

2020 Regular Session

HOUSE BILL NO. 747

BY REPRESENTATIVE RISER

ADMINISTRATIVE PROCEDURE: Provides for notice regarding the impact of administrative rules on businesses

1 AN ACT

2 To amend and reenact R.S. 49:953(A)(1)(a)(x) and (I)(1), 978.3(3), (4), and (5), and 978.4,
3 to enact R.S. 49:978.3(6), and to repeal R.S. 49:953(E)(3), relative to administrative
4 rules; to provide for the business impact statement; to provide procedures regarding
5 administrative rules; to provide for definitions; to provide for notifications; to
6 provide for the electronic transfer of certain information; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 49:953(A)(1)(a)(x) and (I)(1), 978.3(3), (4), and (5), and 978.4 are
10 hereby amended and reenacted and R.S. 49:978.3(6) is enacted to read as follows:

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

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

13 (1)(a) Give notice of its intended action and a copy of the proposed rules at
14 least ninety days prior to taking action on the rule. The notice shall include:

15 * * *

16 (x) A "business impact" statement concerning the ~~economic~~ impact on ~~small~~
17 businesses, as set forth in R.S. 49:978.4, that has been approved by the legislative
18 fiscal office and the small business regulatory flexibility analysis, as set forth in R.S.
19 49:978.5.

20 * * *

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

4 (a) The ~~small~~ business impact statement prepared by the agency pursuant to
5 R.S. 49:978.4 and approved by the legislative fiscal office and the small business
6 regulatory flexibility analysis prepared pursuant to R.S. 49:978.5.

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

9 (c) Any potpourri ~~notices which are~~ notice submitted to the office of the state
10 register pursuant to R.S. 49:978.4.

11 * * *

12 §978.3. Definitions

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

15 * * *

16 (3) "Large business" means a business that is not a small business.

17 (4) "Proposed rule" means a proposal by an agency for a new rule or for a
18 change in, addition to, or repeal of an existing rule.

19 (4) (5) "Rule" means each agency statement, guide, or requirement for
20 conduct or action, exclusive of those regulating only the internal management of the
21 agency and those purporting to adopt, increase, or decrease any fees imposed on the
22 affairs, actions, or persons regulated by the agency, which has general applicability
23 and the effect of implementing or interpreting substantive law or policy, or which
24 prescribes the procedure or practice requirements of the agency. "Rule" includes but
25 is not limited to any provision for fines, prices or penalties, the attainment or loss of
26 preferential status, and the criteria or qualifications for licensure or certification by
27 an agency. A rule may be of general applicability even though it may not apply to
28 the entire state, provided its form is general and it is capable of being applied to

1 every member of an identifiable class. The term includes the amendment or repeal
2 of an existing rule but does not include declaratory rulings or orders or any fees.

3 ~~(5)~~ (6) "Small business" means a business that is either for profit or
4 nonprofit, that is domiciled or doing business in this state, and that employs one
5 hundred or fewer a number of full-time employees that is less than or equal to the
6 greater of fifteen hundred or the maximum number of employees that would qualify
7 the business as a "small business" as defined by the United States Small Business
8 Administration, and meets at least one of the following conditions:

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

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

11 §978.4. ~~Small business economic~~ Business impact statements; potpourri notices

12 A.~~(1)~~ Prior to the adoption of any proposed rule ~~that may have an adverse~~
13 ~~impact on small businesses~~, each agency shall prepare a ~~small business economic~~
14 ~~impact statement~~, that includes the following:

15 (a) (1) An identification and estimate of the number of the small businesses
16 subject to the proposed rule: The name, address, and phone number of the agency
17 proposing the rule.

18 (b) (2) The projected reporting, record keeping, and other administrative
19 costs required for compliance with the proposed rule, including the type of
20 professional skills necessary for preparation of the report or record: The title of the
21 rule, the date of first publication of the rule, and the effective date of the rule.

22 (c) (3) A brief summary statement of the probable effect on impacted small
23 businesses: how the proposed rule would add to, modify, or remove existing
24 regulations.

25 (d) (4) A description of any less intrusive or less costly alternative methods
26 of achieving the purpose of the proposed rule: A summary of the circumstances
27 which require the proposed rule. If the proposed rule is required by federal
28 regulation, the summary shall cite the federal statute or regulation.

1 (5)(a) A description of which of the following are reasonably expected to be
2 impacted by the proposed rule:

3 (i) Businesses located in Louisiana.

4 (ii) Individual citizens of Louisiana.

5 (iii) Both businesses and individual citizens of Louisiana.

6 (iv) Neither businesses nor individual citizens of Louisiana.

7 (b) If the agency determines that the proposed rule will not have any impact
8 on businesses in Louisiana, the agency shall give a brief statement as to why the
9 proposed rule does not impact businesses and which individuals are expected to be
10 impacted by the proposed rule.

11 (6) If the agency determines that the proposed rule is reasonably expected
12 to impact businesses in any manner, the agency shall state one of the following:

13 (a) Small businesses are expected to be impacted.

14 (b) Large businesses are expected to be impacted.

15 (c) Both small and large businesses are expected to be impacted.

16 (d) The agency is unable to determine whether the expected impact to
17 businesses will be borne by small businesses, large businesses, or both.

18 (7) If the agency determines that the proposed rule is reasonably expected
19 to impact businesses in any manner, the agency shall identify one of the following
20 business sectors which is reasonably expected to be impacted:

21 (a) Accommodations and Hospitality.

22 (b) Accounting.

23 (c) Agriculture and Farming.

24 (d) Automobiles.

25 (e) Chemical Industry.

26 (f) Communications.

27 (g) Construction.

28 (h) Education Services or Contractors.

29 (i) Engineering.

- 1 (j) Environmental Services.
- 2 (k) Entertainment.
- 3 (l) Fishing and Aquaculture.
- 4 (m) Food Services.
- 5 (n) Funeral Homes, Mortuaries, and Internment Services.
- 6 (o) Healthcare or Medical Services.
- 7 (p) Information Technology.
- 8 (q) Insurance.
- 9 (r) Manufacturing.
- 10 (s) Oil or Petroleum.
- 11 (t) Real Estate.
- 12 (u) Retail Establishments.
- 13 (v) Timber and Forestry.
- 14 (w) Transportation.
- 15 (x) Other businesses or industries not listed.
- 16 ~~(2)~~ B. The ~~small~~ business ~~economic~~ impact statement shall be submitted to
- 17 the office of the state register pursuant to R.S. 49:953 after the statement has been
- 18 approved by the legislative fiscal office.
- 19 ~~B.~~ C. If an agency determines, in its own judgment, that the input of ~~small~~
- 20 businesses and the public would be helpful in drafting a new proposed rule, the
- 21 agency may issue a potpourri notice. If the agency issues a potpourri notice, it shall
- 22 be submitted ~~with~~ to the office of the state register.
- 23 Section 2. R.S. 49:953(E)(3) is hereby repealed in its entirety.

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)]

HB 747 Original

2020 Regular Session

Riser

Abstract: Proposes requirements for business impact statements regarding proposed administrative rules.

Present law provides procedures for the proposal and adoption of administrative rules.

Present law requires that an agency give notice of an intended rule-making action at least 90 days prior to the action, and requires that the notice include specified elements.

Present law provides that one required element of the notice is a statement concerning the economic impact of the proposed rule on small business. Proposed law removes the "economic" limitation on the impacts and the "small" limitation on the businesses that shall be considered in the statement; thus proposed law requires that the statement evaluate any impact on any business. Proposed law further requires that the statements be approved by the legislative fiscal office.

Present law provides for the required elements of the small business impact statement.

Proposed law removes the following as required elements of the small business impact statement:

- (1) An identification and estimate of the number of the small businesses subject to the proposed rule.
- (2) The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule.
- (3) A statement of the probable effect on impacted small businesses.
- (4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

Proposed law adds the following as required elements of the business impact statement:

- (1) The name, address, and phone number of the agency.
- (2) The title, date of first publication, and effective date of the proposed rule.
- (3) A description of how the proposed rule changes existing regulations.
- (4) A summary of the circumstances that require the rule.
- (5) A description of whether La. businesses or citizens will be impacted by the proposed rule.
- (6) A statement of whether large or small businesses will be impacted.
- (7) Identification of one business sector from which businesses are expected to be impacted.

Present law defines "small business" as a business that is domiciled in La., employs 100 or fewer full-time employees, and has either gross annual sales are less than \$10 million or a total net worth of less than \$2 million.

Proposed law defines "small business" as a business that is:

- (1) Domiciled or doing business in La.
- (2) For profit or nonprofit.

- (3) Has a number of full-time employees that is less than or equal to the greater of 1,500 or the number of employees that would qualify the business as a small business as defined by the U.S. Small Business Administration.

Present law provides that other elements of a notice of an intended rule-making action are economic and fiscal impact statements. Requires that the agency summarize such statements as to the estimated costs or economic benefits or both to directly affected persons, small businesses, or nongovernmental groups. Proposed law retains present law.

Present law requires that the office of state register electronically transmit the summaries of the economic and fiscal impact statements to the commercial division of the Dept. of State. Proposed law removes present law.

(Amends R.S. 49:953(A)(1)(a)(x) and (I)(1), 978.3(3), (4), and (5), and 978.4; Adds R.S. 49:978.3(6); Repeals R.S. 49:953(E)(3))