

2020 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 4

BY REPRESENTATIVES BEAULLIEU AND FARNUM

A CONCURRENT RESOLUTION

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

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

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

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

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

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

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

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

§502. Definitions

*Addition to a Manufacturing Establishment -*

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

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

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

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

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

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

*Board* - Board of Commerce and Industry.

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

*Department* - Louisiana Department of Economic Development.

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

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

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

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

*Job* - positions of employment that are:

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

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

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

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

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

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

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

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

*Qualified Disaster* -

1. a disaster which results from:
  - a. an act of terror directed against the United States ~~of~~ or any of its allies; or
  - b. any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof), but not including training exercises;
2. any disaster which, with respect to the area in which the manufacturing establishment is located, resulted in a subsequent determination by the president of the United States that such area warrants assistance by the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act;

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

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

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

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

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

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

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

§503. Advance Notification; Application

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H. Upon the board's approval of an application, the department, on behalf of the board, shall, within three business days, transmit a copy of the approval and Exhibit A by mail or electronic mail to each local governmental authority and the assessor in the parish in which the manufacturing establishment is or will be located. ~~and the~~ The department shall post notice of the board's approval of an application on the department's website within three business days of approval, upon which date shall begin a notice period of 30 days for the parish governing authority (speaking on behalf of the parish and all parish bodies who are located outside the boundary of any affected municipality who receive a millage), the school board, any applicable

municipality (speaking on behalf of the municipality and all municipal bodies who receive a millage) and the sheriff to initiate action to approve or reject the board's action as provided hereinafter.

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

2.a. A parish shall be ITEP Ready if each local governmental entity in the parish approves the designation by a majority vote at a public meeting, agreeing to either approve or reject all industrial ad valorem tax exemption applications and projects within their jurisdictions, including, in the case of continuous approval, all terms and conditions provided in any proposed industrial ad valorem tax exemption agreement. The parish governing authority, the school board, and each municipality authorized to receive a millage in the parish shall individually evidence its vote for or against the parish becoming ITEP Ready by resolution. The sheriff shall evidence his vote for or against the parish becoming ITEP Ready by letter. The 30 day notice period in which local governmental entities are authorized to hold a public hearing for the purpose of approving or rejecting an industrial ad valorem tax exemption application shall not apply to ITEP Ready parishes. The governing authority of a parish that is ITEP Ready shall submit to the department a resolution on behalf of the parish and all local governmental entities in the parish stating the continuous approval or continuous rejection of industrial ad valorem tax exemption applications

within its jurisdiction. No further action evidencing local governmental entity approval or rejection shall be required.

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

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

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

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

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE