

2020 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 4

BY REPRESENTATIVES BEAULLIEU AND FARNUM

TAX/AD VALOREM-EXEMPTION: Amends rules relative to participation in the Industrial Tax Exemption Program

1 A CONCURRENT RESOLUTION

2 To amend the Louisiana Economic Development rules LAC 13:I.502 and 503(H), which
3 provide for local approval for industrial ad valorem tax exemption applications; to
4 authorize an ITEP Ready local governmental entity approval option; to provide for
5 certain requirements and limitations; to provide for related matters; and to direct the
6 Office of the State Register to print the amendments in the Louisiana Administrative
7 Code.

8 WHEREAS, Article 7, Section 21(F) of the Constitution of Louisiana provides that
9 the Board of Commerce and Industry "with the approval of the governor, may enter into
10 contracts for the exemption from ad valorem taxes of a new manufacturing establishment
11 or an addition to an existing manufacturing establishment, on such terms and conditions as
12 the board, with approval of the governor, deems in the best interest of the state"; and

13 WHEREAS, in June of 2017 and August of 2018, the Department of Economic
14 Development promulgated rules in accordance with the Administrative Procedure Act to
15 govern the application process for the Industrial Tax Exemption Program established in
16 Article 7, Section 21(F) of the Constitution of Louisiana; and

17 WHEREAS, the current administrative rules and regulations require local
18 governmental entities to provide their approval or rejection of an industrial ad valorem tax
19 exemption application within their jurisdiction prior to gubernatorial review and approval
20 of an application; and

1 WHEREAS, the current administrative rules and regulations do not allow local
2 governmental entities to provide continuous approval of all potential industrial ad valorem
3 tax exemption applications within their jurisdictions; and

4 WHEREAS, a local approval option that indicates to potential applicants continuous
5 approval of all industrial ad valorem tax exemption applications in a parish could be a useful
6 economic development recruitment tool; and

7 WHEREAS, R.S. 49:969 authorizes the legislature, by Concurrent Resolution, to
8 suspend, amend, or repeal any rule or regulation or body of rules or regulations adopted by
9 a state department, agency, board, or commission.

10 THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that LAC
11 13:I.502 and 503(H) are hereby amended to read as follows:

12 §502. Definitions

13 *Addition to a Manufacturing Establishment -*

14 1.a. a capital expenditure for property that would meet the standard of a new
15 manufacturing establishment if the addition were treated as a stand-alone
16 establishment;

17 b. a capital expenditure for property that is directly related to the
18 manufacturing operations of an existing manufacturing establishment; or

19 c. an installation or physical change made to a manufacturing establishment
20 that increases its value, utility or competitiveness;

21 2. maintenance capital, required environmental capital upgrades, and
22 replacement parts, except those replacements required in the rehabilitation or
23 restoration of an establishment, to conserve as nearly, and as long as possible,
24 original condition, shall not qualify as an addition to a manufacturing establishment;

25 3. expenses associated with the rehabilitation or restoration of an
26 establishment as provided for in §511 shall be included as an addition to a
27 manufacturing establishment.

1 *Beginning of Construction* - the first day on which foundations are started or,
2 where foundations are unnecessary, the first day on which installations of the
3 manufacturing establishment begins.

4 *Board* - Board of Commerce and Industry.

5 *Capital Expenditure* - the cost associated with a new manufacturing
6 establishment or an addition to an existing manufacturing establishment, including
7 purchasing or improving real property and tangible personal property, whose useful
8 life exceeds one year and which is used in the conduct of business.

9 *Department* - Louisiana Department of Economic Development.

10 *Establishment* - an economic unit at a single physical location.

11 *Exhibit A* - a fully executed agreement between the department and the
12 applicant specifying the terms and conditions of the granting of the exemption
13 contract

14 *Integral* - required to make whole the product being produced.

15 ITEP Ready - a parish that has provided for continuous local governmental
16 entity approval for all industrial ad valorem tax exemption applications within the
17 parish.

18 *Job* - positions of employment that are:

- 19 1. new (not previously existing in the state) or retained;
- 20 2. permanent (without specific term);
- 21 3. full-time (working 30 or more hours per week);
- 22 4. employed directly, by an affiliate or through contract labor;
- 23 5. based at the manufacturing establishment;
- 24 6. filled by a United States citizen who is domiciled in Louisiana or who
25 becomes domiciled in Louisiana within 60 days of employment; and
- 26 7. any other terms of employment as negotiated in the exhibit A, including
27 a requirement that in order to qualify as a job, a basic health benefits plan is or has
28 been offered in conjunction with the position of employment.

1 *Local Governmental Entity* - the parish governing authority, school board,
2 sheriff, and any municipality in which the manufacturing establishment is or will be
3 located.

4 *Maintenance Capital* - costs incurred to conserve as nearly as possible the
5 original condition.

6 *Manufacturer* - a person or business who engages in manufacturing at a
7 manufacturing establishment.

8 *Manufacturing* - working raw materials by means of mass or custom
9 production, including fabrication, applying manual labor or machinery into wares
10 suitable for use or which gives new shapes, qualities or combinations to matter which
11 already has gone through some artificial process. The resulting products must be
12 "suitable for use" as manufactured products that are placed into commerce for sale
13 or sold for use as a component of another product to be placed, and placed into
14 commerce for sale.

15 *Mega-Project* - a manufacturing establishment that provides all of the
16 following:

- 17 1. 500 jobs, employed directly, only, and otherwise meeting the definition
18 of jobs, which shall generate a minimum of \$20,000,000 in net new payroll within
19 three years of the beginning of operations; and
20 2. a minimum of \$100,000,000 in capital expenditures.

21 *Obsolescence*—the inadequacy, disuse, outdated or non-functionality of
22 facilities, infrastructure, equipment or product technologies due to the effects of
23 time, decay, changing market conditions, invention and adoption of new product
24 technologies or changing consumer demands.

25 *Qualified Disaster* -

- 26 1. a disaster which results from:
27 a. an act of terror directed against the United States ~~of~~ or any of its allies; or

1 b. any military action involving the Armed Forces of the United States and
2 resulting from violence or aggression against the United States or any of its allies (or
3 threat thereof), but not including training exercises;

4 2. any disaster which, with respect to the area in which the manufacturing
5 establishment is located, resulted in a subsequent determination by the president of
6 the United States that such area warrants assistance by the federal government under
7 the Robert T. Stafford Disaster Relief and Emergency Assistance Act;

8 3. a disaster which is determined by an applicable federal, state, or local
9 authority (as determined by the secretary) to warrant assistance from the federal,
10 state, or local government, or agency ~~of~~ or instrumentality thereof; or

11 4. any other extraordinary event that destroys or renders all or a portion of
12 the manufacturing establishment inoperable.

13 *Rehabilitation* - the extensive renovation of a building or project that is
14 intended to cure obsolescence or to repurpose a facility.

15 *Required Environmental Capital Upgrades* - upgrades required by any state
16 or federal governmental agency in order to avoid fines, closures or other penalty.
17 Environmental upgrades demonstrated to be in excess of state and federal
18 governmental agency requirements shall not be considered required environmental
19 capital upgrades.

20 *Restoration* - repairs to bring a building or structure to at least its original
21 form or an improved condition.

22 *Secretary* - secretary of the Louisiana Department of Economic
23 Development.

24 *Site* - one or more contiguous parcels of land which are under the control of
25 the manufacturing establishment or which contains certain assets of the
26 manufacturing establishment.

1 §503. Advance Notification; Application

2 * * *

3 H. Upon the board's approval of an application, the department, on behalf of
4 the board, shall, within three business days, transmit a copy of the approval and
5 Exhibit A by mail or electronic mail to each local governmental authority and the
6 assessor in the parish in which the manufacturing establishment is or will be located.
7 ~~and the~~ The department shall post notice of the board's approval of an application on
8 the department's website within three business days of approval, upon which date
9 shall begin a notice period of 30 days for the parish governing authority (speaking
10 on behalf of the parish and all parish bodies who are located outside the boundary
11 of any affected municipality who receive a millage), the school board, any applicable
12 municipality (speaking on behalf of the municipality and all municipal bodies who
13 receive a millage) and the sheriff to initiate action to approve or reject the board's
14 action as provided hereinafter.

15 1. Within the 30-day notice period, the parish governing authority, the school
16 board, or any affected municipality may identify the application on the agenda of a
17 public meeting notice and the sheriff may issue a letter approving or denying the
18 application, and notice of these actions shall be given to the department within 3
19 business days. A local governmental entity that places the application on the agenda
20 for a public meeting will have an additional 30 days (for a total of 60 days from the
21 start of the notice period) to conduct a public meeting issuing a resolution approving
22 or rejecting the board approved application, and notice of the issuance shall be given
23 to the department within 3 business days. If a local governmental entity does not
24 take action or provide notice as required herein, then the application will be deemed
25 approved by each such entity.

26 2.a. A parish shall be ITEP Ready if each local governmental entity in the
27 parish approves the designation by a majority vote at a public meeting, agreeing to
28 approve all industrial ad valorem tax exemption applications and projects within
29 their jurisdictions, including approving all terms and conditions provided in any

1 proposed industrial ad valorem tax exemption agreement. The parish governing
 2 authority, the school board, and each municipality authorized to receive a millage in
 3 the parish shall individually evidence its vote for or against the parish becoming
 4 ITEP Ready by resolution. The sheriff shall evidence his vote for or against the
 5 parish becoming ITEP Ready by letter. The 30 day notice period in which local
 6 governmental entities are authorized to hold a public hearing for the purpose of
 7 approving or rejecting an industrial ad valorem tax exemption application shall not
 8 apply to ITEP Ready parishes. The governing authority of a parish that is ITEP
 9 Ready shall submit to the department a resolution on behalf of the parish and all
 10 local governmental entities in the parish stating the continuous approval of industrial
 11 ad valorem tax exemption applications within its jurisdiction. No further action
 12 evidencing local governmental entity approval shall be required.

13 b. Any local governmental entity within an ITEP Ready parish may change
 14 its intent to be ITEP Ready for the next calendar year. This change shall be
 15 evidenced by a resolution or letter presented to the Board of Commerce and Industry
 16 no later than December 31 of any year and shall be in effect for one calendar year
 17 beginning January 1 of the following calendar year. A parish shall remain ITEP
 18 Ready unless a change is made in accordance with this Subparagraph.

19 3. Within 60 days of the promulgation of these rules, the local governmental
 20 entities for each parish (in consultation with the parish assessor and, upon request,
 21 with guidance from the department), shall make best efforts to develop reasonable
 22 guidelines for application approval and/or denial and if so desired, penalty guidelines
 23 for failure to achieve and maintain jobs and/or payroll as required by the exhibit A.

24 BE IT FURTHER RESOLVED that the rules as amended by the provisions
 25 of this Resolution shall apply to industrial ad valorem tax exemption applications
 26 filed on or after August 1, 2020.

27 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted
 28 to the Office of the State Register.

1 BE IT FURTHER RESOLVED that the office of the state register is hereby
 2 directed to have the amendments to LAC 13:I.502 and 503(H) printed and
 3 incorporated into the Louisiana Administrative Code.

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)]

HCR 4 Engrossed

2020 Regular Session

Beaulieu

Present LAC provides for various definitions and procedures related to the Industrial Ad Valorem Tax Exemption Program.

Proposed LAC retains Present LAC and creates and defines the ITEP Ready designation.

Proposed LAC defines ITEP Ready as a parish that provides continuous and automatic local governmental entity approval of all industrial ad valorem tax exemptions within the parish.

Present LAC establishes the procedures an applicant must follow to participate in the advanced notification application process. The applicant must first provide an application and application fee to the Louisiana Dept. of Economic Development (LED). LED will then provide a copy of the application to the Dept. of Revenue (LDR) for review.

Present LAC provides LED must receive a letter-of-no-objection/letter-of-approval from LDR prior to submitting the application to the Board of Commerce and Industry (board). The applicant must provide documentation proving it has met specific criteria set forth in the administrative rules to receive the board's approval.

Present LAC provides that upon the board's approval of an application, LED transmits a copy of the application to each local governmental entity and the local tax assessor.

Present LAC provides that each local governmental authority that receives a millage, the school board, and the sheriff may review the proposed ad valorem tax exemption application provided by the board and approve or deny the application.

Present LAC does not require any local governmental entity receiving a millage, the school board, or the sheriff to review a proposed ad valorem tax exemption application; however, failure to review an application after 30 days notice results in automatic local governmental entity approval.

Proposed LAC authorizes an alternative to each local governmental entity providing their approval. Establishes the alternative ITEP Ready parish designation.

Proposed LAC provides that a parish is ITEP Ready if each local governmental entity in the parish approves the designation by a majority vote at a public meeting.

Proposed LAC provides that if the local governmental entities approve the ITEP Ready designation, the parish governing authority, on behalf of all taxing authorities in the parish, will publicly declare the parish ITEP Ready by resolution.

Proposed LAC establishes that no further action evidencing local governmental entity approval shall be required.

Proposed LAC provides that if a parish is ITEP Ready the local governmental entities in the parish automatically approve all industrial ad valorem tax exemption applications proposed in the parish including all terms and conditions of the tax exemption agreement.

Proposed LAC provides that the 30 day notice period in which local governmental entities are authorized to hold a public hearing to approve or reject an application does not apply to ITEP Ready parishes.

Proposed LAC authorizes governmental entities within an ITEP Ready parish the opportunity to change their ITEP Ready designation. The change shall be documented and provided to the board no later than Dec. 31 of any year and shall be effective for one calendar year beginning Jan. 1 of the following calendar year.

Proposed LAC applies to industrial tax exemption program applications filed on or after August 1, 2020.

(Amends LAC 13:I.502 and 503(H))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Change the vote requirement for local governmental entities to designate the parish in which they are located as ITEP Ready from a unanimous vote to a majority vote at a public meeting.
2. Provide local governmental entities within an ITEP Ready parish the opportunity to change their ITEP Ready designation. The change shall be documented and provided to the Board of Commerce and Industry no later than Dec. 31 of any year and shall be effective for one calendar year beginning Jan. 1 of the following calendar year.