

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

BY SENATOR RISER AND REPRESENTATIVE COUSSAN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

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

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

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

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

* * *

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

1 as set forth in R.S. 49:965.6.

2 * * *

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

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

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

17 * * *

18 I.(1) 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, all of the following information:

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

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

26 (c) Any potpourri notices which are submitted to the office of the state
27 register pursuant to R.S. 49:965.5.

28 (2) Prior to electronically sending the information required in this
29 Subsection and Subsection E of this Section to the commercial division of the
30 Department of State, the office of the state register shall divide the information

1 **by agency.**

2 * * *

3 §965.2. Short title

4 R.S. 49:965.2 through **965.9** may be cited as the ~~Regulatory Flexibility~~ **Small**
 5 **Business Protection** Act and are referred to therein as "this Act".

6 §965.3. Intent; legislative findings

7 A. It is the legislative intent and purpose of ~~this~~ **the Small Business**
 8 **Protection** Act to improve state rulemaking by creating procedures to analyze the
 9 availability of more flexible regulatory approaches for small businesses.

10 B. The legislature finds that:

11 (1) A vibrant and growing small business sector is critical to creating jobs in
 12 a dynamic economy. **Increased hiring in Louisiana's small businesses creates**
 13 **higher wages and better outcomes for Louisiana's citizens and families.**

14 (2) Small businesses bear a disproportionate share of regulatory costs and
 15 burdens. **Increased regulatory costs decrease the amount of capital that small**
 16 **businesses have to create new jobs.**

17 * * *

18 (10) ~~The~~ **Prior to the adoption of regulations, the** process by which state
 19 regulations are developed and adopted should be reformed to require agencies to
 20 solicit the ideas and comments of small businesses, to examine the impact of
 21 proposed and existing rules on such businesses, and to review the continued need for
 22 existing rules.

23 **(11) Regulations affect small businesses differently than their larger**
 24 **counterparts. According to the United States Small Business Administration,**
 25 **evidence indicates that regulatory requirements at the federal and state level**
 26 **tend to create disproportionately heavier burdens for small businesses, putting**
 27 **them at a disadvantage relative to their larger competitors. Reasons that small**
 28 **businesses are at a disadvantage include the following:**

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

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

3 **(12) Making small businesses aware of proposed state regulations prior**
 4 **to implementation is key to creating an effective partnership between state**
 5 **agencies and small businesses.**

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

8 §965.4. Definitions

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

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

17 **(a) the The** legislature or any branch, committee, or officer thereof;

18 **(b) any Any** political subdivision, as defined in Article VI, Section 44 of the
 19 Constitution of Louisiana, and any board, commission, department, agency, officer,
 20 or other entity thereof;

21 **(c) and the The** courts.

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

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

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

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

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

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

15 (4)(5) "Small business" means a business that is domiciled in this state,
16 employs one hundred or fewer full-time employees, and meets at least one of the
17 following conditions:

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

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

20 §965.5. Economic **Small business economic** impact statements; **potpourri notices**

21 **A.(1)** Prior to the adoption of any proposed rule ~~on or after July 1, 2009~~, that
22 may have an adverse impact on small businesses, each agency shall prepare ~~an~~ **a**
23 **small business** economic impact statement, that includes the following:

24 (1)(a) An identification and estimate of the number of the small businesses
25 subject to the proposed rule.

26 (2)(b) The projected reporting, record keeping, and other administrative
27 costs required for compliance with the proposed rule, including the type of
28 professional skills necessary for preparation of the report or record.

29 (3)(c) A statement of the probable effect on impacted small businesses.

30 (4)(d) A description of any less intrusive or less costly alternative methods

1 of achieving the purpose of the proposed rule.

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

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

8 §965.6. ~~Regulatory~~ **Small business regulatory** flexibility analysis

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

16 * * *

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

19 §965.7. Conflicts of law

20 Nothing in the ~~Regulatory Flexibility~~ **Small Business Protection** Act shall
 21 be construed to conflict with or supersede any applicable federal law, rule, or
 22 regulation.

23 §965.8. Notification

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

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

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

7 (2) No later than the sixteenth day of the month, the division shall
8 electronically transfer the information to the Louisiana Association of Business
9 and Industry, the Louisiana Chapter of the National Federation of Independent
10 Business, and to each person who has made a timely request of the department
11 for this information.

12 §965.9. Small business advocate; posting of rules

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

17 B. The small business advocate shall coordinate the implementation and
18 maintenance of the website of the commercial division of the Department of
19 State relative to the receipt of information from the office of the state register,
20 pursuant to R.S. 49:953. The department shall enter into an agreement with the
21 office of the state register to arrange for the electronic receipt of the
22 information on an ongoing basis.

23 C. The small business advocate shall administer the Small Business
24 Protection Act.

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

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

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____