C)(2) and (4), (D)(1)(a), and the introductory paragraph of (D)(1)(b), (D)(1)(b)(i), and (c) and (3), (E)(1)(a), the introductory paragraph of 968(F)(1), (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), the introductory paragraph of 978.7, and 978.7(1), and 978.8(A) and (B), to enact R.S. 49:953.1(G), 963, and 964, and to recodify Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 in its entirety, relative to the Administrative Procedure Act; to make technical updates to the Administrative Procedure Act; to provide for public hearings; to provide for publication of executive orders; to provide for judicial review; to direct the Louisiana State Law Institute to redesignate the current provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 into a new format and number scheme, to be comprised of R.S. 49:950 through 978.3, without changing the text of the provisions except as provided herein; to make

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

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 49:951(9), 953, the introductory paragraph of 953.1(A)(1),
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, the introductory paragraph of
968(B), 968(B)(24)(b), (C)(2) and (4), (D)(1)(a), the introductory paragraph of (D)(1)(b),
(D)(1)(b)(i), and (c) and (3), (E)(1)(a), the introductory paragraph of 968(F)(1), (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), the introductory paragraph of 978.7, 978.7(1), and 978.8(A)
and (B) are hereby amended and reenacted and R.S. 49:953.1(G), 963, and 964 are hereby
enacted to read as follows:

§951. Definitions

As used in this Chapter:

* * *

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

§966.8952. Construction and effect; judicial cognizance

A. Nothing in this Chapter shall be held to diminish the constitutional rights
of any person or to limit or repeal additional requirements imposed by statute or
otherwise recognized by law. Notwithstanding the foregoing, and except as provided in R.S. 49:967, R.S. 49:954, any and all statutory requirements regarding the adoption or promulgation of rules other than those contained in Sections 953, 954, 954.1, and 968 of this Title are hereby superseded by the provisions of this Chapter and are repealed. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this Chapter through the issuance of rules or otherwise.

* * *

§954. Louisiana Administrative Code and Louisiana Register; publication; distribution; copies; index; interagency rules

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

* * *

§957. Exemptions from provisions of Chapter

A. Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 shall not be applicable to the Board of Tax Appeals, the Department of Revenue, with the exception of the Louisiana Tax Commission that shall continue to be governed by this Chapter in its entirety, unless otherwise specifically provided by law, and the administrator of the Louisiana Employment Security Law; however, the provisions of R.S. 49:951(2), (4), (5), (6), and (7), 952, 953, 954, 954.1, 961, 965.
966, 969, and 970 shall be applicable to such the board, department, and administrator.

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

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

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

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

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

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

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

E. The provisions of R.S. 49:963, 964, and 965 shall apply only to the regulations and policies of the Department of Public Safety and Corrections, corrections services, that affect the substantial rights of, or administrative remedies available to, the public or any offender incarcerated in a state correctional facility or local jail facility.
§952. §956. Public information; adoption of rules; availability of rules and orders

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

§954. §957. Internet publication of certain information concerning proposed rules and fees; information required to be published; manner of publication; deadlines

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

E. The provisions of this Section shall not be construed to require the publication of information concerning the adoption, amendment, or repeal of any
rule or fee unless and until the agency gives notice of its intended action pursuant to

PART II. RULE PROMULGATION

§9535961. Procedure for adoption of rules; agency rule review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The impact on child, individual, or family poverty in relation to individual or community asset development required by R.S. 49:973.
(iii) The economic impact on small businesses required by R.S. 49:974.4.

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

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

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

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

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

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

(2) Any hearing held pursuant to the provisions of Paragraph (1) of this
Subsection shall be held no earlier than thirty-five days and no later than forty-five days after the publication of the Louisiana Register in which the notice of the intended action appears.

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

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

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

C.(1) An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, considerations, and disposition.

Within ninety days after submission of a petition, the agency shall either deny the petition in writing, stating reasons for the denial, or shall initiate rulemaking proceedings in accordance with this Chapter. Each agency with an appropriated operating budget of five million dollars or more shall include on its website a description of the procedure for submitting petitions in accordance with this
Paragraph:

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

(b) The notice of the meeting shall contain:

(i) The name of the agency;

(ii) The purpose of the meeting;

(iii) The time and place of the meeting;

(iv) The process for requesting reasonable accommodations for persons with disabilities;

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

(c) The agency shall consider fully all written and oral comments and submissions concerning its rules. The agency shall advise persons who provide oral comments that in order to be submitted to the legislative oversight committees, comments must be submitted to the agency in writing. The agency shall issue a response to each submission describing the principal advantages and disadvantages of the rule changes suggested in the submission. In addition, the agency may prepare a statement explaining the basis and rationale for the rule in question identifying the data and evidence upon which the rule is based. All such statements and responses to submissions shall be furnished to the respective legislative oversight committees.
in the manner provided by R.S. 49:968(K) and shall be made available to interested
persons as soon as possible but no later than one day following their submission to
the appropriate legislative oversight committees.

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

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

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

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

E.(1) No agency shall adopt, amend, or repeal any rule if the accompanying
fiscal and economic impact statement approved by the legislative fiscal office
indicates that the rule change would result in any increase in the expenditure of state
funds, unless the rule is adopted as an emergency rule pursuant to the requirements
of R.S. 49:953.1 or unless the legislature has specifically appropriated the funds
necessary for the expenditures associated with the rule change:

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

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

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

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

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

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

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

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

(a) The department shall publish a notice of the proposed rule at least sixty days prior to taking action on the rule as provided below. The notice, which may include an explanation of the basis and rationale for the proposed rule, shall include all of the following:
(i) A statement of either the terms or substance of the intended action or a
description of the subjects and issues involved:

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

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

(iv) The time, place, and manner in which interested persons may present
their views thereon including the notice for a public hearing required by R.S. 30:2611(D)(1):

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

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

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

(d) For the purpose of timely notice as required by this Paragraph, the date
of notice shall be deemed to be the date of publication of the issue of the Louisiana
Register in which the notice appears, such publication date to be the publication date
as stated on the outside cover or the first page of said issue.
(e) The department shall afford all interested persons an opportunity to submit data, views, comments, or arguments related to the proposed rule, in writing, during a period of no less than thirty days. The department shall consider fully all written comments and submissions respecting the proposed rule.

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

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

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

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

(ii) Furnish the chairman of the Senate Committee on Environmental Quality and the chairman of the House Committee on Natural Resources and Environment the response to comments and submissions required under Subparagraph (g) of this Paragraph, together with a copy of the notice required under Subparagraph (a) of this Paragraph.
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
under Subparagraph (h) of this Paragraph, there shall be no legislative oversight of
the proposed rule. If, however, legislative oversight is properly requested, R.S.
4 49:968 and Items (A)(2)(b)(ii) and (iii) of this Section shall thereafter apply with
respect to the proposed rule:
5
6 (j) In the absence of legislative oversight, the proposed rule may be adopted
by the Department of Environmental Quality no earlier than sixty days, nor later than
twelve months, after the official notice of the proposed rule was published in the
Louisiana Register; provided, however, that the proposed rule shall be effective upon
its publication in the Louisiana Register, said publication to be subsequent to the act
of adoption:
7
8 (4) The procedures set forth in Paragraph (3) of this Subsection for the
adoption by the Department of Environmental Quality of rules identical to federal
laws or regulations applicable in Louisiana shall not be available for the adoption of
any rules creating or increasing fees.
9
10 F.(1) No later than the tenth day of the month, the office of the state
register shall electronically transmit to the commercial division of the
Department of State, all of the following information:
11
12 (a) The small business economic impact statement prepared by the
agency pursuant to R.S. 49:974.4 and the small business regulatory flexibility
analysis prepared pursuant to R.S. 49:974.5.
13
14 (b) The summary of the estimated costs to small businesses, citizens, and
nongovernmental groups as provided in Subsection E of this Section.
15
16 (c) Any potpourri notices which are submitted to the office of the state
register pursuant to R.S. 49:974.4.
17
18 (2) Prior to electronically sending the information required in this
Subsection and Subsection E of this Section to the commercial division of the
Department of State, the office of the state register shall divide the information by agency.

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

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

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

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

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

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

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

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

(b) Is identical to a federal law or regulation applicable in Louisiana:
(c) Will cost the state and affected persons less than one million dollars, in
the aggregate, to implement.

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

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

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

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

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

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

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

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

(2) Prior to electronically sending the information required in this Subsection
and Subsection E of this Section to the commercial division of the Department of
State, the office of the state register shall divide the information by agency.
§953.1-§962. Emergency rulemaking

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

*   *   *

(5) No emergency rule shall be adopted by an agency more than two
consecutive times unless the agency is operating under a state or federal declaration
of disaster, a state or federal public health emergency, or an ongoing emergency as
authorized by the legislature, governor, or other provision of law. However, the
agency may concurrently proceed with the adoption of an identical rule pursuant to

*   *   *

C. The validity of an emergency rule may be determined in an action for
declaratory judgment in the district court of the parish in which the agency is located.
The agency shall be made a party to the action. An action for a declaratory judgment
under this Section may be brought only by a person to whom such emergency rule
is applicable or who would be adversely affected by such emergency rule and only
on the grounds that the emergency rule does not meet the criteria for adoption of an
emergency rule as provided in Paragraph (A)(1) of this Section. The court shall
declare the emergency rule invalid if it finds that there is not sufficient evidence that
such emergency rule must be adopted on an emergency basis for one or more of the
reasons for adoption of an emergency rule as provided in Subsection A of this
Section. Notwithstanding any provision of law to the contrary, the emergency rule shall remain in effect until such declaratory judgment is rendered. The provisions of R.S. 49:963, R.S. 49:968 shall not apply to any action brought pursuant to this Section. The provisions of this Section are in addition to R.S. 49:963, R.S. 49:968 and shall not limit any action pursuant to R.S. 49:963, R.S. 49:968.

*          *          *

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

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

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

(a) Adopt and promulgate the proposed rule separately from any proposed rule or set of proposed rules that is identical to a federal law or regulation or required for compliance with a federal law or regulation, unless the only difference between the proposed rule or set of proposed rules and the
corresponding federal law or regulation is a proposed fee. For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Unless specifically requested, in writing, by the chairman of the House
Committee on Natural Resources and Environment or the chairman of the
Senate Committee on Environmental Quality within ten days of the certification
provided under Subparagraph (h) of this Paragraph, there shall be no
legislative oversight of the proposed rule. If, however, legislative oversight is
properly requested, R.S. 49:961(B)(2) and (3) and 966 shall thereafter apply
with respect to the proposed rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§954.3, §963.1 Environmental Regulatory Code

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

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

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

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

(2) The notice of the meeting shall contain:

(a) The name of the agency.

(b) The purpose of the meeting.

(c) The time and place of the meeting.

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

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

(3) The agency shall consider fully all written and oral comments and
submissions concerning its rules. The agency shall advise persons who provide
oral comments that in order to be submitted to the legislative oversight
committees, comments must be submitted to the agency in writing. The agency
shall issue a response to each submission describing the principal advantages
and disadvantages of the rule changes suggested in the submission. In addition,
the agency may prepare a statement explaining the basis and rationale for the
rule in question identifying the data and evidence upon which the rule is based.

All such statements and responses to submissions shall be furnished to the
respective legislative oversight committees in the manner provided by R.S.
49:966(K) and shall be made available to interested persons as soon as possible
but no later than one day following their submission to the appropriate
legislative oversight committees.

§ 954 § 965. Filing; taking effect of rules

A. No rule adopted on or after January 1, 1975, is valid unless adopted in
substantial compliance with this Chapter. Each rulemaking agency shall file a
certified copy of its rules with the Office of the State Register. No rule, whether
adopted before, on, or after January 1, 1975, shall be effective, nor may it be
enforced, unless it has been properly filed with the Office of the State Register. No
rule adopted on or after November 1, 1978, shall be effective, nor may it be
enforced, unless prior to its adoption a report relative to the proposed rule change is
submitted to the appropriate standing committee of the legislature or to the presiding
officers of the respective houses as provided in R.S. 49:968. No rule adopted on or
after September 12, 1980, shall be effective, nor may it be enforced, unless the
approved economic and fiscal impact statements, as provided in R.S. 49:952(A) R.S.
49:961, have been filed with the Office of the State Register and published in the
Louisiana Register. The inadvertent failure to mail notice and statements to persons
making request for such mail notice, as provided in R.S. 49:953 R.S. 49:961, shall
not invalidate any rule adopted hereunder. A proceeding under R.S. 49:962 R.S.
49:968 to contest any rule on the grounds of noncompliance with the procedures for
adoption, as given in this Chapter, must be commenced within two years from the
date upon which the rule became effective.

B. * * *

(2) An emergency rule shall be considered effective pursuant to the
§966. Review of agency rules; fees

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

(24)

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

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

(2) A statement of the proposed action, that is, whether the rule is proposed for adoption, amendment, or repeal; a brief summary of the content of the rule if proposed for adoption or repeal; and a brief summary of the change in the rule if...
(4) A statement of the circumstances which require adoption, amending, or repeal of the rule or the adoption, increasing, or decreasing of the fee.

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

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

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

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

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

(a) Determine whether the rule change or action on fees is in conformity with the intent and scope of the enabling legislation purporting to authorize the adoption thereof.
(b) Determine whether **Whether** the rule change or action on fees is in conformity and not contrary to all applicable provisions of law and of the constitution.

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

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

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

* * *

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

* * *

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

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

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

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

*          *          *

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

K. *          *          *

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

*          *          *

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

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

§963.§968. Judicial review of validity or applicability of rules

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

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

A. In addition to the procedures provided in R.S. 49:968 R.S. 49:966 for review of the exercise of the rulemaking authority delegated by the legislature to state agencies, as defined by this Chapter, the legislature, by Concurrent Resolution, may suspend, amend, or repeal any rule or regulation or body of rules or regulations, or any fee or any increase, decrease, or repeal of any fee, adopted by a state department, agency, board, or commission. The Louisiana Register shall publish a
brief summary of any Concurrent Resolution adopted by the legislature pursuant to
this Section. Such the summary shall be published not later than forty-five days
after signing of such Resolution by the presiding officers of the legislature.

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

A. The governor, by executive order, may suspend or veto any rule or
regulation or body of rules or regulations adopted by a state department, agency,
board or commission, except as provided in R.S. 49:947 R.S. 49:954, within thirty
days of their adoption. Upon the execution of such an order, the governor shall
transmit copies thereof to the speaker of the House of Representatives
and president of the Senate.

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

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

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

49:966

* * *

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

* * *

§978.1 §974.1 Short title
R.S. 49:978.1 R.S. 49:974.1 through 978.8 974.8 may be cited as the Small
Business Protection Act and are referred to therein as "this Act".

§978.2 §974.2 Intent; legislative findings
[Section redesignated from R.S. 49:978.2]

§978.3 §974.3 Definitions
[Section redesignated from R.S. 49:978.3]

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

(2) The small business economic impact statement shall be submitted to the

* * *

§978.5 §974.5 Regulatory flexibility analysis
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B. Prior to the adoption of any proposed rule by an agency which according
to the economic impact statement required by R.S. 49:978.4 R.S. 49:974.4 and the
results of the regulatory flexibility analysis required by this Section would have an
adverse impact on small businesses, the agency shall notify the Department of
Economic Development of its intent to adopt the proposed rule.

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

§978.6 R.S. 49.74.6, Conflicts of law

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

§978.7 R.S. 49.74.7, Notification

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

(1) By the fifteenth day of the month, the commercial division shall post information a link to the Louisiana Register website showing the proposed rule or statement of the proposed fee on the internet page of the commercial division under the heading of "Proposed State Rules and Regulations that May Affect Your Business".

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§978.8 R.S. 49.74.8, Small business advocate; posting of rules

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

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

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PART III. ADJUDICATION

§955 R.S. 4975. Adjudication; notice; hearing; records

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B.(1) The notice shall include all of the following:
(a) A statement of the time, place, and nature of the hearing;
(b) A statement of the legal authority and jurisdiction under which the hearing is to be held;
(c) A reference to the particular sections of the statutes and rules involved;
(d) A short and plain statement of the matters asserted.

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

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

*          *          *

E. The record in a case of adjudication shall include all of the following:
(1) All pleadings, motions, intermediate rulings;
(2) Evidence received or considered or a resume thereof if not transcribed;
(3) A statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;
(4) Offers of proof, objections, and rulings thereon;
(5) Proposed findings and exceptions;
(6) Any decision, opinion, or report by the officer presiding at the hearing.

F. The agency shall make a full transcript of all proceedings before it when the statute governing it requires it, and, in the absence of such a requirement, shall, at the request of any party or person, have prepared and furnish him with a copy of the transcript or any part thereof upon payment of the cost thereof unless the governing statute or constitution provides that it shall be furnished without cost.
§956.1. Rules of evidence; official notice; oaths and affirmations; subpoenas; depositions and discovery; and confidential privileged information

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

§956.1. Administrative proceedings; member of the legislature or personnel as witness

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

§957. Examination of evidence by agency

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

§958. Decisions and orders

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

§959. Rehearings

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

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

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

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

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

*  *  *

§960. Ex parte consultations and recusations

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

§961. Licenses

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

§962. Declaratory orders and rulings

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

§962.1 Judicial review, rule to show cause for permit applicants

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

§964.1 Judicial review of adjudication

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

* * *

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

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

(1) In violation of constitutional or statutory provisions;
(2) In excess of the statutory authority of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion;
(6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

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

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

§965.-§979. Appeals

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

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

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

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

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

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

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

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Brandi Cannon.

DIGEST

SB 67 Original 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

Coding: Words which are struck through are deletions from existing law; words in boldface type and underscored are additions.
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:


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), 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 978.7(1), and 978.8(A) and (B); adds R.S. 49:953.1(G), 963, and 964)