

RESOLUTION OF THE
LOUISIANA BOARD OF COMMERCE AND INDUSTRY

WHEREAS, the Louisiana Constitution provides in Article 7, Section 21 (F) that the State 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 the approval of the governor, deems in the best interest of the state;” and

WHEREAS, by virtue of this provision, this Board is solely authorized to administer the granting, subject to the approval of the Governor, of the Industrial Tax Exemption and, pursuant to that end, this Board, with the assistance of the Louisiana Department of Economic Development has established the Industrial Tax Exemption Program (“ITEP”) and formulates and promulgates Rules for ITEP that promote the best interests of the State; and

WHEREAS, following the leadership of Governor Edwards particularly his issuance of Executive Order 2016-73 setting forth the terms and conditions that he has determined represent the best interests of the State for his consideration of ITEP contract approvals by this Board, the Board in 2017 and 2018 enacted important reforms for ITEP (“Rules”). Those Rules now require that the exemption be subject to the company’s accountability to create, maintain and retain jobs as part of the investment in the manufacturing establishment for which the exemption is sought; and

WHEREAS, the 2017 and 2018 Rules condition approval of the exemption upon the local parish and city councils, school boards and sheriffs (“local governing bodies”) having the opportunity to review and to reject within time periods provided, each exemption granted by the Board for their Parish; and,

WHEREAS, the Board has established uniform rules for the statewide application of each exemption that it grants in order to provide business and industry with clear mandates for obtaining Board approval of the exemption; and

WHEREAS, the rules also include the opportunity for local governing bodies to establish “guidelines” for business and industry seeking those bodies’ consent to the exemption and the Board, through LED, has worked with those local interests in establishing guidelines for their use in reviewing the exemptions granted by this Board; and

WHEREAS, nothing in the Rules, including the opportunity to provide guidelines, authorizes local governing bodies to contradict the terms and conditions upon which the exemption is approved, or to conflict with the duly established Board Rules for the exemption. LED, on behalf of the Board, will continue to work with local interests to establish guidelines consistent with the process and qualifications for the exemption established by this Board, and this Resolution provides for Board procedures for dealing

with rejections of exemptions by local governing bodies that have established guidelines that are in conflict with the Rules of this Board; and

WHEREAS, this Board has followed the Louisiana Administrative Procedures Act (“APA”) in promulgating its rules. In doing so, the Board has never surrendered its constitutional power over the exemption to the legislature. Further, although the APA statute includes the Board as a body that is required to follow its terms, there is no legislative intent in the APA or constitutional authority for the legislature to remove the Board’s constitutional prerogative established in Article 7 Section 21 (F) of the Louisiana Constitution of 1974; and

WHEREAS, members of the legislature serve on this board and their input on the parameters and administration of the exemption is of great and respected value; and

WHEREAS, this resolution affirms that the Board’s use of the APA in the promulgation of its rules does not (and cannot) delegate the Board’s constitutional authority over the exemption.

THEREFORE, BE IT RESOLVED by the Louisiana Board of Commerce and Industry that an interested party may appeal the rejection of an exemption by a local governing body after action by this Board approving the exemption in accordance with the ITEP rules upon grounds that the rejection is for reasons in conflict with the ITEP Rules, including but not limited to alleging that a local governing body rejecting the exemption has guidelines that contradict the ITEP rules.

BE IT FURTHER RESOLVED by the Louisiana Board of Commerce and Industry that it maintains its jurisdiction over the Industrial Property Tax exemption as provided in Article 7, Section 21 (F) of the Louisiana Constitution of 1974 and that by using the Louisiana Administrative Procedures Act, or any other legislative act or procedure, to promulgate its rules it does not (and cannot) surrender its constitutional authority over the exemption.

BATON ROUGE, LOUISIANA
FEBRUARY 21, 2020