

State and Local Government in Louisiana: An Overview 2012-2016 Term

CHAPTER 2 — STATE GOVERNMENT FUNCTIONS

Part L. Administrative Procedure

Administrative Procedure Act

The Louisiana Administrative Procedure Act (R.S. 49:950 et seq.) provides for public access to agency decision-making and furthers public awareness of agency rules by applying uniform requirements to state agencies with rulemaking power and by setting minimum standards for agencies to follow in adopting and implementing rules. Very generally, the Administrative Procedure Act (APA) establishes a uniform, comprehensive set of procedures covering the administrative actions of state executive branch agencies, including rulemaking, fee setting, adjudicatory proceedings, and licensing, and judicial review of those actions. The APA applies to any state board, commission, department, agency, officer, or other entity (within the executive branch of state government) which makes rules, regulations, or policy, or formulates or issues decisions or orders pursuant to or as directed by the laws of the state or the United States. (R.S. 49:951)

The office of the state register is the official agency charged with publishing the "Louisiana Register", which contains agencies' notices of intent to adopt rules and the text of such proposed rules. In addition, the office of the state register directs and supervises the publishing, indexing, and revision of the "Louisiana Administrative Code", which contains all effective rules adopted by each agency in accordance with the provisions of the APA. For further information, see the office of the state register's web site at www.doa.louisiana.gov/osr/osr.htm.

Agency Rulemaking

An agency that engages in rulemaking must file a description of its organization with the office of the state register; adopt rules setting forth the nature and requirements of all agency procedures; and make available for public inspection all rules, preambles, responses to comments, and submissions and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions. (R.S. 49:952)

Prior to the adoption, amendment, or repeal of any rule or fee, an agency shall give notice of its intended action at least 90 days prior to taking action on the rule. The notice must include a description of the subjects and issues involved or a statement of the terms or substance of the intended action; statements concerning the fiscal impact, economic impact, and the impact upon family formation, stability, and autonomy; the name of the person within the agency responsible for responding to inquiries regarding the action; the time, place, and manner in which interested persons may present their views; a statement that the intended action complies with the statutory law administered by the agency; and a statement indicating whether the agency has prepared an explanatory preamble. Such notice must be published in the "Louisiana Register". The agency is required to allow interested persons to submit data, views, comments, or arguments, orally or in writing, and the agency must respond to comments and submissions.

(R.S. 49:953(A)) (See the "Timetable for Adoption of Rules, Fees, Emergency Rules, and Emergency Fees by Louisiana State Agencies" table beginning on following page.)

If an agency finds that imminent peril to public health, safety, or welfare requires adoption of a rule or fee upon shorter notice than 90 days, the agency must, within five days of adoption, inform the governor, the attorney general, the speaker of the House of Representatives, the president of the Senate, and the office of the state register in writing of its reasons for so finding. It may proceed without prior notice or hearing or upon abbreviated notice and hearing to adopt such emergency rule subject to certain requirements. (R.S. 49:953(B)) The agency must take appropriate measures to make emergency rules known to the persons who may be affected. An emergency rule cannot remain in effect beyond the publication date of the "Louisiana Register" in the month following the month in which the rule was adopted, unless the rule and the reasons for its adoption are published in that issue. An emergency rule shall not be effective for a period longer than 120 days. (R.S. 49:954(B))

Legislative Oversight of Rulemaking

The legislature may review the exercise of rulemaking authority and the adopting, increasing, or decreasing of fees, as well as any extensions of the legislative lawmaking function which it has delegated to state agencies. Prior to the adoption, amendment, or repeal of any such rule, the agency must submit a report relative to the proposed action to the appropriate committees of the legislature and the presiding officers of the respective houses of the legislature. The chairman of each committee to which reports are submitted must appoint an oversight subcommittee (which may consist of the entire committee), which may conduct hearings on the proposed rule change or action on fees. At such hearings, the committee must determine if the rule change or action on fees is in conformity with the intent and scope of the enabling legislation; if the rule change or action on fees is in conformity and not contrary to law; if the rule change or action on fees is advisable or has merit; and if the rule change or action on fees is acceptable or unacceptable to the committee. (R.S. 49:968) (See the "Timetable for Adoption of Rules, Fees, Emergency Rules, and Emergency Fees by Louisiana State Agencies" table beginning on the following page.)

Within 60 days after the adoption of an emergency rule or fee, an oversight subcommittee of either house may conduct a hearing to review an emergency rule or fee and make a determination of whether such rule or fee meets the criteria for an emergency rule or fee and the determinations as provided in the paragraph above. (R.S. 49:953(B)) (See the "Timetable for Adoption of Rules, Fees, Emergency Rules, and Emergency Fees by Louisiana State Agencies" table beginning on the following page.)

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

DAY	TIME REQUIREMENT	ACTION
<p><u>Agency Rule and Fee Proposal</u></p> <p>10 days prior to Day 1</p>	<p>10 days prior to publication date of <i>Louisiana Register</i> in which notice of rulemaking or fee setting intent is published (Because the <i>Register</i> is published on the 20th day of the month, the deadline is always 10th day of month). (R.S. 49:951(7), 953(A)(1)(b)(i), and 968(B))</p>	<p>Last day for agency to submit notice of intent of rulemaking or fee setting to Louisiana Register and legislative committee and presiding officers.</p>
Day 1	Louisiana Register publication date (always the 20th day of month).	Notice of intent is published. By this date, also must mail notice to interested persons who have requested notice.
Day 36-41	Agency hearing, if requested, no earlier than 35 days and no later than 40 days after notice publication. (R.S. 49:953(A)(2))	The agency must conduct a hearing on the proposed rule or fee, if requested as specified in the law.
***	<p>Prior to legislative oversight, agency report to legislative committees. (R.S. 49:968(D))</p> <p>“Summary Report”</p>	A report of the hearing, summary of comments received, and of any proposed revision must be provided to the legislative committee, with an explanation of agency action on changes suggested.
<p><u>Legislative Oversight of Rules and Fees</u></p> <p>Day 1</p>	<p>Delivery of agency report to legislative committee. (R.S. 49:968(D))</p> <p>“Summary Report”</p>	When the agency has completed its report of hearing, comments, and/or revision and is ready for oversight, the report is submitted to the legislative committees. This starts the timetable for legislative oversight hearings.
Day 6-31	Legislative hearing no earlier than 5 days and no later than 30 days after agency report. (R.S. 49:968(D)(2) and 953(A)(2)(b)(ii))	The legislative committees having jurisdiction may conduct a hearing to review and determine if the rule change or fee action is acceptable or unacceptable.
4th day after determination	Committee report to the governor, the agency, and the <i>Louisiana Register</i> not later than 4th day after committee determination, if the rule or fee is found unacceptable. (R.S. 49:968(F))	If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the Louisiana Register summarizing its determination.
10th day after receipt by governor	The governor has 10 calendar days after receipt of committee report to disapprove committee action. (R.S. 49:968(G))	The governor may disapprove committee action. If he <u>does not</u> disapprove committee action the agency <u>may not adopt</u> rule unless modified and approved by committee or legislature. If he <u>does</u> disapprove committee action, the agency <u>may adopt</u> rule.
<p><u>Legislative and Gubernatorial Oversight for Emergency Rules and Emergency Fees</u></p> <p>Day 1</p>	Adoption of emergency rule or emergency fee. (R.S. 49:953(B)(4)(a) and (b))	Adoption of emergency rule or emergency fee begins time period for review by oversight subcommittee or by governor.
Day 2-60	Oversight subcommittee hearing or gubernatorial review within 60 days of adoption of emergency rule or emergency fee. (R.S. 49:953(B)(4)(a) and (b))	Oversight subcommittee may conduct a hearing or governor may review to determine if such rule or fee meets criteria for emergency rule and determinations as provided in R.S. 49:968(D)(3).

DAY	TIME REQUIREMENT	ACTION
4th Day after determination	If rule is found unacceptable, committee report to the governor, the agency, and the Louisiana Register and gubernatorial report to the agency and Louisiana Register. (R.S. 49:953(B)(4)(a) and (b) and 968(F))	If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the <i>Louisiana Register</i> or the governor must submit a report to the agency and <i>Louisiana Register</i> summarizing the determination. Upon agency receipt of report from committee or governor, rule is null and ineffective. Also, if the subcommittee determines that fee action is unacceptable, must provide report of reasons to governor, agency, and the other house. (R.S. 49:971)
<u>Adoption and Effectiveness</u> <i>Rules and Fees</i> 90 days after publication	First day agency may adopt rule or fee is 90 days after publication of notice of intent in <i>Louisiana Register</i> and after compliance with rulemaking and oversight requirements; last day for adoption is 12 months after publication of notice of intent. (R.S. 49:953(A)(1) and 968(H))	Agency may adopt rule if the legislative committees of both houses fail to find the rule unacceptable or, if found unacceptable by a legislative committee of either house, if the governor disapproves committee action. Otherwise, it may not adopt the rule unless changed and approved by the committee or legislature. Agency may adopt fee if a legislative committee of one house fails to find the fee unacceptable. The governor has no authority to disapprove. (R.S. 49:971)
***	Effective date of adopted rule or fee is date of <i>Louisiana Register</i> publication of such rule or fee, unless rule or law provides later date. (R.S. 49:954(B))	Final rules or fees are effective after adoption by the agency and upon publication in the <i>Louisiana Register</i> , unless a later date is provided in the rule, fee, or by law.
<i>Emergency Rules and Emergency Fees</i> Adoption or 60 days from adoption	Emergency rule or emergency fee is effective on date of adoption, or date specified by agency not more than 60 days from adoption provided written notice is given within 5 days of adoption to governor, attorney general, speaker, president, and Department of State Register. (R.S. 49:951(7) and 954(B)(2))	Agency may adopt emergency rule or emergency fee if emergency criteria are met. Emergency rule may be invalidated by declaratory judgment that it does not meet emergency criteria. (R.S. 49:953(B)(3)) Emergency rule is null upon agency receipt of report from oversight committee or governor that the rule is unacceptable. (R.S. 49:953(B)(4))
***	Not effective beyond publication date of <i>Louisiana Register</i> published in month following the month adopted, unless such rule or fee and the reasons for adoption are published therein (however, not effective for longer than 120 days in any case). (R.S. 49:954(B)(2))	Agency must publish emergency rule or emergency fee and the reasons for adoption in the <i>Louisiana Register</i> published the month after the month of adoption to continue effectiveness, provided not effective longer than 120 days.

This table uses the term legislative committee to include oversight committees of legislative committee. It should be noted that the APA authorizes and provides for oversight subcommittees of legislative committees to conduct hearings and make determinations; however, it also provides that the oversight subcommittee may consist of the entire membership of the standing committee.

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

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Adjudication

In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice. The notice must include the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; reference to the particular sections of the statutes and rules involved; and a short and plain statement of the matters asserted. Parties involved must be afforded the opportunity to present evidence on all issues of fact and argument on all issues of law and policy and to conduct cross-examination as may be required for a full and true disclosure of the facts. The record of the adjudication must include certain required documents, and the agency must produce a full transcript of the proceedings if required to do so by statute or requested to do so by any party or person. (R.S. 49:955) Final decisions or orders adverse to a party in an adjudication proceeding must be in writing or stated in the record. Upon request, a copy of the decision must be given to each party and to his attorney of record. (R.S. 49:958)

Division of Administrative Law

The Division of Administrative Law (DAL) is an independent state agency which provides for administrative law judges to conduct fair, impartial, and prompt hearings for persons affected by state agency actions. The DAL conducts administrative hearings for state agencies according to the APA. Each party to an administrative hearing has a right to present and question witnesses and submit or challenge documents regarding the decision. The result of the proceeding is a decision to affirm, modify, or set aside the original agency decision. The administrative law judge will issue a written decision based on the evidence introduced and the laws and regulations which apply to the case. In most cases a decision will be issued within 30 days after the hearing is completed. A person who is dissatisfied with the administrative law judge's decision has a right to appeal. However, a state agency or a representative of such agency may not appeal. Typically, the appeal is a judicial review of the record by the district court. (www.adminlaw.state.la.us)

In *Wooley v. State Farm Fire and Casualty Ins. Co.*, 2004-CA-0882 (La. 1/19/05), 893 So. 2d 746, the Louisiana Supreme Court upheld the constitutionality of the provisions of law creating the DAL and transferring to it the authority to conduct adjudications for certain agencies. The court also upheld the provision of law which precludes the agencies from seeking judicial review of adverse rulings by administrative law judges.

