

Regular Session, 2012

SENATE BILL NO. 392

BY SENATOR AMEDEE

ETHICS. Provides the Board of Ethics a limited right to appeal decisions of the Ethics Adjudicatory Board. (8/1/12)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

To amend and reenact R.S. 42:1142, relative to the Code of Governmental Ethics; to provide the Board of Ethics a limited right to appeal decisions of the Ethics Adjudicatory Board; to provide for clarification of duties relative to the Board of Ethics and the Ethics Adjudicatory Board; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 42:1142 is hereby amended and reenacted to read as follows:

§1142. Appeals

~~A. 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 Court of Appeal, First Circuit, if application to the board is made within thirty days after the decision of the board becomes final. Any refusal by the board or panel to issue a declaratory opinion 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 Article V, Section 10 of the Constitution of Louisiana. The Court of Appeal, First Circuit, shall promulgate rules~~

1 of procedure to be followed in taking and lodging such appeals:

2 (1) Whenever action is taken against any public servant or person by a
3 final decision of the Ethics Adjudicatory Board, or panel thereof, or by an
4 agency head by order of the Ethics Adjudicatory Board, or panel thereof, or
5 whenever any public servant or person is aggrieved by any action taken by the
6 Ethics Adjudicatory Board, or panel thereof, he may appeal to the Court of
7 Appeal, First Circuit. Such final decision may be appealed by filing a written
8 motion with the Ethics Adjudicatory Board within thirty days after the signing
9 and mailing of the notice of the final decision, or if a rehearing is requested,
10 within thirty days after mailing of notice of the decision of the Ethics
11 Adjudicatory Board on the rehearing.

12 (2) Upon the unanimous vote of its members, the Board of Ethics may
13 appeal a final decision of the Ethics Adjudicatory Board or a panel thereof, to
14 the Court of Appeal, First Circuit, within thirty days after the signing and
15 mailing of the notice of the final decision, or if a rehearing is requested, within
16 thirty days after mailing of notice of the decision of the Ethics Adjudicatory
17 Board on the rehearing. Only questions of law of a final decision may be
18 appealed pursuant to this Paragraph, and the appeal shall be limited to the
19 record created at the hearing before the Ethics Adjudicatory Board. For
20 purposes of this Paragraph, "final decision" means the decision and order of the
21 Ethics Adjudicatory Board, or panel thereof, on the final disposition of the
22 entire matter the Ethics Adjudicatory Board was required to hear.

23 (3) Any refusal by the Board of Ethics to issue a declaratory opinion or
24 any preliminary, procedural, or intermediate action or ruling by the Board of
25 Ethics is subject to the supervisory jurisdiction of the appellate court as
26 provided by Article V, Section 10 of the Constitution of Louisiana. The Court
27 of Appeal, First Circuit, shall promulgate rules of procedure to be followed in
28 taking and lodging such appeals.

29 B. In the event that any public employee suspended or dismissed by order of

1 the board **Board of Ethics, or panel thereof, or by a final decision of the Ethics**
 2 **Adjudicatory Board,** or panel **thereof,** or any public employee suspended or
 3 dismissed by an appointing authority at **by an** order of the board **Board of Ethics,**
 4 **or panel thereof, or a final decision of the Ethics Adjudicatory Board** or panel
 5 **thereof,** expressly for violation of any provision of law within the jurisdiction of the
 6 board **Board of Ethics** is ordered reinstated by **a final** court order upon appeal, the
 7 public employee shall be entitled to receive his back pay for the period of his
 8 suspension or improper dismissal less any earnings by him during the period from
 9 other sources, provided, however, that there shall be excluded from the mentioned
 10 deduction costs of court and reasonable attorney fees which shall be fixed by the
 11 court.

12 C. Notwithstanding the provisions of this Section, a public employee who has
 13 attained permanent status in the classified state or city service, as provided in Article
 14 X, Section 1 of the Constitution of Louisiana, may, whenever any disciplinary action
 15 is taken against him by the board **Board of Ethics, or panel thereof, or the Ethics**
 16 **Adjudicatory Board,** or panel **thereof,** or by an appointing authority by order of the
 17 board **Board of Ethics, or panel thereof, or the Ethics Adjudicatory Board,** or
 18 panel **thereof,** appeal ~~therefrom~~ to the appropriate civil service commission, if
 19 **written** application to the board **which ordered the disciplinary action or the**
 20 **board of the panel which ordered the disciplinary action** is made within thirty
 21 days after the decision of the board or panel becomes final. Any decision of a civil
 22 service commission may be appealed to the Court of Appeal, First Circuit, either by
 23 the board **Board of Ethics** or the public employee, **if a written motion is filed with**
 24 ~~upon application to~~ the civil service commission within thirty days after **notice of** the
 25 decision of such civil service commission becomes final.

26 D. Notwithstanding the provisions of this Section, any tenured public
 27 employee of a public institution of higher education in this state may, whenever any
 28 disciplinary action is taken against him by the board **Board of Ethics, or panel**
 29 **thereof, or the Ethics Adjudicatory Board,** or panel **thereof,** or by the appointing

1 authority by order of the board **Board of Ethics, or panel thereof, or the Ethics**
 2 **Adjudicatory Board,** or panel ~~thereof~~, appeal ~~therefrom~~ to the appropriate higher
 3 education management board, if **the tenured employee files a written appeal with**
 4 ~~application to the board~~ **which ordered the disciplinary action or the board of the**
 5 **panel which ordered the disciplinary action** ~~is made~~ within thirty days after ~~the~~
 6 **order or the signing and mailing of the notice of** the decision of the board or panel
 7 becomes final. Such appeal shall be solely on the record of the ~~hearing of the~~ board
 8 or panel **which ordered the disciplinary action** ~~hearing and the board~~ **the Board**
 9 **of Ethics and the Ethics Adjudicatory Board** shall adopt rules and regulations to
 10 effectuate the preparation of such record. If appeal is timely filed, the appropriate
 11 higher education management board shall review the record and decision shall be
 12 rendered ~~thereon~~ within one hundred twenty days of the receipt of the record from
 13 the board **which ordered the disciplinary action or the board of the panel which**
 14 **ordered the disciplinary action.** Any decision of a higher education management
 15 board may be appealed to the Court of Appeal, First Circuit, as provided in this
 16 Chapter, either by the board **Board of Ethics** or by the tenured public employee,
 17 upon application to the appropriate higher education management board within thirty
 18 days after the decision of such higher education management board is rendered.

19 ~~E. A decision of the Ethics Adjudicatory Board or a panel thereof is a final~~
 20 ~~decision that may be appealed under this Section in the same manner as a decision~~
 21 ~~of the Board of Ethics within thirty days after the mailing of the notice of the~~
 22 ~~decision, or if a rehearing is requested, within thirty days after mailing of the~~
 23 ~~decision on the rehearing.~~

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Lauren Bailey.

DIGEST

Present law authorizes any party aggrieved by an action of the board or a panel thereof the right to appeal to the First Circuit Court of Appeal within 30 days after action taken by the board becomes final.

Proposed law retains present law.

Present law authorizes any party aggrieved by a final decision of the Ethics Adjudicatory Board (EAB) or a panel thereof the right to appeal to the First Circuit Court of Appeal within 30 days after signing and mailing of notice of the final decision.

Proposed law retains present law.

Proposed law authorizes the Board of Ethics, upon unanimous vote of the members, to appeal questions of law of a final decision of the EAB to the First Circuit Court of Appeal within 30 days after the signing and mailing of the notice of a final decision by the EAB.

Proposed law provides that if a person charged prevails in their appeal, the Board of Ethics shall be responsible for payment of reasonable attorney fees and court costs for the appeal.

Effective August 1, 2012.

(Amends R.S. 42:1142)