

2019 Regular Session

SENATE BILL NO. 241 (Substitute of Senate Bill No. 208 by Senator Riser)

BY SENATOR RISER

ECONOMIC DEVELOPMENT. Provides for the Small Business Protection Act. (2/1/20)

1 AN ACT

2 To amend and reenact R.S. 49:953(E), 965.2, 965.3(A), (B)(1), (2), and (10), and (C), 965.4,
3 965.5, the introductory paragraph of R.S. 49:965.6(A), 965.7, and 965.8 and to enact
4 R.S. 953(A)(1)(a)(x) and (I), R.S. 49:965.3(B)(11) and (12), 965.6(C), and 965.9,
5 relative to small business development; to enact the Small Business Protection Act;
6 to provide procedures regarding administrative rules; to provide for legislative intent;
7 to provide for definitions; to provide for notifications; to provide for the electronic
8 transfer of certain information; to provide for a small business advocate; and to
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 49:953(E), 965.2, 965.3(A), (B)(1), (2), and (10), and (C), 965.4,
12 965.5, the introductory paragraph of R.S. 49:965.6(A), 965.7, and 965.8 are hereby amended
13 and reenacted and R.S. 953(A)(1)(a)(x) and (I), R.S. 49:965.3(B)(11) and (12), 965.6(C) and
14 965.9 are hereby enacted to read as follows:

15 §953. Procedure for adoption of rules; agency rule review

16 A. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

17 (1)(a) Give notice of its intended action and a copy of the proposed rules at

1 least ninety days prior to taking action on the rule. The notice shall include:

2 * * *

3 (x) A statement concerning the economic impact on small businesses, as
 4 set forth in R.S. 49:965.5, and the small business regulatory flexibility analysis,
 5 as set forth in R.S. 49:965.6.

6 * * *

7 E.~~(1) Beginning January 1, 1987, no~~ **No** agency shall adopt, amend, or repeal
 8 any rule if the accompanying fiscal **and economic** impact statement approved by the
 9 Legislative Fiscal Office indicates that ~~said~~ **the** rule change would result in any
 10 increase in the expenditure of state funds, unless ~~said~~ **the** rule is adopted as an
 11 emergency rule pursuant to the requirements of this Section or unless the legislature
 12 has specifically appropriated the funds necessary for the expenditures associated with
 13 ~~said~~ **the** rule change.

14 (2) The fiscal and economic impact statement shall be summarized by the
 15 agency as to the estimated costs or economic benefits or both, to directly
 16 affected persons, small businesses, or nongovernmental groups and the
 17 summary shall be published in the *Louisiana Register*.

18 (3) No later than the tenth day of the month, the office of the state
 19 register shall electronically transmit to the commercial division of the
 20 Department of State, the summary of the fiscal and economic impact statement.

21 * * *

22 I.(1) No later than the tenth day of the month, the office of the state
 23 register shall electronically transmit to the commercial division of the
 24 Department of State, all of the following information:

25 (a) The small business economic impact statement prepared by the
 26 agency pursuant to R.S. 49:965.5 and the small business regulatory flexibility
 27 analysis prepared pursuant to R.S. 49:965.6.

28 (b) The summary of the estimated costs to small businesses, citizens, and
 29 nongovernmental groups as is provided in Subsection E of this Section.

1 evidence indicates that regulatory requirements at the federal and state level
 2 tend to create disproportionately heavier burdens for small businesses, putting
 3 them at a disadvantage relative to their larger competitors. Reasons that small
 4 businesses are at a disadvantage include the following:

5 (a) The cost of regulations is higher relative to available resources. The
 6 cost of regulations per employee is higher for businesses with fewer employees.

7 (b) The cost per employee for the smallest businesses is typically one or
 8 more times greater than the equivalent cost for the largest businesses.

9 (12) Making small businesses aware of proposed state regulations prior
 10 to implementation is key to creating an effective partnership between state
 11 agencies and small businesses.

12 C. Nothing in the ~~Regulatory Flexibility~~ **Small Business Protection** Act shall
 13 be interpreted or construed to limit the ability of an agency to propose rules.

14 §965.4. Definitions

15 The following words or terms as used in this Act shall have the following
 16 meanings unless a different meaning appears from the context:

17 (1) "Agency" means each state board, commission, department, agency,
 18 officer, or other entity which makes rules, regulations, or policy, or formulates, or
 19 issues decisions or orders pursuant to, or as directed by, or in implementation, of the
 20 constitution or laws of the United States or the constitution and statutes of
 21 Louisiana; ~~except~~ The term "agency" shall not include any of the following
 22 entities:

23 (a) the ~~The~~ legislature or any branch, committee, or officer thereof;

24 (b) any ~~Any~~ political subdivision, as defined in Article VI, Section 44 of the
 25 Constitution of Louisiana, and any board, commission, department, agency, officer,
 26 or other entity thereof;

27 (c) and the ~~The~~ courts.

28 (2) "Potpourri notice" means a notice sent by an agency to the office of
 29 the state register indicating all of the following items:

1 (a) That the agency may implement a rule change at some future date.

2 (b) That the agency is seeking public comment and plans to conduct a
 3 public hearing, if one is requested prior to giving a notice of intent to implement
 4 the rule change.

5 (c) The deadline for receiving public comments and requests for a public
 6 hearing, which deadline is to occur prior to the date that the notice of intent to
 7 adopt the rule change, shall be sent to the office of the state register.

8 (3) "Proposed rule" means a proposal by an agency for a new rule or for a
 9 change in, addition to, or repeal of an existing rule.

10 ~~(3)~~(4) "Rule" means each agency statement, guide, or requirement for
 11 conduct or action, exclusive of those regulating only the internal management of the
 12 agency and those purporting to adopt, increase, or decrease any fees imposed on the
 13 affairs, actions, or persons regulated by the agency, which has general applicability
 14 and the effect of implementing or interpreting substantive law or policy, or which
 15 prescribes the procedure or practice requirements of the agency. "Rule" includes but
 16 is not limited to any provision for fines, prices or penalties, the attainment or loss of
 17 preferential status, and the criteria or qualifications for licensure or certification by
 18 an agency. A rule may be of general applicability even though it may not apply to
 19 the entire state, provided its form is general and it is capable of being applied to
 20 every member of an identifiable class. The term includes the amendment or repeal
 21 of an existing rule but does not include declaratory rulings or orders or any fees.

22 ~~(4)~~(5) "Small business" means a business that is domiciled in this state,
 23 employs one hundred or fewer full-time employees, and meets at least one of the
 24 following conditions:

25 (a) Gross annual sales are less than ten million dollars.

26 (b) Total net worth of the business is less than two million dollars.

27 §965.5. ~~Economic~~ **Small business economic** impact statements; **potpourri notices**

28 **A.(1)** Prior to the adoption of any proposed rule ~~on or after July 1, 2009~~, that
 29 may have an adverse impact on small businesses, each agency shall prepare ~~an a~~

1 **small business** economic impact statement, that includes the following:

2 ~~(1)~~**(a)** An identification and estimate of the number of the small businesses
3 subject to the proposed rule.

4 ~~(2)~~**(b)** The projected reporting, record keeping, and other administrative
5 costs required for compliance with the proposed rule, including the type of
6 professional skills necessary for preparation of the report or record.

7 ~~(3)~~**(c)** A statement of the probable effect on impacted small businesses.

8 ~~(4)~~**(d)** A description of any less intrusive or less costly alternative methods
9 of achieving the purpose of the proposed rule.

10 **(2) The small business economic impact statement shall be submitted to**
11 **the office of the state register, pursuant to R.S. 49:953.**

12 **B. If an agency determines, in its own judgment, that the input of small**
13 **businesses and the public would be helpful in drafting a new proposed rule, the**
14 **agency may issue a potpourri notice. If the agency issues a potpourri notice, it**
15 **shall be submitted with the office of the state register.**

16 §965.6. ~~Regulatory~~ **Small business regulatory** flexibility analysis

17 A. Prior to the adoption of any proposed rule ~~on or after July 1, 2009~~, each
18 agency shall prepare a regulatory flexibility analysis in which the agency shall,
19 where consistent with health, safety, environmental, and economic welfare, consider
20 utilizing regulatory methods that will accomplish the objectives of applicable statutes
21 while minimizing adverse impact on small businesses. The agency shall consider,
22 without limitation, each of the following methods of reducing the impact of the
23 proposed rule on small businesses:

24 * * *

25 **C. The agency shall submit the small business flexibility analysis with the**
26 **office of the state register, pursuant to R.S. 49:953.**

27 §965.7. Conflicts of law

28 Nothing in the ~~Regulatory Flexibility~~ **Small Business Protection** Act shall
29 be construed to conflict with or supersede any applicable federal law, rule, or

1 regulation.

2 §965.8. Notification

3 ~~The Department of Economic Development shall send notification of the~~
4 ~~intent of an agency to adopt, amend, or repeal any rule which would affect small~~
5 ~~businesses as indicated by the economic impact statement or regulatory flexibility~~
6 ~~analysis required by this Act to each person who has made a timely request of the~~
7 ~~department for such notice. The notification shall be sent at the earliest possible date,~~
8 ~~and in no case later than ten days after the date an agency notifies the Department of~~
9 ~~Economic Development of such a proposed rule as required by R.S. 49:965.6.~~

10 Upon receiving the electronic transfer of information from the office of
11 the state register, as provided in R.S. 49:953, the commercial division of the
12 Department of State shall perform all of the following items:

13 (1) By the fifteenth day of the month, the commercial division shall post
14 information on the internet page of the commercial division under the heading
15 of "Proposed State Rules and Regulations that May Affect Your Business".

16 (2) No later than the sixteenth day of the month, the division shall
17 electronically transfer the information to the Louisiana Association of Business
18 and Industry, the Louisiana Chapter of the National Federation of Independent
19 Business, and to each person who has made a timely request of the department
20 for this information.

21 §965.9. Small business advocate; posting of rules

22 A. The secretary of state shall designate a small business advocate from
23 the existing staff of the commercial division of the Department of State to
24 implement and maintain the notification duties and functions required of the
25 Department of State pursuant to R.S. 49:965.8.

26 B. The small business advocate shall coordinate the implementation and
27 maintenance of the website of the commercial division of the Department of
28 State relative to the receipt of information from the office of the state register,
29 pursuant to R.S. 49:953. The department shall enter into an agreement with the

1 office of the state register to arrange for the electronic receipt of the
 2 information on an ongoing basis.

3 C. The small business advocate shall administer the Small Business
 4 Protection Act.

5 Section 2. (A) The Louisiana State Law Institute, pursuant to its statutory authority,
 6 is hereby directed to designate the provisions contained in Chapter 13 of Title 49 of the
 7 Louisiana Revised Statutes of 1950 as "Part A. General Provisions" and to predesignate and
 8 renumber the provisions of R.S. 49:965.2 through 965.8 as "Part B. Small Business
 9 Protection Act" in Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 to be
 10 comprised of R.S. 49:978.1 through 978.7.

11 (B) The Louisiana State Law Institute is hereby directed to change any references
 12 in the Codes or Louisiana Revised Statutes of 1950 to reflect the citation changes contained
 13 in this Act.

14 Section 3. This Act shall become effective on February 1, 2020.

The original instrument was prepared by Carla S. Roberts. The following
 digest, which does not constitute a part of the legislative instrument, was
 prepared by Nancy Vicknair.

DIGEST

SB 241 Reengrossed

2019 Regular Session

Riser

Present law provides that, prior to the adoption, amendment, or repeal of any rule or regulation by a state agency, the agency will notify the public of the change by sending a notice of intent to make the rule or regulation change to the office of the state register for publication in the *La. Register*.

Present law provides for the Regulatory Flexibility Act, which requires state agencies to conduct a review of each proposed rule or regulation change and to prepare an economic impact statement and a regulatory flexibility analysis as it relates to impact that the proposed rule would have on small businesses prior to sending the proposed rule or regulation change to the office of the state register for publication in the *La. Register*.

Proposed law retains present law but changes the name of the Act from the Regulatory Flexibility Act to the Small Business Protection Act.

Present law states that the legislature, as it relates to the regulation of small businesses, makes the following legislative findings:

- (1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy.
- (2) Small businesses bear a disproportionate share of regulatory costs and burdens.

- (3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies.
- (4) When adopting rules to protect the health, safety, and economic welfare of Louisiana, state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers.
- (5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands, including legal, accounting, and consulting costs upon small businesses with limited resources.
- (6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity.
- (7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes.
- (8) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation.
- (9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses.
- (10) The process by which state regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules.

Proposed law retains present law and adds the following:

- (1) Increased hiring in Louisiana's small businesses creates higher wages and better outcomes for Louisiana's citizens and families.
- (2) Before adopting regulations, it is helpful if agencies solicit the ideas and comments of small businesses to examine the impact of proposed and existing rules on small businesses.
- (3) Regulations affect small businesses differently than their larger counterparts. According to the U.S. Small Business Administration, evidence indicates that regulatory requirements at the federal and state level tend to create disproportionately heavier burdens for small businesses, putting them at a disadvantage relative to their larger competitors. Some of the reasons that small businesses are at a disadvantage include all of the following:
 - (a) The cost of regulations is higher relative to available resources. In other words, the cost of regulations per employee is higher for businesses with fewer employees.
 - (b) The cost per employee at the smallest businesses is typically one or more times greater than the equivalent cost at the largest businesses.
- (4) Making small businesses aware of proposed state regulations before they are implemented is the key to creating an effective partnership between state agencies

and small businesses.

Present law provides that prior to the adoption of any proposed rule that may have an adverse impact on small businesses, each agency shall prepare an economic impact statement that identifies an estimate of the number of the small businesses subject to the proposed rule, the costs of compliance, the probable effect on impacted small businesses, and a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

Proposed law retains present law and requires that the economic impact statement will be filed with the office of the state register for publication in the *La. Register* along with the notice of intent to implement the new regulation.

Present law provides that, prior to the adoption of any proposed rule, each agency shall prepare a regulatory flexibility analysis in which the agency will consider utilizing regulatory methods for small businesses that establish less stringent compliance or reporting requirements, establish less stringent deadlines for compliance, consolidate or simplify the reporting requirements, establish performance standards to replace operational standards required in the proposed rule, and exempt small businesses from all or any part of the requirements contained in the proposed rule.

Proposed law retains present law and requires that the regulatory flexibility analysis will be filed with the office of the state register for publication in the *La. Register* along with the notice of intent to implement the new regulation.

Proposed law defines "potpourri notice" to mean a notice sent by an agency to the office of the state register announcing that the agency may implement a future regulation change and that the agency is seeking public comment and will conduct a public hearing, if one is requested, prior to officially proposing the regulation change. Proposed law provides that, when an agency determines in its own judgment that the input of small businesses and the public would serve the interest of small business or the public, the agency may issue a potpourri notice. Proposed law provides that the potpourri notice will be filed with the office of the state register for publication in the *La. Register*.

Present law requires that, when an agency intends to adopt, amend, or repeal any rule or regulation, the notice of intent which is filed with the office of the state register for publication in the *La. Register* shall include a fiscal impact statement approved by the legislative fiscal office indicating that the proposed rule or regulation change would not result in any increase in the expenditure of state funds, unless at least one of the following occurs:

- (1) The proposed rule or regulation is adopted as an emergency rule pursuant to the requirements of present law.
- (2) The legislature has specifically appropriated the monies necessary for the expenditures associated with the intended rule or regulation change.

Proposed law retains present law and requires that the fiscal impact statement be summarized by the agency as to the estimated costs and/or economic benefits to directly affected persons, small businesses, or nongovernmental groups and that the summary shall be published in the *La. Register*.

Proposed law requires that, no later than the 10th day of the month, the office of the state register shall electronically transmit all of the small business economic impact statements, the small business regulatory flexibility analyses, and the fiscal impact statement approved by the legislative fiscal office to the secretary of state's commercial division. Proposed law further provides that, if the agency has filed a potpourri notice, that the notice will also be sent to the secretary of state's commercial division. Proposed law further requires that the

electronic transfer of information from the office of the state register to the secretary of state's commercial division is to be divided into categories by the name of the agency which is filing the proposed rule change or sending the potpourri notice.

Proposed law provides that, upon receiving the electronic transfer of information from the office of the state register, to the secretary of state's commercial division will do all of the following:

- (1) On the 15th day of the month, post the information on the commercial division's internet page under the heading of "proposed state rules and regulations that may affect your business."
- (2) No later than the 16th day of the month, electronically transfer the information to the Louisiana Association of Business and Industry and the Louisiana Chapter of the National Federation of Independent Business, and to each person who has made a timely request of the department for such notices.

Proposed law provides that the secretary of state shall designate a small business advocate from the existing staff of the secretary of state's commercial division to implement and maintain the notification duties and functions pursuant to proposed law and to administer the Small Business Protection Act. Proposed law provides that the small business advocate shall coordinate the implementation and maintenance on the website of the secretary of state's commercial division, as it relates to the receipt of information from the office of the state register. Proposed law provides that the secretary of state's commercial division will enter into an agreement with the office of the state register to arrange for the receipt of such information on an ongoing basis.

Effective February 1, 2020.

(Amends R.S. 49:953(E), 965.2, 965.3(A), (B)(1), (2), and (10), and (C), 965.4, 965.5, 965.6(A)(intro para), 965.7, and 965.8; adds R.S. 953(A)(1)(a)(x) and (I), R.S. 49:965.3(B)(11) and (12), 965.6(C), and 965.9)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Makes technical changes.
2. Removes language requiring the Dept. of Economic Development to send notification of the intent of an agency to adopt, amend, or repeal any rule which would affect small businesses as indicated by the economic impact statement or regulatory flexibility analysis required by proposed law to each person who has made a timely request for such notice.
3. Removes language requiring such notification be sent at the earliest possible date, and in no case later than 10 days after the date an agency notifies the Dept. of such a proposed rule as required by present law.
4. Changes the date the commercial division of the Dept. of State is required to post certain information to its internet page from the 11th to the 15th day of the month.
5. Changes the date the commercial division of the Dept. of State is required to electronically transfer such information to certain entities from the 12th to the 16th day of the month.
6. Changes effective date from Aug. 1, 2019 to Feb. 1, 2020.