

Regular Session, 2012

HOUSE BILL NO. 942

BY REPRESENTATIVE TIM BURNS

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AN ACT

To amend and reenact R.S. 42:1142, relative to enforcement of the laws under the jurisdiction of the Board of Ethics; to provide for the appeal of actions taken to enforce the laws under the jurisdiction of the Board of Ethics; to provide for appeal of actions of the Board of Ethics and the Ethics Adjudicatory Board; to provide the Board of Ethics a limited right to appeal final decisions of the Ethics Adjudicatory Board; to provide for the payment of attorney fees and court costs under certain circumstances; 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 of procedure to be followed in taking and lodging such appeals.~~

(1) Whenever action is taken against any public servant or person by order of the Board of Ethics, or panel thereof, or by a final decision of the Ethics

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

6 (a) An order of the Board of Ethics, or panel thereof, may be appealed by  
7 filing a written motion with the Board of Ethics within thirty days after the signing  
8 and transmission of the notice of the order.

9 (b) A final decision of the Ethics Adjudicatory Board may be appealed by  
10 filing a written motion with the Ethics Adjudicatory Board within thirty days after  
11 the signing and transmission of the notice of the final decision, or if a rehearing is  
12 requested, within thirty days after the transmission of the notice of the decision of  
13 the Ethics Adjudicatory Board on the rehearing.

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

25 (b) If the Board of Ethics does not prevail in the final disposition of its  
26 appeal, the Board of Ethics shall be responsible for the payment of reasonable  
27 attorney fees and court costs of the other party inclusive of all stages of litigation and  
28 appeal.

29 (c) The amount of attorney fees shall be determined by the court of appeal  
30 and shall be set forth in the court's judgment.

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

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

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

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

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

26 Section 2. This Act shall become effective upon signature by the governor or, if not  
 27 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
3 effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_