
DIGEST

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HB 600 Original

2015 Regular Session

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

Present law relative to the Administrative Procedure Act (APA), defines "rule" as each agency statement, guide, or requirement for conduct or action (exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency) which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. Provides that "rule" includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. Provides that a rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. Specifies that the term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

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

Present law provides that no rule adopted on or after Jan. 1, 1975, is valid unless adopted in substantial compliance with the APA. Further provides, relative to judicial review of the validity or applicability of rules, that the court shall declare the rule invalid or inapplicable if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without substantial compliance with required rulemaking procedures.

Further provides relative to legislative oversight over rules that the failure of a subcommittee to conduct a hearing or to make a determination regarding any rule proposed for adoption, amendment, or repeal shall not affect the validity of a rule otherwise adopted in compliance with the APA.

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

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

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

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

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

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

Effective July 1, 2015.

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