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TO: All Departments, Boards and Commissions

FROM: John D. Carpenter, Legislative Fiscal Officer

DATE: December 5, 2019

SUBJECT: Fiscal and Economic Impact Statements

The Administrative Procedure Act requires that fiscal and economic impact statements be prepared by the appropriate agency and approved by the Legislative Fiscal Office prior to the adoption, amendment, or repeal of any agency rule (see Section 953 of Title 49 of the Louisiana Revised Statutes).

Act 204 of 2019 revised the information required to be submitted as part of the fiscal and economic impact statements, specifically as to the impacts on small businesses. The purpose of this letter is to outline the procedures each agency should follow in complying with the law. It provides updated instructions and guidelines for impact statements and revises the forms which are attached and available on the website. **These forms must be used effective January 1, 2020.**

- (1) Each notice of intent for the adoption, amendment or repeal of a rule (as defined in R.S. 49:951) which is forwarded to the Louisiana Register for publication must be accompanied by a fiscal and economic impact statement which has been approved by the Legislative Fiscal Office. Even if a proposed rule/amendment/repeal is anticipated to have no fiscal or economic impact, a statement to that effect must be submitted to the Legislative Fiscal Office for approval.
- (2) Preparation of fiscal and economic statements is the responsibility of the agency proposing the rule/amendment/repeal. The Legislative Fiscal Office is not authorized to prepare such statements if the proposing agency fails to do so.
- (3) Impact statement forms must be accompanied by the following:
  - a) a copy of the notice of intent which will be forwarded by the agency to the Louisiana Register for publication;
  - b) a copy of the rule proposed for adoption or repeal, or in the case of a rule change, copies of both the proposed rule and the current rule with amended portions indicated;
  - c) a copy of any federal regulations requiring adoption of the rule change, if applicable;
  - d) a copy of the family formation, stability, and autonomy impact statement;
  - e) a copy of the child, individual, or family poverty impact statement;

- f) a copy of the regulatory flexibility analysis as required by LA R.S. 49:965.6 and;
- g) a copy of the small business economic impact statement as required by LA R.S. 49:965.5, if applicable.

Copies of the notice of intent and the rule or rule change must be identical to those which will be forwarded by the agency to the Louisiana Register for publication.

(4) Fiscal and economic impact statements must be submitted to the Legislative Fiscal Office by the 20th of the month preceding the agency's planned filing of its "Notice of Intent" to adopt/amend/repeal a rule. If any substantive (non-technical) modifications are made to the language of the rule after its initial submission to the Legislative Fiscal Office (e.g., as a result of comments from the public), it is the responsibility of the agency to forward a copy of the modified rule and a revised fiscal and economic impact statement to the Legislative Fiscal Office for approval prior to a hearing by the appropriate legislative oversight subcommittee.

(5) Only those fiscal and economic impact statements which bear the signature of the Legislative Fiscal Officer or his designee will be considered officially approved. Once an impact statement has been officially approved, no changes are permitted to it or the accompanying notice of intent and proposed rule.

(6) In the event a fiscal and economic impact statement is not approved as submitted, the Legislative Fiscal Office will notify the agency and will indicate the areas where changes are needed. If the agency agrees to the changes, it must forward a revised impact statement to the Legislative Fiscal Office for approval. If an agreement cannot be reached, the Legislative Fiscal Office will notify the agency in writing of required changes to the impact statement.

(7) In order to avoid unnecessary delays, the agency should ensure that each fiscal and economic statement is complete, grammatically correct and written in complete sentences. The fiscal and economic information contained therein must be clearly stated and well documented. Any assumption used must be explained in detail.

(8) Each fiscal and economic statement should reflect all costs or savings to state or local governmental units resulting from adoption, amendment or repeal of a rule (see worksheet I). Costs might include, but are not limited to, the following: printing, postage and personnel required; staff training required; additional contractual arrangements needed; the number of clients served; or benefits paid. These and any other associated costs should be included regardless of whether or not funds have been appropriated or budgeted for the intended purposes.

(9) If adoption, amendment, or repeal of a rule would result in increases or decreases in expenditures of federal funds, this should be reflected under "revenues" (see worksheet II) as an increase or decrease in federal revenues. The impact on collection of any other revenues, including those paid into the state general fund, should also be listed.

(10) All costs and savings, changes in revenue collections, costs and economic benefits to directly affected persons, small businesses, or non-governmental groups and any effect on competition and employment should be explained in detail on worksheets I through IV (pages 3-5). A thorough but concise summary of each worksheet must be provided on one page. The contents of page one will be published in the Louisiana Register with the Notice of Intent.

(11) Page two of the impact statement requires a summary of the rule or rule change and a summary of why the action is being proposed. (e.g. State law, federal mandate or agency discretion).

Act 11 of the First Extraordinary Session of 1986 prohibits the adoption, amendment or repeal of any rule if it would result in any increase in the expenditure of state funds. There are two exceptions: first, adoption as an emergency rule; and second, a specific appropriation by the Legislature for the increased expenditure. It should be noted that the Attorney General has issued an opinion (87-209), which indicates that the budgeting of funds by BA-7 is not considered a "specific appropriation" for the purposes of Act 11.

Page 2 provides relevant information to legislative oversight committees. Such subcommittees are charged with the statutory responsibility of determining during the course of a rules review hearing if a rule change conforms to all applicable provisions of law and of the constitution (R.S. 49:968D(3)(b)). Although this information will be required in order to process the fiscal and economic impact statement, final determinations of compliance with Act 11 will not be made by the Legislative Fiscal Office. Such determinations may, however, be made by the appropriate legislative oversight subcommittee based upon information provided in the impact statement.

If you have any questions about the requirements of the Administrative Procedure Act or about these procedures, please contact me or the analyst assigned to your agency.

Enclosures