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## DIGEST

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Gallot

HB No. 87

**Abstract:** Provides for proceedings related to enforcement of laws under the jurisdiction of the Board of Ethics. Provides for the powers, functions, and duties of the board and of the division of administrative law relative to such enforcement. Provides for the conduct of hearings and procedures related thereto. Provides relative to appeals.

Present law (R.S. 49:950 et seq. (Administrative Procedure Act (APA)) and R.S. 49:991 et seq. (dealing with the division of administrative law)) provides relative to the adjudicative process for agencies. Provides procedures for adjudications. Provides for review of decisions.

Present law provides that the division of administrative law (in the Dept. of State Civil Service) commences and handles all adjudications in the manner required by the APA, except as otherwise provided in the law establishing the division. Provides that any board or commission authorized by law to conduct hearings may continue to hold such hearings. Provides that in an adjudication commenced by the division, the administrative law judge shall issue the final decision or order and the agency shall not have the authority to override such decision or order. Provides that upon the issuance of such a final decision or order, the agency or any official thereof shall comply fully with the final order or decision. Provides that no agency or official thereof is entitled to judicial review of such a decision.

Proposed law (R.S. 49:992.1 and 994), relative to the division of administrative law, adds provisions specifying that all adjudications involving alleged violations of any provision of law under the jurisdiction of the Board of Ethics shall be resolved as required by the provisions of law applicable to the division of administrative law and the APA to the extent that such provisions do not conflict with ethics code provisions relative to enforcement (Part III of Chapter 15 of Title 42 of the LRS of 1950).

Present law (R.S. 42:1132—Code of Governmental Ethics) provides that the Board of Ethics shall administer and enforce the Code of Governmental Ethics, the provisions of the La. Election Code relative to elections integrity, certain gaming and lottery provisions, and the provisions of law relative to legislative and executive branch lobbying. Provides that the board shall also function as the Supervisory Committee on Campaign Finance Disclosure to administer and enforce the provisions of the Campaign Finance Disclosure Act.

Present law (R.S. 42:1141) provides procedures for the enforcement proceedings of the board. Provides the following relative to investigations and hearings:

- (1) Specifies that upon receiving a sworn complaint or voting to consider a matter as provided in present law relative to complaints (R.S. 42:1141(B)), a private investigation shall be conducted to elicit evidence. Requires that the defendant and the complainant be given written notice of the commencement of the investigation not less than 10 days prior to the date set for the investigation.
- (2) Requires the board, after the investigation has been completed, to determine whether a public hearing should be conducted to receive evidence and to determine whether any violation of any provision of law within its jurisdiction has occurred, and if a violation has occurred, to prescribe authorized penalties. Provides that if a violation has not occurred, the defendant and the complainant shall be notified within 10 days of the ruling.

Proposed law retains present law and makes technical corrections.

Proposed law additionally provides the following relative to investigations and hearings:

- (1) Provides that if the board, following an investigation, determines that a public hearing should be conducted to determine whether a violation of any provision of law within its jurisdiction has occurred, the board shall issue charges. Requires that the public hearing on such charges be conducted by the division of administrative law in accordance with the APA and provisions for procedures for enforcement of the ethics code (R.S. 42:1141-1143).
- (2) Provides that at the hearing, an administrative law judge shall determine whether a violation of any provision of law within the jurisdiction of the board has occurred. Provides that if the administrative law judge determines that a violation has occurred, he shall determine what authorized penalties or other sanctions, if any, should be imposed.
- (3) Specifies that the division of administrative law shall not conduct a public hearing until after the charged person's rights, if any, to rehearing and appellate review of any previous decision of the board have expired or have been exhausted.
- (4) Provides that if the public hearing of the administrative law judge fails to disclose any substantial evidence to support the charges, the administrative law judge must make an official determination of his findings and thereupon the board shall close its file on the charges. Requires that the person charged and the complainant be notified in writing within 10 days of the judge's rendition of a final decision. Provides that the person charged may require the judge to make an official determination of the validity of the charges.
- (5) Provides that if the administrative law judge determines that a violation has occurred, the board shall take all action necessary to enforce the determination of the administrative law judge in accordance with law, including the imposition and enforcement of the penalties or other sanctions, if any, that the administrative law judge has determined should be imposed. However, provides that the board shall take no action to enforce the

determination of the administrative law judge until after the charged person's rights to rehearing and appeal of the decision of the administrative law judge have expired or have been exhausted.

Present law (R.S. 42:1141(D)), relative to the location of hearings, provides that the board or panel may conduct any hearing provided for in R.S. 42:1141 in the parish wherein the public servant or person alleged to have violated any provision of law within the jurisdiction of the board resides, or in the parish of the official domicile of any office or employment held by the defendant, or in the parish of domicile of the board.

Proposed law retains present law and additionally provides that the division of administrative law shall conduct public hearings at the division of administrative law office which is in, or is as close as possible to, the parish in which such person resides, provided that such person resides in the state.

Present law (R.S. 42:1141(E)), relative to procedure, provides as follows:

- (1) Requires that any public servant or other person who is to be the subject of a public or private hearing and the complainant be given written notice of the charges and of the time and place such hearing is to be held. Specifies that such notice shall not be less than 60 days prior to the hearing date. Permits the hearing to be held sooner upon the request of a public servant or other person charged.

Proposed law retains present law and additionally requires that the board give public notice of each hearing to be conducted by an administrative law judge pursuant to proposed law.

- (2) Permits the board or panel, for purposes of an investigation or a hearing, to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records which the board deems relevant or material to the investigation or hearing. Provides that witness attendance and the production of records may be required at any place designated by the board or panel at no cost to the public servant or other person charged as permitted by board rules.

Proposed law retains present law.

- (3) Specifies that in case of contumacy or refusal to obey a subpoena issued to any public servant or other person, any state district court within the jurisdiction of which the inquiry is conducted, or within which the public servant or other person is found, resides, or transacts business, upon application by the board shall have jurisdiction to issue to such public servant or other person an order requiring him to appear before the board or panel and to produce evidence, if so ordered, or to give testimony touching on the matter under consideration. Provides that any failure to obey such court order may be punished by the court as a contempt thereof.

Proposed law retains present law.

- (4) Provides that if any public employee willfully refuses or fails to appear before the board or panel, or any court authorized to conduct any hearing or inquiry, or having appeared shall refuse to testify or answer any question specifically, directly, and narrowly relating to the performance of his official duties on the grounds that his testimony or answers would tend to incriminate him, or shall refuse to accept immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry, such action shall be grounds for dismissal or forfeiture of his office or position and, if dismissed, he shall not be eligible thereafter for employment by the governmental entity for a period of five years, unless such reemployment is authorized by a majority vote of the membership.

Proposed law retains present law and adds a provision making present law also applicable to any hearing or inquiry by an administrative law judge pursuant to proposed law.

- (5) Provides that if any elected official willfully refuses or fails to appear before the board or panel, or any court authorized to conduct any hearing or inquiry or having appeared shall refuse to testify or answer any question specifically, directly, and narrowly relating to the performance of his official duties on the grounds that his testimony or answers would tend to incriminate him, or shall refuse to accept immunity from prosecution on account of any matter about which he may be asked to testify at such hearing or inquiry, such action shall be grounds for the board to prescribe specified ethics code penalties (R.S. 42:1153) against such elected official.

Proposed law retains present law and adds a provision making present law also applicable to any hearing or inquiry by an administrative law judge pursuant to proposed law.

Present law (R.S. 42:1153) provides penalties for violation of the ethics code and certain other laws within the ethics board's jurisdiction which include for elected officials and other persons censure and/or a fine of up to \$10,000 and which include for public employees and other persons removal, suspension, reduction in pay, or demotion and/or a fine of up to \$10,000.

- (6) Specifies that no disciplinary action shall be taken against a public servant or other person by the board or panel unless it is determined by a majority vote of the membership of the board or panel that such public servant or other person has violated a provision of law within its jurisdiction at a public hearing conducted for that purpose. Provides, however, that in cases where the panel consists of three members, all determinations shall require a unanimous vote.

Proposed law deletes present law.

- (7) Provides that any public servant or other person who is the subject of any hearing may have legal counsel, cross-examine witnesses, call witnesses, and present evidence in his own behalf.

Proposed law retains present law.

- (8) Provides that any public servant or other person who is the subject of any investigation shall be advised of his right to have an attorney present.

Proposed law retains present law.

- (9) Provides that any witness may be accompanied by counsel at investigations or hearings, which counsel may advise the witness of his rights, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the investigation or hearing. Permits counsel to submit questions to be asked for his client.

Proposed law retains present law.

- (10) Provides that any witness at any investigation or hearing, subject to rules and regulations promulgated by the board, shall be entitled to a copy of his testimony when the same becomes important and relevant in a criminal proceeding or subsequent investigation or hearing, provided that the furnishing of such copy will not prejudice the public safety or security.

Proposed law retains present law.

- (11) Provides that in making any official determination of whether any provision of law within the jurisdiction of the board has been violated, the board or panel may only consider testimony given under oath and transcribed verbatim by a reporter.

Proposed law deletes present law references to the board or panel and refers instead to the administrative law judge.

- (12) Provides that if the public hearing of the board or panel fails to disclose any substantial evidence to support the charges, the board or panel shall make an official determination of its findings and thereupon close its file on the charges. Requires that the public servant or other person charged and the complainant shall be notified in writing within 10 days of the board's or panel's rendition of a final decision. Provides that the public servant or other persons charged may require the board or panel to make an official determination of the validity of the charges against him.

Proposed law deletes present law.

- (13) Provides that any public servant or other person who is aggrieved by any action taken by a panel may request a review of the panel's decision by the board. Requires the board to determine whether or not to review the panel's action within 14 days of the request for review.

Proposed law retains present law.

- (14) Provides that the records of the board prepared or obtained in connection with investigations and private hearings conducted by the board, including all extracts of minutes and votes to take any matter under consideration in connection therewith, shall be deemed confidential and privileged, except that such records shall be available to each member of the board upon request. Specifies that other than for this exception and that provided for in R.S. 42:1111(E)(2)(c), relative to sworn statements filed by certain elected officials who assist others in certain transactions, all records, including the results and conclusions reached in connection with any investigation or hearing, shall be public.

Proposed law retains present law and makes technical corrections.

- (15) Provides that it is a misdemeanor, punishable by a fine of not more than \$2,000 or imprisonment for not more than one year, or both, for any member of the board, its executive secretary, other employee, or any other person to make public the testimony taken at a private investigation or private hearing of the board or to make any public statement or give out any information concerning a private investigation or private hearing of the board without the written request of the public servant or other person investigated.

Proposed law retains present law.

- (16) Requires the board, upon receipt of a written request by the public servant or person charged, to furnish the requestor with a certified copy of the entire proceedings of a private hearing, including a verbatim transcript of all testimony considered at such hearing, and make public the findings of any private investigation or hearing in connection with the charges.

Proposed law retains present law.

Present law (R.S. 42:1141(F)), relative to exceptions, provides that specified provisions of law relative to open meetings shall not apply to investigations and hearings conducted by the board.

Proposed law retains present law exception as it applies to investigations. Changes present law exception as it applies to hearings and makes it applicable only to private hearings.

Present law (R.S. 42:1142), relative to appeals, provides that whenever action is taken against any public servant or person by the board or panel or by an agency head by order of the board or panel, or whenever any public servant or person is aggrieved by any action taken by the board or panel, he may appeal therefrom to the state's First Circuit Court of Appeal if application to the board is made within 30 days after the decision of the board becomes final. Specifies that any advisory opinion issued to any person or governmental entity by the board or panel or any preliminary, procedural, or intermediate action or ruling by the board or panel is subject to the supervisory jurisdiction of the appellate court as provided by the state constitution. Requires the state's First Circuit Court of Appeal to promulgate rules of procedure to be followed in taking and lodging such appeals.

Provides that a public employee who has attained permanent status in the classified state or city service may, whenever any disciplinary action is taken against him by the board or panel or by an appointing authority by order of the board or panel, appeal therefrom to the appropriate civil service commission, if application to the board is made within 30 days after the decision of the board or panel becomes final. Provides that any decision of a civil service commission may be appealed to the Court of Appeal, First Circuit, either by the board or the public employee, upon application to the civil service commission within 30 days after the decision of such civil service commission becomes final.

Provides that any tenured public employee of a public institution of higher education in this state may, whenever any disciplinary action is taken against him by the board or panel or by the appointing authority by order of the board or panel, appeal therefrom to the appropriate higher education management board, if application to the board is made within 30 days after the decision of the board or panel becomes final. Provides that such appeal shall be solely on the record of the board or panel hearing and the board shall adopt rules and regulations to effectuate the preparation of such record. Provides that if appeal is timely filed, the appropriate higher education management board shall review the record and decision shall be rendered thereon within 120 days of the receipt of the record from the board. Provides that any decision of a higher education management board may be appealed to the Court of Appeal, First Circuit, as provided in Chapter 15 of Title 42 of the LRS of 1950, either by the board or by the tenured public employee, upon application to the appropriate higher education management board within 30 days after the decision of such higher education management board is rendered.

Proposed law retains present law. Provides additionally that a decision by an administrative law judge that a person has violated a provision of law under the jurisdiction of the board or that penalties or other sanctions should be imposed against a person for such a violation may be appealed by such person as provided in present law as though the decision of the administrative law judge were an action or order by the board, except for the following:

- (1) Application shall be made to the administrative law judge instead of the board within 30 days after the decision of the administrative law judge becomes final.
- (2) Appeal in accordance with proposed law shall be to the court of appeal for the circuit in which the person resides. If the person does not reside in the state, appeal shall be to the Court of Appeal, First Circuit.

Provides that notwithstanding any provision of the APA, appeal of a decision by an administrative law judge that a person has violated a provision of law under the jurisdiction of the board or that penalties or other sanctions should be imposed against a person for such a violation shall not be taken to a district court.

Proposed law provides that prior to its effective date, the Board of Ethics shall notify all parties involved in any public hearing which has been scheduled to occur on or after the effective date of proposed law of the transfer of such hearing to the division of administrative law. Requires the board and the division to take all action necessary to effectuate the transfer of such proceedings.

Effective Aug. 15, 2008.

(Amends R.S. 42:1141(C), (D), (E), and (F); Adds R.S. 42:1142(E) and R.S. 49:992.1)