

APPENDIX B

LOUISIANA REVISED STATUTES:

Chapter 30

Chapter 32

Chapter 47

Chapter 49

LOUISIANA REVISED STATUTE

CHAPTER 30

Chapter 30, sec. 2001-2005

West's Louisiana Statutes Annotated [Currentness](#)

Louisiana Revised Statutes

Title 30. Minerals, Oil, and Gas and Environmental Quality ([Refs & Annos](#))

 [Subtitle II.](#) Environmental Quality ([Refs & Annos](#))

 [Chapter 1.](#) General ([Refs & Annos](#))

→ § 2001. Short title

This Subtitle shall be known and may be cited as the "Louisiana Environmental Quality Act."

CREDIT(S)

Acts 1979, No. 449, § 1, eff. Jan. 1, 1980. Amended by Acts 1983, No. 97, § 1, eff. Feb. 1, 1984.

HISTORY AND SOURCE OF LAW

2000 Main Volume

1979 Redesignation--Acts 1979, No. 449

Former Chapter 11 of Title 30 was originally enacted by Acts 1978, No. 334, § 1, effective July 10, 1978, to consist of Part I, "Hazardous Waste Control", containing [R.S. 30:1101](#) to [30:1116](#). Acts 1979, No. 449, § 1 amended and reenacted former Chapter 11 of Title 30, to consist of former Parts I to VII, containing [R.S. 30:1051](#) to [30:1147](#). Other sections of Act 449 affected other provisions of Titles 30, 33, 36, 40, 51, and 56 of the Revised Statutes, all relative to environmental protection.

Sections 6 to 16 of Acts 1979, No. 449 (§ 1 of which reenacted former Chapter 11) provided as follows:

"Section 6. Nothing in this Act shall be construed to limit or diminish the powers and duties of the state health officer as provided in [R.S. 40:2](#) through [R.S. 40:5](#), as amended herein. Nothing in this Act shall be construed to limit or diminish the authority of the Department of Wildlife and Fisheries over those environmental matters relating to the management of fish, wildlife or its habitat which shall remain under said department jurisdiction, as amended herein.

"Section 7. This Act shall become effective on January 1, 1980, except that the provisions of § 1143 of this Chapter shall become effective on June 1, 1980.

"Section 8. Upon the effective date of this Act, the unfinished business of the Louisiana Air Control Commission and the Stream Control Commission, and any unfinished business of the office of conservation of the Department of Natural Resources under the provisions of Chapter 5 of Title 51 of the Louisiana Revised Statutes of 1950 shall be taken over and be completed by the Department of Natural Resources through the Environmental Control Commission and the Office of Environmental Affairs with the same power and authority as that of the named agencies. For such purposes, the department through said commission and office shall be the successor in every way to each such agency, and every act done by the department, commission or office in the exercise of the functions of each shall be deemed to have the same force and effect under any provisions of the constitution and laws in effect on the effective date of this Section as if done by the agencies for which the provisions are repealed.

"Section 9. Wherever the Stream Control Commission, the Louisiana Air Control Commission, or any agency formerly provided for in Chapter 5 of Title 51 of the Louisiana Revised Statutes of 1950 is referred to or designated by the constitution or laws or by any contract or other document, after the effective date of this Act, such reference or designation shall be deemed to apply to the Department of Natural Resources, the secretary of said department, the Environmental Control Commission, the office of environmental affairs, or any of them together.

"Section 10. Any legal proceeding, as defined in [R.S. 36:924](#), to which any agency, the statutory provisions for which are repealed by this Act, is a party and which is filed, initiated, or otherwise pending before any court on the effective date of such repeal, and all documents involved in or affected by said legal proceeding, shall retain their effectiveness and shall be continued in the name of the former agency. All further legal proceedings and documents in the continuation, disposition, and enforcement of said legal proceeding shall be in the name of the original party agency which is abolished, and the Department of Natural Resources shall be substituted for the original party agency without the necessity for amendment of any document to substitute the name of the department or the name or title of any office, official, employee, or other agent or representative of the department. For purposes of this Section, "document" shall be defined as in [R.S. 36:924](#).

"Section 11. This Act is in no way and to no extent intended to, nor shall it be construed in any manner which will impair the contractual or other obligations of any agency, the provisions for which are repealed by this Act or of the state of Louisiana. It is hereby specifically provided that all obligations of any such agency hereafter shall be deemed to be the obligations of the Department of Natural Resources to the same extent as if originally made by it. In like manner, and in order to prevent any violation of the provisions, terms, or conditions of any gift, donation, deed, will, trust, or other instrument or disposition by which property of any kind has been vested in any such agency, or diversion from the purposes for which such property was thus vested in any such agency, it is hereby specifically provided that each such instrument or disposition hereafter shall be deemed to have been vested in the Department of Natural Resources in the same manner and to the same extent as if originally so done. The Department of Natural Resources and its secretary shall be the successor in every way to each such agency, including all of the obligations and debts of each such agency.

"Section 12. All books, papers, records, money, actions, and other property of every kind, movable and immovable, real and personal, heretofore possessed, controlled, or used, by each agency, the provisions for which are repealed by this Act, in carrying out functions, duties, and responsibilities granted by this Act to the Department of Natural Resources or to the Environmental Control Commission and the office of environmental affairs, are hereby transferred to the Department of Natural Resources.

"Section 13. All employees heretofore engaged in the performance of functions of each agency, the provisions for which are abolished by this Act, which functions are assigned by this Act to the Department of Natural Resources, are hereby transferred to the Department of Natural Resources, to the extent the secretary of the Department of Natural Resources deems necessary to carry out the functions formerly performed by the abolished agency, and shall insofar as practicable and necessary, continue to perform the duties heretofore performed, subject to applicable state civil service laws, rules, and regulations.

"Section 14. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

"Section 15. Nothing in this Act shall be construed or interpreted to repeal, supersede, amend, or affect any of the powers, duties, and functions of the State Soil and Water Conservation Committee and the soil and water conservation districts as now or hereafter set forth in Chapter 9 of Title 3 of the Louisiana Revised Statutes.

"Section 16. Nothing in this Act shall be interpreted to repeal, supersede, amend, or affect any of the powers, duties, and functions of the Office of Conservation relating to the regulation of the disposal of waste incidental to oil and gas exploration and production as set forth in Chapter 1 of Title 30 of the Louisiana Revised Statutes."

The 1983 amendment substituted "Quality" for "Affairs".

Senate Concurrent Resolution No. 3 of the 1983 Second Extraordinary Session

Suspension of Acts 1983, No. 97. Senate Concurrent Resolution No. 3 of the 1983 Second Extraordinary Session suspended Acts 1983, No. 97 until the sixtieth day after adjournment of the 1984 Regular Session of the Legislature. However, the Governor, by Executive Order No. 83-30, challenged the validity of SCR No. 3 and directed implementation of Acts 1983, No. 97. Senate Concurrent Resolution No. 3 and Executive Order No. 83-30 provided

as follows:

"A CONCURRENT RESOLUTION to suspend Act 97 of the 1983 Regular Session relative to the creation of the Department of Environmental Quality and the Department of Public Safety and Corrections and the executive authority to transfer previously appropriated funds to the new department.

"WHEREAS, the governor and the joint committee established by House Concurrent Resolution 34 of the 1983 Regular Session have estimated a deficit in the 1983- 84 fiscal year; and

"WHEREAS, the Legislature of Louisiana has been called into extraordinary session to address the issue of the state's deficit, as indicated by the items on the governor's call; and

"WHEREAS, the Constitution provides for only twenty cabinet level departments in the Executive Branch of state government and also provides that the suspension of laws lies exclusively with the legislature; and

"WHEREAS, Act 97 of the 1983 Regular Session, effective February 1, 1984, consolidates two totally diverse departments in order to provide an additional cabinet level position for the new department; and

"WHEREAS, the operation of state government is presently hampered by severe budget restrictions and curtailments of essential services, requiring that all available funds be used in a cost-effective manner; and

"WHEREAS, the basic functions of public safety, corrections, and environmental protection are and can be effectively administered by the present structuring of cabinet level departments; and

"WHEREAS, the legislature has continuously endorsed the present organization of cabinet level positions by appropriating funds and enacting laws in support of the current system since 1978; and

"WHEREAS, Act 97 of the 1983 Regular Session, using said existing authority creates the Department of Environmental Quality from the present Office of Environmental Affairs of the Department of Natural Resources, without providing adequate funds to the Department of Natural Resources for the establishment and maintenance of both itself and the new department; and

"WHEREAS, the savings in state funds resulting from the merger of the Department of Public Safety and the Department of Corrections are limited and differ from the fiscal statement presented when the Act was originally passed; and

"WHEREAS, effective implementation of Act 97 of the 1983 Regular Session requires monies in excess of previously appropriated funds to the Departments of Public Safety, Corrections, and Natural Resources; and

"WHEREAS, the legislature in Section 11(A) of Act 97 of the 1983 Regular Session provides authority to the governor to transfer funds appropriated to the Departments of Natural Resources and Transportation and Development to effectuate the Act; and

"WHEREAS, Act 97 of the 1983 Regular Session, relative to the merger of the Department of Public Safety and the Department of Corrections, specifically the amendment to [R.S. 36:404\(B\)\(11\)](#), provides that all of the functions necessary for the efficient administration of the newly combined department be subject to the budgetary control and applicable laws; and

"WHEREAS, Act 97 of the 1983 Regular Session, relative to the creation of the Department of Environmental Quality, specifically the amendment to [R.S. 36:234\(B\)\(1\)\(C\)](#), provides that all of the funds necessary for the efficient administration of that department, including the employment, appointment, removal, assignment, promotion and transfer of personnel, and duties, functions, regulations and policy, are subject to budgetary control and applicable law; and

"WHEREAS, in recognition of the current fiscal problems of the state, the legislature has been called into Extraordinary Session to legislature relative to appropriating funds for the expenses of state government; and

"WHEREAS, Act 97 of the 1983 Regular Session provides for funds appropriated by the legislature in that session to the various departments for the expenses of state government; and

"WHEREAS, the provisions of Act 97 of the 1983 Regular Session concerning funds appropriated for the expenses of state government are not severable from the other provisions of said Act; and

"WHEREAS, the suspension of Act 97 of the 1983 Regular Session prior to its effective date of February 1, 1984, would continue in full force and effect all existing provisions of law establishing public safety, corrections and environmental protection functions.

"THEREFORE, BE IT RESOLVED by the Senate of the Legislature of Louisiana, the House of Representatives thereof concurring, that Act 97 of the 1983 Regular Session, which creates the Department of Environmental Quality and the Department of Public Safety and Corrections and provides for the transfer of funds by the governor to establish the new departments, is hereby suspended until the sixtieth day after the sine die adjournment of the 1984 Regular Session of the Legislature of Louisiana.

"BE IT FURTHER RESOLVED that this Resolution has the effect of legislation upon passage by majority vote on this issue in accordance with [Article III, Section 20 of the Louisiana Constitution](#) and restricts the transfer of funds by the governor, the appropriation of funds to the resulting departments of Act 97 of the 1983 Regular Session and the processing of any documents by the Legislative Budget Committee, and continues in full force and effect all provisions of the Louisiana Revised Statutes sought to be amended or repealed by Act 97 of 1983, in particular, portions of Titles 30, 36, 49, 50." [The reference to Title 50 is as it appears in the enrolled concurrent resolution. The reference probably should be to Title 51 or Title 56.]

Executive Order No. 83-30

"PURSUANT TO THE AUTHORITY VESTED IN AND OBLIGATIONS IMPOSED UPON THE GOVERNOR AS CHIEF EXECUTIVE OFFICER OF THE STATE, THE FOLLOWING FINDINGS ARE MADE:

"1. Act 97 of the Regular Session of the Legislature of 1983 created the Department of Environmental Quality and merged the Departments of Public Safety and Corrections; and

"2. Act 97 authorizes the appointment of certain positions effective December 1, 1983, and mandates full implementation of the Act as of February 1, 1984; and

"3. The Governor of this state is mandated by [Article IV, Section 5\(a\) of the Louisiana Constitution](#) to see that the laws are faithfully executed; and

"4. The legislature at its Second Extraordinary Session of 1983 purportedly approved an instrument entitled Senate Concurrent Resolution No. 3 (SCR No. 3) to suspend the effect of Act 97 but said subject matter was not within the proclamation issued by the Governor calling the legislature into extraordinary session; and

"5. Suspension of laws is subject to the 'same procedures and formalities required for enactment' except for veto and time limitation for introduction in accordance with [Article III, Section 20 of the Louisiana Constitution](#); and

"6. A suspension resolution must be specifically within the subject matter of the proclamation calling the legislature into extraordinary session since it is regulated by [Article III, Section 20](#) and is clearly legislating rather than carrying out ministerial duties of the legislature; and

"7. The following non-exclusive reasons indicate that SCR No. 3 was not within the scope of the proclamation:

"(a) Item No. 18 within which proponents of SCR No. 3 urge that it was 'specifically' included provides, 'To legislate by appropriating funds for the expenses of state government.'

"(b) Nothing in Act 97 involves legislating 'by appropriating funds' and nothing in SCR No. 3 involves legislating 'by appropriating funds.'

"(c) The public was not reasonably put on notice by Item No. 18 that the legislature might reorganize the executive branch of government by the action purportedly taken in SCR No. 3.

"(d) A common understanding of 'appropriating funds' does not include reorganizing the executive branch of state government; the legal definition of 'appropriation' in [La. R.S. 39:2](#) provides, 'authorization by the legislature to a budget unit to expend from public funds a sum of money for purposes designated.'

"(e) Act 97 is not an appropriation act. If it were it would violate [Article III, Section 15\(A\) of the Constitution](#) which provides only the general appropriation bill can have multiple objects; the single object of Act 97 was to reorganize state government, not the multiple objects of reorganizing the appropriating.

"(f) SCR No. 3 would fail the constitutional test of [Henry v. Edwards, 346 So.2d 153 \(La.1977\)](#); 'the legislature cannot through the appropriation process' circumvent the Governor's veto power over substantive legislation (like reorganization) by artfully drafting general law measures so that they appear to be true conditions or limitations on an item of appropriation. ([346 So.2d at 158](#)); and

"8. Purported legislative action of an extraordinary session when a matter is not 'specifically' enumerated in the proclamation covering the session results in a 'nullity' pursuant to [Article III, Section 2\(B\) of the Louisiana Constitution](#); and

"9. Additionally and independently of all other considerations, SCR No. 3 has no special effective date provision in the resolute portion of the resolution; thus, pursuant to [Article III, Sections 19 and 20 of the Louisiana Constitution](#), SCR No. 3, if it were not a nullity, would not be effective legislation until the sixtieth day after adjournment of the extraordinary session; that date is after February 1, 1984, at which time all aspects of Act 97 of the 1983 Regular Session are to be implemented; and

"10. The consequences of the suspension of a law after it has become effective and fully implemented results in the prior law not being revived and thus no law in force on the subject. Such a potential consequence in the important environmental regulation area is intolerable; and

"11. Additionally, SCR No. 3 does not even purport to affect Act 411 of the Regular Session of the Legislature of 1983 enacted subsequent to Act 97; Act 411 gives the Governor the final decision as to the responsibility of each department represented on the Governor's Resource Development and Environmental Quality Council, which includes, inter alia, the Department of Environmental Quality, the Department of Natural Resources and the Department of Public Safety (which is succeeded by the Department of Public Safety and Corrections pursuant to [Section 15](#) of Act 97); and

"12. Moreover, the merger of the Department of Public Safety and Corrections will not disturb the operations of either department because of the manner in which the merger is effected; and additionally, because pursuant to Section 12B of Act 97 the Governor may retain all employees of each department in their present job classification until July 1, 1984; and

"13. The nullity of SCR No. 3 renders all the potential adverse consequences moot; and

"14. Despite the nullity of SCR No. 3, to avoid or lessen as much as possible confusion and untoward and intolerable potential results created by SCR No. 3, this Executive Order is issued.

"PURSUANT TO THE AUTHORITY VESTED IN THE GOVERNOR AS CHIEF EXECUTIVE OFFICER OF THE STATE, THE FOLLOWING DIRECTIVE IS ISSUED:

"I.

"The provisions of Act 97 of the 1983 Regular Session of the Legislature shall be implemented in accordance with its provisions and pursuant to further direction of the Governor as provided in said Act and in accordance with Act 411 of the 1983 Regular Session of the Legislature.

"II.

"The Secretary of the Department of Natural Resources and the Secretary of the Department of Environmental

Quality are directed to cooperate and coordinate their activities so as to minimize costs and assure adequate enforcement of the environmental laws of Louisiana. To the extent feasible, administrative positions, facilities, resources and support personnel shall be shared and not duplicated.

"III.

"Effective February 1, 1984, the person occupying the office of Secretary of the Department of Corrections shall be the Deputy Secretary for Correction Services of the Department of Public Safety and Corrections; the person occupying the office of Deputy Secretary of Public Safety shall be the Deputy Secretary for Public Safety Services of the Department of Public Safety and Corrections; and the person occupying the office of Secretary of Public Safety shall be the Secretary of Public Safety and Corrections. Internal administrative actions shall be taken in such a manner as to cause the least disruption possible of the existing internal administration. Present accounting, payroll and purchasing procedures and support services of each Department shall continue except that the Secretary of the Department of Public Safety and Corrections shall have final authority as Secretary of the Department. In the event there is disagreement between the Deputy Secretary of Correction Services and the Secretary, the Governor will make the final decision.

"IV.

"Pursuant to the authority provided by Section 12B of Act 97 of the 1983 Regular Session and where applicable Act 411 of the 1983 Regular Session and [Article IV, Section 5 of the Louisiana Constitution](#), all administrative employees of the Department of Public Safety and the Department of Corrections affected by Act 97 shall maintain their present job classification in the new department until July 1, 1984, or until further direction of the Governor.

"V.

"To avoid or lessen any adverse consequences to the public through uncertainty in enforcement of the regulatory laws of this state in the event there is a final judicial decree upholding the validity of SCR No. 3 of the Second Extraordinary Session of 1983, each department affected shall, insofar as practicable, implement the regulatory and enforcement functions in a manner to assure their validity under prior and existing law.

"Cooperation and coordination among the affected departments are directed to assure that the regulatory laws of this state are effectively developed and enforced.

"VI.

"The purpose of this Order is to provide for the orderly conduct of the affairs of our state and to avoid unnecessary confusion, expense, uncertainty, and delay while still enforcing the laws of Louisiana. Those persons charged with the responsibilities hereunder should cooperate toward that goal. This order may be supplemented and amended by written directive of the Governor.

IN WITNESS WHEREOF, I have hereunto set my hand
officially and caused to be affixed the Great Seal of
the State of Louisiana, at the Capitol, in the City of
Baton Rouge, on this the 29th day of December, A.D.,
1983.

"David C. Treen
GOVERNOR OF LOUISIANA"

Repeal of S.C.R. No. 3 of the 1983 Second Extraordinary Session

[Sections 1](#) and [2](#) of Acts 1984, No. 342, eff. July 2, 1984, provide:

"[Section 1](#). Whereas, the Legislature of Louisiana adopted Senate Concurrent Resolution No. 3 during the Ninth

Extraordinary Session under the Constitution of 1974, which resolution purported to suspend the effect of Act No. 97 of the 1983 Regular Session of the Legislature until sixty days after adjournment of the 1984 Regular Session of the Legislature. Act No. 97 of the 1983 Regular Session of the Louisiana Legislature created the Department of Environmental Quality, merged the Department of Corrections with the Department of Public Safety, and amended the Louisiana Environmental Affairs Act to provide for transfer of certain powers and duties from the Environmental Control Commission to the secretary of the Department of Environmental Quality, and made numerous other substantive changes in the Louisiana Environmental Quality Act. The legislature hereby finds that it is vital to the protection of the health and welfare of the citizens of this state and to the protection of the environment that the provisions of Act No. 97 be construed as being effective on and after the effective date provided in that Act, which was February 1, 1984.

"[Section 2](#). The provisions of Senate Concurrent Resolution No. 3 of the Ninth Extraordinary Session of the Legislature under the Constitution of 1974 are hereby repealed and are declared to be null and void and of no effect. It is further declared that the provisions of that Resolution are deemed to have been of no effect and invalid at the time of its enactment by the legislature."

1988 Redesignation--House Concurrent Resolution No. 247 of the 1987 Regular Session

Pursuant to House Concurrent Resolution No. 247 of the 1987 Regular Session and pursuant to the statutory revision authority of the Louisiana State Law Institute, this section, formerly [R.S. 30:1051](#) (preceding former Part I of Chapter 11 of Title 30 of the Revised Statutes of 1950), was redesignated as R.S. 30:2001 and inserted as the first section of Chapter 1 of Subtitle II of Title 30.

For disposition of the sections of former Chapter 11 following their reorganization and redesignation in Subtitle II pursuant to House Concurrent Resolution No. 247 of the 1987 Regular Session, see notes and Table 2 preceding this section.

Pursuant to the statutory revision authority of the Louisiana State Law Institute and pursuant to the redesignation of the sections of Chapter 11 into Subtitle II, references in the texts of the affected sections to "Chapter" and "Part" were changed to refer to "Subtitle" and "Chapter", respectively, and internal citations to particular sections were changed to reflect their redesignation.

Title of 1979 Act:

An Act to amend and reenact Chapter 11 of Title 30 of the Louisiana Revised Statutes of 1950 comprised of [R.S. 30:1051](#) through [R.S. 30:1147](#), both inclusive; to amend and reenact Section 7556 of Title 33 of the Louisiana Revised Statutes of 1950; to amend and reenact Subsection B of Section 251, Subsection D of Section 258; Subsection B of Section 259; Subsections B and C of Section 351; Subsection C of Section 358; Subsections B and F of Section 359; and Subsection B of Section 602, all of Title 36 of the Louisiana Revised Statutes of 1950, and to amend Section 358 of said Title, by adding thereto a new Subsection, to be designated as Subsection E thereof; to amend and reenact Section 5 of Title 40 of the Louisiana Revised Statutes of 1950; and to repeal Subparagraphs (b), (c), and (d) of Subsection A and Subsection B of Section 521 and Paragraph (6) of Section 541 of Title 30 of the Louisiana Revised Statutes of 1950 and Paragraphs (2) and (3) of Subsection G of Section 259 of Title 36 of the Louisiana Revised Statutes of 1950, Part XIX of Chapter 5, comprised of Section 1299.36, and Chapter 12, comprised of Sections 2201 through 2216, all of Title 40 of the Louisiana Revised Statutes, Chapter 5 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of [R.S. 51:1051](#) through [R.S. 51:1072](#), and Chapter 3 of Title 56 of the Louisiana Revised Statutes of 1950 comprised of [R.S. 56:1431](#) through [R.S. 56:1464.4](#), all to provide for the merger and consolidation of the functions of the state relating to protection of the environment, to create and provide with respect to the Environmental Control Commission and the office of environmental affairs of the Department of Natural Resources and their powers, duties, functions, and responsibilities, including provisions for protection by the commission of the air and water resources of the state and regulation of the pollution thereof, for supervision of the development and operation of nuclear energy and radiation emitting processes and facilities and regulation of sources of radiation and their development and use, for the Radiation Protection and Perpetual Care Fund, for the regulation of solid waste disposal, and for statewide resource recovery and management program; to authorize the development, implementation, and enforcement of a comprehensive state hazardous waste control

program; to grant the commission authority to grant and deny permits, licenses, registrations, and variances relating to such powers, duties, functions, and responsibilities, to permit delegations of such authority, and to provide for fees for such permits, licenses, registrations, and variances; to provide for the adoption of rules and regulations; to provide for enforcement of the Act and regulations thereunder; to provide for criminal and civil penalties; and to repeal provisions of law relative to stream control and the Stream Control Commission, the Louisiana Air Control Commission, and agencies relating to the regulation of nuclear energy and pollution previously transferred to the office of conservation; to make other changes in provisions of law relative to the Department of Health and Human Resources and the Department of Wildlife and Fisheries to accomplish the consolidation of environmental protection functions; to transfer to the Department of Natural Resources certain other agencies with related functions; to provide for effective dates and the orderly implementation of the consolidation of functions and the granting to the Department of Natural Resources of certain powers, duties, functions, and responsibilities formerly granted to agencies abolished; to exclude the state soil and water conservation committee and water conservation districts from the provisions of the Act, and otherwise to provide generally and specifically with respect to all of the above. Acts 1979, No. 449.

Title of 1983 Act:

An Act to amend and reenact [R.S. 30:1051](#), [R.S. 30:1052](#), [R.S. 30:1053](#), [R.S. 30:1054](#), [R.S. 30:1061](#), [R.S. 30:1061.1\(B\)](#), [\(D\)](#), [\(E\)](#), [\(F\)](#), [\(H\)](#), and [\(I\)](#), [R.S. 30:1062](#), [R.S. 30:1064\(A\)](#) and [\(B\)](#), [R.S. 30:1065](#), [R.S. 30:1066](#), [R.S. 30:1066.1](#), [R.S. 30:1067](#), [R.S. 30:1068](#), [R.S. 30:1069](#), [R.S. 30:1070](#), [R.S. 30:1072](#), [R.S. 30:1073](#), [R.S. 30:1074\(2\)](#), [R.S. 30:1076\(A\)](#), [R.S. 30:1077](#), [R.S. 30:1077.1](#), [R.S. 30:1078](#), [R.S. 30:1079\(D\)](#), [R.S. 30:1080](#), [R.S. 30:1084](#), [R.S. 30:1085](#), [R.S. 30:1086](#), [R.S. 30:1087](#), [R.S. 30:1089](#), [R.S. 30:1094](#), [R.S. 30:1096](#), [R.S. 30:1103\(4\)](#) and [\(5\)](#), the introductory paragraphs of [R.S. 30:1104\(A\)](#) and [R.S. 30:1104\(B\)](#), [R.S. 30:1104\(A\)\(6\)](#) and [\(B\)\(1\)](#), [R.S. 30:1105](#), [R.S. 30:1106\(B\)](#), [R.S. 30:1111\(A\)](#), [\(F\)](#), and [\(G\)](#), [R.S. 30:1115\(A\)](#), [R.S. 30:1116.1](#), [R.S. 30:1118](#), [R.S. 30:1119](#), [R.S. 30:1124](#), [R.S. 30:1125](#), [R.S. 30:1136](#), [R.S. 30:1136.1](#), [R.S. 30:1136.2](#), [R.S. 30:1137\(A\)](#), [\(C\)](#), and [\(G\)](#), [R.S. 30:1138\(A\)](#), [R.S. 30:1139](#), [R.S. 30:1140\(A\)](#), [R.S. 30:1141\(A\)](#), [R.S. 30:1142](#), [R.S. 30:1143\(C\)](#), [\(D\)](#), and [\(E\)](#), [R.S. 30:1144\(A\)](#), [R.S. 30:1145](#), [R.S. 30:1147\(B\)](#), [R.S. 30:1148](#), [R.S. 30:1149\(C\)](#), [R.S. 30:1149.1](#), [R.S. 30:1150.4\(4\)](#), [R.S. 30:1150.5\(B\)](#), [\(G\)](#), and [\(H\)](#), [R.S. 30:1150.7\(A\)\(2\)](#) and [\(B\)](#), [R.S. 30:1150.8\(4\)](#), [R.S. 36:4\(A\)\(3\)](#), [\(4\)](#), and [\(8\)](#), [R.S. 36:401](#), [R.S. 36:402\(A\)](#), [R.S. 36:403](#), [R.S. 36:404\(B\)\(1\)](#), [R.S. 36:405](#), [R.S. 36:406\(A\)](#) and [\(B\)](#), [R.S. 36:407\(A\)](#), [\(B\)](#), and [\(C\)](#), [R.S. 36:408\(A\)](#), [R.S. 36:409](#), [R.S. 36:351](#), [R.S. 36:802](#), [R.S. 36:901\(A\)](#), the title of Chapter 9 of Title 36 of the Louisiana Revised Statutes of 1950, [R.S. 49:191\(F\)\(1\)](#), [R.S. 49:968\(B\)\(13\)](#), [R.S. 56:1849.1](#) and to enact Part IX of Chapter 11 of Title 30 of the Louisiana Revised Statutes of 1950, consisting of [R.S. 30:1150.41](#) through [R.S. 30:1150.53](#), and to enact Chapter 5-A of Title 36, consisting of [R.S. 36:231](#) through [R.S. 36:239](#), and [R.S. 36:408\(G\)](#) and [\(H\)](#), [R.S. 49:191\(D\)\(6\)](#), and [R.S. 49:968\(B\)\(22\)](#) and to repeal [R.S. 36:509\(B\)\(4\)](#), Chapter 4 of Title 36 of the Louisiana Revised Statutes of 1950, comprised of [R.S. 36:151](#) through [R.S. 36:159](#), [R.S. 36:358\(E\)](#) and [R.S. 36:359\(B\)\(2\)](#) and [\(F\)\(2\)](#), [\(3\)](#), and [\(4\)](#), [\(G\)](#), and [\(H\)](#), and [R.S. 49:191\(F\)\(3\)](#) and [R.S. 49:968\(B\)\(3\)](#), and Chapter 22 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of [R.S. 51:1801](#) through [R.S. 51:1813](#), to provide for the creation and necessary consolidation of departments in the executive branch of state government, including provisions to amend the Environmental Affairs Act; to create the Department of Environmental Quality; to provide for the offices within the Department of Environmental Quality and their functions; to provide for the powers and duties of the secretary of the Department of Environmental Quality; to provide for the powers and duties of the undersecretary, deputy, and assistant secretaries of the Department of Environmental Quality; to provide for the powers and duties of the Environmental Control Commission; to provide for the enforcement of laws relating to environmental affairs; to provide for the regulation of the underground injection of hazardous waste; to provide with respect to the dredging of the West Pearl River and Bayou Channel; to transfer the Louisiana Litter Control and Recycling Commission to the Department of Environmental Quality; to create the Department of Public Safety and Corrections; to abolish the former Department of Public Safety and the former Department of Corrections and to transfer their functions to the new Department of Public Safety and Corrections; to provide for the purposes, powers, duties, functions, and responsibilities of the Department of Public Safety and Corrections and its offices and for its officers and their powers, duties, functions, and responsibilities; to transfer agencies formerly within the former Department of Corrections to the new Department of Public Safety and Corrections; to provide for an effective date and for implementation; to provide for legislative oversight of the new departments and for matters related thereto; and otherwise to provide with respect thereto. Acts 1983, No. 97.

CROSS REFERENCES

Department of Environmental Quality, confidentiality of information submitted, see [R.S. 30:2074](#).

Environmental protection districts within certain parishes, see [R.S. 33:7551](#) et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

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LSA-R.S. 30:2001, **LA R.S. 30:2001**

Current through all 2005 Regular Session Acts

→§ 2002. Findings and declaration of policy

The legislature finds and declares that:

(1) The maintenance of a healthful and safe environment for the people of Louisiana is a matter of critical state concern.

(2) It is necessary and desirable for the protection of the public welfare and property of the people of Louisiana that there be maintained at all times, both now and in the future, clean air and water resources, preservation of the scenic beauty and ecological regimen of certain free flowing streams, and strictly enforced programs for the safe and sanitary disposal of solid waste, for the management of hazardous waste, for the control of hazards due to natural and man-made radiation, considering sound policies regarding employment and economic development in Louisiana.

(3) It is necessary and essential to the success of the regulatory program established in this Subtitle that the enforcement procedures include unannounced regular inspections of all facilities which may be regulated by this Subtitle or any facility in violation of this Subtitle.

CREDIT(S)

Acts 1979, No. 449, § 1, eff. Jan. 1, 1980. Amended by Acts 1982, No. 655, § 1; Acts 1983, No. 97, § 1, eff. Feb. 1, 1984.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

Chapter 11 of Title 30 was originally enacted by Acts 1978, No. 334, § 1, eff. July 10, 1978, to consist of Part I, comprised of [R.S. 30:1101](#) to [30:1116](#). Chapter 11 of Title 30 was revised by Acts 1979, No. 449, § 1, eff. Jan. 1, 1980, to consist of Parts I to VII, comprised of [R.S. 30:1051](#) to [30:1147](#). Chapter 11, expanded to consist of [R.S. 30:1051](#) to [30:1150.96](#), was later redesignated as Subtitle II of Title 30, consisting of [R.S. 30:2001](#) to [30:2396](#) (see notes, post).

The 1982 amendment deleted "A." from the beginning of the section; in par. (2), substituted "strictly enforced programs" for "a program", and deleted "a program" following "waste," in two places; and added par. (3).

The 1983 amendment in par. (2), inserted "preservation of the scenic beauty and ecological regimen of certain free flowing streams," and substituted "economic" for "industrial".

In par. (2), as amended in 1983, "and" was inserted preceding "strictly" pursuant to the statutory revision authority of the Louisiana State Law Institute.

Senate Concurrent Resolution No. 3 of the 1983 Second Extraordinary Session suspended Acts 1983, No. 97 until the sixtieth day after adjournment of the 1984 Regular Session of the Legislature. However, the Governor, by Executive Order No. 83-30, challenged the validity of SCR No. 3 and directed implementation of Acts 1983, No. 97. The full texts of SCR No. 3 and Executive Order No. 83-30 are set forth under [R.S. 30:2001](#).

Senate Concurrent Resolution No. 3 of the 1983 Second Extraordinary Session was repealed by Acts 1984, No. 342, § 2, eff. July 2, 1984. See note under [R.S. 30:2001](#).

House Concurrent Resolution No. 78 of the 1986 Regular Session, relating to the Mississippi River Corridor/Lake Pontchartrain Sewerage and Pollution Control Authority, provides as follows:

"A Concurrent Resolution to create the Mississippi River Corridor/Lake Pontchartrain Sewerage and Pollution Control Authority, to include the parishes of Jefferson, Orleans, St. Bernard, St. Charles, St. Tammany, Tangipahoa,

St. James, St. John, Ascension, and East Baton Rouge, in order to attempt to develop comprehensive and coordinated approaches to the public health and environmental aspects of sewage disposal and pollution control in those parishes through institution of a common mechanism through which to address these needs and concerns.

"WHEREAS, the parishes of Jefferson, Orleans, St. Bernard, St. Charles, St. Tammany, Tangipahoa, St. James, St. John, Ascension, and East Baton Rouge have developed and continue to develop into areas with common interests in the health and safety and the economic, cultural, recreational, and general well-being of the citizens therein; and

"WHEREAS, rapid urban and suburban development throughout these parishes, particularly during the past decade, has posed serious difficulties for local governments striving to provide traditional urban services to developing localities in a systematic and comprehensive fashion; and

"WHEREAS, proper sewage disposal and pollution control facilities and techniques are particularly important in developing wetlands in these parishes, since the potential for contamination of the drinking and recreational water sources therein is so acute; and

"WHEREAS, clearly, an areawide planned approach is the answer to such areawide problems as sewage disposal and pollution control.

"THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that the Mississippi River Corridor/Lake Pontchartrain Sewerage and Pollution Control Authority, to include the parishes of Jefferson, Orleans, St. Bernard, St. Charles, St. Tammany, Tangipahoa, St. James, St. John, Ascension, and East Baton Rouge, is hereby created in order to attempt to develop a comprehensive and coordinated approach to the public health and environmental aspects of sewage disposal and pollution control in those parishes through institution of a common approach to address these needs and concerns.

"BE IT FURTHER RESOLVED that the composition of the authority shall include:

"(1) The chief executive officers of the city of New Orleans and the city-parish of Baton Rouge, or their designees, and the chief executive officers of the parishes of Jefferson, St. Bernard, St. Charles, St. Tammany, Tangipahoa, St. James, St. John, and Ascension, or their designees.

"(2) One representative from each of the following local governing authorities or organizations, chosen by the respective governing authority or organization:

"(a) The parish governing authority of each parish included in the authority, except Tangipahoa Parish, other than those persons included in Paragraph (1) above. Such representatives may include persons with technical knowledge or expertise in sewage disposal or pollution control.

"(b) The Regional Planning Commission of Jefferson, Orleans, St. Bernard, and St. Tammany Parishes.

"(c) The Chamber of Commerce-New Orleans and the River Region.

"(d) The Metropolitan Area Council.

"(e) The League of Women Voters of New Orleans.

"(f) The Bureau of Governmental Research.

"(g) The Public Affairs Research Council.

"(h) The State Bond Commission.

"(i) The Orleans Parish affiliate of the Urban League.

"(j) The Orleans Parish affiliate of the National Association for the Advancement of Colored People.

"(k) The Tangipahoa Municipal Association.

"BE IT FURTHER RESOLVED that the authority shall report its findings and recommendations to the governor and to the legislature prior to its termination and that the authority shall terminate upon adjournment sine die of the 1988 Regular Session of the Legislature."

Pursuant to House Concurrent Resolution No. 247 of the 1987 Regular Session and pursuant to the statutory revision authority of the Louisiana State Law Institute, this section, formerly R.S. 30:1052 of Part I of Chapter 11 of Title 30 of the Revised Statutes of 1950, was redesignated as R.S. 30:2002 of Chapter 1 of Subtitle II of Title 30 in 1988.

For disposition of the sections of former Chapter 11 following their reorganization and redesignation in Subtitle II by House Concurrent Resolution No. 247 of the 1987 Regular Session, see notes and Table 2 preceding [R.S. 30:2001](#).

Pursuant to the statutory revision authority of the Louisiana State Law Institute and pursuant to the redesignation of the sections of Chapter 11 into Subtitle II, references in the texts of the affected sections to "Chapter" and "Part" were changed to refer to "Subtitle" and "Chapter", respectively, and internal citations to particular sections were changed to reflect their redesignation.

UNITED STATES CODE ANNOTATED

National environmental policy, see [42 U.S.C.A. § 4321](#) et seq.

NOTES OF DECISIONS

[Administrative implementation 1](#)

[Basis of regulatory framework 2](#)

[Environmental protection 3](#)

[1. Administrative implementation](#)

An impartial administrative tribunal is essential for efficient and fair implementation of the Environmental Affairs Act ([R.S. 30:1051](#) et seq.; see, now, [R.S. 30:2001](#) et seq.). [Office of Environmental Affairs v. McWhorter and Associates, Inc., App. 1 Cir.1984, 449 So.2d 1062](#). Environmental Law  15

[2. Basis of regulatory framework](#)

Federal and state cases interpreting various state and federal statutes may provide guidance in applying Louisiana environmental statutes ([R.S. 30:1051](#) et seq.; see, now, [R.S. 30:2001](#) et seq.), but it should be kept in mind that the Louisiana regulatory framework is also based on [LSA-Const. Art. 9, § 1](#) and the public-trust concept. [Save Ourselves, Inc. v. Louisiana Environmental Control Com'n, Sup.1984, 452 So.2d 1152](#).

[3. Environmental protection](#)

The natural resources of the state should be protected consistent with the health, safety, and welfare of the people; the intent of the Environmental Quality Act is to maintain a healthful and safe environment through regulation of water and air quality; and the rights of the public must receive active and affirmative protection at the hands of environmental regulators. Op.Atty.Gen. No. 98-108, April 21, 1998.

LSA-R.S. 30:2002, **LA R.S. 30:2002**

Current through all 2005 Regular Session Acts

→ § 2003. Purposes

A. The maintenance of a healthful and safe environment in Louisiana requires governmental regulation and control over the areas of water quality, air quality, solid and hazardous waste, scenic rivers and streams, and radiation.

B. In order to accomplish these goals most efficiently, it is necessary to provide for comprehensive policies on a statewide basis to unify, coordinate, and implement programs to provide for the most advantageous use of the resources of the state and to preserve, protect, and enhance the quality of the environment in Louisiana.

CREDIT(S)

Acts 1979, No. 449, § 1, eff. Jan. 1, 1980. Amended by Acts 1983, No. 97, § 1, eff. Feb. 1, 1984; [Acts 2003, No. 933, § 3](#).

HISTORICAL AND STATUTORY NOTES

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Acts 2003, No. 933, § 3, in subsec. A, inserted "governmental".

2000 Main Volume

Chapter 11 of Title 30 was originally enacted by Acts 1978, No. 334, § 1, eff. July 10, 1978, to consist of Part I, comprised of [R.S. 30:1101](#) to [30:1116](#). Chapter 11 of Title 30 was revised by Acts 1979, No. 449, § 1, eff. Jan. 1, 1980, to consist of Parts I to VII, comprised of [R.S. 30:1051](#) to [30:1147](#). Chapter 11, expanded to consist of [R.S. 30:1051](#) to [30:1150.96](#), was later redesignated as Subtitle II of Title 30, consisting of [R.S. 30:2001](#) to [30:2396](#) (see notes, post).

The 1983 amendment, in subsec. A, inserted "scenic rivers and streams,"; and, in subsec. B, substituted "comprehensive policies on a statewide basis" for "evolving policies for comprehensive environmental development and control on a statewide basis, and".

Senate Concurrent Resolution No. 3 of the 1983 Second Extraordinary Session suspended Acts 1983, No. 97 until the sixtieth day after adjournment of the 1984 Regular Session of the Legislature. However, the Governor, by Executive Order No. 83-30, challenged the validity of SCR No. 3 and directed implementation of Acts 1983, No. 97. The full texts of SCR No. 3 and Executive Order No. 83-30 are set forth under [R.S. 30:2001](#).

Senate Concurrent Resolution No. 3 of the 1983 Second Extraordinary Session was repealed by Acts 1984, No. 342, § 2, eff. July 2, 1984. See note under [R.S. 30:2001](#).

Pursuant to House Concurrent Resolution No. 247 of the 1987 Regular Session and pursuant to the statutory revision authority of the Louisiana State Law Institute, this section, formerly R.S. 30:1053 of Part I of Chapter 11 of Title 30 of the Revised Statutes of 1950, was redesignated as R.S. 30:2003 of Chapter 1 of Subtitle II of Title 30 in 1988.

For disposition of the sections of former Chapter 11 following their reorganization and redesignation in Subtitle II by House Concurrent Resolution No. 247 of the 1987 Regular Session, see notes and Table 2 preceding [R.S. 30:2001](#).

LSA-R.S. 30:2003, LA R.S. 30:2003

Current through all 2005 Regular Session Acts

→ § 2004. Definitions

The following terms as used in this Subtitle, unless the context otherwise requires or unless redefined by a particular Chapter hereof, shall have the following meanings:

- (1) Repealed by Acts 1997, No. 26, § 1.
- (2) "Department" means the Department of Environmental Quality.
- (3) "Implementation plan" means any pollution control or other environmental regulatory plan prepared by a state agency in compliance with the terms of the Clean Air Act, [\[FN1\]](#) the Federal Water Pollution Control Act, [\[FN2\]](#) the Resource Conservation and Recovery Act, [\[FN3\]](#) or other federal environmental legislation.
- (4) "Secretary" means the secretary of the Department of Environmental Quality.
- (5), (6) Repealed by Acts 1997, No. 26, § 1.
- (7) "Variance" means a special authorization granted to a person for a limited period of time which allows that person a specified date for compliance with a requirement pursuant to the provisions of this Subtitle.
- (8) "Person" means any individual, municipality, public or private corporation, partnership, firm, the United States Government, and any agent or subdivision thereof or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, the state of Louisiana, political subdivisions of the state of Louisiana, commissions, and interstate bodies.
- (9) "Natural resources committees" means the natural resources committee of the House of Representatives and the environmental quality committee of the Senate of the Louisiana Legislature.
- (10) "Discharge" means the placing, releasing, spilling, percolating, draining, pumping, leaking, seeping, emitting, or other escaping of pollutants into the air, waters, subsurface water, or ground as the result of a prior act or omission; or the placing of pollutants into pits, drums, barrels, or similar containers under conditions and circumstances that leaking, seeping, draining, or escaping of the pollutants can be reasonably anticipated.
- (11) "Response fund" means the Environmental Trust Fund created in [R.S. 30:2015](#).
- (12) "Abandoned site fund" shall mean the Hazardous Waste Site Cleanup Fund as created by [R.S. 30:2205](#) and formerly known as the Abandoned Hazardous Waste Site Fund.
- (13) "Pollution source" means the immediate site or location of a discharge or potential discharge, including such surrounding property necessary to secure or quarantine the area from access by the general public.
- (14) "Facility" means a pollution source or any public or private property or facility where an activity is conducted which is required to be regulated under this Subtitle and which does or has the potential to do any of the following:
 - (a) Emit air contaminants into the atmosphere.
 - (b) Discharge pollutants into waters of the state.
 - (c) Use or control radioactive materials and waste.
 - (d) Transport, process, or dispose of solid wastes.
 - (e) Generate, transport, treat, store, or dispose of hazardous wastes.
- (15) "Pollutant" means those elements or compounds defined or identified as hazardous, toxic, or noxious, or as

hazardous, solid, or radioactive wastes under this Subtitle and regulations, or by the secretary, consistent with applicable laws and regulations. For the purposes of the Louisiana Pollutant Discharge Elimination System, as defined in [R.S. 30:2073\(6\)](#), "pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, except those regulated under the Atomic Energy Act of 1954, [42 U.S.C. 2011](#) et seq., as amended, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. For the purposes of the Louisiana Pollutant Discharge Elimination System, as defined in [R.S. 30:2073\(6\)](#), "pollutant" does not mean:

(a) Water, gas, waste, or other material which is injected into a well for disposal in accordance with a permit approved by the Department of Natural Resources or the Department of Environmental Quality.

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(16) "Adjudication" means formal or informal proceedings for the formulation of a decision or order.

(17) "Aggrieved person" means a natural or juridical person who has a real and actual interest that is or may be adversely affected by a final action under this Subtitle.

(18) "Assistant secretary" means the assistant secretary to whom a given function or responsibility has been allocated by this Subtitle or delegated by the secretary.

(19) "Compliance order" means an order issued by the secretary or an assistant secretary requiring a respondent to comply with specified provisions of this Subtitle, a rule, or a permit within a specified period of time.

(20) "Respondent" means the person against whom an enforcement action is directed.

(21) "Violation" means a failure to comply with the requirements of this Subtitle, the rules issued under this Subtitle, and conditions of permits under this Subtitle.

CREDIT(S)

Acts 1979, No. 449, § 1, eff. Jan. 1, 1980. Amended by Acts 1980, No. 194, § 1; Acts 1981, No. 198, § 1; Acts 1982, No. 655, § 1; Acts 1983, No. 97, § 1, eff. Feb. 1, 1984; Acts 1983, No. 467, § 1, eff. July 6, 1983; Acts 1984, No. 116, § 1, eff. June 22, 1984; [Acts 1989, No. 392, § 1, eff. June 30, 1989](#); [Acts 1991, No. 21, § 1, eff. June 14, 1991](#); [Acts 1995, No. 708, § 1](#); [Acts 1995, No. 947, § 2, eff. Jan. 1, 1996](#).

[FN1] [42 U.S.C.A. § 7401](#) et seq.

[FN2] [33 U.S.C.A. § 1251](#) et seq.

[FN3] [42 U.S.C.A. § 6901](#) et seq.

IMPLEMENTATION AND APPLICATION

<Acts 1995, No. 947 amended, enacted, or repealed provisions in Title 30 relating to administration of enforcement procedures of the Department of Environmental Quality. Sections 4, 5, 6, 7, and 8 of Acts 1995 (as modified by the Louisiana State Law Institute) provided:>

<"Section 4. The secretary shall propose all rules relating to enforcement by January 1, 1997, and shall adopt those rules relating to enforcement by July 1, 1997.>

<"Section 5. The provisions of this Act shall apply to requests for declaratory rulings filed on or after the effective date of this Act and to all compliance orders issued or penalties assessed on or after the effective date.>

<"Section 6. The Louisiana State Law Institute is hereby authorized and requested to change the heading of [R.S. 49:962](#) from 'Judicial Review of Declaratory Orders and Rulings' to 'Declaratory Orders and Rulings'.>

<"Section 7. This Act shall become effective on January 1, 1996; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on January 1, 1996, or on the day following such approval by the legislature, whichever is later.>

<"Section 8. If the provisions of House Bill No. 2117 providing that review of final decisions or orders of the Department of Environmental Quality are to be appealed to the Nineteenth Judicial District Court for the parish of East Baton Rouge instead of the Court of Appeal, First Circuit, become effective, then [R.S. 30:2050.21](#) and 2050.18(A)(1) of this Act are hereby amended to specify that such decisions or orders are to be appealed to said district court. The Louisiana State Law Institute is hereby authorized and directed to edit these specified statutes consistent herewith. In addition, if the provisions of Senate Bill No. 636, which provides for an administrative hearings division, become effective, to the extent that its provisions are inconsistent with the provisions of this Act, the provisions of Senate Bill No. 636 shall prevail. Otherwise, to the extent that the provisions of this Act are in conflict with any other Act passed at this regular session, the provisions of this Act shall supersede such other provisions.">

<Acts 1995, House Bill No. 2117 became effective as Acts 1995, No. 1208, amending [R.S. 13:3662](#) and [R.S. 30:2024](#). Acts 1995, Senate Bill No. 636 became effective as Acts 1995, No. 739, enacting, in Title 49, Chapter 13-B, containing [R.S. 49:991](#) to [49:999](#) relating to an administrative hearings division, and made conforming changes to [R.S. 36:53](#).>

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

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The amendments prior to 1987 were made to [R.S. 30:1054](#), the predecessor to this section.

The 1980 amendment added pars. (12) to (15) (see, now, pars. (10) to (13)), defining "discharge", "response fund", "abandoned site fund" and "pollution source".

The 1981 amendment, in par. (10) defining "person" (see, now, par. (8)), added "the United States Government, and any agent or subdivision thereof".

The 1982 amendment added par. (16) defining "facility" (see, now, par. (14)).

Acts 1983, No. 97, § 1, in the introductory sentence, deleted commas following "Chapter" and "hereof"; in par. (2), substituted "Environmental Quality" for "Natural Resources"; in par. (3), inserted "the" preceding "Resource"; deleted former par. (4), which had read: "'Office' means the office of environmental affairs within the Department of Natural Resources."; redesignated former par. (5) as par. (4); deleted former par. (6), which had read: "'Assistant secretary' means the assistant secretary of the office of environmental affairs within the Department of Natural Resources."; redesignated pars. (7) to (16) as pars. (5) to (14); in par. (4), substituted "Environmental Quality" for "Natural Resources"; in par. (6), deleted "assistant" preceding "secretary", substituted "Department of

Environmental Quality" for "office of environmental affairs", substituted "of" for "to" following "secretary"; in par. (7), inserted "the" preceding "divisions"; in par. (8), deleted a comma following "Government"; in par. (10), inserted commas following "emitting", "water", "pits", "barrels", and "draining", deleted "the" preceding "ground" and "or" following "pits"; in par. (11), substituted "[R.S. 30:1079](#)" for "Section 1078 of this Chapter"; deleted "of this Chapter" from the end of par. (12); and, in par. (14), deleted "The term" from the beginning of the paragraph, deleted a comma following "source", substituted "pollutants" for "pollutant", and added commas following "process" and "store".

In the text as amended by Acts 1983, No. 97, § 1, commas were inserted following "Chapter" and "hereof" in the introductory sentence, and "which" was inserted in par. (14), all pursuant to the statutory revision authority of the Louisiana State Law Institute.

Acts 1983, No. 467, § 1, eff. July 6, 1983, rewrote the definition of "abandoned site fund", which formerly read: "shall mean the Abandoned Hazardous Waste Site Fund as created by Section 1149 of this Chapter.", and added par. (17), defining "Pollutant". The paragraph designations of the definitions "Abandoned site fund" and "Pollutant" were redesignated from (14) and (17) to (12) and (15), respectively, in the text of Acts 1983, No. 467, § 1, pursuant to the statutory revision authority of the Louisiana State Law Institute to conform with Acts 1983, No. 97.

Paragraph (12), defining "Abandoned site fund", was amended by conflicting language by both Acts 1983, No. 97, § 1 and Acts 1983, No. 467, § 1. Pursuant to the statutory revision authority of the Louisiana State Law Institute, par. (12) was printed as set forth in Acts 1983, No. 467, § 1.

Paragraph (12) as amended by Acts 1983, No. 97, § 1 provided:

"(12) 'Abandoned site fund' means the Abandoned Hazardous Waste Site Fund created by [R.S. 30:1149](#)."

Senate Concurrent Resolution No. 3 of the 1983 Second Extraordinary Session suspended Acts 1983, No. 97 until the sixtieth day after adjournment of the 1984 Regular Session of the Legislature. However, the Governor, by Executive Order No. 83-30, challenged the validity of SCR No. 3 and directed implementation of Acts 1983, No. 97. The full texts of SCR No. 3 and Executive Order No. 83-30 are set forth under [R.S. 30:2001](#).

Senate Concurrent Resolution No. 3 of the 1983 Second Extraordinary Session was repealed by Acts 1984, No. 342, § 2, eff. July 2, 1984. See note following [R.S. 30:2001](#).

The 1984 amendment, in par. (8), inserted a comma following "United States Government", deleted a comma following "thereof", and inserted ", which shall include, but not be limited to, trusts, joint stock companies, associations, the state of Louisiana, political subdivisions of the state of Louisiana, commissions and interstate bodies"; and in par. (15), substituted a semicolon for a comma following "noxious", inserted a comma following "solid", and substituted "radioactive" for "nuclear".

In par. (15), as amended in 1984, a comma was substituted for a semicolon following "noxious" pursuant to the statutory revision authority of the Louisiana State Law Institute.

Pursuant to House Concurrent Resolution No. 247 of the 1987 Regular Session and pursuant to the statutory revision authority of the Louisiana State Law Institute, this section, formerly R.S. 30:1054 of Part I of Chapter 11 of Title 30 of the Revised Statutes of 1950, was redesignated as R.S. 30:2004 of Chapter 1 of Subtitle II of Title 30 in 1988.

For disposition of the sections of former Chapter 11 following their reorganization and redesignation in Subtitle II by House Concurrent Resolution No. 247 of the 1987 Regular Session, see notes and Table 2 preceding [R.S. 30:2001](#).

Pursuant to the statutory revision authority of the Louisiana State Law Institute and pursuant to the redesignation of the sections of Chapter 11 into Subtitle II, references in the texts of the affected sections to "Chapter" and "Part" were changed to refer to "Subtitle" and "Chapter", respectively, and internal citations to particular sections were changed to reflect their redesignation.

The 1989 amendment, in par. (11), substituted "the Environmental Trust Fund created in [R.S. 30:2015](#)" for "the Environmental Emergency Response Fund created in [R.S. 30:2034](#)".

The 1991 amendment, in par. (9), defining "natural resources committees", substituted "committee" for "committees" following "natural resources" and added "the environmental quality committee of the" preceding "Senate of the Louisiana Legislature."

Acts 1995, No. 708, § 1 added, to par. (15), the second and third sentences of the introductory paragraph, and subpars. (15)(a) and (15)(b), all defining "pollutant" for purposes of the Louisiana Pollutant Discharge Elimination System.

Acts 1995, No. 947, § 2 deleted, from what is now the first sentence of the introductory paragraph of par. (15), "or commission" following "secretary"; and added pars. (16) to (21), defining "Adjudication", "Aggrieved person", "Assistant secretary", "Compliance order", "Respondent", and "Violation".

Both Acts 1995, No. 708 and Acts 1995, No. 947 amended par. (15) of this section. Pursuant to the statutory revision authority of the Louisiana State Law Institute, the text of par. (15) as amended by Act 708 was set forth, with the amendment by Act 947 (deletion of "or commission" following "secretary" in the first sentence) merged therein.

Acts 1997, No. 26 repealed pars. (1), (5) and (6), which had read:

"(1) 'Commission' means the Environmental Control Commission."

"(5) 'Member' means a member of the Environmental Control Commission.

"(6) 'Commission secretary' means the secretary of the Department of Environmental Quality serving in his capacity as secretary of the Environmental Control Commission."

LAW REVIEW AND JOURNAL COMMENTARIES

Public trust doctrine as a basis for environmental litigation in Louisiana. 27 Loy.L.Rev. 469 (1981).

LSA-R.S. 30:2004, LA R.S. 30:2004

Current through all 2005 Regular Session Acts

→§ 2005. Repealed by Acts 2001, No. 1137, § 1

HISTORICAL AND STATUTORY NOTES

2004 Electronic Pocket Part Update

Former R.S. 30:2005, relating to the Environment and Natural Resources Council, was added by Acts 1995, No. 537, § 1.

The title of the repealing act, Acts 2001, No. 1137, indicated an intent "to abolish certain inactive boards and commissions".

Prior to repeal, Acts 2000, 1st Ex.Sess., No. 144, § 16 amended this section contingent upon passage of a proposed constitutional amendment of [Article XII, section 12 of the Louisiana Constitution](#) by Acts 2000, 1st Ex.Sess., No. 153. The proposed amendment of [Article XII, Section 12](#) by Acts 2000, 1st Ex.Sess. No. 153, § 1 failed to pass at the general election held on November 7, 2000. Therefore the amendment of this section did not take effect.

A former R.S. 30:2005 related to the creation, membership, and function of the Governor's Resource Development and Environmental Quality Council. It was originally enacted as [R.S. 30:1066.2](#) by Acts 1983, No. 411 and was redesignated as [R.S. 30:1055](#), pursuant to the statutory revision authority of the Louisiana State Law Institute, to conform with the amendments by Acts 1983, No. 97.

Subsequently, in 1988, R.S. 30:1055 of Part 1 of Chapter 11 of Title 30 was redesignated as R.S. 30:2005 of Chapter 1 of Subtitle II of Title 30, pursuant to House Concurrent Resolution No. 247 of the 1987 Regular Session and pursuant to the statutory revision authority of the Louisiana State Law Institute. House Concurrent Resolution No. 247 of the 1987 Regular Session generally requested the Louisiana State Law Institute to reorganize and redesignate existing environmental laws. See notes and Table 2 preceding [R.S. 30:2001](#).

Former R.S. 30:2005 was repealed by Acts 1989, No. 662, § 8, eff. July 7, 1989. The title of the repealing Act reflected an intent to, inter alia, abolish the Governor's Resource Development and Environmental Quality Council.

LSA-R.S. 30:2005, LA R.S. 30:2005

Current through all 2005 Regular Session Acts

LOUISIANA REVISED STATUTE

CHAPTER 30, SECTION 2054

West's Louisiana Statutes Annotated [Currentness](#)

Louisiana Revised Statutes

Title 30. Minerals, Oil, and Gas and Environmental Quality ([Refs & Annos](#))

[Subtitle II.](#) Environmental Quality ([Refs & Annos](#))

[Chapter 3.](#) Louisiana Air Control Law ([Refs & Annos](#))

→ § 2054. Air quality control; secretary of environmental quality; powers and duties

A. The secretary shall have the following powers and duties with respect to air quality control:

(1) To prepare and develop a general plan for the proper control of the air resources in the state of Louisiana including the compilation and maintenance of an ongoing comprehensive air emissions inventory.

(2) To make investigations upon receipt of information concerning an alleged violation of this Chapter or any rule or regulation promulgated hereunder and to issue any appropriate orders in accordance with [R.S. 30:2025](#). This Paragraph shall in no way detract from the power of the office to make investigations and inquiries upon its own motion.

(3) To prepare and develop a general plan for the proper control of noise in the state of Louisiana.

B. The secretary shall have the following powers and duties:

(1) To adopt and promulgate rules and regulations consistent with applicable state and federal law and the general intent and purposes of this Chapter for the maintenance of air quality within the state of Louisiana.

(2)(a) To develop permitting procedures and regulations conforming to applicable state and federal laws, and to require and issue permits, licenses, variances, or compliance schedules for all sources of air contaminants within the state of Louisiana and when the secretary deems it advisable to delegate the power to issue or deny such permits, licenses, variances, or compliance schedules to the appropriate assistant secretary subject to his continuing oversight. The authority to execute minor permit actions, to issue registrations, certifications, notices of deficiency, and notification of inclusion under a general permit may be delegated by the secretary or the appropriate assistant secretary to an authorized representative, notwithstanding the provisions of [R.S. 30:2050.26](#).

(b) Nothing in this law shall be deemed to grant to the secretary any jurisdiction or authority to make any rule, regulation, recommendations, or determination with respect to any of the following:

(i) Air conditions existing solely within the property boundaries of commercial and industrial plants, works, or shops.

(ii) Relations between employers and employees with respect to or arising out of any air condition.

(iii) Burning of agricultural by-products in the field in connection with the planting, harvesting, or processing of agricultural products.

(iv) Controlled burning of cotton gin agricultural wastes in connection with cotton gin operations.

(v) Controlled burning in connection with timber stand management.

(vi) Controlled burning of pastureland or marshland in connection with trapping or livestock production.

(vii) Imposition of a motor vehicle fuels program respecting any characteristic, other than Reid vapor pressure, or component of a fuel or fuel additive not specifically required by federal law and specifically authorized by this Subtitle.

(viii) Confiscation of emission reduction credits or imposition of additional emission reductions from industrial

sources to compensate for restrictions in vehicle inspection and maintenance or motor vehicle fuels programs, unless no other reasonable or practical alternatives exist to bring about timely attainment of the ozone ambient air standard.

(ix) Permitting regulations, with respect to air quality, requiring authorization to construct or operate any source for which facility- wide potential emissions are less than five tons per year for each of any regulated air pollutant as defined by the Federal Clean Air Act, [42 U.S.C. 7401](#) et seq., less than fifteen tons per year emitted of all such defined pollutants combined, and less than the minimum emission rate for each toxic air pollutant established pursuant to [R.S. 30:2060](#), unless such source is required to obtain a permit pursuant to the Federal Clean Air Act, Subchapter V, [42 U.S.C. 7661](#) et seq.

(3) To adopt and promulgate regulations necessary in establishing and administering an air pollution emission reduction credit banking system for the state as an inducement for Louisiana industries to reduce emissions of air pollutants. Such regulations shall at a minimum provide:

(a) For the administration of the banking system.

(b) Criteria under which emission reduction credits may be earned.

(c) Geographical limitations or emission offset areas for which emission offsets may be earned.

(d) Criteria for the use, banking, or sale of banked emissions.

(e) For the approval of the department for the earning, use, banking, or sale of banked emissions.

(f) Requirements for the maintenance and submission of records concerning emission levels, amounts of emission offsets, and banked emissions.

(g) The implementation of the banking system to allow credit for all emission offsets meeting the criteria established pursuant to Subparagraph (b) which have been accomplished subsequent to December 21, 1976.

(h) Appropriate recognition of the efficacy of permits issued prior to the promulgation of final regulations and reductions of emissions made in compliance with said permits.

(i) For the establishment of a schedule requiring banked air emissions of permitted facilities and credits to be discounted or decreased over time in nonattainment areas so as to comply with state and federal regulations which require improvement in air quality within nonattainment areas. Banked air emissions of permitted facilities and credits shall be discounted from a base year at a rate so as to effect decreases in banked air emissions consistent with state and federal law relative to nonattainment areas.

(j) In the absence of regulations, the secretary shall have the authority to create emissions credits by permit and shall authorize the transfer of credits by permit actions.

(4) The present air law and air regulations shall remain in effect until the final promulgation of new regulations is completed in accordance with the provision of this Section and the Administrative Procedure Act; [R.S. 49:950](#) et seq.

(5) To adopt and promulgate regulations establishing a noxious odor control and abatement program for the state of Louisiana. The odor control and abatement program authorized by this Paragraph shall not apply to odors caused by agricultural, fiber, timber, poultry, seafood, or fisheries production or by byproducts created by agricultural, fiber, timber, poultry, seafood, or fisheries production unless such odors are detected in concentrations or intensities above that normally detected from these processes or byproducts when using applicable air pollution control devices. Nothing in this provision shall be construed as precluding a private litigant's right to sue for abatement of odors.

(6) To adopt and promulgate rules and regulations implementing a comprehensive toxic air pollutant emission control program in accordance with [R.S. 30:2060](#).

(7) To adopt and promulgate rules and regulations establishing and implementing a comprehensive program for the control and abatement of environmental noise pollution. The regulations shall be consistent with applicable federal laws, rules, and regulations and, at a minimum, shall provide for the following:

(a) Criteria and standards for noise control and abatement.

(b) Levels of noise appropriate to defined areas under various conditions.

(8) To establish and implement a program for the control and abatement of motor vehicle emissions in accordance with [R.S. 30:2060](#) and other applicable state and federal laws, particularly the Clean Air Act as amended, but not to exceed the requirements provided in such Act unless specifically authorized. Such program shall be applicable only in parishes and municipalities that have been placed on the nonattainment list for ozone standards and classified as "serious" or worse by the United States Environmental Protection Agency as of June 30, 1999. If such program includes the periodic inspection of motor vehicles, the frequency of performing such inspections shall be as allowed by federal law or regulations or by agreements with federal agencies. During each calendar year, the secretary may exempt vehicles of that model year and vehicles from prior model years from on-board diagnostic (OBD II) testing. The fees due the department for this program pursuant to [R.S. 32:1306\(C\)\(3\)](#) shall be deposited into the Environmental Trust Fund. The inspection and maintenance of motor vehicles as required by this Paragraph shall begin on January 1, 2000.

(9)(a) To develop permits by rule for certain temporary air emissions of less than one hundred eighty days in duration provided the conditions in Subparagraph (b) are satisfied.

(b)(i) A permit by rule cannot be used for any facility which is a new major stationary source or for any major modification of an existing source subject to the New Source Review (NSR) requirements of the Federal Clean Air Act.

(ii) A facility shall comply with all applicable provisions of Section 3 (New Source Performance Standards) and Section 112 (Hazardous Air Pollutants) of the Federal Clean Air Act.

(iii) Use of a permit by rule may be precluded by specific permit conditions contained within a Federal Clean Air Act Part 70 Operating Permit.

(iv) A permit by rule may not authorize the maintenance of a nuisance or a danger to public health or safety. All emissions control equipment shall be maintained in good condition and operated properly.

(10) To develop rules and regulations providing for an expedited review process for permit applications with minor air emissions.

CREDIT(S)

Acts 1979, No. 449, § 1, eff. Jan. 1, 1980. Amended by Acts 1980, No. 194, § 7; Acts 1981, No. 626, § 1; Acts 1981, No. 915, § 1; Acts 1982, No. 468, § 1; Acts 1982, No. 783, § 1; Acts 1983, No. 34, § 1; Acts 1983, No. 97, § 1, eff. Feb. 1, 1984; Acts 1983, No. 538, § 1; Acts 1984, No. 117, § 1, eff. June 22, 1984; Acts 1984, No. 254, § 1; Acts 1984, No. 316, § 1, eff. July 2, 1984; [Acts 1989, No. 184, § 1, eff. June 23, 1989](#); [Acts 1990, No. 245, § 1](#); [Acts 1991, No. 872, § 1](#); [Acts 1991, No. 873, § 1](#); [Acts 1993, No. 570, § 3](#); [Acts 1995, No. 393, § 1, eff. June 16, 1995](#); [Acts 1995, No. 457, § 1](#); [Acts 1995, No. 1216, § 1](#); [Acts 1999, No. 303, § 1, eff. June 14, 1999](#); [Acts 1999, No. 348, § 1, eff. June 16, 1999](#); [Acts 1999, No. 468, § 1, eff. June 18, 1999](#); [Acts 1999, No. 576, § 1, eff. June 30, 1999](#); [Acts 2003, No. 918, § 1](#); [Acts 2004, No. 584, § 1, eff. July 1, 2004](#).

IMPLEMENTATION--ACTS 1995, NO. 393

<Acts 1995, No. 393, § 3 (§ 1 of which amends items B(8)(b)(i) and (iii) and enacts items B(8)(b)(x) and (xi) of this section), provides:>

<"Section 3. The provision of R.S. 30:2054(B)(8) shall not be implemented after January 1, 1998, unless

the program provided for therein is reauthorized by the legislature in the regular session in 1997 and thereafter in each regular session in odd numbered years.">

HISTORICAL AND STATUTORY NOTES

2004 Electronic Pocket Part Update

Acts 2003, No. 918, § 1, in subsec. B, in subpar. (2)(b), added item (ix); and added pars. (9) and (10).

In 2004, pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as amended in 2003, "an expedited" was substituted for "a expedited" in par. (B)(10).

Acts 2004, No. 584, § 1, in par. (B)(8), inserted new third and fourth sentences, relating to periodic inspection and exemption of vehicles.

2000 Main Volume

The amendments prior to House Resolution No. 247 of the 1987 Regular Session are to [R.S. 30:1084](#), the predecessor of this section.

Acts 1979, No. 409, § 1 provided that:

"Notwithstanding any provisions of law to the contrary, the Air Control Commission or its successor is hereby directed to submit the commission's state implementation plan to the House of Representatives and Senate natural resources committees, prior to implementing the Clean Air Act."

Chapter 11 of Title 30 was originally enacted by Acts 1978, No. 334, § 1, eff. July 10, 1978, to consist of Part I, comprised of [R.S. 30:1101](#) to [30:1116](#). Chapter 11 of Title 30 was revised by Acts 1979, No. 449, § 1, eff. Jan. 1, 1980, to consist of Parts I to VII, comprised of [R.S. 30:1051](#) to [30:1147](#). Chapter 11, expanded to consist of [R.S. 30:1051](#) to [30:1150.96](#), was later redesignated as Subtitle II of Title 30, consisting of [R.S. 30:2001](#) to [30:2396](#) (see notes, post).

As originally enacted, the reference in par. (A)(2) to [R.S. 30:1073](#) had referred instead to [R.S. 30:1072](#). Prior to the 1980 amendment "[R.S. 30:1073](#)" had been substituted for "[R.S. 30:1072](#)" pursuant to the statutory revision authority of the Louisiana State Law Institute. The 1980 amendment made no other changes.

Acts 1981, No. 626, § 1 added pars. (B)(3) and (4).

Acts 1981, No. 915, § 1 added par. (B)(3), which was redesignated as par. (B)(5) pursuant to the statutory revision authority of the Louisiana State Law Institute.

Acts 1982, No. 468, added par. (B)(6).

Acts 1982, No. 783, § 1, in the section heading, capitalized "Environmental Affairs"; in the introductory clause of subsec. B, substituted "Commission" for "commission"; and in par. (B)(5), added the last sentence relating to a private litigant's right to sue.

Acts 1983, No. 34, § 1, eff. Aug. 30, 1983, added provisions relating to the burning of agricultural byproducts and to controlled burning, and added the last sentence in par. (B)(2).

Acts 1983, No. 97, § 1, eff. Feb. 1, 1984, in the section heading, substituted "air quality; secretary of environmental quality" for "Environmental Affairs, Environmental Control Commission"; in subsec. A, inserted "of air quality" in the introductory sentence; throughout subsec. B, substituted "secretary" for "Commission" or "commission", deleted commas following "law" and "regulations", and added commas following "laws"; in par. (B)(2), substituted "advisable, to delegate" for "advisable it may delegate" and "his" for "its"; in par. (B)(2), inserted "or refer it to the commission"; in par. (B)(3), substituted "air quality" for "environmental affairs" and deleted quotation marks

surrounding "banked emissions"; in par. (B)(4), substituted "procedure" for "procedures"; and in par. (B)(5), deleted "or by byproducts created by agricultural, fiber, timber, poultry, seafood or fisheries production," following "production", and twice added commas following "seafood".

Acts 1983, No. 538, eff. Aug. 30, 1983, inserted "including the compilation and maintenance of an ongoing comprehensive air emissions inventory" in par. (A)(1); and added subpar. (B)(3)(i).

Acts 1983, No. 34; Acts 1983, No. 97; and Acts 1983, No. 538 all amended this section. The introductory paragraph of subsec. B as amended by Act 97 was set out pursuant to the statutory revision authority of the Louisiana State Law Institute. Acts 1983, No. 538, § 1, and Acts 1983, No. 34, § 1, read "commission" instead of "secretary" in the introductory paragraph of subsec. B.

Senate Concurrent Resolution No. 3 of the 1983 Second Extraordinary Session suspended Acts 1983, No. 97 until the sixtieth day after adjournment of the 1984 Regular Session of the Legislature. However, the Governor, by Executive Order No. 83-30, challenged the validity of SCR No. 3 and directed implementation of Acts 1983, No. 97. The full texts of SCR No. 3 and Executive Order No. 83-30 are set forth under [R.S. 30:2001](#).

Senate Concurrent Resolution No. 3 of the 1983 Second Extraordinary Session was repealed by Acts 1984, No. 342, § 2, eff. July 2, 1984. See note following [R.S. 30:2001](#).

Acts 1984, No. 117, § 1, inserted "and nuclear energy" in the section heading, in the first sentence of subsec. A, and in subpars. (B)(3)(a) and (e).

Acts 1984, No. 254, § 1, added pars. (A)(3) and (B)(7).

Acts 1984, No. 316, § 1, in the second sentence of par. (B)(2), substituted a semicolon for "or" following "determination", inserted a semicolon following "shops", substituted "by-products in the field" for "byproducts", inserted "of cotton gin agricultural wastes in connection with cotton gin operations, or with respect to controlled burning", and inserted ", or with respect to controlled burning of pastureland or marshland in connection with trapping or livestock production"; and deleted the former third sentence of par. (B)(2), which read, "The provisions of this Section shall not exempt papermills or raw sugarmills from the provisions of this Part."

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as amended by Acts 1984, No. 316, subparagraph designations were made in par. (B)(2).

Pursuant to House Concurrent Resolution No. 247 of the 1987 Regular Session and pursuant to the statutory revision authority of the Louisiana State Law Institute, this section, formerly R.S. 30:1084 of Part III of Chapter 11 of Title 30 of the Revised Statutes of 1950, was redesignated as R.S. 30:2054 of Chapter 3 of Subtitle II of Title 30 in 1988.

For disposition of the sections of former Chapter 11 following their reorganization and redesignation in Subtitle II pursuant to House Concurrent Resolution No. 247 of the 1987 Regular Session, see notes and Table 2 preceding [R.S. 30:2001](#).

Pursuant to the statutory revision authority of the Louisiana State Law Institute and pursuant to the redesignation of the sections of Chapter 11 into Subtitle II, references in the texts of the affected sections to "Chapter" and "Part" were changed to refer to "Subtitle" and "Chapter", respectively, and internal citations to particular sections were changed to reflect their redesignation, and, pursuant to the statutory revision authority of the Louisiana State Law Institute, in par. (B)(4), reference to "[R.S. 49:951](#) et seq." was changed to "[R.S. 49:950](#) et seq."

The 1989 amendment, in par. (B)(6), substituted "toxic air pollutant" for "hazardous air pollutant", deleted a comma following "control program", and substituted "[R.S. 30:2060](#)" for "[R.S. 30:2059](#)".

The 1990 amendment substituted, in the section heading and in the introductory clause of subsec. A, "radiation protection" for "nuclear energy".

Acts 1991, No. 872, § 1 added par. (B)(8), relating to adoption of rules for motor vehicle emissions.

Act 1991, No. 873, § 1 added subpar. (B)(3)(j), relating to emissions credits.

The 1993 amendment, in subpar. (B)(8)(a), inserted ", in accordance with the Administrative Procedure Act," replaced "(11/15/90) (Clean Air Act amendments)" with "(Clean Air Act Amendments of 1990)", and added "unless specifically authorized in Subparagraph (b) of this Paragraph", all in the first sentence; in the second sentence, inserted "and classified as 'serious', or worse, on or after the effective date hereof," inserted "(EPA)", and deleted the last sentence, which had read "Neither the secretary nor the Department of Public Safety and Corrections shall assess of adopt a fee to implement this program."; rewrote subpar. (B)(8)(b); and replaced "eligible for special license plates for antique motor vehicles or symbols for antique" with "displaying special" in subpar. (B)(8)(c).

Prior to being rewritten, subpar. (B)(8)(b) read:

"(b) Unless required by the U.S. Environmental Protection Agency, the regulations adopted pursuant to this Paragraph shall provide for:

"(i) Privately operated inspection stations.

"(ii) Department conducted mechanic-inspector training for equipment operation.

"(iii) Annual inspections in conjunction with vehicle inspections.

"(iv) Increased enforcement at inspection stations."

Senate Concurrent Resolution No. 5 of the Fourth Extraordinary Session of 1994 urges and requests "the attorney general to review Louisiana's options and take all available reasonable legal action, either acting alone or with other states or governmental entities, to preserve state options as required under Louisiana law and available under the Clean Air Act regarding implementation of a federally mandated and unfunded enhanced inspection and maintenance program for Baton Rouge motor vehicles".

Acts 1995, No. 393, in item (B)(8)(b)(i), in the first sentence, substituted "that is classified as 'serious' or worse on the ozone non-attainment list of the U.S. Environmental Protection Agency on January 1, 1998" for "with a population greater than two hundred thousand" following "any affected parish"; in the second sentence, changed "shall" to "may" preceding "impose", inserted commas following "a fee" and "Trust Fund", changed "shall" to "may" preceding "be imposed", and substituted "1998" for "1994" following "January 1,"; in item (B)(8)(b)(iii), in the first sentence, deleted "inspection-only" preceding "facilities", and in the second sentence, deleted "test-only" preceding "facilities"; and added items (B)(8)(b)(x) and (xi), relating to the time that contracts for the inspection of vehicles can be executed and that vehicle emissions inspection may take place.

Acts 1995, No. 457, § 1 added subpar. (B)(8)(d), relating to preparation of an annual report presenting ozone monitoring data.

Acts 1995, No. 1216, § 1, in subpar. (B)(2)(b), substituted "with respect to any of the following" for "; to enter any order with respect to" following "determination", designated items (i) to (vi), deleted "or to affect" preceding "relations", deleted "or with respect to the" preceding "burning of agricultural" and preceding "controlled burning of cottongin", deleted "or with respect to" preceding "controlled burning of pastureland", added "; (vii) imposition of a motor vehicle fuels program respecting any characteristic or component of a fuel or fuel additive not specifically required by federal law and specifically authorized by this Subtitle; or (viii) confiscation of emission reduction credits or imposition of additional emission reductions from industrial sources to compensate for restrictions in vehicle inspection and maintenance or motor fuels programs, unless no other reasonable or practical alternatives exist to bring about timely attainment of the ozone ambient air standard" at the end, and made punctuation changes throughout.

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as amended in 1995, in subpar. (B)(2)(b), items (i) to (viii) were indented, with attendant punctuation and capitalization changes: and, in the first sentence of item (B)(8)(d)(iii), semicolons were substituted for commas following "reporting" and

"reported".

Acts 1999, No. 303, § 1, in the section heading, substituted "Air quality control" for "Office of air quality and radiation protection"; in the introductory paragraph of subsec. A, substituted "secretary" for "office of air quality and radiation protection" and added "with respect to air quality control" following "powers and duties"; in the first sentence of subpar. (B)(2)(a), inserted "or deny" following "to delegate the power to issue", inserted "appropriate" following "compliance schedules to the", deleted "or refer it to the commission." following "subject to his continuing oversight.", and added the second sentence, relating to the delegation by the secretary or assistant secretary of certain functions to an authorized representative; in subpar. (B)(3)(a), deleted "by the assistant secretary of the office of air quality and nuclear energy" following "of the banking system"; in subpar. (B)(3)(e), substituted "For the" for "The" and substituted "department" for "assistant secretary of the office of air quality and nuclear energy".

Acts 1999, No. 348, § 1, in the section heading, substituted "Air quality control" for "Office of air quality and radiation protection", and in subpar. (B)(2)(a), deleted "or refer it to the commission" following "to the assistant secretary subject to his continuing oversight".

Acts 1999, No. 468, § 1, in item (B)(2)(b)(vii), inserted "other than Reid vapor pressure," following "motor vehicle fuels program respecting any characteristic,".

Acts 1999, No. 576, § 1 rewrote par. (B)(8), which had read:

"(8)(a) To adopt and promulgate rules and regulations, in accordance with the Administrative Procedure Act, establishing and implementing a program for the control and abatement of motor vehicle emissions in accordance with [R.S. 30:2060](#) and other applicable state and federal laws, particularly [Public Law 101-549](#) (Clean Air Act Amendments of 1990), but not to exceed the requirements provided in such public law unless specifically authorized in Subparagraph (b) of this Paragraph. However, such rules shall be applicable only in those parishes and municipalities that have been placed on the nonattainment list for ozone standards and classified as "serious", or worse, on or after the effective date hereof, by the U.S. Environmental Protection Agency (EPA).

"(b) Unless otherwise required by the U.S. Environmental Protection Agency, regulations authorized and adopted pursuant to the Clean Air Act Amendments of 1990, the regulations adopted pursuant to this Paragraph, at a minimum, shall provide for the following:

"(i) A biennial emission inspection for vehicles that are registered or required to be registered in any affected parish that is classified as "serious" or worse on the ozone non-attainment list of the U.S. Environmental Protection Agency on January 1, 1998 for which a program emission inspection fee not to exceed ten dollars per vehicle inspected may be imposed if Intermodal Surface Transportation Efficiency Act funds are available for the purpose; otherwise and to the extent such funds are not available a fee not to exceed twenty dollars per vehicle inspected may be imposed. The secretary of the Department of Public Safety and Corrections may impose as an addition to the authorized annual fee provided for in [R.S. 32:1301](#) et seq., a fee, the proceeds of which shall be deposited into the Environmental Trust Fund, for the exclusive use of an emission inspection program provided for in this Paragraph, such fee may be imposed commencing January 1, 1998, and which shall not exceed five dollars for the inspection of any vehicle registered in any affected parish. The additional annual fee authorized herein, and any other funds available for the purpose, shall be used to offset the program emission inspection fee and may be used to supplement the program emission inspection costs. However, to the extent that funds are available, from whatever source, in an amount sufficient for the program to operate without assessment of part or all of one or both of the fees authorized herein, such fees shall not be collected or, if being collected, shall be suspended until the continued collection is necessary.

"(ii) To ensure the per vehicle fees imposed are no greater than the minimum amount necessary to fund the emission inspection program, the secretary and the secretary of the Department of Public Safety and Corrections shall each file an annual report with the legislative auditor prior to March first showing both actual and anticipated costs and revenues for the program.

"(iii) Privately operated facilities employing tests designed to achieve federal performance standards. It is the goal

of this Subparagraph that such facilities be located not more than fifteen miles driving distance from ninety percent of the affected population's residences and designed to require a total maximum inspection and waiting time of not more than fifteen minutes.

"(iv) On-road testing, which includes but is not limited to remote sensing in all affected parishes for all registered vehicles, with appropriate followup testing for failing vehicles. Such followup testing is to be conducted at an emission inspection facility and enforced by the possibility of registration suspension or denial. Followup testing shall be exempt from the maximum driving distance provision of this Paragraph. Consideration shall be given to the maximum extent appropriate, for the use of remote sensing and other available technology, as a method for selection of vehicles for followup testing at an emission inspection facility.

"(v) The provisions of [R.S. 30:2064](#) notwithstanding, a vehicle scrappage program, optional for the vehicle owner, designed to accelerate the removal and disposal of gross emitting vehicles that cannot be repaired within the repair cost limits set by the secretary or the value of which is exceeded by the cost for such repair. The implementation of such scrappage program shall coincide with that of the emission inspection program provided for in this Paragraph and shall be voluntarily funded by stationary source industries within the nonattainment area in exchange for emission reduction credits, banking, and trading criteria established by rules of the secretary to provide participation incentives to industries using a cost per ton formula. Other funding sources may be used for this program. Such rules shall be finally promulgated no later than September 1, 1994. In development of such scrappage program rules, the secretary shall make a reasonable effort to ensure that no affected resident will be denied basic transportation for employment purposes.

"(vi) An educational program with criteria to certify highly trained and qualified repair mechanics, a repair mechanic training program sufficiently funded to permit the purchase of equivalent technology to that used at an emission inspection facility, and a system designed to reduce the public inconvenience of multiple retesting of repaired vehicles.

"(vii) In determining the specific test technology to be implemented, the secretary shall preserve the state's options provided by federal law to vary from the specific program features required by EPA rules and to consider alternate, evolving, cost-effective technologies, presenting minimal public inconvenience, which are designed to bring Louisiana into compliance with federal ambient air quality standards and meet EPA required program elements. The secretary shall annually report to the presiding officers of each chamber of the Louisiana Legislature demonstrating the ongoing results of the program authorized by this Paragraph and shall include therein the results of its ongoing search for technology which may be employed to reduce ozone causing emissions.

"(viii) The secretary shall hold at least one public meeting in each affected parish prior to the commencement of any testing to inform the residents of the affected parishes concerning the requirements of federal law and regulations, to increase citizen support for the program, to answer questions, and to gain insight into ways in which the program might be altered to be more effective and less intrusive; thereafter the secretary shall do so annually for the duration of the program to report on progress and address issues of interest to the public. In any parish in which emission inspections are conducted, the secretary shall hold such public meetings in each of the major municipalities of the parish.

"(ix) At each inspection facility, notices shall be displayed in a place of prominence stating that the subject program, all inspections and funding provisions are expressly required by the U.S. Environmental Protection Agency and by an act of congress. Additionally, such notices shall be included on all cost- and fee-related transaction forms.

"(x) No contract for the inspection of vehicles or for the distribution of equipment for the inspection of vehicles shall be executed by the department before January 1, 1998.

"(xi) No vehicle shall be subject to an emissions inspection pursuant to this Subsection before January 1, 1999.

"(c) The provisions of this Paragraph shall not apply to antique motor vehicles displaying special license plates as provided by [R.S. 47:463.8](#).

"(d)(i) To prepare and disseminate an annual ozone standard attainment monitoring report presenting data collected

from monitors in all affected areas of the state.

"(ii) The annual report shall be used by the department in its efforts to evaluate its existing and proposed programs, including for the inspection of motor vehicle emissions, if any, to achieve attainment of the National Ambient Air Quality Standard for ozone, and to provide summary information for the education of the public concerning progress toward achievement of said standard.

"(iii) The report shall include summary information as follows: background information on the federal requirements for annual reporting; the types of data which must be reported; and the number of hours, days, monitors, and violations which are reflected by the data and reported to EPA for past, current, and future years. The report shall provide analysis of the data reflecting trends including decreases or increases over time and the patterns of monitoring site exceedances and total exceedances for the various areas where attainment has not been achieved fully.

"(iv) The report should include any other data and information reasonably necessary to enhance the public's understanding of the ozone nonattainment data and report. The report should include tabular and chart formats to facilitate its use and understanding by the public."

Both Acts 1999, No. 303 and Acts 1999, No. 348 amended subpar. (B)(2)(a) of this section (see descriptive notes, ante). Pursuant to the statutory revision authority of the Louisiana State Law Institute, subpar. (B)(2)(a) is set out as amended by Act 303, which amended subparagraph incorporates the amendments by both Act 303 and Act 348.

On the same authority, in the second sentence of par. (B)(8) as amended by Acts 1999, No. 576, "as of the effective date of this Act" was changed to "as of June 30, 1999"; and, in item (B)(2)(b)(vii) as amended by Acts 1999, No. 468, "reid vapor pressure" was changed to "Reid vapor pressure".

CROSS REFERENCES

Contracts for privately operated vehicle emission inspection facilities authorized, see [R.S. 39:1615\(F\)](#).

LAW REVIEW AND JOURNAL COMMENTARIES

Assessing Benefits of ground-level ozone: What role for science in setting national air quality standards. Randall Lutter, Howard Gruenspecht, [15 Tul.Envtl.L.J. 85 \(2001\)](#).

[Carbon markets: Reducing greenhouse gas emissions through emissions trading. Gary C. Bryner, 17 Tul. Envtl. L.J. 267 \(2004\).](#)

[Department of Transportation v. Public citizen: The supreme court allows Mexican trucks to cross the border under NAFTA without environmental scrutiny. 18 Tul.Envtl. L.J. 231 \(2004\).](#)

Developments in the law, 1981-1982: Environmental law. Joseph T. Bockrath, [43 La.L.Rev. 403 \(1982\)](#).

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Health and Environment 6.
Westlaw Topic No. 199.
[C.J.S. Health and Environment § 13.](#)

UNITED STATES SUPREME COURT

Environmental protection, revisions to national ambient air quality standards, delegation of legislative power, final agency action, see [Whitman v. American Trucking Associations, U.S. Dist.Col.2001, 121 S.Ct. 903, 531 U.S. 457, 149 L.Ed.2d 1](#), on remand [283 F.3d 355, 350 U.S.App.D.C. 254](#).

NOTES OF DECISIONS

Power to enforce rules and regulations [3](#)

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Validity [1](#)

[1.](#) Validity

In testing constitutional sufficiency of standards prescribed in state air control law ([R.S. 30:1081](#) et seq.; see, now, [R.S. 30:2051](#) et seq.) concerning promulgation of necessary regulations for control of air quality, regard was required to be given to purpose and scope of act, subject matters covered therein, duties prescribed and broad or narrow powers granted. [State v. Union Tank Car Co., Sup.1983, 439 So.2d 377](#). Environmental Law  256

Standards prescribed in state air control law ([R.S. 30:1081](#) et seq.; see, now, [R.S. 30:2051](#) et seq.) concerning promulgation of regulations for control of air quality, although broad, are nevertheless adequate to support constitutional delegation of authority. [State v. Union Tank Car Co., Sup.1983, 439 So.2d 377](#). Environmental Law  246

Regulations defining "undesirable levels" of air contaminants by words "appreciably injure," "beyond inconvenience," "materially injure or interfere," and "reasonable use" and requiring notification of emergency emissions by words "substantially increase" failed to inform those to whom they were addressed of definite standards by which criminal conduct might be judged and were thus unconstitutionally vague. [State v. Union Tank Car Co., Sup.1983, 439 So.2d 377](#). Environmental Law  256

[2.](#) Rules and regulations--promulgation

Air Control Commission regulation not filed with Division of Administration is not enforceable until it is filed and available to public. Op.Atty.Gen. No. 76-1592, Jan. 19, 1977.

[3.](#) ---- Power to enforce, rules and regulations

State law does not empower State Department of Environmental Quality to authorize other agencies to enforce Air Pollution Control Regulations. Op.Atty.Gen., No. 91-074 (March 13, 1991.)

[4.](#) Preemption

The State of Louisiana, through its air control commission, has preempted the field of control of air pollution, so a parish may not enforce its air pollution control ordinance. Op.Atty.Gen., Oct. 23, 1973.

LSA-R.S. 30:2054, **LA R.S. 30:2054**

Current through all 2005 Regular Session Acts

LOUISIANA REVISED STATUTE

CHAPTER 32

Chapter 32, sec. 1301-1314

West's Louisiana Statutes Annotated [Currentness](#)
Louisiana Revised Statutes
Title 32. Motor Vehicles and Traffic Regulation
 [Chapter 7.](#) Motor Vehicle Inspection

→§ 1301. Vehicles without required equipment or in unsafe condition

No person shall drive or move on any highway any motor vehicle, low-speed vehicle as defined in [R.S. 32:1\(40\)](#), trailer, semitrailer, or pole trailer, or any combination thereof, unless the equipment upon any such vehicle is in good working order and adjustment as required in this Chapter and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway. Every motor vehicle, low-speed vehicle, trailer, semitrailer, and pole trailer registered in this state shall bear a valid safety inspection certificate issued in the state of Louisiana, except as otherwise provided by [R.S. 32:1305\(G\)](#).

CREDIT(S) Added by Acts 1960, No. 405, § 1. Amended by [Acts 1995, No. 475, § 1](#); [Acts 1997, No. 77, § 1](#); [Acts 1997, No. 288, § 1](#); [Acts 2003, No. 986, § 1](#).

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Both Acts 1997, No. 77, § 1 and Acts 1997, No. 288, § 1 amended this section by adding the exception relating to [R.S. 32:1305\(G\)](#) to the end of the second sentence. Pursuant to the statutory revision authority of the Louisiana State Law Institute, the text of this section as set forth in Act 288 was printed.

Title of Act:

An Act to provide for state-wide motor vehicle inspection and penalties therefor. Acts 1960, No. 405.

CROSS REFERENCES

Abolition and transfer of functions of Department of Public Safety to the secretary of the Department of Public Safety and Corrections, see [R.S. 36:409](#).

Juvenile traffic violations, inspection of vehicles, see [Ch.C. art. 959](#).

LIBRARY REFERENCES

2002 Main Volume

Automobiles  5(2), 115.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 26, 44, 56](#).

NOTES OF DECISIONS

Low speed vehicles [1](#)

[1](#). Low speed vehicles

An electric scooter with two wheels, handbrakes, and capability of traveling 15 to 22 miles per hour is a "vehicle" and may be regulated. Op.Atty.Gen., No. 03-0383, February 5, 2004.

LSA-R.S. 32:1301, **LA R.S. 32:1301**

→ § 1302. Inspection by officers of the department

A. The Director of Public Safety, members of the State Police and such other officers and employees of the department as the director may designate, may at any time upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate.

B. In the event such vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment the officer shall give a written notice to the driver and shall send a copy to the department. Said notice shall require that such vehicle be placed in safe condition and its equipment in proper repair and adjustment specifying the particulars with reference thereto and that a certificate of inspection and approval be obtained within 5 days.

CREDIT(S)

Added by Acts 1960, No. 405, § 2.

LIBRARY REFERENCES

2002 Main Volume

Automobiles  5(2), 115.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 26, 44, 56.](#)

LSA-R.S. 32:1302, LA R.S. 32:1302

→ § 1303. Owners and drivers to comply with inspection laws

A. No person driving a vehicle shall refuse to submit such vehicle to an inspection and test when required to do so by the director or an authorized officer or employee of the department.

B. Every owner or driver, upon receiving a notice as provided in [R.S. 32:1302](#) shall comply therewith and shall within 5 days secure an official certificate of inspection and approval which shall be issued in duplicate, one copy to be retained by the owner or driver and the other copy to be forwarded to the department. In lieu of compliance with this Sub-section the vehicle shall not be operated, except as provided in Sub-section C of this Section.

C. No person shall operate any vehicle after receiving a notice with reference thereto as above provided, except as may be necessary to return such vehicle to the residence or place of business of the owner or driver, if within a distance of 20 miles, or to a garage, until said vehicle and its equipment has been placed in proper repair and adjustment and otherwise made to conform to the requirements of this act and a certificate of inspection and approval shall be obtained as promptly as possible thereafter.

D. In the event repair or adjustment of any vehicle or its equipment is found necessary upon inspection, the owner of said vehicle may obtain such repair or adjustment at any place he may choose, but in every event an official certificate of inspection and approval must be obtained, otherwise such vehicle shall not be operated upon the highways of this State.

CREDIT(S)

Added by Acts 1960, No. 405, § 3.

LIBRARY REFERENCES

2002 Main Volume

Automobiles  5(2), 115, 327.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 26, 44, 56, 608, 640, 714.](#)

LSA-R.S. 32:1303, LA R.S. 32:1303

→ § 1304. Secretary to require periodical inspection

A. (1) The secretary shall at least once every other year, but not more frequently than twice each year, require that every motor vehicle, low-speed vehicle, trailer, semitrailer, and pole trailer registered in this state be inspected and that an official certificate of inspection and approval be obtained for such vehicle. However, overweight and oversize mobile homes requiring a state permit shall not be required to bear a certificate of approved inspection when being moved by a bonded carrier as defined by law nor shall used motor vehicles in transit by a dealer be required to have a certificate of inspection and approval.

(2) Such inspection should be made and such certificates obtained with respect to the mechanism, brakes, and equipment of every vehicle as shall be designated by the secretary. The secretary shall require the inspection of all approved automotive emission control devices installed on motor vehicles produced after model year 1980 to insure that such devices are operative and have not been tampered with. However, low-speed vehicles shall not be subject to regular emissions inspections.

(3)(a) The secretary shall formulate and promulgate a set of standards for the control and regulation of emission control devices on all automobiles and other motor vehicles which standards shall be consistent with other federal and state regulations for the installation and operation of approved emission control devices.

(b) The secretary is hereby authorized to make necessary rules and regulations for the administration and enforcement of this Section and to designate any periods of time during which owners of vehicles, subject to this Section, shall display upon such vehicles certificates of inspection and approval and shall produce the same on demand of any officer or employee of the department designated by the secretary or any police or peace officer when authorized by the secretary.

(4) The rules and regulations adopted for the administration and enforcement of this Section shall include standards for windshields as follows:

(a) In the eight and one-half inch by eleven inch "acute area" directly in the driver's line of vision there shall be no cracks and there shall be no more than two stars, nicks, chips, bullseyes, or half-moons in excess of one-half inch.

(b) In the "critical area" cleaned by the normal sweep of the windshield wiper blade on the driver's side of the windshield there shall be no star which is larger than two inches in diameter; there shall be no more than two stars larger than one and one-half inches in diameter; and there shall be no more than two cracks longer than eight inches; or any combination thereof.

(c) In the remaining areas of the windshield, only those cracks which jeopardize the integrity of the windshield shall be cause for rejection.

B. The secretary is hereby authorized to make necessary rules and regulations for the administration and

enforcement of this Section and to designate any periods of time during which owners of vehicles, subject to this Section, shall display upon such vehicles certificates of inspection and approval or shall produce the same on demand of any officer or employee of the department designated by the secretary or any police or peace officer when authorized by the secretary. Owners and operators of all motor vehicles required to be equipped with windshields shall display on the lower left hand corner of the windshield a certificate of inspection affixed thereto by a duly authorized motor vehicle inspection station. The secretary shall accept the certificate of inspection and approval issued by any municipality pursuant to any municipal ordinance adopted prior to July 27, 1960. However, each person who applies for a motor vehicle inspection tag in the city of New Orleans shall produce written proof of insurance from an insurer that the motor vehicle is covered by security and shall declare in writing that he or she intends to maintain said security at all times while said vehicle is used upon the highways of Louisiana.

C. The director may authorize the acceptance in this state of a certificate of inspection and approval issued in another state having an inspection law similar to this Chapter and may extend the time within which a certificate shall be obtained by the resident owner of a vehicle which was not in this state during the time an inspection was required.

D. (1) The secretary may suspend the registration of any vehicle which he determines is in such unsafe condition as to constitute a menace to safety, or which after notice and demand is not equipped as required in this Chapter, or for which a required certificate has not been obtained.

(2),(3) Repealed by Acts 1999, No. 576, § 3, eff. June 30, 1999

E. (1) The mere failure of the owner or operator of a motor vehicle required by this Section to be inspected to obtain a current and valid inspection certificate shall not be in violation, provided that the certificate has been expired less than one calendar month; nor shall an owner or operator be in violation if he shall produce on demand, under Subsection B of this Section, a certificate of inspection for the vehicle valid and effective for not more than six months and not in current display on the windshield by reason of replacement of the windshield glass.

(2) However, when a certificate of inspection is removed from a windshield by reason of replacement of windshield glass, the owner of the vehicle may be issued, for a fee of five dollars and twenty-five cents and return of the original certificate to an inspection certificate station, a certificate which shall be valid for the time remaining on the original certificate.

F. The purchaser of a used vehicle from a private individual shall be protected from citations for failure to have an inspection tag during the interval between the date of purchase and the receipt of title, provided proof of application can be shown.

G. In order to enforce the provisions of this Section as applicable to motor vehicles which are propelled by an internal combustion engine or motor capable of using liquefied petroleum gas or compressed natural gas, no such vehicle shall be issued a motor vehicle inspection certificate without a current decal as evidence of tax payment, as required by [R.S. 47:802.3](#).

CREDIT(S)

Added by Acts 1960, No. 405, § 4. Amended by Acts 1975, No. 257, § 1; Acts 1975, No. 282, § 1; Acts 1975, No. 640, § 1; Acts 1981, No. 201, § 1, eff. July 11, 1981; Acts 1982, No. 428, § 1; Acts 1983, No. 227, § 1; Acts 1986, No. 52, § 1; Acts 1986, No. 879, § 2, eff. Jan. 1, 1987; [Acts 1990, No. 166, § 1](#); [Acts 1991, No. 416, § 1](#); [Acts 1993, No. 570, § 4](#); [Acts 1994, 3rd Ex.Sess., No. 128, § 1, eff. July 7, 1994](#); [Acts 1999, No. 470, § 1](#); [Acts 2003, No. 986, § 1](#).

HISTORICAL AND STATUTORY NOTES

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Acts 1975, Nos. 257, 282, and 640 amended R.S. 32:1304. Pursuant to the statutory revision authority of the Louisiana State Law Institute, the provisions of Acts 257, 282, and 640 were merged and incorporated in R.S.

32:1304.

In subsec. E of this section as amended in 1982, paragraph designations (1) and (2) were added pursuant to the statutory revision authority of the Louisiana State Law Institute.

Subparagraph designations in par. A(3) of this section as amended in 1983 were made pursuant to the statutory revision authority of the Louisiana State Law Institute.

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in subsec. G as enacted in 1986, "Subsection" was changed to "Section".

In subsec. B of this section as amended in 1990, the first sentence was divided into two sentences by substituting a period for a semicolon following "by the secretary", deleting "provided, however, that" thereafter, and capitalizing "owners", all pursuant to the statutory revision authority of the Louisiana State Law Institute.

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as amended in 1993, in par. D(1), a comma was inserted following "safety", and a comma was inserted following "Chapter"; and in the first sentence of par. D(2), a comma was inserted following "such rules".

Acts 1999, No. 576, § 3 repealed pars. D(2) and (3), which had read:

"(2) In accordance with the rules and regulations adopted by the Department of Environmental Quality pursuant to [R.S. 30:2054\(B\)\(8\)](#), when a vehicle has failed an emission inspection conducted pursuant to such rules, the registered owner shall have a stipulated amount of time of not less than thirty days to make the necessary repairs to the vehicle. The owner shall be required to submit the vehicle to be reinspected no later than the last day of the stipulated amount of time. If the vehicle fails the reinspection and the owner shows evidence of expending four hundred fifty dollars for repairs made for the purpose of causing the vehicle to be capable of passing the reinspection, the vehicle shall not be required to be submitted for an emission inspection for a period of two years. The four hundred fifty dollar minimum expenditure required for a two-year waiver shall be adjusted in January of each year by the percentage, if any, by which the consumer price index for the preceding calendar year differs from the consumer price index for 1989. If the vehicle fails the reinspection and the owner does not show evidence of expending an amount specified in rules for repairs made for the purpose of causing the vehicle to be capable of passing the reinspection, or the vehicle has not been submitted to an emission inspection as required by [R.S. 30:2054\(B\)\(8\)](#), the secretary shall suspend or revoke the registration of the vehicle and impound or cancel the vehicle's license plate. The secretary shall adopt rules and regulations in accordance with the Administrative Procedure Act in order to effectuate the suspension or revocation of the registration of the vehicle and impoundment or cancellation of the vehicle's license plate.

"(3) Motor vehicles being titled for the first time may be registered for up to two years without being subject to an emissions inspection, and the four immediately preceding model years, that are being held in a motor vehicle dealer's inventory for resale, may be registered in the localities provided for under this Paragraph for up to one year without being subject to an emissions inspection, provided that the dealer states in writing that the emissions equipment on the motor vehicle was operating in accordance with the manufacturer's and distributor's warranty at the time of resale."

CROSS REFERENCES

Emission controls removed or disconnected from motor vehicle, disclosure by seller, see [R.S. 51:1949](#).

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Automobiles  5(2), 11, 55, 115.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 20, 26, 44, 56, 127.](#)

UNITED STATES CODE ANNOTATED

Motor vehicle emission standards, see [42 U.S.C.A. § 7521](#) et seq.
LSA-R.S. 32:1304, LA R.S. 32:1304

→ § 1304.1. [Blank]

HISTORICAL AND STATUTORY NOTES

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R.S. 32:1304.1, relating to exemptions for farm vehicles and equipment, was added by Acts 1972, No. 31, § 1. Pursuant to the statutory revision authority of the Louisiana State Law Institute, R.S. 32:1304.1 was redesignated as subsec. A of [R.S. 32:1311](#) in 1990.

An additional exemption for log loaders was provided in Acts 1976, No. 176. Pursuant to the statutory revision authority of the Louisiana State Law Institute, Act 176 was designated [R.S. 47:502.1](#).

LSA-R.S. 32:1304.1, LA R.S. 32:1304.1

→ § 1304.2. [Blank]

HISTORICAL AND STATUTORY NOTES

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R.S. 32:1304.2, added by Acts 1978, No. 41, § 1 and amended by Acts 1987, No. 512, § 1, Acts 1989, No. 674, § 1, and Acts 1990, No. 725, § 1, and relating to exemptions from inspection requirements, was redesignated as the heading and subsecs. B, C, and D of [R.S. 32:1311](#) in 1990 pursuant to the statutory revision authority of the Louisiana State Law Institute.

LSA-R.S. 32:1304.2, LA R.S. 32:1304.2

→ § 1305. Appointment of official inspection stations

A. For the purpose of making inspections and issuing official certificates of inspection and approval as provided herein the director shall issue permits for and furnish instructions and all necessary forms to official inspection stations for the inspection of vehicles as herein required and the issuance of official certificates of inspection and approval.

B. Application for permit shall be made upon an official form and shall be granted only when the director is satisfied that the station is properly equipped and has competent personnel to make such inspections and adjustments and that inspection will be properly conducted. The director shall not issue a permit as an official inspection station unless the applicant business has been in operation for not less than ninety days prior to the issuance. However, if there is no other official inspection station for use by the general public within twenty-five miles of the business making application, this required prior operation period shall be not less than thirty days. The director before issuing a permit may require the applicant to file a bond conditioned that it will make compensation for any damage to a vehicle during an inspection or adjustment due to negligence on the part of such applicant or its employees. The aggregate liability of the surety for all such damages shall in no event exceed the amount of such bond.

C. The director shall properly supervise and cause inspections to be made of such stations and shall revoke and require the surrender of the permit issued to a station which he finds is not properly equipped or conducted. The director shall maintain and post at the office of the department lists of all stations holding permits and of those whose permits have been revoked.

D. Permits for inspecting and issuing official certificates of inspection and approval shall be issued for a period of one year upon payment to the director of an annual fee of twenty-five dollars, plus an annual fee of five dollars for each mechanic inspector named in the permit application.

E. Any motor vehicle repair or maintenance shop operated or maintained by a person, firm or corporation in whose name there is licensed under the provisions of [R.S. 47:462](#), ten or more vehicles, shall be, at his or its request, designated as an official inspection station, for the purpose of inspecting and certifying vehicles operated by such person.

F. Any motor vehicle repair shop or maintenance shop operated by a school board of any city or parish in whose name there are licensed under the provisions of [R.S. 47:462](#) ten or more vehicles, or which has ten or more vehicles under contract, or which has a combination of owned and contract vehicles totalling ten or more, shall be, at their request, designated as an official inspection station for the purpose of inspecting and certifying vehicles operated or contracted for such board.

G. (1) Any person, corporation, partnership, or other business entity owning more than forty motor vehicles registered in Louisiana pursuant to the International Registration Plan, and operating at least one vehicle repair and maintenance shop, shall, upon request in writing to the Department of Public Safety and Corrections, have one or more of his vehicle repair and maintenance shops designated as official inspection stations for the purpose of inspecting and certifying those motor vehicles which are owned by him. Such duly designated vehicle repair and maintenance shops may be located within or without the state of Louisiana.

(2) The secretary shall adopt and promulgate rules and regulations in accordance with the Administrative Procedure Act necessary to implement the provisions of this Subsection. These rules shall include provisions for total reimbursement by the business entity of any costs incurred by the state for the administration of this Subsection. Reimbursement shall be made by the business entity availing itself of this program within thirty days after submission by the state of the total costs incurred.

(3) The venue for any civil action arising out of this Subsection shall be East Baton Rouge Parish.

H. The department shall provide for a safety inspection program for the purpose of inspecting and certifying vehicles which transport forest products in their natural state in compliance with the Federal Motor Carrier Safety Regulations. The program shall include a mobile unit which will function as an official inspection station and which will conduct safety inspections, on a voluntary basis, at or near sawmills, chip mills, and paper mills in the state. The secretary shall adopt and promulgate rules and regulations in accordance with the Administrative Procedure Act necessary to implement the provisions of this Subsection.

I. The department shall provide for a safety inspection program for the purpose of inspecting and certifying vehicles that transport general freight and commodities in compliance with the Federal Motor Carrier Safety Regulations. The program shall include a mobile unit that will function as an official inspection station and which will conduct motor carrier safety inspections, on a voluntary basis, at the permanent weight scales in the state. The secretary shall adopt and promulgate rules and regulations in accordance with the Administrative Procedure Act necessary to implement the provisions of this Subsection.

CREDIT(S)

Added by Acts 1960, No. 405, § 5. Amended by Acts 1984, No. 101, § 1; [Acts 1991, No. 571, § 1](#); [Acts 1995, No. 267, § 1](#); [Acts 1997, No. 77, § 1](#); [Acts 1997, No. 288, § 1](#); [Acts 2003, No. 1262, § 1, eff. July 7, 2003](#).

APPLICATION--ACTS 2003, NO. 1262

<Section 3 of Acts 2003, No. 1262 (§ 1 of which added subsecs. H and I to this section and § 2 of which enacted [R.S. 45:164\(E\)](#) and [R.S. 45:858](#)) provided:>

<"Section 3. The provisions of this Act shall have prospective application only.">

HISTORICAL AND STATUTORY NOTES

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School bus inspection. House Concurrent Resolution No. 5 of the 1988 Second Extraordinary Session provides:

"WHEREAS, the Louisiana Department of Public Safety and Corrections administers a mandatory motor vehicle inspection program for the state; and

"WHEREAS, as part of the administration of the motor vehicle inspection program, the Department of Public Safety and Corrections selects and certifies businesses to be designated official motor vehicle inspection stations; and

"WHEREAS, the official inspection stations are required to meet certain standards established by the department qualifying them to participate in the program; and

"WHEREAS, these official stations inspect a variety of vehicles, including commercial vehicles; and

"WHEREAS, the Department of Public Safety and Corrections has arbitrarily and without written rules and regulations or guidelines selected only certain of these official stations to inspect school buses; and

"WHEREAS, official motor vehicle inspection stations are qualified to inspect school buses and all stations should be certified and designated to do so by the Department of Public Safety and Corrections.

"THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby authorize and direct the Department of Public Safety and Corrections to immediately designate all official motor vehicle inspection stations as certified stations to inspect school buses in addition to other motor vehicles already being inspected by the official stations."

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as amended by Acts 1995, No. 267, in subsec. B, in the fourth sentence, "provided, however, that" was deleted; the language beginning with "the aggregate liability" was designated as the fifth sentence and necessary capitalization and punctuation changes were made.

Both Acts 1997, No. 77, § 1 and Acts 1997, No. 288, § 1 amended this section by adding subsec. G relating to certification of fleet owner repair and maintenance shops as official inspection stations. The added subsections were substantially similar. Pursuant to the statutory revision authority of the Louisiana State Law Institute, the subsection as added by Act 288 was printed.

LIBRARY REFERENCES

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Automobiles  5(2), 365.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 26, 718.](#)

NOTES OF DECISIONS

Agent 1

1. Agent

Vehicle safety inspector was not an "agent" of the state such that Department of Public Safety and Corrections (DPS), which licensed inspector, could be liable for accident involving an inspected truck; inspector's work schedule and rate of pay were determined by trucking company owner, who had authority to fire inspector, inspections were

made at business location of trucking company with tools furnished by trucking company, trucking company paid inspector for his services, and DPS was not supervising or controlling manner of when, how, or which vehicles were inspected. [Hayes v. State ex rel. Dept. of Public Safety and Corrections, App. 1 Cir.2001, 798 So.2d 148, 2000-0512 \(La.App. 1 Cir. 5/11/01\)](#). Automobiles  187(4)LSA-R.S. 32:1305, LA R.S. 32:1305

→ § 1306. Operation of official inspection stations

A. No permit for an official station shall be assigned or transferred or used at any location other than therein designated and every said permit shall be posted in a conspicuous place at the location designated.

B. The person operating an official inspection station shall issue a certificate of inspection and approval upon an official form to the owner of a vehicle upon inspecting such vehicle and determining that its equipment required under the provisions of this act is in good condition and proper adjustment, otherwise no certificate shall be issued. When required by the director a record and report shall be made of every inspection and every certificate so issued.

C. (1) An annual charge or fee shall be charged for each certificate of inspection and approval issued, as provided in this Subsection.

(2) Except as otherwise provided in this Subsection, an annual charge or fee of ten dollars shall be charged for each certificate of inspection and approval issued, four dollars and seventy-five cents of which shall be retained by the operator of the motor vehicle inspection station conducting the inspection, four dollars of which shall be transferred to the office of state police for use in traffic law enforcement, and one dollar and twenty-five cents shall be transferred to the office of motor vehicles for expenses associated with the motor vehicle inspection and financial responsibility programs. Included in the inspection shall be the adjustment of headlights when needed and mechanically practical, at no additional cost to the operator of the motor vehicle inspected.

(3)(a) For parishes and municipalities that have been placed on the nonattainment list for ozone standards and classified as "serious" or worse by the United States Environmental Protection Agency an additional eight dollars shall be charged for each inspection that includes the performance of the inspection and maintenance (I/M) program pursuant to the provisions of [R.S. 30:2054\(B\)\(8\)](#) for 1980 or newer model year motor vehicles. The motor vehicle inspection station shall retain six dollars of the additional charge for implementation and performance of the I/M program. Two dollars of the additional charge shall be transferred to the Louisiana Department of Environmental Quality to implement and operate the inspection and maintenance program.

(b) The department shall promulgate rules and regulations necessary to implement the provisions of this Paragraph.

(c) The provisions of this Paragraph shall not apply to any trailer, light trailer, or semitrailer.

(4) The maintenance and inspection program and the fees provided for in Paragraph (3) of this Subsection shall be discontinued when the parishes placed on the nonattainment list for ozone standards and classified as "serious" or worse, are removed from the list and are no longer classified as "serious" or worse if such discontinuance does not conflict with any requirements of the United States Environmental Protection Agency or agreements with the agency concerning the implementation of this program, or result in any other noncompliance regarding this Subsection.

(5) An annual charge or fee of thirty dollars shall be charged for the inspection of all commercial motor vehicles which are required to be inspected under the provisions of Part 396 of Title 49 of the Code of Federal Regulations, including Part 396.17 and "Appendix G" thereof. No charges or fees other than the thirty-dollar fee shall be charged for a commercial motor vehicle inspection. Of the thirty-dollar fee, the motor vehicle inspection station operator who performs this inspection shall retain twenty-three dollars and seventy-five cents; two dollars and twenty-five cents shall be transferred to the office of motor vehicles for expenses associated with motor vehicle and financial responsibility programs; and four dollars of which shall be transferred to the office of state police for use in traffic law enforcement. Included in the inspection shall be the adjustment of headlights at no additional cost to the operator of the motor vehicle being inspected. The Legislature of Louisiana hereby declares that a commercial motor vehicle inspection is much more extensive than the inspection mandated in Paragraph (2) of this Subsection and that the increase in the fee or charge for the inspection of commercial vehicles is based on the difference in the two types of inspection.

D. The Department of Public Safety shall adopt guidelines for the certification of motor vehicle inspection stations. Any applicant meeting the guidelines shall be certified as a motor vehicle inspection station. Geographical location shall not be a criteria for certification.

E. The office of motor vehicles shall distribute motor vehicle inspection stickers to each district office throughout the state and shall make such stickers available for purchase by certified motor vehicle inspection stations during normal business hours. The stickers shall be in convenient book form and shall be sold in such practical increments as will not present a financial hardship to low volume stations.

F. Each certified motor vehicle inspection station shall replace motor vehicle inspection stickers which are damaged, or which are attached to windshields which have become damaged, upon the presentation of proof of purchase of the damaged sticker, the presentation of identification of the person applying for the replacement sticker, and the payment of a fee of five dollars and twenty-five cents. The deputy secretary of public safety services shall design a notice that shall be posted in public view at all certified motor vehicle inspection stations, which shall include the availability and cost of the replacement of a damaged motor vehicle inspection sticker.

G. Notwithstanding any law or rule or administrative policy to the contrary, official motor vehicle inspection stations shall not be required to reserve a service bay or stall for the exclusive purpose of conducting motor vehicle inspections. Each official motor vehicle inspection station shall give priority to customers seeking motor vehicle inspections.

CREDIT(S)

Added by Acts 1960, No. 405, § 6. Amended by Acts 1970, No. 33, § 2; Acts 1975, No. 610, § 1; Acts 1981, No. 579, § 1; Acts 1983, 1st Ex.Sess., No. 33, § 2, eff. Jan. 19, 1983; Acts 1984, No. 212, § 3, eff. Sept. 1, 1984; Acts 1986, No. 52, § 1; [Acts 1987, No. 424, § 1](#); [Acts 1988, No. 198, § 1, eff. July 6, 1988](#); [Acts 1989, No. 668, § 1, eff. July 7, 1989](#); [Acts 1991, No. 929, § 1](#); [Acts 1994, 3rd Ex.Sess., No. 129, § 1](#); [Acts 1995, No. 267, § 1](#); [Acts 1999, No. 576, § 2, eff. June 30, 1999](#); [Acts 2001, No. 469, § 1](#); [Acts 2004, No. 584, § 2, eff. July 1, 2004](#).

HISTORICAL AND STATUTORY NOTES

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Acts 1970, H.C.R. No. 239 provided in part: "The effective date of House Bill No. 671, adopted as Act No. 33 of the 1970 Regular Session of the Legislature of Louisiana is hereby suspended in its entirety for a period of thirty days from noon July 29, 1970."

Acts 1981, No. 579, § 1 rewrote subsec. C and also added subsec. D, although no mention of such subsection was made in either the title of the Act or in the enacting clause of § 1.

In par. C(2) as amended by Acts 1984, No. 212, § 3, subparagraph designations were made pursuant to the statutory revision authority of the Louisiana State Law Institute.

Section 5 of Acts 1984, No. 212 (§ 3 of which amended subsec. C of this section) provides:

"The provisions of [R.S. 32:852\(D\)](#), 863(B) and (D), 863.1 and 863.2 as amended and reenacted or enacted by this Act shall become effective on July 1, 1985. The provisions of [R.S. 32:853\(B\)\(2\)](#) and R.S. 32:1306(C) as amended and reenacted herein shall become effective on September 1, 1984."

Section 2 of Acts 1988, No. 198 provides:

"In the event of an increase in the vehicle registration license tax the portion of the motor vehicle inspection fee paid to the state shall be decreased by an appropriate amount."

Acts 1988, No. 198, § 2 would have been repealed by Acts 1989, 1st Ex.Sess., No. 3, § 6, contingent upon voter approval of a proposed constitutional amendment. The proposed constitutional amendment was rejected in an

election held April 29, 1989.

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as amended in 1991, the first paragraph of subsec. C was designated as par. C(1); pars. C(1) and C(2) were designated as pars. C(2) and C(3), respectively, with attendant changes in internal paragraph references.

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as amended in 1999, in the first sentence of subpar. C(3)(a), "as of June 30, 1999" was substituted for "as of the effective date of this Act".

LIBRARY REFERENCES

2002 Main Volume

Automobiles  5(2), 365.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 26, 718.](#)

NOTES OF DECISIONS

Agent 2 **Validity 1**

1. Validity

Section 2 of Act 198 of 1988, amending subsec. C of this section and requiring portion of motor vehicle inspection fee paid to state to be decreased if vehicle registration license tax is increased, is fatally vague under [Const. Art. 7, § 5](#). Op. Atty. Gen., No. 89-669, Jan. 11, 1990.

2. Agent

Vehicle safety inspector was not an "agent" of the state such that Department of Public Safety and Corrections (DPS), which licensed inspector, could be liable for accident involving an inspected truck; inspector's work schedule and rate of pay were determined by trucking company owner, who had authority to fire inspector, inspections were made at business location of trucking company with tools furnished by trucking company, trucking company paid inspector for his services, and DPS was not supervising or controlling manner of when, how, or which vehicles were inspected. [Hayes v. State ex rel. Dept. of Public Safety and Corrections, App. 1 Cir. 2001, 798 So.2d 148, 2000-0512 \(La.App. 1 Cir. 5/11/01\)](#). Automobiles  187(4)

LSA-R.S. 32:1306, LA R.S. 32:1306

→ § 1307. Improper representation as official station

A. No person shall in any manner represent any place as an official inspection station unless such station is operating under a valid permit issued by the department.

B. No person other than a duly authorized officer or employee of inspection station shall issue a certificate of inspection and approval.

CREDIT(S)

Added by Acts 1960, No. 405, § 7.

LIBRARY REFERENCES

2002 Main Volume

Automobiles  5(2), 327.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 26, 608, 640, 714.](#)

LSA-R.S. 32:1307, LA R.S. 32:1307

→ § 1308. False certificates

- A. No person shall make, issue or knowingly use any imitation or counterfeit of an official certificate of inspection.
- B. No person shall display or cause or permit to be displayed upon any vehicle any certificate of inspection and approval knowing the same to be fictitious or issued for another vehicle or issued without an inspection having been made.

CREDIT(S)

Added by Acts 1960, No. 405, § 7.

LIBRARY REFERENCES

2002 Main Volume

Automobiles  5(2), 308.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 26, 227, 239.](#)

LSA-R.S. 32:1308, LA R.S. 32:1308

→ § 1309. Fee for inspection certificates

The fees collected for the issuance of certificates of inspection and approval shall be deposited in the state treasury upon receipt and shall be credited to the Bond Security and Redemption Fund as required by [Article VII, Section 9 of the Constitution of Louisiana.](#)

CREDIT(S)

Added by Acts 1960, No. 405, § 8. Amended by Acts 1975, No. 610, § 2; Acts 1983, 1st Ex.Sess., No. 33, § 2, eff. Jan. 19, 1983; Acts 1986, No. 52, § 1; [Acts 1992, No. 984, § 10.](#)

LIBRARY REFERENCES

2002 Main Volume

Automobiles  5(2), 46, 49.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 26, 137, 143.](#)

LSA-R.S. 32:1309, LA R.S. 32:1309

→§ 1310. Penalty for violation

Any person violating any of the provisions of [R.S. 32:1301](#) through [32:1308](#) or of any rules and regulations established by the director as herein provided shall, upon conviction, be punished by a fine of not more than five hundred dollars or by imprisonment of not more than six months or by both such fine and imprisonment.

CREDIT(S)

Added by Acts 1960, No. 405, § 9.

LIBRARY REFERENCES

2002 Main Volume

Automobiles  327, 359.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 596, 608, 640, 714.](#)

LSA-R.S. 32:1310, LA R.S. 32:1310

→§ 1311. Exemptions

A. Farm tractor, self-propelled farm equipment, rubber-tired farm wagons and carts, drawn rubber-tired farm equipment, and implements of husbandry which are designed primarily for field use and which are operated or moved only incidentally on the highways of this state, and which are used for farm purposes only, are exempt from the inspection requirements of this chapter.

B. Motor vehicles which are forty years old or older and which are used primarily for exhibition in shows, parades, tours, and other special uses and not for general transportation and which are registered and licensed as antique as provided in [R.S. 32:707\(L\)](#) shall be exempt from the inspection requirements of this Chapter.

C. Motor vehicles which display a current safety inspection sticker as certified by the Department of Public Safety and Corrections shall be exempt from the inspection requirements of this Chapter.

D. (1) Commercial motor vehicle truck tractors, trailers, and semitrailers in interstate commerce which are subject to the Federal Motor Carrier Safety Regulations shall be exempt from the inspection requirements of this Chapter provided that these commercial motor vehicles shall comply with the requirements of the Code of Federal Regulations (49 CFR 396. 17) requiring periodic and annual inspections of commercial motor vehicles.

(2) As an alternate means of compliance with the requirements of 49 CFR, the owner or operator of a commercial motor vehicle truck tractor may opt to obtain a Louisiana commercial motor vehicle inspection certificate which satisfies the requirements of [49 CFR 396.17](#). A trailer or semitrailer being used in combination with a truck tractor meeting such exemption may opt to obtain a Louisiana commercial motor vehicle inspection certificate which satisfies the requirements of [49 CFR 396.17](#).

(3) As used in this Subsection, "commercial motor vehicle" means any self-propelled truck tractor or towed vehicle which is used on public highways to transport property in interstate commerce, has been issued an apportioned plate through the International Registration Plan; and

(a) Has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of 10,001 pounds or more; or

(b) Is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by

the secretary under the Hazardous Transportation Act ([49 USC app. 1801-1813](#)).

CREDIT(S) Added by Acts 1972, No. 31, § 1. Amended by Acts 1978, No. 41, § 1; [Acts 1987, No. 512, § 1](#); [Acts 1989, No. 674, § 1](#); [Acts 1990, No. 725, § 1](#); [Acts 2004, No. 848, § 1](#), eff. July 12, 2004.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in [1990, R.S. 32:1304.2](#) as amended by Acts 1990, No. 725, § 1 was redesignated as the heading and subsecs. B, C, and D of R.S. 32:1311, and [R.S. 32:1304.1](#) was redesignated as subsec. A of R.S. 32:1311.

LIBRARY REFERENCES

2002 Main Volume

Automobiles  5(2), 115.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 26, 44, 56](#).

UNITED STATES SUPREME COURT

Interstate commerce, trucking, state registration fee, preemption, state fee imposed on trucks operating in interstate commerce, see [Mid-Con Freight Systems v. Michigan Public Service Commission, 2005, 125 S.Ct. 2427](#).

NOTES OF DECISIONS

Incidental operation 1

1. Incidental operation

Under statutes (this section and [R.S. 32:341.1](#), [R.S. 47:479](#), and [R.S. 47:502](#)) exempting from equipment and registration requirements certain farm trailers "operated or moved only incidentally on the highways of this state", the equipment used must not have as its function the transfer of materials on the highways; that is, if the trailer is used primarily on the farm but is occasionally transferred from point X to point Y by means of a public highway it would fall within the exceptions of the statutes, and, similarly, if the trailers are regularly used to transfer produce from one part of the farm to another part of the same farm, such exceptions would still apply; if, however, the trailers are used to transfer produce to some place away from the farm, such trailers would not be exempt. Op.Atty.Gen., Aug. 22, 1972.

LSA-R.S. 32:1311, LA R.S. 32:1311

→§ 1312. Civil penalties

A. After reasonable notice and opportunity for a fair and impartial hearing to be held in accordance with the Administrative Procedure Act, any person who is determined by the secretary to have committed an act that is in violation of the provisions of this Chapter relative to the operation of an official inspection station or the actual conduct of a motor vehicle safety inspection, or any rule adopted under the provisions of this Chapter for such activities, is subject to a civil penalty of not more than one thousand dollars.

B. The secretary shall determine and assess the amount of any civil penalty. In determining the amount of the penalty, the secretary shall take into account the nature, circumstances, extent, and gravity of the violation; the

degree of culpability of the person charged; the person's history of previous offenses and ability to pay; the effect of the penalty on the person's ability to continue to operate his business or maintain his employment; and any other matter that justice requires.

CREDIT(S)

Added by [Acts 1994, 3rd Ex.Sess., No. 128, § 1, eff. July 7, 1994.](#)

LIBRARY REFERENCES

2002 Main Volume

Automobiles  57.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 133, 135.](#)

LSA-R.S. 32:1312, LA R.S. 32:1312

→§ 1313. Recovery of civil penalties

A. After due process, the secretary shall notify, either by certified mail or in person, any person found in violation of the provisions of this Chapter relative to the operation of an official inspection station or the actual conduct of a motor vehicle safety inspection, or in violation of any rules adopted under the provisions of this Chapter for such activities, of the penalty assessed. If the penalty assessed has not been received by the secretary within thirty calendar days after notification of the assessment, the secretary may order the suspension of the motor vehicle inspection station license. For offenses involving the mechanic inspector rather than the station, the secretary may order the suspension of the certificate authorizing the mechanic to inspect motor vehicles. Upon receipt by the secretary of the penalty assessed, the license or certificate shall be reinstated.

B. All civil penalties collected pursuant to the provisions of this Chapter shall be deposited into the state treasury and, after compliance with [Article VII, Section 9 of the Constitution of Louisiana](#) relative to the Bond Security and Redemption Fund, shall be deposited into the state general fund.

C. The secretary shall adopt and promulgate rules and regulations in accordance with the Administrative Procedure Act to implement the assessment of the civil penalty.

CREDIT(S)

Added by [Acts 1994, 3rd Ex.Sess., No. 128, § 1, eff. July 7, 1994.](#) Amended by [Acts 2001, No. 1185, § 3, eff. July 1, 2001.](#)

EFFECT OF ACTS 2001, NO. 1185--FUND ABOLISHED

<Acts 2001, No. 1185 (§ 3 of which amended this section and § 11 of which abolishes, inter alia, the Motor Vehicle Safety Inspection Fund, effective July 1, 2001), relates to treasury funds. The Title of Acts 2001, No. 1185 indicates the intent to eliminate specified funds, authorizes the transfer of balances between funds, and provides for deposit of monies into the state general fund.>

<Section 11 of Acts 2001, No. 1185, provides:>

<"The Health Care Facility Fund, the Motor Vehicle Safety Inspection Fund, the Interagency Recreation Board Fund, and the Louisiana Community-Based Services Trust Fund are abolished effective July 1, 2001.">

<Section 13 of the repealing act, Acts 2001, No. 1185, provides:>

<"The state treasurer is authorized and directed to transfer any balances remaining in the funds repealed and abolished in Sections 8 and 11 of this Act, and the balance remaining in the Watchmakers' Board Fund repealed by Act 64 of the 1991 Regular Session to the state general fund. The balance remaining in the Workers' Compensation Enforcement Revolving Fund shall be transferred to the Workers' Compensation Administration Fund.">

<Section 15 of the repealing act, Acts 2001, No. 1185, provides:>

<"The provisions of Sections 1 through 8, 11, 13, and 15 of this Acts shall become effective on July 1, 2001; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2001, or on the day following such approval by the legislature, whichever is later. The provisions of [Sections 9, 10, 12](#), and [14](#) of this Act shall become effective July 1, 2002.">

<Pursuant to § 15 of Acts 2001, No. 1185, § 11 of that Act, effecting the abolition of the Motor Vehicle Safety Inspection Fund, is effective July 1, 2001.>

LIBRARY REFERENCES

2002 Main Volume

Automobiles  57.
Westlaw Topic No. 48A.

[C.J.S. Motor Vehicles § § 133, 135.](#)

LSA-R.S. 32:1313, LA R.S. 32:1313

→ § 1314. Intermodal vehicle inspections

A. It is the purpose of this Section to insure that the proper preventative maintenance is performed on intermodal equipment and that all necessary repairs, as defined in the United States Department of Transportation Federal Motor Carrier Safety Regulations (FMCSR), are performed before such equipment is transported over the roadways of the state by a motor carrier.

B. For purposes of enforcing this Section, "vehicle" means intermodal trailer, chassis, or container not owned by the motor carrier.

C. (1) The owner of any vehicle shall not permit the tender or the interchange of a vehicle for use on any highway which is in violation of the requirements contained in the FMCSR. A motor carrier shall not certify or guarantee to a person tendering or interchanging a vehicle to a motor carrier that the vehicle complies with the FMCSR. When the tenderer has knowledge that the vehicle does not meet such requirements, the tenderer shall not put such vehicle into commerce until all necessary repairs have been completed.

(2) Before an operator may accept a vehicle the tenderer must allow the motor carrier operator adequate equipment, time and facilities to perform the United States Department of Transportation required inspection of the vehicle. If the vehicle fails to meet federal safety requirements, the owner or tenderer must make any necessary repairs to the vehicle so that it complies with applicable safety standards or make available a replacement vehicle which meets the safety requirements.

D. The department, if requested, may as a public safety service, enter upon vehicle tender facilities, and perform courtesy inspections of vehicles for purposes of identifying and tagging vehicles which may require mechanical

work before being tendered for use on public highways.

E. If a vehicle that is not owned by the motor carrier is placed out of service as a result of a roadside inspection conducted within five days of initial placement of the vehicle in service from a tenderer by a motor carrier in this state or prior to the next interchange, whichever occurs first, then the owner of the vehicle shall reimburse the operator for all fines, penalties, expenses, and reasonable attorney fees incurred pursuant to the out-of-service order, including all equipment repair expenses necessary to bring the vehicle into compliance with the FMCSR, unless the fines, penalties, or repair expenses are due to actions or omissions of the motor carrier operator after the vehicle was tendered. Reimbursement must be made to the operator no later than sixty days from receipt of notice from the motor carrier.

F. The department shall develop and maintain a database on roadside vehicle inspection reports for defects on any vehicle tendered to the motor carrier. The database shall be used to identify violations discovered on intermodal equipment during a roadside inspection.

G. Nothing in this Section is intended to eliminate the responsibility and obligation of a motor carrier and operator to maintain and operate vehicles in accordance with the FMCSR and applicable state and local laws and regulations.

H. Any provision contained in an intermodal interchange contract providing for a hold harmless or indemnity agreement, or both, between the motor carrier and the tenderer or owner of a vehicle, contrary to any provisions of this Section shall be considered contrary to public policy and shall be null and void.

CREDIT(S)

Added by [Acts 1999, No. 1362, § 1, eff. July 12, 1999](#).

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this Section as enacted in 1999, in subsec. A, "this Act" was changed to "this section" in subsec. B, a comma was inserted following "chassis"; pars. (1) and (2) were designated in subsec. C; in the first sentence of par. C(1), "(FMCSR)" was substituted for "United States Department of Transportation Federal Motor Carrier Safety Regulations"; in subsec. E, "compliance with FMCSR" was changed to "compliance with the FMCSR"; and, in subsec. G, "Federal Motor Carrier Safety Regulations" was changed to "FMCSR".

LIBRARY REFERENCES

2002 Main Volume

Automobiles  115.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 26, 44, 56](#).

LSA-R.S. 32:1314, LA R.S. 32:1314

Current through all 2005 Regular Session Acts
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LOUISIANA REVISED STATUTE

CHAPTER 47

Chapter 47, sec. 501-504

West's Louisiana Statutes Annotated [Currentness](#)

Louisiana Revised Statutes

Title 47. Revenue and Taxation ([Refs & Annos](#))

Subtitle II. Provisions Relating to Taxes Collected and Administered by the Collector of Revenue

 [Chapter 4.](#) Vehicle Registration License Tax ([Refs & Annos](#))

 [Part III.](#) Registration of Vehicles

→ § 501. Owner to secure registration

A. Every owner of a motor vehicle, trailer, or semitrailer, or other vehicle intended to be operated upon the public highways in this state shall, before operating the same, apply to the secretary of the Department of Public Safety and Corrections for and obtain the registration thereof and pay the state registration or license tax imposed by this Chapter, except where the secretary of the Department of Revenue has found that the registration and license taxes have been previously paid to a motor vehicle dealer pursuant to [R.S. 47:303\(B\)\(5\)](#). This Section does not apply to the owner of any vehicle which is exempted by this Chapter, nor to the owner who is permitted to operate a vehicle under the special provisions relating to lienholders, manufacturers, dealers, and nonresidents, as provided in this Chapter.

B. Every vehicle required to be registered under the provisions of this Chapter shall be registered in the parish of domicile of the owner, or if the owner is not domiciled in Louisiana, in a parish in which the owner has a residence.

CREDIT(S)

Amended by Acts 1982, No. 699, § 2, eff. Aug. 2, 1982; [Acts 1995, No. 393, § 2, eff. June 16, 1995](#).

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

Source:

Acts 1938, No. 285, § 6.

S.C.R. No. 58 of the 1962 Regular Session provided:

"BE IT RESOLVED by the Senate of the Louisiana Legislature, the House of Representatives concurring, that the Legislature does hereby declare that the exclusion and exemption from the purchase of motor vehicle license plates and the registration by the owners of self propelled motor cranes and other similar equipment used exclusively for heavy construction by the building and utility industries in off road construction is a correct interpretation of the law and is hereby affirmed, and any interpretation of or provision of the law to the contrary is hereby suspended."

Acts 1982, No. 699, § 1 substituted "secretary of the Department of Public Safety" for "commissioner", "state" for "State", inserted ", except where the secretary of the Department of Revenue and Taxation has found that the registration and license taxes have been previously paid to a motor vehicle dealer pursuant to [R.S. 47:303\(B\)\(5\)](#)", and inserted a comma following "dealers".

Acts 1995, No. 393, § 2 designated subsec. A and, in the newly designated subsec. A, in the first sentence, changed "semi-trailer" to "semitrailer" and inserted "and Corrections" following "Department of Public Safety"; and added subsec. B, relating to the parish in which vehicles must be registered.

In 1997, pursuant to Acts 1997, No. 658, § 2 and the statutory revision authority of the Louisiana State Law Institute, "Department of Revenue and Taxation" was changed to "Department of Revenue" in subsec. A.

CROSS REFERENCES

Mobile homes, Certificate of Title Law, see [R.S. 32:704](#).

Owner, definition, see [R.S. 47:451](#).

Sale of vehicle under writ of fieri facias or of seizure and sale, see [R.S. 13:4344](#).

LAW REVIEW AND JOURNAL COMMENTARIES

Accident cases, statutory standards and negligence in. Fleming James, Jr., 11 La.L.Rev. 95 (Nov. 1950).

Motor vehicles, Certificate of Title Act as related to registration license tax law and law governing chattel mortgages. 11 La.L.Rev. 450 (May 1951).

LIBRARY REFERENCES

2001 Main Volume

Automobiles  39, 82.

Westlaw Topic No. 48A.

[C.J.S. Motor Vehicles § § 92, 101 to 102](#).

NOTES OF DECISIONS

Proof of ownership 1

1. Proof of ownership

The taking out of a license in one's name does not of itself constitute proof of ownership of automobile, but is a circumstance tending to prove ownership. [Easley v. Roberts, App. 1 Cir.1946, 25 So.2d 245](#). Automobiles  244(32)

Proof that a motor vehicle was registered in name of defendant as owner is a mere presumption, having force until rebutted, but, until overcome by competent evidence, it makes a prima facie case of ownership of vehicle. [Brunning v. Brock, App.1939, 191 So. 551](#). Automobiles  242(5)

LSA-R.S. 47:501, **LA R.S. 47:501**

→ § 501.1. Duties of employees and employers

A. Any person who is a resident of a state which requires registration of the motor vehicle or motor vehicles of a person who is employed in that state within thirty days of such employment, and who is employed in and maintains a residence in Louisiana and who operates one or more vehicles on the public streets and roads in Louisiana shall apply for a certificate of registration for each of those vehicles within thirty days of the date on which the person was employed in Louisiana.

B. Each employer in this state shall notify each person employed by that employer of the requirement of Subsection A of this Section. The notice shall be by direct communication at the time of employment and by posting a notice in a prominent location at the place of employment.

C. The provisions of this Section shall not be applicable to members actively serving in the armed forces of the United States.

CREDIT(S)

Added by [Acts 1993, No. 765, § 1](#).

LIBRARY REFERENCES

2001 Main Volume

Automobiles  39, 82.
Westlaw Topic No. 48A.

[C.J.S. Motor Vehicles § § 92, 101 to 102.](#)

LSA-R.S. 47:501.1, **LA R.S. 47:501.1**

→ § 502. Exemption from registration

Farm tractors, self-propelled farm equipment, rubber-tired farm wagons and carts and drawn rubber-tired farm equipment which are designed primarily for field use and which are operated or moved only incidentally on the highways of this state, and which are used for farm purposes only need not be registered under this chapter. Road rollers and road machinery temporarily moved upon the highways are also exempt from registration.

CREDIT(S) Amended by Acts 1972, No. 533, § 1.

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

Source:

Acts 1938, No. 285, § 7.

Acts 1972, No. 533, § 1 rewrote the section, which formerly read:

"Farm tractors, road rollers and road machinery temporarily moved upon the highways need not be registered under this Chapter."

LIBRARY REFERENCES

2001 Main Volume

Automobiles  78.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 63, 94\(1\).](#)

NOTES OF DECISIONS

Farm vehicles 1

1. Farm vehicles

Under statutes (this section and [R.S. 32:341.1](#), [R.S. 32:1304.1](#) and [R.S. 47:479](#)) exempting from equipment and registration requirements certain farm trailers "operated or moved only incidentally on the highways of this state", the equipment used must not have as its primary function the transfer of materials on the highways; that is, if the trailer is used primarily on the farm but is occasionally transferred from point X to point Y by means of a public highway it would fall within the exceptions of the statutes and, similarly, if the trailers are regularly used to transfer produce from one part of the farm to another part of the same farm, such exceptions would still apply; if, however, the trailers are used to transfer produce to some place away from the farm, such trailers would not be exempt. Op.Atty.Gen., Aug. 22, 1972.

LSA-R.S. 47:502, **LA R.S. 47:502**

→ § **502.1. Exemption from registration; log loaders**

A. The provisions of this section shall apply to log loaders which are used exclusively for loading logs upon another vehicle and are not used to haul logs, and which are operated or moved only incidentally on the highways of this state. Such log loaders are exempt from the registration and registration tax provided for by Chapter 4 of Title 47 of the Louisiana Revised Statutes of 1950 and are exempt from the provisions of Chapter 7 of Title 32 of the Louisiana Revised Statutes of 1950.

B. No such log loader shall be operated at a speed in excess of forty miles per hour.

Violations of the provisions of this subsection shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than thirty days, or both. A subsequent violation shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than ninety days, or both.

If the violator is other than an individual, imprisonment shall be dispensed with and a double fine imposed.

CREDIT(S)

Added by Acts 1976, No. 176, § § 1 to 3.

HISTORICAL AND STATUTORY NOTES

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Pursuant to the statutory revision authority of the Louisiana State Law Institute, Acts 1976, No. 176, was designated as R.S. 47:502.1.

LIBRARY REFERENCES

2001 Main Volume

Automobiles  78.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 63](#), 94(1).

LSA-R.S. 47:502.1, **LA R.S. 47:502.1**

→ § **502.2. Exemption from registration; nonresident military personnel**

A. Any nonresident owner of a vehicle registered in a foreign state who is a member or spouse of a member of the armed forces of the United States on active duty within this state, and any resident owner of a vehicle registered in a foreign state who is a member or spouse of a member of the armed forces of the United States returning from active duty in a foreign state or country, may operate the vehicle in this state without securing Louisiana registration after satisfying the following requirements:

- (1) The license plates displayed on the vehicle are valid plates issued by a foreign jurisdiction.
- (2) The vehicle registration and license plates are current and issued to the active duty member or spouse of the active duty member.
- (3) The owner or driver has in effect one of the forms of financial responsibility specified in [R.S. 32:861](#).

B. This Section applies to all vehicles owned by the active duty member or the spouse of the active duty member except any commercial vehicle used in any business manner wherein the active duty member or the spouse of the

active duty member receives compensation.

CREDIT(S)

Added by [Acts 1989, No. 455, § 1.](#)

LSA-R.S. 47:502.2, **LA R.S. 47:502.2**

→ § 503. Application for registration

A. (1) Application for registration of a vehicle required to be registered under the provisions of this Chapter shall be made by the owner thereof, upon the appropriate form approved or furnished by the secretary.

(2) Every application shall be signed by the owner and contain the address of his domicile, or if he is not domiciled in Louisiana, the address of his residence and a brief description of the vehicle to be registered, including the engine number or serial number, or both, as required by the secretary, whether new or used, and, upon the registration of a new vehicle, the date of sale by the manufacturer or dealer to the person first operating such vehicle.

(3) The address required herein shall be the physical location of the applicant's residence or in the instance of business ownership of the vehicle, the physical location of the business or the physical location where the vehicle is primarily used or domiciled, in addition to the mailing address.

(4) The application shall contain such other information as may be required by the secretary.

B. If the vehicle for which registration is applied is a specially constructed, reconstructed, or a foreign vehicle, such fact shall be stated in the application, and with reference to every foreign vehicle which has been registered outside of this state, the owner shall exhibit to the secretary the certificate of title and registration certificate or other evidence of such former registration as may be in the applicant's possession or control, or such other evidence as will satisfy the secretary that the applicant is the lawful owner or possessor of the vehicle.

C. Renewals of the registration or license tax may be made by mail. In addition to the registration or license tax, there shall be a minimum assessed fee of two dollars to cover the cost of handling the processing of renewals. Additionally, in accordance with the Administrative Procedure Act, there may be additional charges assessed to cover the cost of operation. Any proposed additional charges shall be subject to oversight review by the Joint Legislative Committee on Transportation, Highways, and Public Works.

D., E. Repealed by Acts 1992, No. 984, § 18.

F. When an application for registration is rejected for any reason, the application shall be returned to the applicant. The time limit for submitting the application shall be extended for a single period of thirty days from the date the rejected application was received by the applicant. If the applicant reapplies for registration within the thirty-day extension, the applicant shall not be charged penalties or interest for that period of time.

CREDIT(S)

Amended by Acts 1954, No. 27, § 2; Acts 1986, No. 344, § 1; Acts 1986, No. 971, § 1; [Acts 1987, No. 337, § 1, eff. July 6, 1987](#); [Acts 1989, No. 407, § 1](#); [Acts 1991, No. 348, § 1](#); [Acts 1992, No. 183, § 1](#); [Acts 1995, No. 393, § 2, eff. June 16, 1995](#); [Acts 1995, No. 773, § 1](#).

VALIDITY--SUBSECTION C

<Subsection C of this section was held unconstitutional in [Williams v. State, Through Office of Motor Vehicles, Sup.1989, 538 So.2d 193](#). See Notes of Decisions under this section in Louisiana Statutes Annotated.>

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

Source:

Acts 1938, No. 285, § 8.

Acts 1954, No. 27, § 2 substituted "number or serial number, or both, as required by the commissioner" for "and serial numbers" following "engine" in the first paragraph.

Acts 1986, No. 344, § 1, added "affidavit of physical inspection" in the section heading, designated the former section as subsecs. A and B, substituted references to the "secretary" for the "commissioner" throughout subsecs. A and B, and added subsec. C.

Acts 1986, No. 971, § 1 designated the former section as subsecs. A and B, and added subsecs. C, D and E.

Section 2 of Acts 1986, No. 971, provided:

"Monies accruing to the Driver's License Office Operating Fund in fiscal year 1986-87 are hereby declared to be self-generated revenues."

Pursuant to the statutory revision authority of the Louisiana State law Institute, subsecs. A, B, and C, as amended by Acts 1986, No. 344, § 1, and subsecs. C, D, and E, as amended by Acts 1986, No. 971, § 1 and redesignated as subsec. D and pars. E(1) and E(2), respectively, were printed.

On the same authority "renewal by mail" was inserted in the section heading, a comma was inserted following "used" in the second sentence of subsec. A, paragraph designations were made in subsec. C, "Subsection D" was substituted for "Subsection C" and "amount" was substituted for "amound" in the first sentence of par. E(1), and quotation marks were placed around, "Driver's License Office Operations Fund" in the second sentence of par. E(2).

Acts 1987, No. 337, § 1 deleted "; affidavit of physical inspection; renewal by mail" from the section heading; and rewrote subsecs. C, D and E, which had provided:

"C. (1) If the application for registration of a vehicle as required herein, is incomplete or contains information that the secretary or his designee determines that the physical inspection is necessary in order to properly register the vehicle, the secretary or his designee shall so notify the applicant that a physical inspection of the vehicle and its identifying numbers is required.

"(2) The Department of Public Safety and Corrections may charge a fee of not less than five dollars for the required physical inspection. Any fees charged in excess of the amount shall be adopted pursuant to [R.S. 49:950](#), et seq.

"D. Renewals of the registration or license tax may be made by mail. In addition to the registration or license tax, there shall be a minimum assessed fee of two dollars to cover the cost of handling the processing of renewals. Additionally, in accordance with the Administrative Procedure Act, there may be additional charges assessed to cover the cost of operation. Any proposed additional charges shall be subject to oversight review by the House and Senate committees on transportation, highways, and public works.

"E. (1) The full amount of fees collected pursuant to Subsection D of this Section shall be credited to the Bond Security and Redemption Fund. After a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall pay the total amount of fees collected into a special fund, which is hereby created in the state treasury and designated as the 'Driver's License Office Operations Fund'.

"(2) The monies in the fund shall be used solely to fund the operation of driver's license offices. Any surplus remaining to the credit of the fund on June 30 of each year, after all appropriations of the preceding fiscal year have been made, shall revert to the state general fund. Such monies shall be expended solely from year to year as appropriated by the legislature for the operations of driver's license offices. Any amounts earned through

investment of the monies in the fund shall revert to the state general fund."

Section 2 of Acts 1987, No. 337, provided:

"The provisions of Section 1 of this Act shall apply and be made applicable to all applications for registration made from August 1, 1986, and thereafter."

Acts 1989, No. 407, § 1 added the fourth, fifth and sixth sentences to subsec. A; and rewrote the section heading, which had read: "Application for registration".

Pursuant to the statutory revision authority of the Louisiana State Law Institute, "Application for registration" was substituted for "Motor vehicle registration proof of identity and domicile" as the heading of this section as amended in 1989.

Acts 1991, No. 348, § 1, in subsec. A, deleted the final three sentences relating to proof of identity and domicile, which had read:

"An applicant who purchases a vehicle within any municipality with a population in excess of two hundred thousand for private use must show proof of identity and domicile. Such proof shall be given by presentment of a driver's license or a state identification card. Applications by mail shall include signed copies of the driver's license or the state identification card of the applicant."

Acts 1992, No. 183, § 1 added subsec. F relating to the time period for resubmission of applications.

Acts 1992, No. 984, § 18, repealed subssecs. D and E, relating, respectively, to crediting of fees to the Bond Security and Redemption Fund and the Driver's License Office Operations Fund, and to the use of the monies to fund the operations of driver's license offices.

Acts 1995, No. 393, § 2, in subsec. A, in the second sentence, changed "his" to "the" preceding "address" and inserted "of his domicile, or if he is not domiciled in Louisiana, the address of his residence" following "address".

Acts 1995, No. 773, § 1, added a new sentence in the third position in subsec. A, specifying the type of address required.

Both Acts 1995, Nos. 393 and 773 amended subsec. A of this section. Pursuant to the statutory revision authority of the Louisiana State Law Institute, the first and second sentences as set forth in Act 393 are printed as pars. A(1) and (2), respectively; the third sentence as set forth in Act 773 is printed as par. A(3); and the third sentence as set forth in Act 393 is printed as par. A(4).

CROSS REFERENCES

Owner, definition, see [R.S. 47:451](#).

LIBRARY REFERENCES

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Automobiles  39, 82.
Westlaw Topic No. 48A.
[C.J.S. Motor Vehicles § § 92, 101 to 102](#).

NOTES OF DECISIONS

Validity 1

1. Validity

Subsection C of this section on motor vehicle registration renewals was unconstitutional; as applied to motor vehicles other than private automobiles, the "handling fee" was not based on horsepower, carrying capacity or weight, as required by [Const. Art. 7, § 5](#) limiting license tax on private vehicles. [Williams v. State, Through Office of Motor Vehicles, Sup.1989, 538 So.2d 193](#), rehearing denied. Automobiles  28

LSA-R.S. 47:503, **LA R.S. 47:503**

→ § 504. Register of applicants to be kept by secretary

A. The secretary shall file each application received, and, when satisfied as to the genuineness and regularity thereof, and that the applicant is entitled thereto, shall register the vehicle therein described and the owner thereof in suitable books or on index cards as follows:

- (1) Under a distinctive registration number assigned to the vehicle and to the owner thereof hereinafter referred to as the "registration number".
- (2) Alphabetically, under the name of the owner.
- (3) Numerically and alphabetically, under the engine number or serial number, or both, and name of the vehicle.

B. The secretary shall, at all times, maintain complete records covering the registration of motor vehicles for the preceding three calendar years.

C. Upon written request, the department may provide information contained in these files to any interested party for a reasonable fee. These fees shall be adopted pursuant to [R.S. 49:950](#) et seq. The provisions of this Subsection shall not apply to a municipal police department or a sheriff's office.

CREDIT(S)

Amended by Acts 1954, No. 27, § 2; Acts 1986, No. 70, § 1.

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

Source:

Acts 1938, No. 285, § 9.

Acts 1954, No. 27, § 2, in par. (3), substituted "number or serial number, or both," for "and serial numbers" following "engine".

Acts 1986, No. 70, § 1 designated the former section as subsecs. A and B, substituted references to the "secretary" for the "commissioner" and the "vehicle commissioner" throughout the section, deleted "in his office in the State Capitol at Baton Rouge" following "records" in subsec. B, and added subsec. C.

CROSS REFERENCES

Alteration or removal of numbers identifying motor vehicle, prohibition, see [R.S. 14:207](#).

LSA-R.S. 47:504, **LA R.S. 47:504**

Current through all 2005 Regular Session Acts

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LOUISIANA REVISED STATUTE

CHAPTER 49

Chapter 49, sec. 950-953

West's Louisiana Statutes Annotated [Currentness](#)
Louisiana Revised Statutes
Title 49. State Administration
 [Chapter 13.](#) Administrative Procedure ([Refs & Annos](#))

➔ § 950. Title and form of citation

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

CREDIT(S)

Added by Acts 1982, No. 129, § 1.

CROSS REFERENCES

Board of Louisiana River Pilot Review and Oversight, actions taken, see [R.S. 34:1133](#).

Community action agencies, rules and regulations, see [R.S. 23:66](#).

Consumer credit law, administrative hearings, see [R.S. 9:3556](#).

Fire prevention and protection, board of review, conformity to this act, see [R.S. 40:1578.1](#).

Hazardous liquids, definition, see [R.S. 30:702](#).

Louisiana Agricultural Finance Authority, powers and duties, see [R.S. 3:266](#) et seq.

Louisiana Aquacultural Development Act, see [R.S. 3:559.1](#) et seq.

Motorcycle safety, operator training program, see [R.S. 17:282](#).

Pesticide control, rules and regulations, see [R.S. 3:3206](#).

Preservation of educational process, rules and regulations, see [R.S. 17:3105](#).

Sanitary code, adoption or amendment by state health officer, see [R.S. 40:4](#).

Subsidies for adopted children, rules and regulations, see [R.S. 46:1790](#) et seq.

Vital records registry, see [R.S. 40:33](#).

LAW REVIEW AND JOURNAL COMMENTARIES

[Administrative practice under the 1974 Constitution: A "silver anniversary" review. David A. Marcello, 62 La.L.Rev. 185 \(2001\).](#)

Developments in the law, 1980-1981: Mineral rights. Patrick H. Martin, 42 La.L.Rev. 374 (1982).

Due process for drivers under Louisiana revocation statutes. 36 La.L.Rev. 852 (1976).

Family law symposium: Alternate dispute resolution. Kenneth J. Rigby, [44 La.L.Rev. 1725 \(1984\)](#).

Highlights of 1974 regular session: Louisiana's "new" Administrative Procedure Act. 35 La.L.Rev. 629 (1975).

Judicial review of administrative abuse of discretion; mandamus and the Louisiana Administrative Procedure Act. 43 Tul.L.Rev. 854 (1969).

Louisiana Administrative Procedure Act. Robert Force and Lawrence Griffith, [42 La. L. Rev. 1227 \(1982\)](#).

Public law. Paul R. Baier, 35 La.L.Rev. 349 (1975).

Special problems of interpretation arising out of procedure for levying special assessments. 38 La.L.Rev. 1073 (1978).

RESEARCH REFERENCES

2004 Electronic Pocket Part Update

Treatises and Practice Aids

[Employment Coordinator Compensation § 42:302](#), Louisiana; Criminal and Civil Penalties for Retaliation.

[Employment Coordinator Employment Practices § 111:84](#), 1988 FEP Statute; Reviewing Commission Decision.

[20 LA Civil Law Treatise § 8.2](#), Legislative Oversight of Executive Branch Rulemaking.

[20 LA Civil Law Treatise § 11.2](#), Overview-Basic Budget Provisions.

NOTES OF DECISIONS

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State bond commission, application of act [13](#)

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Vieux Carre commission, application of act [14](#)

Workers' compensation, application of act [15](#)

[1/2](#). Validity

The legislature's creation of a system of administrative law and its administrative law judges (ALJs) to adjudicate regulatory matters and the creation of the Division of Administrative Law (DAL) and its central panel of ALJs are not per se unconstitutional. [Wooley v. State Farm Fire and Cas. Ins. Co., Sup.2005, 893 So.2d 746, 2004-882 \(La. 1/19/05\)](#), rehearing denied. Administrative Law And Procedure  7

[1](#). Construction and application

Where agency laws are silent, it is the function of the Louisiana Administrative Procedure Act (LAPA) to fill in the gaps and to provide rules of procedure. [Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Board, App. 1 Cir.2000, 99 0863 \(La.App. 1 Cir. 12/20/00\), 774 So.2d 1193](#), writ granted [2001-0185 \(La. 6/1/01\), 793 So.2d 188](#), affirmed in part, vacated in part [2001-0185 \(La. 10/16/01\), 797 So.2d 656](#), rehearing denied; [Louisiana State Bd. of Embalmers and Funeral Directors v. Caskets Direct, Inc., App. 2 Cir.1998, 30,861 \(La.App. 2 Cir. 8/19/98\), 716 So.2d 943](#), rehearing denied.

Provisions of the Administrative Procedure Act (APA) were not intended to supercede specific provisions of other administrative acts, or to supercede rights and remedies created under those acts, but were designed to create procedures in those instances where none existed. [Louisiana State Bd. of Embalmers and Funeral Directors v. Caskets Direct, Inc., App. 2 Cir.1998, 30,861 \(La.App. 2 Cir. 8/19/98\), 716 So.2d 943](#), rehearing denied; [Corbello v. Sutton, Sup.1984, 446 So.2d 301](#).

The trial court's denial of claimant's application for reparations under the Crime Victim's Reparations Act, without affording claimant a hearing, did not violate the state Administrative Procedures Act (APA); the APA provided for judicial review from a final agency decision or order from an adjudication proceeding, a decision or order was defined as a final disposition required by constitution or statute to be determined after notice and the opportunity for an agency hearing, and statute provided that a hearing was not required for every application for reparations. [Carter v. State, Crime Victims Reparation Bd. and Fund, App. 1 Cir.2004, 897 So.2d 149, 2003-2728 \(La.App. 1 Cir. 10/29/04\)](#), writ not considered [893 So.2d 883, 2004-2933 \(La. 2/4/05\)](#). Criminal Law  1220

With regard to administrative agencies, the more specific laws which govern the agency govern over the more general laws of Louisiana's Administrative Procedures Act (APA) or of the Code of Civil Procedure. [Piper v. Shakti, Inc., App. 3 Cir.2003, 856 So.2d 144, 2002-1010 \(La.App. 3 Cir. 10/1/03\)](#). Administrative Law And Procedure  4.1

The Louisiana Administrative Procedure Act (LAPA) was not intended to supersede the more specific provisions of other administrative acts, such as the Louisiana Gaming Control Law; rather, it was intended to create procedures in those instances where none exist. [Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Bd., Sup.2001, 797 So.2d 656, 2001-0185 \(La. 10/16/01\)](#), rehearing denied. Administrative Law And Procedure  4.1; Gaming  3

Where agency laws are silent, it is function of Louisiana Administrative Procedure Act, not more general Louisiana Code of Civil Procedure, to fill gaps and to provide rules for procedure. [Liberty Mut. Ins. Co. v. Louisiana Ins. Rating Com'n, App. 1 Cir.1997, 696 So.2d 1021, 1996-0793 \(La.App. 1 Cir. 2/14/97\)](#), rehearing denied, writ denied [706 So.2d 451, 1997-2069 \(La. 12/19/97\)](#), writ denied [706 So.2d 452, 1997-2062 \(La. 12/19/97\)](#). Administrative Law And Procedure  310

General procedural rules for administrative agencies enunciated by Louisiana Administrative Procedures Act (LAPA) are not intended to supersede specific provisions of other administrative acts or to supersede rights and

remedies created under such acts; instead, LAPA was intended to create procedures in those instances where none existed. [Hayden v. New Orleans Baton Rouge S.S. Pilots Fee Com'n, App. 1 Cir.1997, 690 So.2d 79, 1996-0062, 1996-0063](#) (La.App. 1 Cir. 1/8, rehearing denied, writ granted [701 So.2d 178, 1997-1239 \(La. 9/19/97\)](#), reversed [707 So.2d 3, 1997-1239 \(La. 1/21/98\)](#)). Administrative Law And Procedure  4.1

Where specific statutory procedures exist and are inconsistent with provisions of Louisiana Administrative Procedure Act (LAPA), the specific rules apply. [Louisiana Medical Mut. Ins. Co. v. Green, App. 1 Cir.1995, 657 So.2d 1052, 1994-0616 \(La.App. 1 Cir. 5/31/95\)](#), writ denied [661 So.2d 497, 1995-1643 \(La. 10/13/95\)](#). Statutes  223.4

2. Purpose

Administrative Procedure Act, properly complied with, operates to the advantage of both the parties and the courts by enabling the parties to resolve their disputes in a less cumbersome and expensive manner than normally encountered at a trial in court and, at the same time, relieving the court of the time-consuming task of hearing the evidence. [Buras v. Board of Trustees of Police Pension Fund of City of New Orleans, Sup.1979, 367 So.2d 849](#). Administrative Law And Procedure  4.1

One of purposes of administrative remedies is to enable parties to resolve their disputes in a less cumbersome and less expensive manner than is normally encountered at a trial in court, but if an administrative agency makes no record of its proceedings, observes no formalities whatsoever, conducts some of its affairs behind closed doors and provides parties with no findings whatsoever, entire purpose of administrative determination is defeated and concept of judicial review is frustrated. [Buras v. Board of Trustees of Police Pension Fund of City of New Orleans, App. 4 Cir.1978, 360 So.2d 572](#), writ granted [363 So.2d 534](#), reversed on other grounds [367 So.2d 849](#). Administrative Law And Procedure  2.1; Administrative Law And Procedure  473; Administrative Law And Procedure  506

3. Application of act--In general

The Louisiana Administrative Procedure Act (LAPA) applies to all agencies unless excepted by either the LAPA itself or the constitutional provisions and statutes governing each individual agency. [Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Board, App. 1 Cir.2000, 774 So.2d 1193, 1999-0863 \(La.App. 1 Cir. 12/20/00\)](#), writ granted [793 So.2d 188, 2001-0185 \(La. 6/1/01\)](#), affirmed in part, vacated in part [797 So.2d 656, 2001-0185 \(La. 10/16/01\)](#), rehearing denied. Administrative Law And Procedure  5

Administrative Procedure Act R.S. 49:950 et seq. is not applicable to the Office of Employment Security; however, it is of assistance in interpreting by analogy [R.S. 23:1631](#) exempting unemployment compensation hearings and appeals from rules of evidence, since it is a law in pari materia. [New Orleans Public Service, Inc. v. Masaracchia, App. 4 Cir.1985, 464 So.2d 866](#). Statutes  223.2(31)

4. --- Colleges and universities, application of act

Management decisions involved in determining whether professor has displayed qualities necessary to attain rank of tenure are uniquely internal in academic setting, and therefore come within exception to availability of review under state Administrative Procedure Act for statements, guides, or requirements for conduct or action which regulate "only the internal management of the agency." [Jones v. Southern University and A & M College System Through Bd. of Sup'rs, App. 1 Cir.1997, 693 So.2d 1265, 1996-1430 \(La.App. 1 Cir. 5/9/97\)](#). Administrative Law And Procedure  701; Colleges And Universities  8.1(6.1)

For purpose of determining availability of review under state Administrative Procedure Act of university's denial of professor's tenure application, tenure process did not constitute "decision or order" and was therefore not reviewable product of adjudication within meaning of statute; terms of professor's employment secured no interest in reemployment beyond probationary four year period, and professor had no other legitimate claim of entitlement to tenured position. [Jones v. Southern University and A & M College System Through Bd. of Sup'rs, App. 1 Cir.1997,](#)

[693 So.2d 1265, 1996-1430 \(La.App. 1 Cir. 5/9/97\)](#). Administrative Law And Procedure  701; Colleges And Universities  8.1(6.1)

Policies and procedures of faculty appeals committee of Northeast Louisiana University, setting forth appeals procedure, is in accordance with due process; because grievance committee considers only matters relating to internal management, appeals procedure is not regulated by Administrative Procedure Act, [LSA-R.S. 49:954](#). Op.Atty.Gen. No., 81-1013, Sept. 29, 1981.

[4.5](#). ---- Board of Ethics, application of act

Judicial review of rulings of the Board of Ethics is conducted in accordance with the Louisiana Administrative Procedure Act. [In re Jefferson Alliance, Inc., App. 1 Cir.2003, 841 So.2d 15, 2002-0335 \(La.App. 1 Cir. 2/14/03\)](#), rehearing denied, writ denied [847 So.2d 1233, 2003-1136 \(La. 6/20/03\)](#). Officers And Public Employees  110

[5](#). ---- Department of corrections, application of act

No cause of action under the Civil Rights Act of 1871 was averred by state penitentiary inmates' complaint which challenged the manner in which the penitentiary's "Adult Rules, Regulations and Disciplinary Procedures" were amended, alleging that the Louisiana Administrative Procedures Act had not been followed. [Martin v. Blackburn, C.A.5 \(La.\)1978, 581 F.2d 94](#). Civil Rights  1395(6)

Administrative Procedure Act is applicable to agency adjudication proceeding of the Department of Corrections. [Nix v. King, App. 1 Cir.1984, 457 So.2d 805](#). Administrative Law And Procedure  5

Administrative Procedure Act governed review of determination by prison disciplinary board that prisoner was guilty of attempted theft by forging his inmate store card so as to show balance ten dollars greater in his favor than was the case. [State ex rel. Armistead v. Phelps, Sup.1978, 365 So.2d 468](#). Prisons  13(10)

[6](#). ---- Department of highways, application of act

Administrative Procedure Act, [R.S. 49:951](#) et seq., is not applicable to actions of director of Department of Highways in exercising his authority under [R.S. 48:346](#) to close a section of highway to traffic. [Ramsey v. State, Through Dept. of Highways, App. 2 Cir.1975, 322 So.2d 340](#). Highways  167

[7](#). ---- Driver licenses, application of act

Judicial review of driver's license suspension requires a trial de novo, rather than being restricted to a review of the administrative record. [Dement v. Department of Public Safety and Corrections, App. 2 Cir.1991, 590 So.2d 1333](#). Administrative Law And Procedure  744.1; Automobiles  144.2(4)

Administrative Procedure Act is inapplicable to cases falling within purview of [R.S. 32:414](#) relating to the revocation of drivers' licenses. [State, Dept. of Public Safety, Drivers' License Division v. Moore, App. 2 Cir.1975, 311 So.2d 20](#). Automobiles  144.2(1)

The Administrative Procedure Act, [R.S. 49:951](#) et seq., does not apply to suspension, revocation and cancellation of licenses by the department of public safety acting under the authority of [R.S. 32:414](#), as the act applies only to statutes where notice is required prior to an administrative determination, which is not pertinent to revocation of driver's licenses. Op.Atty.Gen., Oct. 30, 1973.

[8](#). ---- Governor, application of act

Governor had authority to impose moratorium suspending contractual obligations of state to the United States Secretary of Health for state review of capital expenditures proposed by or on behalf of health care facilities located

within the state for purposes of determining costs properly reimbursable to health care providers for services provided medicare, medicaid, and other federal beneficiaries, without complying with State Administrative Procedure Act. (Per opinions of Cole, J., in which three Justices joined, with one Justice concurring, and of Crain, J., in which one Justice joined.) [Rapides General Hosp. v. Robinson, App. 1 Cir.1986, 488 So.2d 711](#), writ denied [489 So.2d 1276](#). Health  535(4); Health  487(4)

9. ---- Judiciary commission, application of act

This act was inapplicable to proceedings of Judiciary Commission held to determine applicability of [Canon 5 of the Louisiana Code of Judicial Conduct](#) (Vol. 8, LSA-R.S.). [Babineaux v. Judiciary Commission, Sup.1976, 341 So.2d 396](#). Judges  11(5.1)

10. ---- Public service commission, application of act

Provision of [LSA-Const.1974, Art. 4, § 21](#) granting power to Public Service Commission to adopt and enforce reasonable rules, regulations and procedures necessary for discharge of its duties precludes legislature from enacting statutes which would restrict ability of Commission to adopt its own rules, regulations and procedures; thus, rulemaking provisions of Administrative Procedure Act ([R.S. 49:951](#) et seq.) are not applicable to Commission. (Per Marcus, J., with one Judge concurring and three Judges concurring in result.) [Louisiana Consumers' League, Inc. v. Louisiana Public Service Commission, Sup.1977, 351 So.2d 128](#). Public Utilities  149

Public Service Commission is subject to Administrative Procedure Act in addition to those procedures outlined in [LSA-Const.1974, Art. 4, § 21](#), which also must be followed by Commission. Op.Atty.Gen., No. 75-89.

11. ---- Retirement systems, application of act

State Administrative Procedure Act (R.S. 49:950 et seq.) was not applicable to procedures used by board of trustees of city employees retirement system in reviewing claim for disability retirement benefits. [Rue v. Board of Trustees of City of Alexandria Employees Retirement System, App. 3 Cir.1983, 437 So.2d 1167](#), writ denied [442 So.2d 452](#). Municipal Corporations  220(9)

12. ---- School boards, application of act

Terminated elementary school principal's due process rights were not violated by school board's failure to adopt Administrative Procedure Act for use at removal hearing as Administrative Procedure Act does not apply to political subdivision such as school board. [Summers v. Vermilion Parish School Bd., App. 3 Cir.1986, 493 So.2d 1258](#), writ denied [497 So.2d 312](#). Constitutional Law  278.5(4)

13. ---- State bond commission, application of act

State Bond Commission is not subject to the Administrative Procedure Act. Op.Atty.Gen., Sept. 18, 1974.

14. ---- Vieux Carre commission, application of act

Because the Vieux Carre Commission is constitutionally authorized and exercises the state's police power, it is covered by the Administrative Procedure Act ([R.S. 49:951](#) et seq.). Op.Atty.Gen., No. 79-257, March 7, 1979.

15. ---- Workers' compensation, application of act

Adjudication requirements of Administrative Procedure Act did not apply to initial recommendation stage of the Worker's Compensation Act; purely advisory recommendation made by director was not a "final disposition" within meaning of Administrative Procedure Act. [Martin v. Rush's Fabricare Center, Inc., App. 3 Cir.1991, 590 So.2d 707](#). Workers' Compensation  1165

→§ 951. Definitions

As used in this Chapter:

- (1) "Adjudication" means agency process for the formulation of a decision or order.
- (2) "Agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof, any political subdivision, as defined in [Article VI, Section 44 of the Louisiana Constitution](#), and any board, commission, department, agency, officer, or other entity thereof, and the courts.
- (3) "Decision" or "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for an agency hearing, and including non-revenue licensing, when the grant, denial, or renewal of a license is required by constitution or statute to be preceded by notice and opportunity for hearing.
- (4) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- (5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency, except that an agency is a "person" for the purpose of appealing an administrative ruling in a disciplinary action brought pursuant to Title 37 of the Louisiana Revised Statutes of 1950 prior to the final adjudication of such disciplinary action.
- (6) "Rule" means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. "Rule" includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.
- (7) "Rulemaking" means the process employed by an agency for the formulation of a rule. Except where the context clearly provides otherwise, the procedures for adoption of rules and of emergency rules as provided in [R.S. 49:953](#) shall also apply to adoption of fees. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts involved does not render the same a rule within this definition or constitute specific adoption thereof by the agency so as to be required to be issued and filed as provided in this Subsection.

CREDIT(S)

Added by Acts 1966, No. 382, § 1, eff. July 1, 1967. Amended by Acts 1974, No. 284, § 1, eff. Jan. 1, 1975; Acts 1975, No. 730, § 1; Acts 1978, No. 252, § 1; Acts 1979, No. 578, § 1, eff. July 18, 1979; [Acts 1987, No. 240, § 1](#); [Acts 1995, No. 1057, § 1, eff. June 29, 1995](#); [Acts 1997, No. 1224, § 1](#).

APPLICATION AND EFFECTIVE DATE

<Acts 1995, No. 1057, § 1 amended this section. Section 2 of Act 1057 provided an effective date for Act 1057 of June 29, 1995. The second sentence of § 2 of Act 1057 provided:>

<"However, the provisions of this Act shall not be applicable to the Department of Health and Hospitals until January 8, 1996.">

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

As set forth in Acts 1966, No. 382, § 1, this section read:

"As used in this Chapter:

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

"(2) 'Agency' means each state board, commission, department, or officer authorized by law to make rules or to formulate and issue decisions and orders except:

"(a) The legislature or any branch, committee or officer thereof;

"(b) The courts;

"(c) The Department of Public Welfare, Department of Conservation, Department of Revenue, Division of Employment Security, Department of Labor, the Department of Hospitals and the State Mineral Board, and the Department of Highways

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

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

"(5) 'Person' means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

"(6) 'Rule' means each agency statement of general applicability and future effect that implements, interprets, or prescribes substantive law or policy, or prescribes the procedure or practice requirements of the agency. A rule may be of general applicability even though it may not apply to the entire state and even though it may be of immediate concern to only a single person or corporation, provided the form is general and others who may qualify in the future will fall within its provisions. The term includes the amendment or repeal of a prior rule but does not include (A) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; (B) declaratory rulings or orders; or (C) intra-agency memoranda.

"(7) 'Rule-making' means the process employed by an agency for the formulation of a rule. 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."

In this section as set forth in Acts 1966, No. 382, § 1, "Chapter" was substituted for "Act" in the introductory clause pursuant to the statutory revision authority of the Louisiana State Law Institute.

The 1974 amendment rewrote par. (2) to read:

"(2) 'Agency' means each state board, commission, department, or officer authorized by law to make rules or to formulate and issue decisions and orders except the legislature or any branch, committee, or officer thereof and the courts."

The 1975 amendment rewrote par. (2) to read:

"(2) 'Agency' means each state board, commission, or department which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof and the courts."

The 1975 amendment also deleted, from the second sentence of par. (6), "and even though it may be of immediate concern to only a single person or corporation,".

The 1978 amendment, in par. (2), substituted "department, agency, officer, or other entity" for "or department," and rewrote par. (6), which had previously read:

"(6) 'Rule' means each agency statement of general applicability and future effect that implements, interprets, or prescribes substantive law or policy, or prescribes the procedure or practice requirements of the agency. A rule may be of general applicability even though it may not apply to the entire state, provided the form is general and others who may qualify in the future will fall within its provisions. The term includes the amendment or repeal of a prior rule but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; (b) declaratory rulings or orders; or (c) intraagency memoranda."

The 1979 amendment, in par. (2) inserted "any political subdivision, as defined in [Article VI, Section 44 of the Louisiana Constitution](#), and any board, commission, department, agency, officer, or other entity thereof".

The 1987 amendment, in par. (6), provided that the definition of "rule" includes an agency statement, guide or requirement purporting to adopt, increase or decrease fees, and provided that the definition of "rule" does not include fees.

Section 2 of Acts 1987, No. 240, provides:

"This Act shall not be construed as to empower any state agency the authority to raise fees or to expand or broaden their specific statutory authority."

The 1995 amendment, in par. (7), in the first sentence, changed "Rule-making" to "Rulemaking", and added a new sentence in the second position providing that [R.S. 49:953](#) shall also apply to adoption of fees.

Acts 1997, No. 1224, § 1 added, to par. (5), defining "person", the exception for an agency for the purpose of appealing an administrative rule in a disciplinary action under Title 37.

Title of Act:

An Act concerning procedure of state administrative agencies and review of their determinations. Acts 1966, No. 382.

Uniform Law:

This section is similar to § 1 of the Uniform State Administrative Procedure Act. See 15 Uniform Laws Annotated, Master Edition.

CROSS REFERENCES

Executive branch lobbying, definitions, see [R.S. 49:72](#).

LAW REVIEW AND JOURNAL COMMENTARIES

[Agency expertise, ALJ independence, and administrative courts: The recent changes in Louisiana's Administrative Procedure Act](#). Jay S. Bybee, 59 La.L.Rev. 431 (1999).

Louisiana's constitutional agencies: Plenary powers or "constitutional illusions of being a fourth branch of government"? Richard D. Moreno, [51 La.L.Rev. 875 \(1991\)](#).

RESEARCH REFERENCES

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Treatises and Practice Aids

[20 LA Civil Law Treatise § 8.2](#), Legislative Oversight of Executive Branch Rulemaking.

UNITED STATES SUPREME COURT

Prisoners' rights, access to courts, no First Amendment right to provide legal assistance to other inmates, see [Shaw v. Murphy, 2001, 121 S.Ct. 1475, 532 U.S. 223, 149 L.Ed.2d 420](#), on remand [253 F.3d 1151](#).

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[1](#). Construction and application

School boards are exempt from the Administrative Procedure Act. [Lee v. East Baton Rouge Parish School Bd., App. 1 Cir.2004, 887 So.2d 1, 2003-0711 \(La.App. 1 Cir. 6/30/04\)](#), writ denied [887 So.2d 480, 2004-1965 \(La. 11/15/04\)](#). Schools  55

Provisions of the Louisiana Administrative Procedure Act (LAPA) do not determine the status of the Department of Insurance for constitutional purposes or any purpose outside the LAPA. [Brown v. State Farm Fire & Cas. Co., App. 1 Cir.2001, 804 So.2d 41, 2000-0539 \(La.App. 1 Cir. 6/22/01\)](#), writ denied [803 So.2d 37](#). Insurance  1024

The Louisiana Administrative Procedure Act (LAPA) was not intended to supersede the more specific provisions of other administrative acts, such as the Louisiana Gaming Control Law; rather, it was intended to create procedures in those instances where none exist. [Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Bd., Sup.2001, 797 So.2d 656, 2001-0185 \(La. 10/16/01\)](#), rehearing denied. Administrative Law And Procedure  4.1; Gaming  3

[2](#). Adjudication--In general

Decision of patient's compensation fund to supply funds to defense of medical malpractice suit against health care provider's estate was not adjudication or decision within meaning of Louisiana Administrative Procedure Act (LAPA) and, thus, was not entitled to deference normally afforded administrative agency determinations. [Potier v. Commissioner of Ins., App. 1 Cir.1999, 753 So.2d 305, 1998-1063 \(La.App. 1 Cir. 11/10/99\)](#), rehearing denied, writ denied [760 So.2d 345, 2000-0319 \(La. 4/20/00\)](#). Health  494

Determinations by Department of Natural Resources (DNR) that property had been acquired by expropriation or by purchase under threat of expropriation, for purposes of statute requiring return of such property, were "adjudications" under judicial review procedures of the Administrative Procedure Act; by decreeing ownership of properties in question, certifications constituted final decision of DNR in that they were determinative of rights of the parties. [Vogt v. Board of Com'rs of Orleans Levee Dist., App. 4 Cir.1999, 738 So.2d 1142, 1998-2379 \(La.App. 4 Cir. 6/9/99\)](#), writ denied [748 So.2d 1166, 1999- 2024 \(La. 10/29/99\)](#), writ denied [748 So.2d 1166, 1999-2025 \(La. 10/29/99\)](#). Eminent Domain  325

Actions of stewards charged with responsibility of enforcing rules and regulations of Racing Commission do not fall within meaning of definition of "adjudication" so as to require application of Administrative Procedure Act (R.S. 49:951 et seq.). [Sider v. Louisiana State Racing Com'n, App. 4 Cir.1984, 451 So.2d 1265](#). Theaters And Shows  3.10

[3](#). ---- Hearing requirement, adjudication

For purposes of the Administrative Procedure Act (APA), "adjudication" means an agency proceeding that results in a disposition that is required to be made (by constitution or statute) after notice is given and a hearing is held; unless some statute or the constitution requires a hearing and notice, an agency action is not an adjudication for purposes of

the APA. [Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Bd., Sup.2001, 2001- 0185 \(La. 10/16/01\), 797 So.2d 656](#), rehearing denied; [Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Board, App. 1 Cir.2000, 99 0863 \(La.App. 1 Cir. 12/20/00\), 774 So.2d 1193](#), writ granted [2001-0185 \(La. 6/1/01\), 793 So.2d 188](#), affirmed in part, vacated in part [2001-0185 \(La. 10/16/01\), 797 So.2d 656](#), rehearing denied.

If no hearing is required by constitution or statute, there is no adjudication, and a hearing before the Division of Administrative Law is not required. [Government Computer Sales, Inc. v. State Through Div. of Admin., App. 1 Cir.1998, 720 So.2d 53, 1998-0224 \(La.App. 1 Cir. 9/25/98\)](#). Administrative Law And Procedure  442; Administrative Law And Procedure  470

Fair hearing requested by applicant challenging recommendation by Department of Health and Hospitals (DHH) committee that competing applicant receive license to operate community home was "adjudication"; while hearing was described as "appeal" in regulations and was treated as such by hearing officer, it could not have been "appeal" absent prior adjudication from which appeal could be taken. [Bell Oaks, Inc. v. Louisiana Dept. of Health & Hospitals, App. 1 Cir.1997, 697 So.2d 739, 1996-1256 \(La.App. 1 Cir. 6/26/97\)](#), rehearing denied, writ denied [703 So.2d 1313, 1997-2202 \(La. 11/21/97\)](#). Asylums  3

"Adjudication," for purposes of Administrative Procedure Act (APA) provision for hearing only in an adjudication, is proceeding resulting in decision or order. [Parochial Employee's Retirement System of Louisiana v. Caddo Parish Com'n, App. 1 Cir.1996, 676 So.2d 105, 1995-0243 \(La.App. 1 Cir. 3/15/96\)](#), writ denied [673 So.2d 1031, 1996-0955 \(La. 5/31/96\)](#). Administrative Law And Procedure  442

4. ---- Internal advisory bodies, adjudication

Recommendation by Department of Health and Hospitals (DHH) committee that one applicant be approved and another disapproved for license to operate community home was not "decision" or "order" of DHH, but was merely internal advisory opinion, and thus, decision reached was not product of "adjudication"; there was no notice and no hearing involved in reaching recommendation. [Bell Oaks, Inc. v. Louisiana Dept. of Health & Hospitals, App. 1 Cir.1997, 697 So.2d 739, 1996-1256 \(La.App. 1 Cir. 6/26/97\)](#), rehearing denied, writ denied [703 So.2d 1313, 1997-2202 \(La. 11/21/97\)](#). Asylums  3

Internal recommendation of advisory body within administrative agency is not "adjudication." [Bell Oaks, Inc. v. Louisiana Dept. of Health & Hospitals, App. 1 Cir.1997, 697 So.2d 739, 1996-1256 \(La.App. 1 Cir. 6/26/97\)](#), rehearing denied, writ denied [703 So.2d 1313, 1997-2202 \(La. 11/21/97\)](#). Administrative Law And Procedure  442

Administrative Procedure Act, [R.S. 49:950](#), did not apply to internal advisory body within the Department of Transportation and Development, and recommendations to the Secretary of Department by the body were clearly not adjudications under the Act. [E. Lionel Pavlo Engineering Co. v. State, Through Dept. of Transp. and Development, Office of Highways, App. 1 Cir.1988, 521 So.2d 652](#), writ denied [523 So.2d 234](#). Administrative Law And Procedure  101

5. ---- Right to review, adjudication

Meeting at which Gaming Control Board approved petition for spin-off of corporation's gaming assets to newly-formed entity, and for proposed merger between that entity and a casino corporation, resulted in an "adjudication" as defined by Louisiana Administrative Procedure Act (LAPA) that was subject to judicial review; opposing party had been notified of meeting and advised that its opposition would be considered. [Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Bd., App. 1 Cir.2000, 761 So.2d 694, 1999-0863 \(La.App. 1 Cir. 5/12/00\)](#), rehearing granted, on rehearing [774 So.2d 1193, 1999-0863 \(La.App. 1 Cir. 12/20/00\)](#), writ granted [793 So.2d 188, 2001-0185 \(La. 6/1/01\)](#), affirmed in part, vacated in part [797 So.2d 656, 2001-0185 \(La. 10/16/01\)](#), rehearing denied. Gaming  4

For purposes of determining availability of judicial review under state Administrative Procedure Act, "adjudication"

is proceeding resulting in decision or order. [LSA-R.S. 49:950](#) et seq. [Jones v. Southern University and A & M College System Through Bd. of Sup'rs, App. 1 Cir.1997, 693 So.2d 1265, 1996-1430 \(La.App. 1 Cir. 5/9/97\)](#). Administrative Law And Procedure  442; Administrative Law And Procedure  701

6. Agency--In general

The Louisiana Administrative Procedure Act (LAPA) applies to all agencies unless excepted by either the LAPA itself or the constitutional provisions and statutes governing each individual agency. [Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Board, App. 1 Cir.2000, 774 So.2d 1193, 1999-0863 \(La.App. 1 Cir. 12/20/00\)](#), writ granted [793 So.2d 188, 2001-0185 \(La. 6/1/01\)](#), affirmed in part, vacated in part [797 So.2d 656, 2001-0185 \(La. 10/16/01\)](#), rehearing denied. Administrative Law And Procedure  5

General procedural rules enunciated by the Louisiana Administrative Procedures Act (LAPA) apply to all agencies as defined by section of LAPA, unless excepted by statutes or constitutional provisions governing each individual agency. [Hayden v. New Orleans Baton Rouge S.S. Pilots Fee Com'n, App. 1 Cir.1997, 690 So.2d 79, 1996-0062, 1996-0063 \(La.App. 1 Cir. 1/8, rehearing denied, writ granted 701 So.2d 178, 1997-1239 \(La. 9/19/97\), reversed 707 So.2d 3, 1997-1239 \(La. 1/21/98\)\)](#). Administrative Law And Procedure  5

Pilots fee commission is an "agency" within meaning of the Louisiana Administrative Procedures Act (LAPA) because, by virtue of its statutory authority, it may make rules, regulations and policies in addition to formulating and issuing orders; thus, in absence of constitutional or statutory provisions or properly promulgated agency rules, commission is required to follow the LAPA. [Hayden v. New Orleans Baton Rouge S.S. Pilots Fee Com'n, App. 1 Cir.1997, 690 So.2d 79, 1996-0062, 1996-0063 \(La.App. 1 Cir. 1/8, rehearing denied, writ granted 701 So.2d 178, 1997-1239 \(La. 9/19/97\), reversed 707 So.2d 3, 1997-1239 \(La. 1/21/98\)\)](#). Pilots  4

Municipal alcoholic beverage control board is not "agency" as defined by Administrative Procedure Act (APA) as would allow prevailing party in action against board to recover reasonable litigation expenses. [Brossette v. Alcoholic Beverage Control Bd., App. 1 Cir.1995, 655 So.2d 536, 1994-0781 \(La.App. 1 Cir. 5/5/95\)](#), writ denied [658 So.2d 1264, 1995-1349 \(La. 9/1/95\)](#). Intoxicating Liquors  108.11; Municipal Corporations  1040

Gaming Enforcement Division of the Louisiana State Police is "agency" as defined in the Administrative Procedure Act (APA), and is excluded from APA's definition of "person." [State Through Dept. of Public Safety and Corrections, Office of State Police, Riverboat Gaming Div. v. Louisiana Riverboat Gaming Com'n and Horseshoe Entertainment, Sup.1995, 655 So.2d 292, 1994-1872, 1994-1914 \(La. 5/22/95\)](#). Administrative Law And Procedure  5; Administrative Law And Procedure  665.1; Gaming  4

This State Police Commission is not bound to follow the Administrative Procedure Act since its rulemaking power is established in the Constitution. Op.Atty.Gen., No. 93-502, Aug. 5, 1993.

Procedure to be followed in implementation of powers of board of regents affecting separate management boards is subject to provisions relating to the necessary rulemaking power of those bodies defined as agencies of Administrative Procedure Act, LSA-R.S. 49:951, par. (2). Op.Atty.Gen., No. 81-981, Nov. 19, 1981.

7. --- Civil service commission, agency

City civil service commission was not subject to Administrative Procedure Act (APA), notwithstanding fact that commission was created by State Constitution. [George v. Department of Fire, App. 4 Cir.1994, 637 So.2d 1097, 1993-2421 \(La.App. 4 Cir. 5/17/94\)](#). Administrative Law And Procedure  5; Municipal Corporations  218(9)

8. --- Corrections department, agency

Department of Public Safety and Corrections (DPSC) was an "agency," as opposed to a "person," under the Administrative Procedure Act and, as such, had no right to judicial review of decision of administrative law judge

dismissing its proposed order suspending motorist's driver's license, absent some other means of review, redress, relief, or trial de novo provided by law. [State, Dept. of Public Safety and Corrections v. Lee, App. 1 Cir.1999, 729 So.2d 717, 1998-0270 \(La.App. 1 Cir. 2/19/99\)](#). Automobiles  144.2(2.1)

9. ---- Financial Institutions Commission, agency

Commissioner of Financial Institutions is "state agency" as term is defined for purposes of Administrative Procedure Act. [Delta Bank & Trust Co. v. Lassiter, Sup.1980, 383 So.2d 330](#). Administrative Law And Procedure  5

10. ---- Hospital district, agency

The Vermillion Parish Hospital Service District No. 2 may either hear appeals from employee dismissal or suspension or they may delegate its duties with regard to dismissals to the director. Op.Atty.Gen. No. 94-359, Jan. 17, 1995.

Vermillion Parish Hospital District No. 2 is not governed by the Administrative Procedure Act and, assuming that it is contained within the district, Abbeville General Hospital is also excluded from the APA. Op.Atty.Gen. No. 94-359(A), Aug. 25, 1995.

11. ---- Parole board, agency

Board of Parole is not the sort of "agency" or "board" contemplated as subject to the law on general administrative procedure, and special provisions creating the Board of Parole and setting out its powers and duties are not complementary or supplementary to the general administrative rules of procedure. [Smith v. Dunn, Sup.1972, 263 La. 599, 268 So.2d 670](#). Pardon And Parole  57.1

12. ---- Port authorities, agency

Louisiana's various port authorities are not state agencies of executive branch within purview of Administrative Procedure Act (R.S. 49:951 et seq.), but are political subdivisions of the state within local governmental framework. Op.Atty.Gen., No. 77-36, Feb. 17, 1977.

13. ---- Retirement systems, agency

City police pension fund was within definition of "agency" under the Administrative Procedure Act (APA). [Ogburn v. City of Shreveport, App. 2 Cir.1993, 614 So.2d 748](#), writ denied [619 So.2d 547](#). Administrative Law And Procedure  5; Municipal Corporations  187(1)

Board of Trustees of Municipal Police Employees Retirement System is "agency" under this section of Administrative Procedure Act, and therefore, provisions of Act must apply to actions of Board whenever possible. [Henning v. Carrier, App. 1 Cir.1983, 430 So.2d 1310](#), writ denied [435 So.2d 429](#). Administrative Law And Procedure  5

State Police Retirement Board is an "agency" within meaning of Administrative Procedure Act (R.S. 49:951 et seq.). [Darbonne v. Louisiana State Police Retirement Bd., App. 1 Cir.1981, 408 So.2d 452](#). States  64.1(1)

The board of trustees of the police pension fund of the city of New Orleans is a state board which formulates or issues decisions pursuant to the statutes of Louisiana and thus is an "agency" within the contemplation of the Administrative Procedure Act (R.S. 49:951 et seq.) and the Act is applicable to proceedings of the board. [Buras v. Board of Trustees of Police Pension Fund of City of New Orleans, Sup.1979, 367 So.2d 849](#). Municipal Corporations  187(1)

[R.S. 33:2284](#), providing that there should be no appeal from finding of board of trustees of city police pension fund

on applications for pensions fell short of minimal due process requirements, and would be controlled by provisions of Administrative Procedure Act (R.S. 49:951 et seq.), particularly provision of [R.S. 49:964](#) granting judicial review of agency determinations. [Werner v. Board of Trustees of New Orleans Police Pension Fund of City of New Orleans, App. 4 Cir.1978, 360 So.2d 615](#). Constitutional Law  318(2); Municipal Corporations  176(3.1); Municipal Corporations  187(10)

The state retirement systems are subject to Louisiana's Code of Governmental Ethics and the Administrative Procedure Act, but are not subject to the Public Contracts Law. Op.Atty.Gen. No. 93-676, Nov. 16, 1993.

14. Courts

Term "courts" in this definitional section means the judicial branch of state government. [Babineaux v. Judiciary Commission, Sup.1976, 341 So.2d 396](#). Administrative Law And Procedure  4.1

15. Decision or order--In general

Two-part test determines if an action is a decision or order and thus rendered pursuant to an adjudication for which an administrative hearing is required: the first question is whether the party aggrieved is claiming a constitutionally protected right, and the second prong requires a determination whether the legislature, through the pertinent statutes, has deemed the governmental action so important as to require a hearing on the record and notice. [Government Computer Sales, Inc. v. State Through Div. of Admin., App. 1 Cir.1998, 720 So.2d 53, 1998-0224 \(La.App. 1 Cir. 9/25/98\)](#). Administrative Law And Procedure  442; Administrative Law And Procedure  470

Either of two tests is applied to facts of particular case to determine whether agency action is "decision" or "order" and, therefore, appealable; first test concerns whether party aggrieved is claiming constitutionally protected right, such as liberty or property right, under which test procedural due process encompassing right to hearing, notice record, and judicial review applies when governmental action deprives party of such right, and, if no constitutionally vested right is at issue, one looks to statutes to determine if legislature has deemed governmental action so important as to require hearing on record and notice thereof. [Parochial Employee's Retirement System of Louisiana v. Caddo Parish Com'n, App. 1 Cir.1996, 676 So.2d 105, 1995-0243 \(La.App. 1 Cir. 3/15/96\)](#), writ denied [673 So.2d 1031, 1996-0955 \(La. 5/31/96\)](#). Administrative Law And Procedure  701; Constitutional Law  255(1); Constitutional Law  278(1); Constitutional Law  278(1.1)

Settlement agreement between Department of Environmental Quality (DEQ) and city and city's landfill operator in compliance order action was "final decision or order" of Secretary of DEQ, appealable by intervenors in case, as aggrieved parties, where agreement contained legally enforceable rights and obligations applicable to parties subject to agreement, only difference between settlement agreement and typical final order was that terms of settlement were agreed to, and decision determined merits of controversies between parties. [Matter of Recovery I, Inc., App. 1 Cir.1993, 622 So.2d 272](#), rehearing denied, writ not considered [629 So.2d 383](#), writ denied [629 So.2d 383](#). Administrative Law And Procedure  704; Environmental Law  661

"Final decision or order" of Secretary of Department of Environmental Quality (DEQ) for purposes of appeal by aggrieved person, is not defined by reference to Rule 7 of Environmental Control Commission, [article 3077 of the Louisiana Civil Code](#), and section 951(3) of Louisiana Administrative Procedure Act; instead, term is defined by Court of Appeals [Marine Shale Processors, Inc.](#), decision. [Matter of Recovery I, Inc., App. 1 Cir.1993, 622 So.2d 272](#), rehearing denied, writ not considered [629 So.2d 383](#), writ denied [629 So.2d 383](#). Administrative Law And Procedure  704; Environmental Law  661

16. ---- Hearing requirement, decision or order

Unless some provision in the constitution or statutes requires notice and a hearing, an agency disposition is not a "decision" or "order" within the meaning of provision of the Administrative Procedure Act (APA) defining "adjudication" as a proceeding resulting in a decision or order. [Government Computer Sales, Inc. v. State Through Div. of Admin., App. 1 Cir.1998, 98 0224 \(La.App. 1 Cir. 9/25/98\)](#), [720 So.2d 53](#); [Parochial Employee's](#)

Retirement System of Louisiana v. Caddo Parish Com'n, App. 1 Cir.1996, 95 0243 (La.App. 1 Cir. 3/15/96), [676 So.2d 105](#), writ denied [96-0955 \(La. 5/31/96\)](#), [673 So.2d 1031](#); [Ogburn v. City of Shreveport, App. 2 Cir.1993, 614 So.2d 748](#), writ denied [619 So.2d 547](#).

Since Bank Merger Act [[12 U.S.C.A. § 1828\(c\)](#)] did not require that decision of Commissioner of National Institutions of Louisiana about bank merger be determined on the record after notice and opportunity for agency hearing, commissioner's failure to issue cease and desist order opposing the merger was not a "decision" or "order" within meaning of this section. [Vial v. First Commerce Corp., E.D.La.1983, 564 F.Supp. 650](#). Banks And Banking  67

For purposes of Louisiana Administrative Procedure Act (LAPA), "decision" or "order" that must be afforded deference by courts is disposition required by constitution or statute to be made only after notice and hearing; unless statute or constitution requires hearing and notice, agency action is not adjudication entitled to deference. [Potier v. Commissioner of Ins., App. 1 Cir.1999, 753 So.2d 305, 1998-1063 \(La.App. 1 Cir. 11/10/99\)](#), rehearing denied, writ denied [760 So.2d 345, 2000-0319 \(La. 4/20/00\)](#). Administrative Law And Procedure  781

"Decision" or "order" is, for purposes of Administrative Procedure Act, a disposition required by Constitution or statute to be made only after notice and hearing. [Parochial Employee's Retirement System of Louisiana v. Caddo Parish Com'n, App. 1 Cir.1996, 676 So.2d 105, 1995-0243 \(La.App. 1 Cir. 3/15/96\)](#), writ denied [673 So.2d 1031, 1996-0955 \(La. 5/31/96\)](#). Administrative Law And Procedure  470

Racing stewards' suspension of horse trainer did not result in a decision or order within the meaning of the Administrative Procedure Act ([R.S. 49:950](#) et seq.) since suspension was not a disposition required to be determined on the record after notice and opportunity for a hearing. [Olbrych v. Louisiana State Racing Com'n, App. 4 Cir.1984, 451 So.2d 1253](#). Theaters And Shows  3.10

Provision of [R.S. 49:955](#) for hearing in "adjudication" creates right to hearing only in an adjudication, i.e., only when agency action is one for formulation of "decision or order," and absent any provision in Constitution or statutes requiring hearing, agency disposition is not "decision" or "order" as defined for purposes of the Administrative Procedure Act. [Delta Bank & Trust Co. v. Lassiter, Sup.1980, 383 So.2d 330](#). Administrative Law And Procedure  470

17. ---- Right to review, decision or order

District court did not have judicial review of disciplinary action of Department of Public Safety and Corrections suspending inmate's telephone and canteen privileges; Department's order did not constitute a "decision or order" or an "adjudication" within meaning of Administrative Procedure Act (APA). (Per Gonzales, J., with one Judge concurring and one Judge concurring in the result.) [Johnson v. Department of Corrections, App. 1 Cir.1999, 738 So.2d 1165, 1997-1891 \(La.App. 1 Cir. 6/25/99\)](#). Prisons  13(10)

For purposes of determining availability of judicial review under state Administrative Procedure Act, "decision or order" is disposition required by constitution or statute to be made only after notice and hearing. [Jones v. Southern University and A & M College System Through Bd. of Sup'rs, App. 1 Cir.1997, 693 So.2d 1265, 1996-1430 \(La.App. 1 Cir. 5/9/97\)](#). Administrative Law And Procedure  701

For purpose of determining availability of review under state Administrative Procedure Act of university's denial of professor's tenure application, tenure process did not constitute "decision or order" and was therefore not reviewable product of adjudication within meaning of statute; terms of professor's employment secured no interest in reemployment beyond probationary four year period, and professor had no other legitimate claim of entitlement to tenured position. [Jones v. Southern University and A & M College System Through Bd. of Sup'rs, App. 1 Cir.1997, 693 So.2d 1265, 1996-1430 \(La.App. 1 Cir. 5/9/97\)](#). Administrative Law And Procedure  701; Colleges And Universities  8.1(6.1)

Appeal from Department of Environmental Quality (DEQ) action is allowed only from proceeding that results in

disposition that is required by constitution or statute to be made after hearing and notice. [Matter of Carline Tank Services, Inc., App. 1 Cir.1993, 626 So.2d 358](#), rehearing denied [627 So.2d 669](#). Administrative Law And Procedure  701; Environmental Law  637

Third party which opposed grant of air emission permit for barge cleaning operation did not have any right to appeal validity of granting of permit since action of DEQ was not, by definition, a decision or order. [Matter of Carline Tank Services, Inc., App. 1 Cir.1993, 626 So.2d 358](#), rehearing denied [627 So.2d 669](#). Administrative Law And Procedure  701; Environmental Law  642

18. Rule--In general

Regulation of Department of Public Safety and Corrections, authorizing referral to "Special Court" in prison disciplinary matters, was not adopted in compliance with Louisiana Administrative Procedure Act, and thus regulation did not preempt Disciplinary Rules for Adult Prisoners. [Rivera v. State, App. 1 Cir.1998, 727 So.2d 609, 1998-0507, 1998-0508](#) (La.App. 1 Cir. 12/, 1998-0507 La.App. 1 Cir. 12/28/98, writ denied [740 So.2d 617, 1999-0289 \(La. 3/26/99\)](#)). Prisons  13(6)

Regulation of Department of Public Safety and Corrections authorizing forfeiture of good time was not adopted in compliance with Louisiana Administrative Procedure Act, and thus regulation was invalid. [Rivera v. State, App. 1 Cir.1998, 727 So.2d 609, 1998-0507, 1998-0508](#) (La.App. 1 Cir. 12/, 1998-0507 La.App. 1 Cir. 12/28/98, writ denied [740 So.2d 617, 1999-0289 \(La. 3/26/99\)](#)). Prisons  15(5)

Bulletin issued by Louisiana Insurance Rating Commission (LIRC) which directed that insurers file for approval all rates for wrap-up programs was "rule" which could only be issued in accordance with rulemaking requirements of Administrative Procedure Act (LAPA) rather than mere investigatory order or interpretive directive; bulletin had general applicability to all insurers issuing wrap-up insurance programs, contained LIRC's interpretation of definition of wrap-up insurance and had effect of interpreting LIRC's substantive policy regarding use of wrap-up insurance policies in Louisiana; bulletin contained substantive criteria which were to be considered in filing wrap-up programs for approval. [Liberty Mut. Ins. Co. v. Louisiana Ins. Rating Com'n, App. 1 Cir.1997, 696 So.2d 1021, 1996-0793 \(La.App. 1 Cir. 2/14/97\)](#), rehearing denied, writ denied [706 So.2d 451, 1997-2069 \(La. 12/19/97\)](#), writ denied [706 So.2d 452, 1997-2062 \(La. 12/19/97\)](#). Insurance  1544(1)

District court had subject matter jurisdiction to entertain an action for a declaratory judgment regarding constitutionality of rules promulgated by Department of Environmental Quality, as a "rule" was not a "final decision or order" exempt from judicial review provisions of the Administrative Procedure Act. [Louisiana Chemical Ass'n v. Department of Environmental Quality, App. 1 Cir.1991, 577 So.2d 230](#). Declaratory Judgment  204

Interpretation of [R.S. 18:1505.2](#) as contained in Supervisory Committee Opinion 98-232, incorporating a primary purpose test and adopting the standards of the Federal Election Committee, constitute "rules" in accordance with [La. R.S. 18:1511.2](#) and La. R.S. 49:951 requiring adoption and promulgation in accordance with the Administrative Procedure Act, [R.S. 49:950](#) et seq. Op.Atty.Gen., No. 99-130, April 14, 1999.

19. ---- Guide to conduct, rule

Policy of state penitentiary that an inmate must specifically request that tape recording from disciplinary proceeding be preserved for possible judicial review was invalid and unenforceable, on ground that policy governed conduct or action and, thus constituted a rule that was not properly promulgated in compliance with procedural rule-making requirements of Administrative Procedure Act (APA). [Hills v. Cain, App. 1 Cir.2000, 764 So.2d 1048, 1999-2324 \(La.App. 1 Cir. 3/31/00\)](#). Prisons  13(10)

Letter from Department of Revenue and Taxation to three oil refineries regarding method of valuation used in computing use tax owed on use of refinery gas and coke-on-catalyst represented "rule" subject to rulemaking procedures of Louisiana Administrative Procedure Act, rather than mere clarification of Department's position, where letter adopted entirely new method of computing taxes at issue; letter directed refineries to disregard previous

rules and regulations, it was of general applicability, and it contained Department's interpretation of substantive law and had effect of implementing substantive law. [Star Enterprise v. State Through Dept. of Revenue and Taxation, App. 1 Cir.1996, 676 So.2d 827, 1995-1980, 1995-1981, 1995-1982](#) (La.App., writ denied [689 So.2d 1383, 1996-1983 \(La. 3/14/97\)](#)). Administrative Law And Procedure  382.1; Taxation  3635

Louisiana Patient's Compensation Fund (PCF) rule prohibiting payment to relatives of patient for care or custodial services was a "statement, guide, or requirement for conduct or action" and did not regulate only the internal management of the agency, and thus adoption of rule had to be in accordance with applicable provisions of Administrative Procedure Act. [Bower v. Schumpert Medical Center, App. 2 Cir.1993, 618 So.2d 600](#). Administrative Law And Procedure  392.1; Insurance  1058

Provisions of the "Final Report: Louisiana Statewide Integrated Solid Waste Management Plan" and the "Guidance Document for Local Governments" issued by the Louisiana Department of Environmental Quality, March 1, 1993 and September 1, 1993, providing for the creation and approval of solid waste regions in Louisiana, and the submission and review of Solid Waste Management Plans by such regions are "rules" within the meaning of R.S. 49:951(6) which must be formally adopted pursuant to provisions of the Louisiana Administrative Procedures Act (R.S. 49:951 et.seq.) and are subject to legislative oversight review. Op.Atty.Gen. No. 93-662, Feb. 3, 1994.

20. ---- Internal management, rule

For purpose of determining availability of review under state Administrative Procedure Act of university's denial of professor's tenure application, tenure process did not constitute "rule" within meaning of statute; management decisions involved in determining whether professor had displayed qualities necessary to attain rank of tenure pertained exclusively to internal management of university and represented type of internal process not suitable for judicial review. [Jones v. Southern University and A & M College System Through Bd. of Sup'rs, App. 1 Cir.1997, 693 So.2d 1265, 1996-1430 \(La.App. 1 Cir. 5/9/97\)](#). Administrative Law And Procedure  383; Colleges And Universities  8.1(6.1)

University grievance procedure related only to regulation of internal management and was not binding rule subject to formalities of Administrative Procedures Act. [Mix v. University of New Orleans, App. 4 Cir.1992, 609 So.2d 958](#), writ denied [612 So.2d 83](#). Administrative Law And Procedure  383; Colleges And Universities  8.1(4.1)

The Administrative Procedure Act ([R.S. 49:950](#) et seq.) expressly excludes, in par. (6) of this section, its application to matters such as faculty grievance proceedings conducted at colleges and universities. [Grace v. Board of Trustees for State Colleges and Universities, App. 1 Cir.1983, 442 So.2d 598](#), writ denied [444 So.2d 1223](#). Colleges And Universities  8(1)

LSA-R.S. 49:951, LA R.S. 49:951

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Louisiana Revised Statutes

Title 49. State Administration

 [Chapter 13.](#) Administrative Procedure ([Refs & Annos](#))

→ § 952. Public information; adoption of rules; availability of rules and orders

Each agency which engages in rulemaking shall:

- (1) File with the Department of the State Register a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.
- (2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.
- (3) Make available for public inspection all rules, preambles, responses to comments, and submissions and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions and publish an index of such rules, preambles, responses to comments, submissions, statements, and interpretations on a regular basis.
- (4) Make available for public inspection all final orders, decisions, and opinions.

CREDIT(S)

Added by Acts 1966, No. 382, § 2, eff. July 1, 1967. Amended by Acts 1978, No. 252, § 1; Acts 1979, No. 578, § 1, eff. July 18, 1979; [Acts 1990, No. 1085, § 1](#); [Acts 1993, No. 386, § 1](#).

HISTORICAL AND STATUTORY NOTES

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The 1978 amendment substituted "File with the Department of the State Register" for "Publish" in paragraph (1), and deleted "including a description of all forms and instructions used by the agency" at the end of paragraph (2).

The 1979 amendment rewrote the introductory paragraph, which had read: "In addition to other rule making requirements imposed by law, each agency shall".

The 1990 amendment, in par. (3), added "and publish an index of such statements and interpretations on a regular basis".

The 1993 amendment, in par. (3), inserted ", preambles, responses to comments, and submissions" following "all rules", inserted "rules, preambles, responses to comments, submissions," following "index of such", and inserted a comma following "statements".

Uniform Law:

This section is similar to § 2 of the Uniform State Administrative Procedure Act. See 15 Uniform Laws Annotated, Master Edition.

LSA-R.S. 49:952, LA R.S. 49:952

Current through all 2005 Regular and First Extraordinary Session Acts

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Louisiana Revised Statutes

Title 49. State Administration

 [Chapter 13.](#) Administrative Procedure ([Refs & Annos](#))

→ § 953. Procedure for adoption of rules

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date

of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

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

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

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

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

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

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

B. (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided in Subsection A of this Section and within five days of adoption states in writing to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Department of the State Register, its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The provisions of this Paragraph also shall apply to the extent necessary to avoid sanctions or penalties from the United States, or to avoid a budget deficit in the case of medical assistance programs or to secure new or enhanced federal funding in medical assistance programs. The agency statement of its reason for finding it necessary to adopt an emergency rule shall include specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public health, safety, or welfare, or specific reasons why the emergency rule meets other criteria provided in this Paragraph for adoption of an emergency rule.

(2) Notice of the emergency rule shall be mailed to all persons who have made timely request of the agency for

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

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

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

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

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

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

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

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

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

proposed rules and the corresponding federal law or regulation is a proposed fee, the Department of Environmental Quality shall not be required to adopt and promulgate such proposed rule or set of proposed rules separately. For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

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

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

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

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

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

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

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

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

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

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

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

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

fully all written comments and submissions respecting the proposed rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CREDIT(S)

Added by Acts 1966, No. 382, § 3, eff. July 1, 1967. Amended by Acts 1974, No. 284, § 1, eff. Jan. 1, 1975; Acts 1975, No. 730, § 1; Acts 1976, No. 279, § 1; Acts 1978, No. 252, § 1; Acts 1980, No. 392, § 1; Acts 1983, No. 713, § 1; Acts 1984, No. 953, § 1; Acts 1985, No. 371, § 1, eff. July 9, 1985; Acts 1986, 1st Ex.Sess., No. 11, § 1, eff. Jan. 1, 1987; [Acts 1987, No. 853, § 1](#); [Acts 1990, No. 1063, § 1](#); [Acts 1990, No. 1085, § 1, eff. July 31, 1990](#); [Acts 1991, No. 104, § 1, eff. June 30, 1991](#); [Acts 1993, No. 119, § 1](#); [Acts 1993, No. 274, § 1](#); [Acts 1993, No. 386, § 1](#); [Acts 1995, No. 512, § 1](#); [Acts 1995, No. 642, § 1](#); [Acts 1995, No. 1057, § 1, eff. June 29, 1995](#); [Acts 1996, 1st Ex.Sess., No. 36, § 3, eff. May 7, 1996](#); [Acts 1999, No. 1183, § 1](#).

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

As set forth in Acts 1966, No. 382, § 3, this section read:

"(A) Prior to the adoption, amendment, or repeal of any rules, the agency shall:

"(1) Give at least ten days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request of the agency for advance notice of its rule-making proceedings and shall be published at least once in the official Louisiana journal;

"(2) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument must be granted if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within thirty days thereafter, shall issue a concise statement of the principal reasons for and against its adoption.

"(B) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than ten days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period of not longer than 120 days, but the adoption of an identical rule under subsections

(A)(1) and (A)(2) of this Section is not precluded.

"(C) No rule adopted on or after July 1, 1967 is valid unless adopted in substantial compliance with this Section, provided, however, that the inadvertent failure to mail notice to any person or agency as provided in this Section shall not invalidate any rule adopted hereunder. A proceeding under [R.S. 49:963](#) to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within two years from the effective date of the rule.

"(D) An interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within ninety days after submission of a petition, the agency shall either deny the petition in writing, stating reasons for the denial, or shall initiate rule-making proceedings in accordance with this Section."

In this section as enacted in 1966, stylistic and capitalization changes were made; "adopted on or after July 1, 1967" was substituted for "hereafter adopted" in subsec. C; and reference to "Section 13 of this Act" in the second sentence of subsec. C was changed to refer to [R.S. 49:963](#), all pursuant to the statutory revision authority of the Louisiana State Law Institute.

The 1974 amendment changed the notice period in par. (A)(1) and subsec. B from "ten days" to "twenty days"; added an additional requirement of publication of proposed rules in the Louisiana Register by inserting "both" after "published at least once" in the second sentence of par. (A)(1), adding "and the Louisiana Register" to the same sentence, and adding a third sentence to the same paragraph, which read: "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 first page of said issue."; inserted, in subsec. B, "to the governor of the state of Louisiana, the attorney general of Louisiana and the division of administration,"; deleted the second sentence of subsec. B, which read: "The rule may be effective for a period of not longer than 120 days, but the adoption of an identical rule under subsections (A)(1) and (A)(2) of this Section is not precluded"; substituted "January 1, 1975" for "July 1, 1967" in the first sentence of subsec. C; changed "Section" to "chapter" in subsections C and D; and changed "rule-making" to "rule making" throughout the section.

The 1975 amendment changed the notice period in par. (A)(1) and subsec. B from "twenty days" to "fifteen days"; and added a subsec. E, which read:

"E. When a rule is adopted, amended, or repealed in compliance with federal regulations, the adopting agency's notice of intent, if such is necessary, 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."

The 1975 amendment also changed "journal" to "Journal" in par. (A)(1); and changed "rule making" to "rule-making" throughout the section.

In this section as amended in 1975, capitalization and punctuation changes were made pursuant to the statutory revision authority of the Louisiana State Law Institute.

The 1976 amendment deleted from the second sentence of par. (A)(2) "or" following "or agency"; and added to the end of the same sentence "or by a committee of either house of the legislature to which the proposed rule change has been referred under the provisions of Section 967 of this Title".

The 1978 amendment, by Acts 1978, No. 252, § 1, rewrote paragraph (A)(1), which had previously read:

"(1) Give at least fifteen days notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request of the agency for advance notice of its rule-making proceedings and shall be published at least once in both the official Louisiana Journal and Louisiana Register. 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 first page of said issue."

As rewritten in 1978, par. (A)(1) read:

"(1) Give at least fifteen days notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the name of the person within the agency who has the responsibility for responding to inquiries about the intended action, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be published at least once in the Louisiana Register. Notice of the intent of an agency to adopt, amend or repeal any rule shall be mailed to all persons who have made timely request of the agency for such notice, which notice shall be mailed at the earliest possible date, and in no case later than the date when the proposed rule change is submitted to the Louisiana Register. 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."

The 1978 amendment also substituted "Section 968" for "Section 967" in paragraph (A)(2); in subsection B substituted "Department of the State Register" for "Division of Administration," and added the provisions concerning mailing of notice and publishing in The Louisiana Register; and deleted the prior subject matter of subsection C, which had read:

"No rule adopted on or after January 1, 1975, is valid unless adopted in substantial compliance with this Chapter, provided, however, that the inadvertent failure to mail notice to any person or agency as provided in this Section shall not invalidate any rule adopted hereunder. A proceeding under [R.S. 49:963](#) to contest any rule on the ground of noncompliance with the procedural requirements of this Chapter must be commenced within two years from the effective date of the rule."

Further, the 1978 amendment redesignated the prior subject matter of subsections D and E as subsections C and D, respectively; in subsection C substituted "adoption" for "promulgation," and substituted "considerations" for "consideration"; and in subsection D deleted "if such is necessary" following "notice of intent."

The Title of Acts 1978, No. 357, reflected an intent to amend par. (2) of subsec. A, but the text of the Act contained no such amendment.

The 1980 amendment, in par. (A)(1), added to the list of required contents of the notice the provisions concerning fiscal and economic impact statements, added "and the approved fiscal and economic impact statements, as provided for in this Subsection," and added "and statements", and added par. (3) to subsec. A.

The 1983 amendment, in par. (A)(1), rewrote the first sentence, which had read: "Give at least fifteen days notice of its intended action.", and in the third sentence inserted "and shall be submitted to the Louisiana Register at least sixty days prior to the date the agency will take action on the rule"; in par. (A)(2) substituted "[R.S. 49:968](#)" for "Section 968 of this Title", and inserted the second sentence; and in subsec. B, inserted "either", substituted "or federal regulations require" for "requires", and substituted "shorter notice than that provided in R.S. 49:953(A)" for "fewer than fifteen days notice".

The subparagraph and item designations in subsec. A, and the paragraph designations in subsec. B of this section as amended in 1983 were made pursuant to the statutory revision authority of the Louisiana State Law Institute.

The 1984 amendment, in subpar. (A)(2)(a), inserted a comma following "orally" in the first sentence, and inserted ", within ten days after publication of the rule as provided in this Subsection," in the second sentence; in subpar. (A)(2)(b), substituted "eighteen" for "fifteen" in the first sentence; and in par. (B)(1), deleted "either" preceding "an imminent" and substituted "requires" for "or federal regulations require" in the first sentence, and added the second sentence.

The 1985 amendment deleted "the" preceding "adoption" in the introductory clause of subsec. A; and inserted the first sentence of subpar. (A)(2)(b).

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in subpar. (A)(2)(b) as amended by Acts 1985, No. 371, "Make" was substituted for "The agency shall make" at the beginning of the first sentence; and "Subparagraph" was substituted for "Paragraph" in the second sentence.

The 1986 amendment added a new subsec. E.

The 1987 amendment, in subpar. (A)(2)(b), substituted "Paragraph" for "Subparagraph"; and added subpar. F relating to the Department of Environmental Quality.

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in subsec. F as enacted in 1987, pars. (1) to (4) were designated.

Acts 1990, No. 1063, § 1, in subpar. (A)(1)(a), following "its intended action", substituted "and a copy of the proposed rules at least ninety" for "at least fifty"; designated the existing subpar. (A)(1)(b) as item (A)(1)(b)(i); in item (A)(1)(b)(i), following "shall be submitted", inserted "with a full text of the proposed rule"; substituted "one hundred days" for "sixty days"; and added item (A)(1)(b)(ii).

Acts 1990, No. 1085, § 2, eff. July 31, 1990 substituted "ninety days" for "fifty days" in the introductory paragraph of subpar. (A)(1)(a); inserted new item (vi) in subpar. (A)(1)(a) and shifted "; and" from the end of item (iv) to the end of item (v); substituted "one hundred days" for "sixty days" in subpar. (A)(1)(b); inserted "ten days after" preceding "the date when the proposed rule change" in subpar. (A)(1)(c); deleted a comma following "if requested" and substituted "twenty days" for "ten days" in the second sentence of subpar. (A)(2)(a); and rewrote subpar. (A)(2)(b), which had read:

"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 later than eighteen 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 submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within thirty days thereafter, shall issue a concise statement of the principal reasons for and against its adoption."

Act 1085 also, in par. (B)(1), inserted "the speaker of the House of Representatives, the president of the Senate," in the first sentence and added ", or to avoid a budget deficit in the case of medical assistance programs or to secure new or enhanced federal funding in medical assistance programs" to the second sentence.

Section 2 of Acts 1990, No. 1085, effective July 31, 1990 repealed a subsec. F of this section which had read:

"F. (1) Notwithstanding any other provision of this Chapter to the contrary, the Department of Environmental Quality may receive and consider additional comments regarding any proposed regulation that is not required for compliance with federal regulations, if requested in accordance with R.S. 49:953(A)(2)(a), for up to thirty days after the hearing provided for in R.S. 49:953(A)(2). The department shall consider fully all written and oral comments submitted on the proposed regulation and shall provide to the legislative oversight subcommittees at least fifteen days prior to the oversight hearing a statement summarizing the reasons for the proposed regulation, the estimated economic impact on the regulated community, any significant comments submitted, and a statement concerning whether or not the department intends to revise the proposed regulation to incorporate any of the comments submitted.

"(2) If the department determines that substantive revisions to the proposed regulation are to be made as a result of the submission of additional comments, the department shall publish a notice of the proposed revisions in the Louisiana Register prior to seeking approval of the revised proposed regulation from the legislative oversight subcommittee.

"(3) Except for time limitations on the conduct of hearings and on determinations concerning a proposed rule, the provisions of [R.S. 49:968\(D\) and \(E\)](#) shall govern the conduct of legislative oversight subcommittee hearings pursuant to this Subsection. The legislative oversight subcommittee hearing on the proposed revised regulation may constitute the agency hearing required by [R.S. 49:968\(H\)\(2\)](#); in such case, time and notice for such hearing shall be in accordance with this Subsection, and the statement required by this Subsection shall satisfy the reporting requirement in [R.S. 49:968\(H\)\(2\)](#).

"(4) This Subsection shall not apply to any rule or order of the Department of Environmental Quality relative to any emergency, permit, or enforcement action."

Both Acts 1990, No. 1085, § 1, eff. July 31, 1990 and Acts 1990, No. 1063, § 1 amended this section. Pursuant to the statutory revision authority of the Louisiana State Law Institute, the amendments were merged by printing the amendment as set forth in Act 1085 and printing subpar. (A)(1)(a) and items (A)(1)(b)(i) and (A)(1)(b)(ii) as set out in Act 1063. Also pursuant to the statutory revision authority of the Louisiana State Law Institute, a comma was deleted following "writing" in the first sentence of par. (B)(1).

The 1991 amendment rewrote the third sentence of subpar. (A)(2)(b) as the third and fourth sentences of the same subparagraph. Prior to the 1991 amendment, subpar. (A)(2)(b) read:

"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 submissions respecting the proposed rule and if requested to do so by an interested person shall issue a concise statement of the principal reasons for and against its adoption at least five days prior to the legislative oversight subcommittee hearing held on the proposed rule."

Acts 1993, No. 119, § 1 rewrote the fourth sentence of subpar. (A)(2)(b) and the second sentence of par. (B)(2). Prior to being rewritten, the sentences read:

"If requested to do so by an interested person the agency shall issue a concise statement of the principal reasons for and against adoption of any amendments or changes suggested in the written or oral submissions at least five days prior to the day the legislative oversight subcommittee hearing is held on the proposed rule, and if no legislative oversight hearing is held, the agency shall issue a concise statement of such reasons to any requesting person not later than the time of publication of the final rule.";

"Any emergency rule shall be published in full in the Louisiana Register with the reasons for the finding of the emergency submitted by the agency."

Acts 1993, No. 274, § 1 enacted a new subsec. F, providing a procedure for the adoption of agency rules; a prior subsec. F was repealed by Acts 199, No. 1985, § 2, eff. July 31, 1990. See notes, ante.

Acts 1993, No. 386, § 1, in subsec. A, added item (1)(a)(vii); and in par. (2), subpar. (a), inserted "comments," following "views," and deleted a comma following "orally", both in the first sentence, and rewrote subpar. (b), which had provided:

"(b) 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 submissions respecting the proposed rule. If requested to do so by an interested person the agency shall issue a concise statement of the principal reasons for and against adoption of any amendments or changes suggested in the written or oral submissions at least five days prior to the day the legislative oversight subcommittee hearing is held on the proposed rule, and if no legislative oversight hearing is held, the agency shall issue a concise statement of such reasons to any requesting person not later than the time of publication of the final rule."

In subpar. (A)(2)(b), the first three sentences from Act 386 were designated as item (i), the remaining sentences from Act 386 were designated as item (ii), and the last sentence from Act 119 was designated as item (iii), pursuant to the statutory revision authority of the Louisiana State Law Institute.

Pursuant to the same authority, at the end of the second sentence of par. (2) of subsec. F as enacted in 1993, "R.S. 49:953(A)(1)(b)(ii)" was changed to "Item (A)(1)(b)(ii) of this Section".

Acts 1995, No. 512, § 1, added pars. (F)(3) and (F)(4), setting forth procedures for adoption of rules identical to federal laws or regulations and excepting rules creating or increasing fees, respectively.

Acts 1995, No. 642, § 1 added subsec. (G), requiring the Department of Environmental Quality to publish a report or summary prior to notice of publication promulgation of any policy, standard, or final regulation under the Louisiana Environmental Quality Act.

Acts 1995, No. 1057, in subsec. B, in par. (1), in the first sentence, substituted "Subsection A of this Section" for "R.S. 49:953(A)" and added the third sentence, specifying the required contents of the agency statement of its reason for finding it necessary to adopt an emergency rule; and added pars. (3) and (4), providing that the validity of an emergency rule or fee may be determined in an action for declaratory judgment in district court and providing for review of an emergency rule or fee by an oversight subcommittee, respectively.

Acts 1995, No. 1057, § 1, inter alia, amended subsec. B of this section. Section 2 of Act 1057 provided for an effective date of June 29, 1995, and also provided, in pertinent part:

"...However, the provisions of this Act shall not be applicable to the Department of Health and Hospitals until January 8, 1996."

In this section as amended in 1995, in subpar. (F)(3)(i) reference to "R.S. 49:953(A)(2)(b)(ii) and (iii)" was changed to refer to "Items A(2)(b)(ii) and (iii) of this Section"; in par. (F)(4) reference to "R.S. 49:953(F)(3)" was changed to refer to "Paragraph (3) of this Subsection"; and, in subpar. (G)(2)(d), reference to "R.S. 49:953(B)" was changed to refer to "Subsection B of this Section", all such changes pursuant to the statutory revision authority of the Louisiana State Law Institute.

Acts 1996, 1st Ex.Sess., No. 36, § 3, effective May 7, 1996, three times in subpars. (F)(3)(h) and (i), substituted "House Committee on the Environment" for "House Committee on Natural Resources" and also deleted a comma which had followed "[R.S. 49:968](#)" in subpar. (F)(3)(i).

Acts 1999, No. 1183, § 1 added item (A)(1)(a)(viii), relating to a statement concerning the impact on family formation, stability, and autonomy.

Uniform Law:

This section is similar to § 3 of the Uniform State Administrative Procedure Act. See 15 Uniform Laws Annotated, Master Edition.

LSA-R.S. 49:953, LA R.S. 49:953

Current through all 2005 Regular and First Extraordinary Session Acts