Scorecard rule takes effect

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The state Board of Commerce and Industry will test its new “environmental scorecard” for the first time when it meets Wednesday to consider requests for industrial development tax exemptions.

The controversial new rule took effect last week with its publication in the August issue of the Louisiana Register. Enactment of the rule came one year after, Gov. Buddy Roemer froze all industrial development tax breaks awarded by the commerce board until the requesting companies’ pollution histories were checked. And it culminated years of debate over whether the state should limit tax breaks to companies that pollute the environment.

The state now has a workable rule to ensure that companies’ environmental compliance histories are considered by the board before it awards tax relief, Roemer said.

“What we ended up with in terms of regulations is not what we wanted when we started out, but not what Commerce and Industry wanted... it was something in the middle. I thought it was fair to both parties,” Roemer said.

Commerce board chairman Alan H. Philipson of New Orleans agreed. “I think it’s a good move,” said Philipson, president of a New Orleans import company. “I think most companies will still qualify for a fairly substantial privilege and yet it will help us clean up and try and save this state’s environment, which is just falling apart.”

The new rule spells out a formula that yields a percentage score the commerce board can use as a guide in awarding available tax breaks to companies as expansion incentives.

Essentially, the formula weighs jobs created by the expansion projects against toxic emissions produced by the companies requesting tax relief.

Despite enactment of the rule, the issue may not be resolved. Opposition remains over the final version of the rule from industry groups, environmentalists and some commerce board members.

Environmentalists complain the new rule is too lax. “I think we’re glad to see that we finally have some regulations, but we’re disappointed that they were so weak,” said Robert Kuehn, director of Tulane Environmental Law Clinic. The clinic represents more than a dozen companies’ pollution histories were checked.
environmental groups on the matter. Industry groups, meanwhile, argue that some provisions remain unfair to business.

"Our concern is that it will reduce investment in Louisiana," said attorney Christopher J. Dicharry, former staff attorney for the Louisiana Association of Business and Industry now in private practice and chairman of LABI's taxation council.

Some board members contend the Roemer administration violated state law by changing the final version of the rule without board approval. That argument formed the basis of a board committee's unsuccessful request of Aug. 14 for the Roemer administration to halt publication, thus ratification, of the new rule.

Industry and environmental groups, too, have questioned the validity of the new rule, claiming the board, the Roemer administration or both failed to follow state law in adopting it.

Nonetheless, Dicharry and Kuehn indicated in interviews last week that the groups they represent will wait to see how the commerce board applies the new rule before deciding whether to challenge its legality in court.

The commerce board will get a chance to do so at its meeting Wednesday at 1:30 p.m. in the Mineral Board hearing room of the state Department of Natural Resources building, 625 North Fourth St.

At that time, the board is scheduled to consider applications from 45 companies collectively requesting nearly $53 million in tax breaks for $516 million in expansion projects expected to create 1,371 new permanent and 2,814 construction jobs.

Roemer has threatened to withhold final approval of some tax breaks if the commerce board does not follow the new rule.

"The person who finally approves tax incentives is standing here with brown shoes, a kind of a black tie on and if I have to use that power I will," Roemer said. "That's not the right way to do it. (But) we have spoken after listening now and it's time to move on."

The new rule includes penalties for pollution citations issued since January 1990. It provides bonus points for companies' efforts to reduce emissions or make other environmental improvements in their operations since January 1988.

The commerce board has used a more stringent version of the rule since December 1990, when it adopted a version under emergency provisions of law.

Since then, staff from Roemer's office and the state departments of Economic Development and Environmental Quality and the board have revised the rule, based on comments made during public debate as well as in closed-door meetings with special interest groups.

The commerce board voted to make certain changes at its June meeting.

But when the board's rules committee met Aug. 14, it was presented with a later revision made by administration staff. That version was submitted for final publication in the Register.

In a last-ditch effort to halt enactment of that version, the rules committee petitioned Roemer to halt publication, claiming the governor and his staff violated state law in bypassing the board when drafting the final version.

Roemer did not halt final publication of the rule.

"The governor is inviting someone to sue the state," board member Dr. George Mowad, a family physician and Mayor of Oakdale, said last week. Mowad has been a consistent critic of the effort to adopt such a rule.

Dicharry said business groups concur with Mowad that the governor did not have authority to change the rule over the objections of board members.

Meanwhile, Kuehn said his clients challenge the legality of the rule because the public was excluded from much of the debate on the issue. Administration officials, however, insist state law was followed in enacting the rule.

"Every single change has been discussed in a public forum — they didn't come out of our heads," DED Secretary Kirsten Nyrop said. "I feel that, with the process we've gone through, we have listened to, worked with, negotiated with, talked with just about everybody under the sun."

DEQ Secretary Paul Templet agreed. Also, Templet said, the new rule, though less stringent than those the board adopted last December, should help the state significantly reduce toxic emissions.

"That's the whole point," Templet said.

During the development process, Nyrop said her focus has been to fine-tune the formula to meet industry concerns.

Now, "my key concern is stabilizing this as quickly as we can," Nyrop said. Stability is needed so DED can proceed with its economic development plan with all players understanding the rules, she said.

Meanwhile, the commerce board should implement the policies established by the governor, Nyrop said. In this case, that means granting tax breaks that help achieve the administration's two-fold goal of stimulating economic growth and cleaning up the environment, she said.

Said Roemer: "It can work. It is working. I'm not telling you that business is totally happy with it but I think it is fair. They have been put on notice and we are going to go with the regulations we have now."