

2018 Regular Session

HOUSE BILL NO. 189

BY REPRESENTATIVE WRIGHT

ADMINISTRATIVE PROCEDURE: Provides for processes, including public comment, to identify agency rules that may be contrary to law, outdated, unnecessary, overly complex, or burdensome

1 AN ACT

2 To amend and reenact R.S. 49:953(C) and 968(K) and (L), relative to administrative
3 procedure; to provide for processes to review agency rules; to require agencies to
4 conduct periodic hearings to have public comment on rules; and to require reports
5 to the appropriate committees of the legislature regarding such comment; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 49:953(C) and 968(K) and (L) are hereby amended and reenacted to
9 read as follows:

10 §953. Procedure for adoption of rules; agency rule review

11 * * *

12 C.(1) An interested person may petition an agency requesting the adoption,
13 amendment, or repeal of a rule. Each agency shall prescribe by rule the form for
14 petitions and the procedure for their submission, considerations, and disposition.
15 Within ninety days after submission of a petition, the agency shall either deny the
16 petition in writing, stating reasons for the denial, or shall initiate ~~rule-making~~
17 rulemaking proceedings in accordance with this Chapter. Each agency with an
18 appropriated operating budget of five million dollars or more shall include on its

1 website a description of the procedure for submitting petitions in accordance with
2 this Paragraph.

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7 outdated, unnecessary, overly complex, or burdensome.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

12 (b)The notice of the meeting shall contain:

13 (i) The name of the agency.

14 (ii) The purpose of the meeting.

15 (iii) The time and place of the meeting.

16 (iv) The process for requesting reasonable accommodations for persons with
17 disabilities.

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

21 (c) The agency shall consider fully all written and oral comments and
22 submissions concerning its rules. The agency shall advise persons who provide oral
23 comments that in order to be submitted to the legislative oversight committees,
24 comments must be submitted to the agency in writing. The agency shall issue a
25 response to each submission describing the principal advantages and disadvantages
26 of the rule changes suggested in the submission. In addition, the agency may prepare
27 a statement explaining the basis and rationale for the rule in question identifying the
28 data and evidence upon which the rule is based. All such statements and responses
29 to submissions shall be furnished to the respective legislative oversight committees

1 in the manner provided by R.S. 49:968(K) and shall be made available to interested
2 persons as soon as possible but no later than one day following their submission to
3 the appropriate legislative oversight committees.

4 * * *

5 §968. Review of agency rules; fees

6 * * *

7 K.(1) Each year, no later than thirty days prior to the beginning of the regular
8 session of the legislature, each agency ~~which has proposed the adoption, amendment,~~
9 ~~or repeal of any rule or the adoption, increase, or decrease of any fee during the~~
10 ~~previous year,~~ shall submit a report to the appropriate committees as provided for in
11 Subsection B of this Section. This report shall contain a statement of the action
12 taken by the agency with respect to adoption, amendment, or repeal of each rule
13 proposed for adoption, amendment, or repeal during the previous year and a report
14 of the action taken by the agency with respect to any proposed fee adoption, increase,
15 or decrease during the previous year.

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

20 L. After submission of the report required by Subsection K of this Section to
21 the standing committee, a public hearing may be held by the committee for the
22 purpose of reviewing the report with representatives of the ~~proposing~~ agency.

23 * * *

24 Section 2. This Act shall become effective on January 1, 2019.

DIGEST

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

HB 189 Engrossed

2018 Regular Session

Wright

Abstract: Requires agencies to conduct periodic public hearings for the purpose of allowing the public to comment on agency rules that may be contrary to law, outdated, unnecessary, overly complex, or burdensome and to require agencies to include specified information regarding such in annual reports to the appropriate committees of the legislature.

Present law (Administrative Procedure Act) provides procedures for the adoption, amendment, and repeal of rules by executive branch agencies and for legislative oversight regarding such rule changes.

Present law (R.S. 49:953(C)) further provides that an interested person may petition an agency requesting rule changes. Requires each agency to prescribe by rule the form for petitions and the procedure for submission, consideration, and disposition. Requires the agency, within 90 days after submission of a petition, to either deny the petition in writing, stating reasons for the denial, or initiate rulemaking proceedings. Proposed law requires each agency with an appropriated operating budget of \$5 million or more to include a description of the procedure for submitting petitions on its website.

Proposed law further requires each agency, at least once prior to Jan. 1, 2020, and at least once every six-year period thereafter, to conduct a public hearing for the purpose of allowing any interested person the opportunity to comment on any rule of the agency which the person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome. Requires the agency to give at least 30 days notice of the meeting by publishing it in the La. Register, sending notice electronically to the appropriate legislative oversight committees, and providing notice of the meeting to all persons who have made timely request of the agency. Requires the notice to contain (a) the agency's name; (b) the purpose of the meeting; (c) the time and place of the meeting; (d) the process to request reasonable accommodations for persons with disabilities; and (e) the name and contact information of the person within the agency to whom interested persons should direct their views regarding the agency's rules, if in writing, and the deadline for submission of written comments.

Proposed law requires the agency to consider fully all comments and submissions concerning its rules. Requires the agency to advise persons who provide oral comments that in order to be submitted to the legislative oversight committee, comments must be submitted in writing. Requires the agency to issue a response to each submission describing the principal advantages and disadvantages of the rule changes suggested in the submission. Further allows the agency to prepare a statement explaining the basis and rationale for the rule in question identifying the data and evidence upon which the rule is based. Requires all submissions, responses, and statements to be furnished to the respective legislative oversight committees in the annual report of rulemaking (see present and proposed law—R.S. 49:968(K) below) and to be made available to interested persons as soon as possible but no later than one day following submission to the appropriate legislative oversight committees.

Present law (R.S. 49:568(K) and (L)) requires each agency which has proposed rule or fee changes during the previous calendar year to submit a report, 30 days prior to the beginning of the regular session, to the appropriate legislative committees containing a statement of the action taken by the agency with respect to those changes. Specifies that the committee may hold a public hearing for the purpose of reviewing the report with representatives of the agency.

Proposed law provides instead that each agency shall submit a report on rulemaking activities during the previous calendar year, no later than 30 days prior to the beginning of the regular session, to the appropriate legislative committees and further provides that such report shall also contain a recitation of each petition and submission received by the agency pursuant to present and proposed law (explained above) during the previous calendar year, if any, and the agency's response to each petition and submission and shall contain the report of the public comments and agency response relative to the public hearing required by proposed law (explained above).

Effective Jan. 1, 2019.

(Amends R.S. 49:953(C) and 968(K) and (L))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the original bill:

1. Remove provisions requiring an agency to review its rules within a six-year period and to report on its progress and recommendations in an annual report to the legislative oversight committees.
2. Change the requirement for the occurrence of the agency hearing for public comment on rules from at least once every two years to at least once prior to Jan. 1, 2020, and at least once every six-year period thereafter.
3. Require agencies with an operating budget of \$5 million or more to place information regarding the submission of petitions on their websites.
4. Remove the requirement that agencies issue a response to oral comments and add a requirement that agencies inform persons that comments must be submitted in writing to be submitted to the legislative oversight committees.
5. Require the inclusion of the process for requesting accommodations for persons with disabilities in the meeting notice.
6. Provide that agency shall "provide" meeting notice to persons who have made a timely request rather than "mail" the notice.
7. Remove specific provisions about the content of the first report required after Jan. 1, 2019.