

Regular Session, 2010

HOUSE BILL NO. 665

BY REPRESENTATIVE ROSALIND JONES

ADMIN LAW/DIVISION: Requires the departments of health and hospitals, social services, and education to delegate certain hearing and adjudication functions to the division of administrative law

1 AN ACT

2 To amend and reenact R.S. 49:992(B)(2) and (D)(2) and (7), relative to adjudicatory and  
3 hearing functions of the division of administrative law and certain state departments;  
4 to provide for the adjudication and hearing functions of the Department of Health  
5 and Hospitals, the Department of Social Services, and the Department of Education;  
6 to provide for the delegation of certain functions and authority to the division of  
7 administrative law, except where prohibited by federal law; to require an agency to  
8 prove its exempt status; to provide for the transfer of adjudications and the resources  
9 related to handling such adjudications; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 49:992(B)(2) and (D)(2) and (7) are hereby amended and reenacted  
12 to read as follows:

13 §992. Applicability; exemptions; attorney fees; court costs

14 \* \* \*

15 B.

16 \* \* \*

17 (2) ~~In~~ Except in the instance of adjudications initiated pursuant to  
18 (D)(2)(b)(iii) of this Section, in an adjudication commenced by the division, the  
19 administrative law judge shall issue the final decision or order, whether or not on

1 rehearing, and the agency shall have no authority to override such decision or order.  
2 Upon the issuance of such a final decision or order, the agency or any official thereof  
3 shall comply fully with the final order or decision of the administrative law judge.

4 \* \* \*

5 D.

6 \* \* \*

7 (2)(a) ~~Any~~ Except as otherwise provided in Subparagraph (b) of this  
8 Paragraph, any board, commission, department, or agency which is required,  
9 pursuant to a federal mandate and as a condition of federal funding, to conduct or to  
10 render a final order in an adjudication proceeding shall be exempt from the  
11 provisions of this Chapter to the extent of the federal mandate.

12 (b) This Subparagraph shall apply to the Department of Health and  
13 Hospitals, the Department of Social Services, the Department of Education, and any  
14 agency within these departments:

15 (i) If the department or an agency within the department is prohibited,  
16 pursuant to a federal mandate or as a condition of federal funding, from delegating  
17 by contract or other means its fair hearings function, then such fair hearings shall be  
18 exempt from the provisions of this Chapter to the extent of the federal mandate;  
19 however, if such federally mandated hearings function may be delegated by contract  
20 or other means, the department or agency shall delegate such function to the division.  
21 If the department or agency claims a federal mandate exemption, the department or  
22 agency shall have the burden of proving such exemption.

23 (ii) If the department or an agency within the department is prohibited,  
24 pursuant to a federal mandate or as a condition of federal funding, from delegating  
25 by contract or other means both its fair hearings function and its authority to render  
26 a final decision or order in an adjudication proceeding, then such fair hearings and  
27 adjudication proceedings shall be exempt from the provisions of this Chapter to the  
28 extent of the federal mandate; however, if such federally mandated hearings function  
29 and authority to render a final decision or order in an adjudication proceeding may

1 be delegated by contract or other means, the department or agency shall delegate  
2 such function and authority to the division. If the department or agency claims a  
3 federal mandate exemption, the department or agency shall have the burden of  
4 proving such exemption.

5 (iii) If a department or an agency within the department may delegate its fair  
6 hearings function but is required by federal mandate to render the final decision or  
7 order in an adjudication proceeding, then in those cases, the division shall conduct  
8 the hearing and issue an initial decision. The initial decision shall be mailed or  
9 delivered to the head of the agency, who shall have, upon receipt of the initial  
10 decision, thirty days to reject, modify, or approve the decision. If he rejects or  
11 modifies the initial decision, he shall specify in writing the findings of fact or  
12 conclusions of law which are being rejected or modified which shall be considered  
13 to be the final decision or order in the adjudication proceeding. If he does not reject  
14 or modify the initial decision within thirty days, or if he approves the initial decision,  
15 then the initial decision of the division shall be certified as the final decision or order  
16 of the department or agency in the adjudication proceeding.

17 (iv) The provisions of this Subparagraph shall not apply to any board which  
18 is exempt from this Chapter pursuant to Paragraph (5) of this Subsection or to any  
19 board or commission which chooses to continue to conduct hearings pursuant to  
20 Subsection G of this Section.

21 \* \* \*

22 (7) All adjudications by the assistant secretary of the office of conservation  
23 pursuant to ~~Chapter~~ Chapters 1 and 7 of Subtitle 1 of Title 30 of the Louisiana  
24 Revised Statutes, except determinations of violations of laws, rules, regulations, and  
25 orders, and determinations of penalties for such violations, shall be exempt from the  
26 provisions of this Chapter.

27 \* \* \*

28 Section 2. The Department of Health and Hospitals, the Department of Social  
29 Services, the Department of Education, and any agency within these departments shall work

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 with the division of administrative law to complete the transfer to the division of  
 2 adjudications as provided for in this Act and the personnel, equipment, furniture, and  
 3 budgets related to handling such adjudications which are not exempt under R.S.  
 4 49:992(D)(2)(b)(i) and (ii) as enacted by this Act. Such transfers shall be complete by  
 5 January 1, 2011.

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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)]

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Rosalind Jones

HB No. 665

**Abstract:** Provides for certain adjudications and hearings functions of the departments of health and hospitals (DHH), social services (DSS), and education (DOE) to be transferred to the division of administrative law, except where the delegation of such functions and adjudications is specifically prohibited by federal law.

Present law (R.S. 49:992(D)(2)) provides that any board, commission, department, or agency which is required, pursuant to a federal mandate and as a condition of federal funding, to conduct or to render a final order in an adjudication proceeding is exempt, to the extent of the federal mandate, from the provisions of present law requiring all adjudications under the APA to be conducted by the division of administrative law.

Present law (R.S. 49:992(B)(2)) provides that in adjudications commenced by the division of administrative law, the administrative law judge shall issue a final decision or order and the agency shall have no authority to override such order. Proposed law creates an exception to present law for certain adjudications initiated under proposed law.

Proposed law, relative to hearings and adjudications of the depts. of health and hospitals (DHH), social services (DSS), and education (DOE), and any agency within these departments, requires such hearings and adjudications to be conducted by the division of administrative law except as follows:

- (1) Exempts the hearings function if the agency is prohibited, pursuant to a federal mandate and as a condition of federal funding, from delegating its fair hearings function. Provides that if such federally mandated hearings function may be delegated, then such hearings function shall be delegated to the division. Provides that the burden of proving that its hearings function is exempt falls on the department or agency.
- (2) Exempts the hearings function and authority to render a final decision or order in an adjudication proceeding if the agency is prohibited, pursuant to a federal mandate or as a condition of federal funding, from delegating such function and authority. Provides that if such federally mandated function and authority may be delegated, then such function and authority shall be delegated to the division. Provides that the burden of proving that its function and authority are exempt falls on the department or agency.
- (3) Provides that if an agency may delegate its fair hearings function but is required by federal mandate to render the final decision or order in an adjudication proceeding, then in those cases, the division shall conduct the hearing and issue an initial

decision. Provides that the initial decision shall be delivered to the head of the agency, who shall have 30 days to reject, modify, or approve the decision. Provides that if he rejects or modifies the initial decision, he shall specify in writing the findings of fact or conclusions of law which are being rejected or modified, which shall be considered to be the final decision or order in the adjudication proceeding. Specifies that if he does not reject or modify the initial decision within 30 days, or if he approves the initial decision, then the initial decision of the division shall be certified as the final decision or order of the agency.

Proposed law makes present law exemptions for state professional and occupational licensing boards and other boards or commissions authorized by law to conduct hearings who chose to do so applicable to proposed law.

Proposed law requires that DHH, DSS, and DOE work with the division of administrative law to complete the transfer to the division of adjudications and the personnel, equipment, furniture, and budgets related to handling such adjudications no later than Jan. 1, 2011.

(Amends R.S. 49:992(B)(2) and (D)(2) and (7))