

2015 Regular Session

HOUSE BILL NO. 600

BY REPRESENTATIVES GEYMANN AND HENSGENS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ADMINISTRATIVE PROCEDURE: Provides relative to the Administrative Procedure Act

1 AN ACT

2 To amend and reenact R.S. 49:951(6), 954, 963(C), 968(E)(2), and 970, relative to the  
3 Administrative Procedure Act; to provide relative to the procedures for adopting and  
4 contesting the validity of rules; to provide for definitions; to provide for standards;  
5 to provide relative to the adoption of certain emergency rules; to provide relative to  
6 gubernatorial suspension or veto of rules and regulations; and to provide for related  
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 49:951(6), 954, 963(C), 968(E)(2), and 970 are hereby amended and  
10 reenacted to read as follows:

11 §951. Definitions

12 As used in this Chapter:

13 \* \* \*

14 (6) "Rule" means each agency statement, guide, or requirement for conduct  
15 or action, exclusive of those regulating only the internal management of the agency  
16 and those purporting to adopt, increase, or decrease any fees imposed on the affairs,  
17 actions, or persons regulated by the agency, which has general applicability and the  
18 effect of implementing or interpreting substantive law or policy, or which prescribes  
19 the procedure or practice requirements of the agency. "Rule" includes, but is not  
20 limited to, any provision for fines, prices or penalties, the attainment or loss of

1 preferential status, and the criteria or qualifications for licensure or certification by  
 2 an agency. A rule may be of general applicability even though it may not apply to  
 3 the entire state, provided its form is general and it is capable of being applied to  
 4 every member of an identifiable class. The term includes the amendment or repeal  
 5 of an existing rule but does not include declaratory rulings or orders or any fees. The  
 6 term also includes any program, statement, guideline, or requirement for conduct,  
 7 standards, or action prescribed by the State Board of Elementary and Secondary  
 8 Education, the state superintendent of education, or the Department of Education  
 9 which has general applicability to public elementary or secondary schools or special  
 10 schools or to identifiable classes of students enrolled in public schools under the  
 11 supervision and control of the State Board of Elementary and Secondary Education.

12 \* \* \*

13 §954. Filing; taking effect of rules

14 A. (1) No rule adopted on or after ~~January 1, 1975~~ July 1, 2015, is valid  
 15 unless adopted in ~~substantial~~ strict compliance with this Chapter. Each rulemaking  
 16 agency shall file a certified copy of its rules with the Office of the State Register.  
 17 No rule, whether adopted before, on, or after January 1, 1975, shall be effective, nor  
 18 may it be enforced, unless it has been properly filed with the Office of the State  
 19 Register. No rule adopted on or after November 1, 1978, shall be effective, nor may  
 20 it be enforced, unless prior to its adoption a report relative to the proposed rule  
 21 change is submitted to the appropriate standing committee of the legislature or to the  
 22 presiding officers of the respective houses as provided in R.S. 49:968. No rule  
 23 adopted on or after September 12, 1980, shall be effective, nor may it be enforced,  
 24 unless the approved economic and fiscal impact statements, as provided in R.S.  
 25 49:953(A), have been filed with the Office of the State Register and published in the  
 26 Louisiana Register.

27 (2) The inadvertent failure to mail notice and statements to persons making  
 28 request for ~~such~~ mail notice; as provided in R.S. 49:953; shall not invalidate any rule  
 29 otherwise adopted hereunder pursuant to this Chapter. However, the intentional

1 failure to mail notice and statements to any person who has made a request for notice  
2 as provided in R.S. 49:953 shall be cause to invalidate a rule.

3 (3) A proceeding under R.S. 49:963 to contest any rule on the grounds of  
4 noncompliance with the procedures for adoption, as given in this Chapter, must be  
5 commenced within two years from the date upon which the rule became effective.  
6 The time period to contest a rule pursuant to this Subsection and R.S. 49:963 shall  
7 not commence until the adopted rule has been published in the Louisiana Register  
8 or the later effective date of the rule as provided in Paragraph B(1) of this Section.

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

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

14 (2) Subject to applicable constitutional or statutory provisions, an emergency  
15 rule shall become effective on the date of its adoption, or on a date specified by the  
16 agency to be not more than sixty days future from the date of its adoption, provided  
17 written notice is given within five days of the date of adoption to the governor of  
18 Louisiana, the attorney general of Louisiana, the speaker of the House of  
19 Representatives, the president of the Senate, and the Office of the State Register as  
20 provided in R.S. 49:953(B). Such emergency rule shall not remain in effect beyond  
21 the publication date of the Louisiana Register published in the month following the  
22 month in which the emergency rule is adopted, unless such rule and the reasons for  
23 adoption thereof are published in that issue; however, any emergency rule so  
24 published shall not be effective for a period longer than one hundred twenty days.  
25 No agency shall successively adopt an identical or substantially similar emergency  
26 rule, but the adoption of an identical or substantially similar rule under R.S.  
27 49:953(A)(1), (2), and (3) is not precluded. The agency shall take appropriate  
28 measures to make emergency rules known to the persons who may be affected by

1           them.

2                                   \*       \*       \*

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

4                                   \*       \*       \*

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

9                                   \*       \*       \*

10          §968. Review of agency rules; fees

11                                  \*       \*       \*

12               E.

13                                  \*       \*       \*

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

18                                  \*       \*       \*

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

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

26                       B. If the governor has cause to believe that a rule or regulation or body of  
27           rules or regulations was not adopted in strict compliance with this Chapter, the  
28           governor, by executive order, may suspend the rule or regulation or body of rules or  
29           regulations adopted by an agency, except as provided in R.S. 49:967, for a period of

1        not less than thirty days nor more than ninety days from the date of the execution of  
2        the executive order. Upon the execution of such an order, the governor shall transmit  
3        copies thereof to the speaker of the House of Representatives, the president of the  
4        Senate, the agency, and the Louisiana Register. During the period of suspension, the  
5        agency shall submit documentation to establish its compliance with the provisions  
6        of the Chapter at the time the rule or regulation or body of rules or regulations were  
7        adopted to the governor and to the appropriate legislative oversight committees as  
8        provided in R.S. 49:968. If the agency fails to establish a minimum of substantial  
9        compliance with the provisions of the Chapter at the time the rule or regulation or  
10       body of rules or regulations were adopted, the governor shall, by executive order,  
11       veto the rule or regulation or body of rules or regulations. Upon the execution of  
12       such an order, the governor shall transmit copies thereof to the speaker of the House  
13       of Representatives, the president of the Senate, the agency, and the Louisiana  
14       Register.

15       Section 2. This Act shall become effective on July 1, 2015; if vetoed by the governor  
16 and subsequently approved by the legislature, this Act shall become effective on July 1,  
17 2015, or on the day following such approval by the legislature, whichever is later.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 600 Original

2015 Regular Session

Geymann

**Abstract:** Relative to the Administrative Procedure Act, specifically and explicitly includes in the definition of "rule" any program, statement, guideline, or requirement for conduct, standards, or action prescribed by the BESE, the state superintendent of education, or the Dept. of Education and applicable to public schools and public school children; changes the required standard of compliance with the APA from "substantial" to "strict"; specifically prohibits an agency from successively adopting identical or substantially similar emergency rules; and expands the governor's authority relative to veto and suspension of rules.

Present law relative to the Administrative Procedure Act (APA), defines "rule" as each agency statement, guide, or requirement for conduct or action (exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency) which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. Provides

that "rule" includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. Provides that a rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. Specifies that the term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

Proposed law retains present law and specifies that the term "rule" also includes any program, statement, guideline, or requirement for conduct, standards, or action prescribed by BESE, the state superintendent of education, or the Dept. of Education which has general applicability to public elementary or secondary schools or special schools or to identifiable classes of students enrolled in public schools under the supervision and control of BESE.

Present law provides that no rule adopted on or after Jan. 1, 1975, is valid unless adopted in substantial compliance with the APA. Further provides, relative to judicial review of the validity or applicability of rules, that the court shall declare the rule invalid or inapplicable if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without substantial compliance with required rulemaking procedures. Further provides relative to legislative oversight over rules that the failure of a subcommittee to conduct a hearing or to make a determination regarding any rule proposed for adoption, amendment, or repeal shall not affect the validity of a rule otherwise adopted in compliance with the APA.

Proposed law provides instead that no rule adopted on or after July 1, 2015, is valid unless adopted in strict compliance with the APA and also changes the standard relative to judicial review from "substantial" to "strict" compliance. Further specifies that the failure of a subcommittee to conduct a hearing or to make a determination regarding any rule proposed for adoption, amendment, or repeal shall not affect the validity of a rule otherwise adopted in strict compliance with the APA.

Present law provides that a proceeding to contest any rule on the grounds of noncompliance with the procedures for adoption must be commenced within two years from the date upon which the rule became effective. Proposed law further specifies that the time period to contest a rule shall not commence until the adopted rule has been published in the Louisiana Register or the later effective date of the rule as provided in present law.

Present law provides that the inadvertent failure to mail notice and statements to persons making request for mail notice as provided in present law shall not invalidate any rule adopted pursuant to the APA. Proposed law retains present law and specifies that the intentional failure to mail notice and statements to any person who has made a request for such notice as provided present law shall be cause to invalidate a rule.

Present law relative to the effectiveness of emergency rules, specifies any emergency rule shall not be effective for a period longer than one hundred twenty days, but the adoption of an identical rule pursuant the normal rulemaking process of the APA is not precluded. Proposed law additionally specifically prohibits an agency from successively adopting an identical or substantially similar emergency rule.

Present law authorizes the governor, by executive order, to suspend or veto any rule or regulation or body of rules or regulations adopted by an agency (except those exempted from provisions of the APA), within 30 days of their adoption. Specifies that 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. Proposed law further requires copies to be sent to the agency and the Louisiana Register.

Proposed law further provides that if the governor has cause to believe that a rule or regulation or body of rules or regulations was not adopted in strict compliance with the APA,

the governor, by executive order, may suspend the rule or regulation or body of rules or regulations adopted by an agency (except those exempted from provisions of the APA) for a period of not less than 30 days nor more than 90 days from the date of the execution of the executive order. Requires copies of the order to be sent to the speaker of the House, the president of the Senate, the agency, and the Louisiana Register. During the suspension, requires the agency to submit documentation to establish its compliance with the provisions of the APA at the time the rule or regulation or body of rules or regulations were adopted to the governor and to the appropriate legislative oversight committees. Specifies that if the agency fails to establish substantial compliance with the APA, the governor shall, by executive order, veto the rule or regulation or body of rules or regulations and send copies of the order to the speaker of the House, the president of the Senate, the agency, and the Louisiana Register.

Effective July 1, 2015.

(Amends R.S. 49:951(6), 954, 963(C), 968(E)(2), and 970)