

Regular Session, 2010

SENATE BILL NO. 308

BY SENATOR MARIONNEAUX

WILDLIFE/FISHERIES DEPT. Provides relative to rulemaking by the Louisiana Willdlife and Fisheries Commission. (8/15/10)

1 AN ACT

2 To amend and reenact R.S. 49:953(B)(1) and 968(B)(13) and R.S. 56:5(C) and 6(28), to
3 enact R.S. 49:953(B)(5), and to repeal R.S. 49:967(D), relative to the Wildlife and
4 Fisheries Commission; to provide legislative oversight of certain rules and
5 regulations; to require the commission to adopt rules and regulations in accordance
6 with the Administrative Procedures Act; to authorize certain emergency rule
7 procedures; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 49:953(B)(1) and 968(B)(13) are hereby amended and reenacted and
10 R.S. 49:953(B)(5) is hereby enacted to read as follows:

11 §953. Procedure for adoption of rules

12 * * *

13 B.(1) If an agency finds that an imminent peril to the public health, safety,
14 or welfare requires adoption of a rule upon shorter notice than that provided in
15 Subsection A of this Section and within five days of adoption states in writing to the
16 governor of the state of Louisiana, the attorney general of Louisiana, the speaker of
17 the House of Representatives, the president of the Senate, and the Department of the

1 State Register, its reasons for that finding, it may proceed without prior notice or
 2 hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt
 3 an emergency rule. The provisions of this Paragraph also shall apply to the extent
 4 necessary to avoid sanctions or penalties from the United States, or to avoid a budget
 5 deficit in the case of medical assistance programs or to secure new or enhanced
 6 federal funding in medical assistance programs, **or to provide relative to the**
 7 **Wildlife and Fisheries Commission as set forth below in this Subsection.** The
 8 agency statement of its reason for finding it necessary to adopt an emergency rule
 9 shall include specific reasons why the failure to adopt the rule on an emergency basis
 10 would result in imminent peril to the public health, safety, or welfare, or specific
 11 reasons why the emergency rule meets other criteria provided in this Paragraph for
 12 adoption of an emergency rule.

13 * * *

14 **(5) Notwithstanding any provision of law to the contrary, (a) the**
 15 **Louisiana Wildlife and Fisheries Commission may adopt without a showing of**
 16 **imminent peril emergency rules relative to webless migratory game bird**
 17 **hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oyster**
 18 **seasons, finfish seasons and size limits. Rules adopted annually pursuant to this**
 19 **Paragraph which open and close the offshore and fall shrimp seasons, the oyster**
 20 **season, the marine finfish seasons, the webless migratory game bird hunting**
 21 **season, and the trapping season shall be effective for a period of time equal to**
 22 **the length of the respective season; and (b) a legislative oversight subcommittee**
 23 **reviewing rules adopted pursuant to this Paragraph shall have thirty days from**
 24 **the date of adoption to conduct a hearing.**

25 * * *

26 §968. Review of agency rules; fees

27 * * *

28 B.

* * *

29 (13) The **Wildlife and Fisheries Commission and the** Department of

1 Wildlife and Fisheries and all of the agencies made a part of it shall submit the report
2 to the House Committee on Natural Resources and Environment and the Senate
3 Committee on Natural Resources.

4 Section 2. R.S. 56:5(C) and 6(28) are hereby amended and reenacted to read as
5 follows:

6 §5. General powers and authority

7 * * *

8 C. The commission shall adopt rules and regulations, **in accordance with**
9 **the Administrative Procedures Act,** necessary to protect certain of the state's
10 natural resources other than fish and wildlife, especially such resources as standing
11 trees which are otherwise protected by law but have no specific provision for
12 enforcing such protection.

13 §6. Special powers and duties; statistics; rules and regulations; reports

14 The commission, through its secretary:

15 * * *

16 (28) May **in accordance with law** impose, by rule **promulgated in**
17 **accordance with the Administrative Procedure Act,** a fee for nonresident
18 recreational hunting licenses and nonresident recreational fishing licenses. ~~The fee~~
19 ~~set by the commission shall supersede any such fee set by law. The provisions of~~
20 ~~R.S. 49:967(D) shall not apply to the adoption of the fees authorized by this~~
21 ~~Paragraph.~~ The nonresident recreational hunting licenses shall be those nonresident
22 licenses and the nonresident stamps authorized by Subpart A and Subpart A-1 of Part
23 IV of this Chapter. The nonresident recreational fishing licenses shall be those
24 nonresident licenses authorized by Subpart B of Part VI of this Chapter.

25 * * *

26 Section 3. R.S. 49:967(D) is hereby repealed.

The original instrument was prepared by Michelle Broussard-Johnson. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

DIGEST

Marionneaux (SB 308)

Present law relative to the Louisiana Wildlife and Fisheries Commission and the Administrative Procedure Act provides exemptions from APA requirements. Includes an exemption from certain APA provisions for any rule or regulation promulgated by the Department of Wildlife and Fisheries or the Wildlife and Fisheries Commission relative to hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oyster seasons, finfish seasons and size limits, and all rules and regulations pursuant thereto.

Proposed law repeals this exemption and provides that the commission shall adopt rules and regulations in accordance with the APA. Provides that the commission and department shall submit reports required under the APA to the House Committee on Natural Resources and Environment and the Senate Committee on Natural Resources.

Present law in APA authorizes agencies to adopt emergency rules because of imminent peril to the public health, safety, or welfare, or 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.

Proposed law retains present law and authorizes Wildlife and Fisheries Commission to adopt without a showing of imminent peril emergency rules relative to webless migratory game bird hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oyster seasons, finfish seasons and size limits. Further provides that rules adopted annually pursuant to the proposed law which open and close the offshore and fall shrimp seasons, the oyster season, the marine finfish seasons, the webless migratory game bird hunting season, and the trapping season shall be effective for a period of time equal to the length of the respective season.

Proposed law further provides that a legislative oversight subcommittee reviewing emergency rules adopted pursuant to the proposed law shall have 30 days from the date of adoption to conduct a hearing.

Present law provides that the commission may impose by rule a fee for nonresident recreational hunting licenses and nonresident recreational fishing licenses, and that the fee set by the commission shall supersede any such fee set by law. Proposed law removes language authorizing commission to supersede fees set by law, and specifies that such rule must be imposed pursuant to the APA.

Effective August 15, 2010

(Amends R.S. 49:953(B)(1) and 968(B)(13) and R.S. 56:5(C); and 6(28); adds R.S. 49:953(B)(5); repeals R.S. 49:967(D))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill.

1. Adds language removing authority of commission to supersede certain fees set by law.
2. Adds procedures relative to issuance of certain emergency rules by commission.