

2019 Regular Session

SENATE BILL NO. 208

BY SENATOR RISER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ECONOMIC DEVELOPMENT. Provides for the Small Business Protection Act. (7/1/19)

1 AN ACT

2 To amend and reenact R.S. 49:953(A)(1)(b)(i), (B)(1)(a), 953(C)(2)(a), 953(F)(3)(b),

3 954(A), 954.1(D), 965.2, 965.3(C), 965.5, the introductory paragraph of 965.6(A),

4 965.6 (B), 965.7, 965.8, 968(B), and 968(H)(2), and (K)(1) and R.S. 51:2376(1) and

5 (3)(e) and to enact R.S. 49:965.9 and 965.10 and R.S. 51:2376(3)(f), relative to small

6 business development; to enact the Small Business Protection Act; to provide

7 procedures regarding administrative rules; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 49:953(A)(1)(b)(i), (B)(1)(a), 953(C)(2)(a), 953(F)(3)(b), 954(A),

10 954.1(D), 965.2, 965.3(C), 965.5, the introductory paragraph of 965.6(A), 965.6 (B), 965.7,

11 965.8, 968(B), and 968(H)(2), and (K)(1) are hereby amended and reenacted and R.S.

12 49:965.9 and 965.10 are hereby enacted to read as follows:

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

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

15 (1)(a) * * *

16 (b)(i) The notice shall be published at least once in the Louisiana Register

17 and shall be submitted with a full text of the proposed rule to the Louisiana Register

1 **and to the commercial division of the Department of State** at least one hundred
2 days prior to the date the agency will take action on the rule.

3 * * *

4 B.(1)(a) If an agency finds that an imminent peril to the public health, safety,
5 or welfare requires adoption of a rule upon shorter notice than that provided in
6 Subsection A of this Section and within five days of adoption states in writing to the
7 governor of the state of Louisiana, the attorney general of Louisiana, the speaker of
8 the House of Representatives, the president of the Senate, **the commercial division**
9 **of the Department of State,** and the Office of the State Register, its reasons for that
10 finding, it may proceed without prior notice or hearing or upon any abbreviated
11 notice and hearing that it finds practicable, to adopt an emergency rule. The
12 provisions of this Paragraph also shall apply to the extent necessary to avoid
13 sanctions or penalties from the United States, or to avoid a budget deficit in the case
14 of medical assistance programs or to secure new or enhanced federal funding in
15 medical assistance programs. The agency statement of its reason for finding it
16 necessary to adopt an emergency rule shall include specific reasons why the failure
17 to adopt the rule on an emergency basis would result in imminent peril to the public
18 health, safety, or welfare, or specific reasons why the emergency rule meets other
19 criteria provided in this Paragraph for adoption of an emergency rule.

20 * * *

21 C.(1) * * *
22 (2)(a) At least once prior to January 1, 2020, and at least once during every
23 six-year period thereafter, each agency subject to Paragraph (1) of this Subsection
24 which engages in rulemaking shall conduct a public hearing for the purpose of
25 allowing any interested person the opportunity to comment on any rule of the agency
26 which the person believes is contrary to law, outdated, unnecessary, overly complex,
27 or burdensome. The agency shall publish notice of the meeting in the Louisiana
28 Register, give notice of the meeting electronically to the appropriate legislative
29 oversight committees, and shall provide notice of the meeting to **the commercial**

1 **division of the Department of State and** all persons who have made timely request
2 of the agency for notice of rule changes, all no later than thirty days prior to the
3 meeting.

4 * * *

5 F. * * *

6 (3) Notwithstanding any other provision of this Chapter to the contrary, when
7 the Department of Environmental Quality proposes a rule that is identical to a federal
8 law or regulation applicable in Louisiana, except as provided in Paragraph (4) of this
9 Subsection, it may use the following procedure for the adoption of the rule:

10 * * *

11 (b) Notice of the proposed rule shall be published at least once in the
12 Louisiana Register and shall be submitted with a full text of the proposed rule to the
13 Louisiana Register **and the commercial division of the Department of State** at
14 least seventy days prior to the date the department proposes to formally adopt the
15 rule. The Office of the State Register may omit from the Louisiana Register any such
16 proposed rule the publication of which would be unduly cumbersome, expensive, or
17 otherwise inexpedient, if the Louisiana Register contains a notice stating the general
18 subject matter of the omitted proposed rule, the process being employed by the
19 department for adoption of the proposed rule, and stating how a copy of the proposed
20 rule may be obtained.

21 * * *

22 §954. Filing; taking effect of rules

23 A. No rule adopted on or after January 1, 1975, is valid unless adopted in
24 substantial compliance with this Chapter. Each rulemaking agency shall file a
25 certified copy of its rules with the Office of the State Register. No rule, whether
26 adopted before, on, or after January 1, 1975, shall be effective, nor may it be
27 enforced, unless it has been properly filed with the Office of the State Register. No
28 rule adopted on or after November 1, 1978, shall be effective, nor may it be
29 enforced, unless prior to its adoption a report relative to the proposed rule change is

1 submitted to the appropriate standing committee of the legislature or to the presiding
 2 officers of the respective houses as provided in R.S. 49:968. No rule adopted on or
 3 after September 12, 1980, shall be effective, nor may it be enforced, unless the
 4 approved economic and fiscal impact statements, as provided in R.S. 49:953(A),
 5 have been filed with the Office of the State Register and published in the Louisiana
 6 Register. No rule adopted on or after October 1, 2019, shall be effective, nor may
 7 it be enforced, unless it has been properly filed with the commercial division of
 8 the Department of State. The inadvertent failure to mail notice and statements to
 9 persons making request for such mail notice, as provided in R.S. 49:953, shall not
 10 invalidate any rule adopted hereunder. A proceeding under R.S. 49:963 to contest
 11 any rule on the grounds of noncompliance with the procedures for adoption, as given
 12 in this Chapter, must be commenced within two years from the date upon which the
 13 rule became effective.

* * *

14 §954.1. Louisiana Administrative Code and Louisiana Register; publication;
 15 distribution; copies; index; interagency rules

* * *

18 D. One copy, or multiple copies if practical, of the Louisiana Register and
 19 Louisiana Administrative Code shall be made available upon request to state
 20 depository libraries and to the commercial division of the Department of State
 21 free of charge, and to other agencies or persons at prices fixed by the Office of the
 22 State Register to recover all or a portion of the mailing and publication costs.
 23 Notwithstanding the provisions of R.S. 49:951(2) to the contrary, the Office of the
 24 State Register shall provide free copies of the Louisiana Register and the Louisiana
 25 Administrative Code to the David R. Poynter Legislative Research Library, the
 26 Senate Law Library, and the Huey P. Long Memorial Law Library.

* * *

28 §965.2. Short title

29 R.S. 49:965.2 through 965.8 may be cited as the ~~Regulatory Flexibility~~ Small

1 **Business Protection** Act and are referred to therein as "this Act".

2 §965.3. Intent; legislative findings

3 * * *

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

6 * * *

7 §965.5. Economic impact statements

8 **A.** Prior to the adoption of any proposed rule on or after July 1, ~~2009~~ **2019**,
9 that may have an adverse impact on small businesses, each agency shall prepare an
10 economic impact statement that includes the following:

11 (1) An identification and estimate of the number of the small businesses
12 subject to the proposed rule.

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

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

17 (4) A description of any less intrusive or less costly alternative methods of
18 achieving the purpose of the proposed rule.

19 **B. When practical, the agency should utilize an economist with a college**
20 **or university in this state to assist in developing the economic impact statement.**

21 * * *

22 §965.6. Regulatory flexibility analysis

23 A. Prior to the adoption of any proposed rule on or after July 1, ~~2009~~ **2019**,
24 each agency shall prepare a regulatory flexibility analysis in which the agency shall,
25 where consistent with health, safety, environmental, and economic welfare, consider
26 utilizing regulatory methods that will accomplish the objectives of applicable statutes
27 while minimizing adverse impact on small businesses. The agency shall consider,
28 without limitation, each of the following methods of reducing the impact of the
29 proposed rule on small businesses:

* * *

B. Prior to the adoption of any proposed rule by an agency which according to the economic impact statement required by R.S. 49:965.5 and the results of the regulatory flexibility analysis required by R.S. 49:965.6 would have an adverse impact on small businesses, the agency shall notify the commercial division of the Department of Economic Development State of its intent to adopt the proposed rule.

§965.7. Conflicts of law

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

§965.8. Notification

The commercial division of the ~~Department of Economic Development~~ State shall 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 this Act to each person who has made a timely request of the department for such notice. The notification shall be sent at the earliest possible date, and in no case later than ten days after the date an agency notifies the commercial division of the ~~Department of Economic Development~~ State of such a proposed rule as required by R.S. 49:965.6.

§965.9. Small business advocate; posting of rules

A. The secretary of state shall designate a small business advocate from the existing staff of the commercial division of the Department of State to implement and maintain the duties and functions of this Section.

B. The small business advocate shall coordinate the implementation and maintenance on the website of the Department of State, the Louisiana Administrative Code, and rules proposed pursuant to the Administrative Procedure Act. The department may enter into an agreement with the office of state register to arrange for the receipt of such information on an ongoing basis.

C. The small business advocate shall administer the Small Business

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Protection Act.

§965.10. Mandatory comment period

Notwithstanding any law to the contrary, no hearing pursuant to R.S. 49:953(A)(2) shall be held earlier than sixty days after notice is received by the commercial division of the Department of State.

* * *

§968. Review of agency rules; fees

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B. Prior to the adoption, amendment, or repeal of any rule or the adoption, increase, or decrease of any fee, the agency shall submit a report relative to such proposed rule change or fee adoption, increase, or decrease to the appropriate standing committees of the legislature and the presiding officers of the respective houses as provided in this Section and to the commercial division of the Department of State. The report shall be so submitted on the same day the notice of the intended action is submitted to the Louisiana Register for publication in accordance with R.S. 49:953(A)(1). The report shall be submitted to each standing committee electronically if electronic means are available. If no electronic means are available, the report shall be submitted to the committee's office in the state capitol by certified mail with return receipt requested or by messenger who shall provide a receipt for signature. The electronic receipt by the committee, return receipt or the messenger's receipt shall be proof of receipt of the report by the committee.

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H.

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(2) Substantive changes to a rule proposed for adoption, amendment, or repeal occur if the nature of the proposed rule is altered or if such changes affect additional or different substantive matters or issues not included in the notice required by R.S. 49:953(A)(1). Whenever an agency seeks to substantively change a proposed rule after notice of intent has been published in the Louisiana Register pursuant to R.S. 49:953(A)(1), the agency shall hold a public hearing on the

1 substantive changes preceded by an announcement of the hearing in the Louisiana
 2 Register. A notice of the hearing shall be mailed within ten days after the date the
 3 announcement is submitted to the Louisiana Register to **the commercial division of**
 4 **the Department of State and to** all persons who have made request of the agency
 5 for such notice. Any hearing by the agency pursuant to this Paragraph shall be held
 6 no earlier than thirty days after the publication of the announcement in the Louisiana
 7 Register. The agency hearing shall conform to R.S. 49:953(A)(2)(b), and a report on
 8 the hearing shall be made to the oversight committees in accordance with
 9 Subparagraph D(1)(b) of this Section. The agency shall make available to interested
 10 persons a copy of such report no later than one working day following the submittal
 11 of such report to the oversight committees. Any determination as to the rule by the
 12 oversight committees, prior to gubernatorial review as provided in Subsection G of
 13 this Section, shall be made no earlier than five days and no later than thirty days
 14 following the day the report required by this Paragraph is received from the agency.

15 * * *

16 K.(1) Each year, no later than thirty days prior to the beginning of the regular
 17 session of the legislature, each agency shall submit a report to the appropriate
 18 committees as provided for in Subsection B of this Section **and to the commercial**
 19 **division of the Department of State**. This report shall contain a statement of the
 20 action taken by the agency with respect to adoption, amendment, or repeal of each
 21 rule proposed for adoption, amendment, or repeal during the previous year and a
 22 report of the action taken by the agency with respect to any proposed fee adoption,
 23 increase, or decrease during the previous year.

24 * * *

25 Section 2. R.S. 51:2376(1) and (3)(e) are hereby amended and reenacted to read as
 26 follows and R.S. 51:2376(3)(f) is hereby enacted to read as follows:

27 §2376. Duties and objectives; reporting

28 The duties and objectives of the members of the council shall include but are
 29 not limited to the following:

1 (1) Continual research and development of recommendations with regard to
 2 regulatory and licensing issues **including the rules impacting small business**
 3 **adopted pursuant to the Administrative Procedure Act during the year covered**
 4 **by the report required by Subparagraph (3)(e) of this Section.**

* * *

6 (3) Development of a report on the state of small business in Louisiana and
 7 a report on the department's small business programs, including but not limited to the
 8 following:

* * *

10 (e) **A catalog of rules impacting small business adopted pursuant to the**
 11 **Administrative Procedure Act during the year covered by the report required**
 12 **by Subparagraph (f) of this Paragraph.**

13 (f) The report shall be developed annually and shall be provided to the
 14 legislature at least sixty days prior to the start of the regular legislative session.

15 Section 3. This Act shall become effective on July 1, 2019.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry J. Guillot.

DIGEST

SB 208 Original

2019 Regular Session

Riser

Proposed law enacts the Small Business Protection Act as successor to the Regulatory Flexibility Act.

Proposed law revises the procedure for the adoption of rules by agencies pursuant to the APA as follows:

- (1) Requires notice of proposed rules, notice of agency hearings, summary report, and annual report of rules be submitted to the commercial division of the Department of State in addition to present law.
- (2) Provides that no rule adopted on or after October 1, 2019, shall be effective, nor may it be enforced, unless it has been properly filed with the commercial division of the Department of State.
- (3) Provides that a copy of the La. Administrative Code be made available upon request to the commercial division of the Department of State free of charge.

Proposed law provides that in the developing an economic impact statement, when practical, agencies should utilize an economist with a college or university in this state.

Present law provides that prior to the adoption of any proposed rule by an agency which

according to the economic impact statement required by R.S. 49:965.5 and the results of the regulatory flexibility analysis required by R.S. 49:965.6 would have an adverse impact on small businesses, the agency shall notify the Department of Economic Development of its intent to adopt the proposed rule. Proposed law requires notification to the commercial division of the Department of State rather than the Department of Economic Development.

Present law requires that the Department of Economic Development 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 this Act to each person who has made a timely request of the department for such notice. Provides that the notification shall be sent at the earliest possible date, and in no case later than 10 days after the date an agency notifies the department of such a proposed rule. Proposed law requires notification by the commercial division of the Department of State rather than the Department of Economic Development.

Proposed law provides that the secretary of state shall designate a small business advocate from the existing staff of the commercial division of the Department of State to implement and administer the Small Business Protection Act. Provides that the small business advocate shall coordinate the implementation and maintenance on the website of the Department of State the La. Administrative Code and rules proposed pursuant to the APA. Authorizes the department may enter into an agreement with the office of state register to arrange for the receipt of such information on an ongoing basis.

Proposed law provides that notwithstanding any law to the contrary, no hearing pursuant to R.S. 49:953(A)(2) shall be held earlier than 60 days after notice is received by the commercial division of the Department of State.

Present law requires the Louisiana Small Business and Entrepreneurship Council to perform continual research and development of recommendations with regard to regulatory and licensing issues. Proposed law retains present law and requires inclusion rules impacting small business adopted pursuant to the APA during the year covered by the report required in present law.

Present law requires that the council develop an annual report on the state of small business in Louisiana and a report on the Department of Economic Development's small business programs, including but not limited to the following:

- (1) The number of small businesses operating in Louisiana and a geographic breakdown of the number of small businesses by economic development region.
- (2) Demographic information on small business ownership in Louisiana.
- (3) A full accounting of the small business resources available in Louisiana in the categories of technical assistance, networking, access to capital, incentives, and state government procurement opportunities.
- (4) A catalog of all services provided by the department and its small business services partners, and for each program the number of businesses served, relevant performance metrics, and recommendations for improvement, if any.

Requires that the report be provided to the legislature at least 60 days prior to the start of the regular legislative session.

Proposed law requires that the report also contain a catalog of rules impacting small business adopted pursuant to the APA during the year covered by the report. Otherwise retain present law.

Effective July 1, 2019.

(Amends R.S. 49:953(A)(1)(b)(i), (B)(1)(a), (C)(2)(a), and (F)(3)(b), 954(A), 954.1(D), 965.2, 965.3(C), 965.5, 965.6(A)(intro para), and (B), 965.7, 965.8, and 968(B), (H)(2), and (K)(1) and R.S. 51:2376(1) and (3)(e); adds R.S. 49:965.9 and 965.10 and R.S. 51:2376(3)(f))