

Regular Session, 2012

HOUSE BILL NO. 942

BY REPRESENTATIVE TIM BURNS

ETHICS: Provides relative to enforcement of the provisions of law under the jurisdiction of the Board of Ethics

1 AN ACT

2 To amend and reenact R.S. 42:1142, relative to enforcement of the laws under the
3 jurisdiction of the Board of Ethics; to provide for the appeal of actions taken to
4 enforce the laws under the jurisdiction of the Board of Ethics; to provide for appeal
5 of actions of the Board of Ethics and the Ethics Adjudicatory Board; to provide the
6 Board of Ethics a limited right to appeal final decisions of the Ethics Adjudicatory
7 Board; to provide for the payment of attorney fees and court costs under certain
8 circumstances; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

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

11 §1142. Appeals

12 A. ~~Whenever action is taken against any public servant or person by the~~
13 ~~board or panel or by an agency head by order of the board or panel, or whenever any~~
14 ~~public servant or person is aggrieved by any action taken by the board or panel, he~~
15 ~~may appeal therefrom to the Court of Appeal, First Circuit, if application to the board~~
16 ~~is made within thirty days after the decision of the board becomes final. Any refusal~~
17 ~~by the board or panel to issue a declaratory opinion or any preliminary, procedural,~~
18 ~~or intermediate action or ruling by the board or panel is subject to the supervisory~~
19 ~~jurisdiction of the appellate court as provided by Article V, Section 10 of the~~

1 ~~Constitution of Louisiana. The Court of Appeal, First Circuit, shall promulgate rules~~
2 ~~of procedure to be followed in taking and lodging such appeals.~~

3 (1) Whenever action is taken against any public servant or person by order
4 of the Board of Ethics, or panel thereof, or by a final decision of the Ethics
5 Adjudicatory Board, or by an agency head by order of the Board of Ethics, or panel
6 thereof, or by a final decision of the Ethics Adjudicatory Board, or whenever any
7 public servant or person is aggrieved by any action taken by the Board of Ethics, or
8 panel thereof, or the Ethics Adjudicatory Board, he may appeal to the Court of
9 Appeal, First Circuit.

10 (a) An order of the Board of Ethics, or panel thereof, may be appealed by
11 filing a written motion with the Board of Ethics within thirty days after the signing
12 and mailing of the notice of the order.

13 (b) A final decision of the Ethics Adjudicatory Board may be appealed by
14 filing a written motion with the Ethics Adjudicatory Board within thirty days after
15 the signing and mailing of the notice of the final decision, or if a rehearing is
16 requested, within thirty days after the mailing of the notice of the decision of the
17 Ethics Adjudicatory Board on the rehearing.

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

1 (b) If the Board of Ethics does not prevail in the final disposition of its
2 appeal, the Board of Ethics shall be responsible for the payment of reasonable
3 attorney fees and court costs of the other party.

4 (3) Any refusal by the Board of Ethics to issue a declaratory opinion is
5 subject to the supervisory jurisdiction of the appellate court as provided by Article
6 V, Section 10 of the Constitution of Louisiana. The Court of Appeal, First Circuit,
7 shall promulgate rules of procedure to be followed in taking and lodging such
8 appeals.

9 B. In the event that any public employee suspended or dismissed by order
10 of the ~~board~~ Board of Ethics, or panel thereof, or by a final decision of the Ethics
11 Adjudicatory Board, or any public employee suspended or dismissed by an
12 appointing authority at by an order of the ~~board~~ Board of Ethics, or panel thereof, or
13 a final decision of the Ethics Adjudicatory Board expressly for violation of any
14 provision of law within the jurisdiction of the ~~board~~ Board of Ethics is ordered
15 reinstated by a final court order upon appeal, the public employee shall be entitled
16 to receive his back pay for the period of his suspension or improper dismissal less
17 any earnings by him during the period from other sources, provided, however, that
18 there shall be excluded from the mentioned deduction costs of court and reasonable
19 attorney fees which shall be fixed by the court.

20 C. Notwithstanding the provisions of this Section, a public employee who
21 has attained permanent status in the classified state or city service, as provided in
22 Article X, Section 1 of the Constitution of Louisiana, may, whenever any
23 disciplinary action is taken against him by the ~~board~~ Board of Ethics, or panel
24 thereof, or the Ethics Adjudicatory Board, or by an appointing authority by order of
25 the ~~board~~ Board of Ethics, or panel thereof, or the Ethics Adjudicatory Board, appeal
26 ~~therefrom~~ to the appropriate civil service commission, if written application to the
27 board that ordered the disciplinary action is made within thirty days after the
28 decision of ~~the board or panel~~ becomes final. Any decision of a civil service
29 commission may be appealed to the Court of Appeal, First Circuit, either by the

1 ~~board~~ Board of Ethics or the public employee, if a written motion is filed with upon
2 ~~application to~~ the civil service commission within thirty days after the decision of
3 such civil service commission becomes final.

4 D. Notwithstanding the provisions of this Section, any tenured public
5 employee of a public institution of higher education in this state may, whenever any
6 disciplinary action is taken against him by the ~~board~~ Board of Ethics, or panel
7 thereof, or the Ethics Adjudicatory Board, or by the appointing authority by order of
8 the ~~board~~ Board of Ethics, or panel thereof, or the Ethics Adjudicatory Board, appeal
9 ~~therefrom~~ to the appropriate higher education management board, if the tenured
10 employee files a written appeal with application to the board that ordered the
11 disciplinary action is made within thirty days after the order or the decision of the
12 ~~board or panel~~ becomes final. Such appeal shall be solely on the record of the
13 hearing of the board or panel that ordered the disciplinary action hearing and the
14 ~~board~~ the Board of Ethics and the Ethics Adjudicatory Board shall adopt rules and
15 regulations to effectuate the preparation of such record. If appeal is timely filed, the
16 appropriate higher education management board shall review the record and decision
17 shall be rendered ~~thereon~~ within one hundred twenty days of the receipt of the record
18 from the board that ordered the disciplinary action. Any decision of a higher
19 education management board may be appealed to the Court of Appeal, First Circuit,
20 as provided in this Chapter, either by the ~~board~~ Board of Ethics or by the tenured
21 public employee, upon application to the appropriate higher education management
22 board within thirty days after the decision of such higher education management
23 board is rendered.

24 ~~E. A decision of the Ethics Adjudicatory Board or a panel thereof is a final~~
25 ~~decision that may be appealed under this Section in the same manner as a decision~~
26 ~~of the Board of Ethics within thirty days after the mailing of the notice of the~~
27 ~~decision, or if a rehearing is requested, within thirty days after mailing of the~~
28 ~~decision on the rehearing.~~

1 Section 2. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without signature
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
5 effective on the day following such approval.

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)]

Tim Burns

HB No. 942

Abstract: Provides for the appeal of actions taken to enforce the laws under the jurisdiction of the Board of Ethics, including giving the Board of Ethics a limited right to appeal final decisions of the Ethics Adjudicatory Board and providing that if the Board of Ethics does not prevail in its appeal, it is responsible for reasonable attorney fees and court costs of the other party.

Present law (R.S. 42:1142) provides relative to appeals of decisions of the Board of Ethics. Provides generally for appeal to the Court of Appeal, First Circuit. Present law authorizes any party aggrieved by an action of the Board of Ethics, or a panel thereof, the right to appeal to the Court of Appeal, First Circuit within 30 days after action taken by the board becomes final and that a final decision of the Ethics Adjudicatory Board may be appealed within 30 days after mailing of the notice of the decision, or if a rehearing is requested, within 30 days after mailing of the decision on rehearing. Present law further provides for appeals to a civil service commission or higher education management board in specific situations involving disciplinary actions taken against certain employees. Provides general procedures. Present law (R.S. 42:1142) further provides that decisions of the adjudicatory board or a panel thereof may be appealed in the same manner as decisions by the Board of Ethics.

Proposed law retains present law except in each instance regarding appeal also makes it applicable to action taken by and final decisions of the Ethics Adjudicatory Board. Proposed law removes the general language about appeals of decisions of the adjudicatory board or panel thereof being the same as those of decisions by the Board of Ethics.

Proposed law further authorizes the Board of Ethics, upon unanimous vote of its members present and voting, to appeal questions of law of a final decision of the Ethics Adjudicatory Board to the First Circuit Court of Appeal within 30 days after the signing and mailing of the notice of a final decision, or final decision on rehearing of the Ethics Adjudicatory Board. Defines "final decision" for this purpose as the decision and order of the adjudicatory panel of the Ethics Adjudicatory Board on the final disposition of the entire matter the Ethics Adjudicatory Board was required to hear. Proposed law further provides that if the Board of Ethics does not prevail in the final disposition of its appeal, the Board of Ethics shall be responsible for the payment of reasonable attorney fees and court costs of the other party.

Present law (R.S. 42:1141.1) provides that a declaratory opinion of the board shall be considered a final decision and shall be reviewable by the Court of Appeal, First Circuit, as provided in present law (R.S. 42:1142). Present law provides that any refusal by the Board of Ethics or any panel thereof to issue a declaratory opinion and any preliminary, procedural,

or intermediate action or ruling is subject to the supervisory jurisdiction of the appellate court as provided in the present constitution (Const. Art. V, §10).

Proposed law removes the provision that any refusal by the Board of Ethics or any panel thereof to issue any preliminary, procedural, or intermediate action or ruling is subject to the supervisory jurisdiction of the appellate court and otherwise retains present law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 42:1142)

Summary of Amendments Adopted by House

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

1. Removes provision that any refusal by the Board of Ethics or any panel thereof to issue any preliminary, procedural, or intermediate action or ruling is subject to the supervisory jurisdiction of the appellate court.
2. Adds provision that the Board of Ethics shall be responsible for the payment of reasonable attorney fees and court costs of the other party if it does not prevail in the final disposition of its appeal.