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Emergency Rules

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

The State Board of Elementary and Secondary Education at its meeting on May 28, 1981, exercised those powers conferred by the emergency provisions of the Administrative Procedure Act, R.S. 49:953B, and adopted the following emergency rules:

1. The Board adopted as an emergency rule, the 1981 Revised Edition of Bulletin 1525, Personnel Evaluation as submitted by the State Department of Education.

This emergency request was made because LEAs are requested to submit by July 15, their personnel evaluation plans in compliance with Bulletin 1525. The State Department of Education was cognizant of time constraints and needed this item to be placed as an emergency item.

2. The Board adopted an emergency rule, the Interim Emergency Policy for Hiring Fulltime/Parttime Noncertified Personnel.

School systems in Louisiana suffered a shortage of classroom teachers in the 1980-81 school year. The State Board allowed the systems to employ noncertified personnel to man the classes when fully certified teachers were not available for 1980-81 only. It is anticipated that the shortage in certain geographic areas and certain academic areas will continue this fall. Since systems are presently hiring personnel for the fall semester, the policy must be approved to allow them this option or schools will open in August with classes taught by substitute teachers.

Interim Emergency Policy for Hiring Fulltime/Parttime Noncertified School Personnel

In an effort to assist Local Education Agencies experiencing extreme difficulty in providing certified personnel for the classroom, the following interim emergency policy is proposed.

Fulltime/parttime noncertified school personnel may be employed by parishes having difficulty in employing certified persons in certain positions provided that proper documentation be submitted to the Department of Education. This documentation shall include:

1. A signed affidavit by the local school superintendent that the position could not be filled by a certified teacher;

2. Documentation that efforts for recruitment for certified teachers have been made (i.e. newspaper advertisements, letters, contacts with colleges, etc.)

3. Submission of names, educational background, subject matter and grade level being taught as an addendum to the Annual School Report.

4. It is required that these teachers take the NTE at the earliest date that it is offered in their geographical area.

These individuals shall be employed at the same salary on an hourly basis based on the effective state salary schedule for a beginning teacher with a baccalaureate degree and a certificate.

Fulltime/parttime noncertified school personnel shall be considered part of the regular teacher allotment and local systems shall be reimbursed in the same manner as regular teachers.

This Interim Emergency Policy will remain in effect until July 1, 1983.

3. The Board adopted as an emergency, a word change in the *Interim Requirements for Special Education Certification*, on Page 5, under Paragraph 2, Line 9, to change the word "and" to "or."

James V. Soileau
Executive Director

DECLARATION OF EMERGENCY

Department of Education Educational Employees Professional Improvement Program

The State Committee for the Louisiana Educational Employees Professional Improvement Program (Act 207) at its June 2, 1981 meeting exercised those powers conferred by the emergency provisions of the Administrative Procedure Act, R.S. 49:953B, and adopted the following emergency rule:

Dr. Kenneth Brown moved that the Committee instruct the staff to promulgate the Guidelines for local PIPS committees in keeping with the Administrative Procedure Act, R.S. 49:951, *et seq.*, and also instruct the staff to advise the Governor, the Attorney General, and the Department of the State Register that under the provisions of Louisiana Revised Statutes 49:953B that these guidelines were being adopted on an emergency basis. The committee is of the opinion that if the guidelines are not adopted on an emergency basis, there will be a significant risk that the PIPS program, along with a significant amount of state money which is being appropriated for the PIPS program, cannot be administered properly nor can the public fisc be protected to ensure that the monies appropriated for the PIPS program are used in a manner consistent with the legislative intent and, furthermore, that the program is administered in a manner consistent with the legislative intent. Dr. Helen Brown seconded, and the motion passed with seven yeas, zero nays, and one abstention.

Robert C. Rice, Chairman
State Committee for the Louisiana
Educational Employees Professional
Improvement Program

DECLARATION OF EMERGENCY

Department of Health and Human Resources Office of Health Services and Environmental Quality

The Department of Health and Human Resources, Office of Health Services and Environmental Quality hereby orders that the area described below is closed to oyster harvesting immediately as of May 19, 1981.

1981 - Cocodrie Line Extension

Moss Bay, Bay Tambour and Bay Welsh

A line beginning at the 1973 Cocodrie Closure at the intersection of Moss Bay and Bay Couteau; thence along the western shoreline of Moss Bay in its entirety to the junction of Moss Bay at the southeastern portion and the pass to Moss Bay and Bayou Petit Caillou; thence southeasterly along the western shore line of Bayou Petit Caillou and Tambour Bay; thence east-northeast to a point (29° 11' 33" North latitude and 90° 40' 17" West longitude); thence easterly through the landmass across Bay Tambour through Tambour Cutoff to the Intersection of the 1973 Closure Line at a point (29° 12' 30" North latitude and 90° 39' 24" West longitude) [Map Reference: U.S. Dept. Commerce, N.O.A.A. #11357 - formerly C&GS #1274].

From a point 29° 13' 0" North latitude and 90° 39' 15" West longitude [Map Reference: U.S. Dept. Commerce, N.O.A.A. #11357 formerly C&GS #1274] at the intersection of the Houma Navigational Canal and the 1973 Cocodrie Oyster Closure Line in West Bay Welsh; thence in a southeasterly direction along the southernmost edge of the Houma Navigational Canal to a point located at 29° 12' 53" North latitude and 90° 38' 45" West longitude; thence in a southerly trend along the landmass in the westernmost part of Bay Welsh; thence easterly to Cooke Point; thence northeast to the landmass in eastern Bay Welsh to a point located at 29° 12' 20" North latitude and 90° 37'

58" West longitude; thence along the easternmost edge of the landmass: thence in a northerly direction to the intersection of the 1973 Cocodrie Closure line located at a point 29° 14' 13" North latitude and 90° 38' 38" West longitude.

All areas within the described closure line and/or shown on the enclosed map are closed for oyster harvesting.

The statistical evaluation of the bacteriological analyses of a recent sanitary survey conducted in the Cocodrie area - Terrebonne Parish, Louisiana has indicated that the water quality of the area is substandard in the respect that fecal coliform limits were in excess of the standards prescribed by State and Federal guidelines regulating oyster waters.

Specifically, these standards require that all oyster growing waters whose bacteriological quality has exceeded the fecal coliform median of 14 fecal coliforms per 100 ml. and more than 10 percent of the samples ordinarily exceed a median of 43 fecal coliforms per 100 ml. be closed to oyster harvesting. Additionally, the area may be so contaminated with fecal material that consumption of the oysters might be hazardous.

So ordered this date May 19, 1981.

Sarah M. Braud, M.D.
Acting State Health Officer
George A. Fischer, Secretary
Department of Health and Human Resources

Rules

RULE **Department of Agriculture** **Seed Commission**

The Louisiana Department of Agriculture, Seed Commission, pursuant to the authority contained in LSA 3:1433 and in accordance with Notice of Intent published April 20, 1981, adopted the following amendment to Section VI of the Rules and Regulations of the Seed Law at a public hearing on June 9, 1981:

28. Itchgrass (Raoulgrass) (*Rottboellia exaltata*) Prohibited.

Bob Odom
Commissioner of Agriculture

RULE **Department of Commerce** **Office of Financial Institutions**

Under the authority granted by R.S. 6:237-B, the Commissioner of Financial Institutions is adopting the following rule for the purpose of providing a means by which State-Chartered Banks may have authority consistent with that granted National Banks by the Comptroller of the Currency Rules and Regulations 12 CFR, Part 29, which was published on Page 18932, Volume 46, No. 59 of the Federal Register, dated March 27, 1981.

RULE

Notwithstanding any limitations imposed by R.S. 6:237 and 322, State-Chartered Banks are hereby authorized to make, purchase, and participate in adjustable rate mortgage instruments authorized for National Banks by the Comptroller of the Currency Regulation 12 CFR, Part 29. For the information and guidance of

State-Chartered banks, the Comptroller of the Currency Regulation is outlined below. The words "national" and "Comptroller of the Currency" have been changed to "state" and "Commissioner of Financial Institutions."

Adjustable-Rate Mortgage Instruments

1. Purpose

This regulation is issued by the Office of Financial Institutions to establish rules for state banks making or purchasing adjustable-rate loans secured by liens on one-to-four family dwellings.

2. Definitions

An adjustable-rate mortgage loan is any loan made to finance or refinance the purchase of and secured by a lien on a one-to-four family dwelling, including a condominium unit, cooperative housing unit, or a mobile home, where such loan is made pursuant to an agreement intended to enable the lender to adjust the rate of interest from time to time. Adjustable-rate mortgage loans include loan agreements where the note and/or other loan documents expressly provide for adjusting the rate at periodic intervals. They also include fixed-rate loan agreements that implicitly permit rate adjustment by having the note mature on demand or at the end of an interval shorter than the term of the amortization schedule unless the state bank has clearly made no promise to refinance the loan (when demand is made or at maturity) and has made the disclosure specified in 8 (c).

3. General Rule

State banks may make or purchase adjustable-rate mortgage loans only if they conform to the conditions and limitations contained in this Part.

4. Index

Changes in the interest rate charged on an adjustable-rate mortgage loan must be linked to changes in an index specified in the loan documents, *i.e.*, a one basis point (one basis point = .01 percentage point) change in the index must be translated into a one basis point change of the same direction in the contract interest rate, except as otherwise provided in 5. The index values used for the purpose of determining changes shall be either (1) the most recently available values on the date of loan origination and on subsequent dates for notifying borrowers of impending rate changes or (2) the moving averages on such dates of all values of an index over the interval from the prior rate-change notification date to the current rate-change notification date, using as the starting index value the moving average of index values over an equivalent interval ending with the date of loan origination. The index must be one of the following:

(a) The monthly average contract interest rate charged by all lenders on mortgage loans for previously occupied homes, as published by the Federal Home Loan Bank Board in its "Journal" and made available by the Federal Home Loan Bank Board in news releases on about the twelfth day of each month.

(b) The monthly average yield on United States Treasury securities adjusted to a constant maturity of three years, as published in the "Federal Reserve Bulletin" and made available by the Federal Reserve Board in Statistical Release G.13(415) during the first week of each month.

(c) The monthly average of weekly average auction rates on United States Treasury bills with a maturity of six months, as published in the "Federal Reserve Bulletin" and made available by the Federal Reserve Board in Statistical Release G.13(415) during the first week of each month.

If a state bank uses the six-month Treasury bill rate index and adjusts interest rates less frequently than once every six months, then the bank must use the moving average, as described above, of the index values to measure interest rate changes.

5. Rate Changes

(a) *Frequency of Changes.* Interest rate changes on adjustable-rate mortgage loans may occur only at regular intervals of not less than six months, as specified in the loan documents. Notwithstanding the foregoing, a state bank may extend the length of the interval before the first potential interest rate change by any pre-terminated period.

(b) *Magnitude of Changes.* Interest rate adjustments to adjustable-rate mortgage loans may not exceed 100 basis points each six months. If the interval between interest rate changes exceeds six months, then the limitation on interest rate changes shall be 100 basis points multiplied by the number of whole consecutive six-month periods in the interval between interest rate changes. In no event may any one interest rate change exceed 500 basis points. Notwithstanding the rules contained in this subsection, a state bank may decrease the contract rate of interest on an adjustable-rate mortgage loan at any time and by any amount beyond decreases required by the rules contained in this Regulation.

(c) *Required and Permitted Rate Changes.* Interest rate changes on adjustable-rate mortgage loans made or purchased by state banks shall be subject to the following additional restrictions:

(1) Interest rate increases permitted in accordance with the provisions of this Rule shall be at the option of the bank.

(2) Interest bank decreases warranted by decreases in the index shall be mandatory except to the extent that rate increases fully reflecting increases in the index have not been implemented by the bank, either at its option or because of the limitation on increases specified in paragraph (b) of this section. If the bank agrees to impose a periodic or aggregate limitation on interest rate changes that is more restrictive than the limitation specified in paragraph (b) of this section, the same limitation shall apply to both increases and decreases.

(3) Banks offering adjustable-rate mortgage loans may establish in the loan documents any minimum interest rate change limitations and minimum increments of interest rate changes.

(4) Changes in the index not translated into changes in the interest rate because of the limitations contained in this Rule or, consistent with this Rule, at the discretion of the bank shall, to the extent not offset by subsequent movements of the index, be carried over and be available at succeeding rate-change dates.

(5) There shall be no charge by the state bank to the borrower, in the form of new closing cost, new processing fees, new finance charges, or similar fees, for any changes in the interest rate on an adjustable-rate mortgage loan.

(d) *Method of Rate Changes.* (1) Interest rate changes to an adjustable-rate mortgage loan may be implemented through changes in the amount of the installment payment or the rate of amortization (i.e., the amount, if any, of each installment payment allocated to repayment of principal) or any combination of these two methods, according to any schedule agreed upon by the borrower and the bank in the loan documents or as agreed upon by the parties at the time of any interest rate change.

(2) Changing the rate of amortization, including utilization of a period or periods of negative amortization, is permissible only if (1) the payment is adjusted at least every five years to a level sufficient to amortize the outstanding principal at the interest rate then in effect over the remainder of the original loan term, which may not exceed 30 years; and (2) the amount of negative amortization, if any, permitted during any such period does not exceed 1.0 percent of the principal outstanding at the beginning of that period multiplied by the number of whole consecutive six-month periods included in the interval between payment changes. In no event may the amount of negative amortization allowed under the

preceding sentence exceed 10.0 percent of the principal outstanding at the beginning of the period.

6. Prepayment Fees

State banks offering or purchasing adjustable-rate mortgage loans must allow the borrowers to prepay in whole or in part without penalty at any time beginning 30 days before the first scheduled interest rate adjustment date. State banks offering or purchasing adjustable-rate mortgage loans may impose penalties for prepayments made prior to the date specified in the preceding sentence of this paragraph.

7. Assumption

State banks offering or purchasing adjustable-rate mortgage loans are not required to allow those loans to be assumed by new purchasers of the mortgaged property, or to allow new purchasers to take title to such property subject to the lien of an adjustable-rate mortgage loan made pursuant to this rule. If a state bank does allow such a loan to be assumed or a purchaser to take title to property subject to the lien of an adjustable-rate mortgage loan made pursuant to this rule, the interest rate and any other loan terms may be reset as of the date of assumption. In order for an adjustable-rate mortgage loan to qualify for the benefits of this section, the loan note must contain a clause stating that the loan is due on sale or must contain some other provision indicating that the loan may be assumed or the property purchased subject to the bank's mortgage lien only at the bank's discretion.

8. Disclosure

(a) State banks offering adjustable-rate mortgage loans shall disclose in writing to a prospective borrower on the earlier of the date on which the bank first provides written information concerning residential mortgage loans available from the bank or provides a loan application form to the prospective borrower, the following items:

1) The fact that the interest rate may change and a brief description of the general nature of an adjustable-rate mortgage loan;

2) The index used, including the name of at least one readily available source in which it is published;

3) A 10-year series updated at least annually showing the values of the index on at least a semi-annual basis, presented in tabular form;

4) The frequency with which the interest rate and payment levels will be adjusted, including provision for any extended interval before the first interest rate adjustment;

5) Any rules relating to changes in the interest rate and/or installment payment amount;

6) A description of the method by which interest rate changes will be implemented, including an explanation of negative amortization if it may occur in connection with the loan;

7) The rules or conditions relating to refinancing of short-term and demand mortgage loans, prepayment, and assumption;

8) A statement, if appropriate, that other fees will be charged by the bank and/or any other persons in connection with the adjustable-rate mortgage loan, including fees due at loan closing; and

9) A schedule of the dollar amounts of the installment payments (principal and interest) on a \$10,000 loan at a commitment rate offered by the bank within the preceding 12-month period if the mortgage interest rate were to increase as rapidly as possible, consistent with the interest rate limitations of the loan, by 10 percentage points (or by such lower aggregate interest rate limit as the bank may impose on its adjustable-rate mortgage loans).

Use of the optional model disclosure form provided in the Appendix to this rule, amended where necessary to describe accurately permissible variations found in the bank's adjustable-

rate mortgage loans, will constitute compliance with this Subsection.

(b) At least 30 days and no more than 45 days before any interest rate change may take effect, the bank must notify the borrower in writing of the following items:

- 1) The current and proposed new interest rate;
- 2) The base and current index values;
- 3) The extent to which the bank has forgone any increase in the mortgage interest rate;
- 4) The new monthly payment and/or other contractual effects of the rate change;
- 5) The amount of the monthly payment, if different from that given in response to item 4, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term; and

6) The fact that the loan may be prepaid at any time without penalty.

Use of the optional notification form provided in the Appendix to this rule will constitute compliance with this Subsection.

(c) A state bank making any loan to finance or refinance the purchase of, and secured by a lien on, a one-to-four family dwelling which is payable either on demand or at the end of a term which, including any terms for which the bank has promised to refinance the loan, is shorter than the term of the amortization schedule must include the following notice, displayed prominently and in capital letters, in or affixed to the loan application form and in or affixed to the loan note:

This loan is payable in full (at the end of _____ years or on demand). (At maturity or if the bank demands payment) you must repay the entire principal balance of the loan and unpaid interest then due. The bank is under no obligation to refinance the loan at that time. You will therefore be required to make payment out of other assets you may own, or you will have to find a lender willing to lend you the money at prevailing market rates, which may be considerably higher than the interest rate on this loan.

Fixed-rate short-term or demand loans for which this notice has been properly given will not be characterized as adjustable-rate mortgage loans.

(d) No later than the date on which an adjustable-rate mortgage loan is made by a state bank, the bank must inform the borrower of the base index value against which interest rate changes will be measured. This base value must be included in the note the borrower signs, and the borrower must be given a copy of this note no later than at loan closing.

9. Certain Payment-Capped Mortgages

(a) *Authority to Lend, Subject to Review by the Commissioner of Financial Institutions.* The limitations imposed by this Rule shall not apply to adjustable-rate mortgage loans which contain meaningful limitations on the magnitude of permissible changes in the amount of installment payments that offer borrowers sufficient protection against payment volatility. The Office of Financial Institutions may at any time require a state bank to modify or terminate a loan program qualifying under this Subsection if it is determined that the program does not adequately provide for repayment of the loans in a timely manner or that the program does not sufficiently protect borrowers against payment volatility.

10. Transition Rule

If on the effective date of this Rule a state bank has already made a loan or a binding commitment to lend under an adjustable-rate mortgage loan program which would violate any of the provisions of this rule, the state bank may continue to make loans or binding commitments to lend under the program for 120 days

from the effective date of this Rule before the program must be brought into conformity with all the provisions of this Rule.

Appendix to Rule

A. Model Form for Initial Adjustable-Rate Mortgage Disclosure Important Mortgage Loan Information - Please Read Carefully

If you wish to apply for an Adjustable-Rate Mortgage (ARM) loan with _____, you should read the information below concerning the difference between this mortgage and other mortgages with which you may be familiar.

General Description of Adjustable-rate Mortgage Loan

The loan offered by _____ is an adjustable-rate mortgage. Its interest rate will change (fill in frequency) based on movements of an interest rate index. Your monthly payments will increase if the interest rate rises or decrease if the interest rate falls. Because future movements of the index are related to market conditions that cannot be predicted, it is impossible to know in advance how much you will have to pay, either each month or over the life of the loan. Interest rate and payment changes will be made according to certain rules that are explained below.

Key Terms of _____ State Bank's Adjustable Rate Mortgage

The following outline of the terms on ARM's offered by — State Bank is intended for easy reference only. You will find other essential information in this disclosure statement and in the loan note itself.

- Loan term
- Frequency of rate changes
- *(Grace period before first rate change
- Interest rate index
- Maximum rate change at one time
- Maximum rate change over life of loan
- *(Minimum rate change at one time
- *(Minimum increments of rate change
- *(Prepayment fee
- Assumability (assumable, not assumable or at lender's discretion)
- Possibility of increasing loan balance (yes or no)

*Bracketed items and footnotes are instructions to State banks or contain optional language to be selected as appropriate.

Hunter O. Wagner, Jr.
Commissioner of Financial Institutions

RULES

Board of Elementary and Secondary Education

Rule 4.00.74a

Amend Bulletin 1134, *Standards and Guidelines for Library Media* to delete Item 8 on the censorship form on page 13, and that Paragraph 5, page 11 of Chapter VI relative to censorship procedures be amended to read as follows: "Any censorship of media shall be challenged in order to maintain the local system's responsibility to provide information and enrichment. The local school board of education is legally responsible for all matters relating to the operation of its library media centers. The local school board is

responsible for adopting a written statement of procedures for meeting the challenge of censorship. The attached form may be used as a guide for challenged materials.”

Rule 3.01.51z

Amendment to Bulletin 741 to add Page 35A: High School Credit for College Courses for Evaluated Gifted Students as follows:

High School Credit for College Courses
For Evaluated Gifted Students

1. College courses for credit in regard to this Section shall be limited to gifted students who have met the evaluation criteria established in Bulletin 1508 (Pupil Appraisal Handbook).
2. An elementary or secondary student must have at least a 3.0 cumulative average on a 4.0 scale for all subjects taken during the previous two years.
3. Entry into a college course for credit must be stated in the student’s Individualized Education Program, (I.E.P.).
4. The student must earn at least two or three college hours of credit per semester. (The two or three hour course per semester shall be counted as one unit of credit toward high school graduation.)
5. The school administrator must establish a procedure with the college to receive reports of the students’ class attendance and performance at six or nine week intervals.
6. College courses shall be counted as high school subjects for students to meet eligibility requirements in order to participate in extracurricular activities governed by voluntary state organizations.

Amendment to Louisiana State Board of Elementary and Secondary Education Policy and Procedure Manual to:

a. Delete Board Policy 3.07.11.b

b. Amend language in Board Policy 3.07.11.c to read:

“Any request for a waiver of the age requirement for taking the General Education Test (GED) shall be made directly to the Board.”

Rule 3.01.51.aa

Amendment to Bulletin 741, *Handbook for School Administrators*, pages 8 and 16, to substitute the minimum attendance requirement for elementary and secondary students as follows:

“Each parish school board will have the option of establishing attendance requirements for elementary (grades one through eight) and secondary (grades nine through twelve) students, providing the limit for elementary students is not less than 140 days of attendance per year and secondary students not less than 70 days per semester. Credit will not be given if attendance goes below parish-set limits. Exception can be made only in the event of extended personal illness, verified by a physician, or other extenuating circumstances approved in accordance with procedures established by the local school systems.”

James V. Soileau
Executive Director

RULES

Board of Trustees for State Colleges and Universities

The following is added to the Policies and Procedures Manual of the Board of Trustees for State Colleges and Universities as paragraph 18 of Part IX, Section 9.5A:

“18. All students, prior to participating in any intercollegiate athletic activity, must sign a statement allowing the Coordinator of Athletics to examine the student’s entire academic record at his discretion.”

Part IX, Section 9.7D is deleted and the following is substituted for that paragraph:

“D. The number of coaches permitted at each institution shall be that number allowed under the guidelines of the NCAA (Article Six, Personnel and Squad Limitation, Bylaw 6-1 of the Bylaws and Interpretations of the National Collegiate Athletic Association.”

Bill Junkin
Executive Director

RULE

Board of Trustees for State Colleges and Universities

The following is added to the Policies and Procedures Manual of the Board of Trustees for State Colleges and Universities as Part VII, Section 7.4C:

“C. Chief Executive Search Procedures

1. Constitution of Search Committee

According to Board Policy (Section 7.4B above) an incumbent president shall announce a decision to retire or resign at least six months prior to the effective date of the decision. Upon receipt of such notice, the President of the Board of Trustees for State Colleges and Universities shall within 15 calendar days appoint five members of the Board to serve, with the Board’s President as its Chairperson, on a Search Committee. The President’s selection of five members shall be such that a majority of that number be those Board members having the strongest ties with the institution in question. Other members of the Board may attend meetings of the Search Committee; however, only those appointed to that Committee shall vote, as it exercises its function of preparing its recommendation for the Board.

2. Search Procedure

The detailed procedure to be employed and the timetable to be followed in carrying out the search shall be designed by the Search Committee (SC) as its first order of business. The SC shall present the aforesaid procedure and timetable to the Board at that body’s first regular meeting after the appointment of the SC.

3. Advisory Committees to Search Committee

Upon appointment, the SC shall invite the student body of the institution involved, its faculty, and its alumni each to institute, through their respective recognized organization or association, an Advisory Committee (AC) selected from their respected memberships.

The AC shall assist the SC in a consultative and an advisory role and in such fashion as the SC shall stipulate.

The selection of the individual to fill a presidential vacancy is and shall be the responsibility solely of the Board of Trustees of State Colleges and Universities. By inviting the advisory assistance of the AC’s above described, it is not the intent of the Board to shirk or to share its constitutionally mandated duty to so select.

4. Eligibility of Candidates

No individual who has accepted appointment to membership on the Board of Trustees for State Colleges and Universities shall be eligible for consideration as a presidential candidate until two calendar years shall have elapsed since the individual ceased to serve as a member of the Board of Trustees for State Colleges and Universities.

5. Lack of Requisite Notice

If, for whatever reason, the incumbent president of an institution governed by the Board of Trustees does not give the mandated minimum notice at least six months prior to the date the position is to be, or has been, relinquished (Section 7.4B above), the Board shall, upon receipt of notice of a present, or projected, presidential vacancy, call a special meeting and at that meeting name an Acting President.

The effective date of the appointment of an Acting President shall be the date on which the office of president came, or shall come, to be vacant."

Bill Junkin
Executive Director

RULE

Office of the Governor Division of Administration

The Commissioner of Administration has adopted regulations and procedures for the procurement of rented or leased space by state agencies.

Rental and Lease Procedure and Regulations (For distribution to user agencies)

I.

Authority, Policy and Purpose

A. The Statutes

Louisiana Revised Statutes provide that all agreements for the lease or rental of space shall be made by the agency whose offices and/or activities are to be housed, but shall be made and entered into only with the approval of the Commissioner of Administration. Louisiana Revised Statutes, Chapter 17 of Title 39 (R.S. 39:1551-1736) with particular reference to 39:1641-1643. The Commissioner has designated the Office of Rentals and Leases to administer this function.

It is the policy of the Division of Administration to acquire for State agencies the best rental or lease space for the least dollar amount with the greatest amount of competition between and among lessors of privately-owned facilities.

Agency is as defined in R. S. 39: 2 (1) and the fact that an agency is a non-budget agency shall not be a test as to whether this Section shall be applicable.

C. Purposes

The purposes of this state of Procedure and Regulations are to simplify and clarify the procurement practices for the renting and leasing of space for State agencies, to provide increased economy and efficiency in procurement activities, to foster more effective competition for bid space and ensure fair and equitable treatment of all persons involved, to enable greater public confidence in the lease procurement process, and to maintain a procurement system of quality and integrity.

D. Exceptions

These provisions do not apply to:

Exempt Agencies.

(1) Colleges, Universities and Trade Schools.

(2) The Department of Transportation and Development.

(3) The Military Department.

(4) Any agency which is established as a corporate entity and enjoying corporate status.

(5) Any agency or office exempted by executive order of the governor.

Exempt types of space.

(1) Space for the storage of voting machines.

(2) Institutional buildings such as hospitals, clinics, and buildings at educational, penal, and correctional institutions.

II.

Space Acquisition Method

The Rental and Lease Section will retain the originals of the pertinent leases and will notify the affected User Agency, reminding them when their lease is about to expire.

Every lease for the use of 2500 square feet or more of space in a privately owned building entered into by a State agency as lessee shall be competitively bid and awarded, pursuant to R.S. 39:1594-1595.

Any lease for the use of less than 2500 square feet may be negotiated by the User Agency, subject to approval by the Division of Administration.

A. Request for Approval

All leases and lease amendments, including amendments both for space of less than 2500 square feet which is to be negotiated, and for 2500 square feet or more which is to be bid, must be preceded by a Request For Approval Form RL-2. The User Agency prepares and forwards to the Rental and Lease Section a Request For Approval Form RL-2 on which agency requests for space, location and terms of lease are detailed. The RL-2A Form gives guidelines to assist the agency in completing RL-2.

In preparing Request For Approval Form RL-2 the User Agency checks its request for space against the "Standards for Capital Projects, Section III B. Net Space Requirement," a copy of which is given in the Appendix.

The Budget Office of the Division of Administration will examine the request in relation to authorized programs, funds, and personnel, and the Rental and Lease Section will approve, take under advisement, or disapprove, the User Agency request, taking into consideration the existing or offered price per square foot of rental space, which is deemed comparable by the Rental and Lease Section.

B. Space Less Than 2500 Square Feet

After approval by the Rental and Lease Section of the requested space of less than 2500 square feet, the User Agency negotiates for the desired space, and submits an RL-1 Form to the Rental and Lease Section. The Rental and Lease Section will submit the RL-1 Form to the Budget Office for approval of the lease expenditure.

The Rental and Lease Section will request the Fire Marshal to make his inspection and report; the Rental and Lease Section will also request liability insurance for the user space. The lease is executed, first by the lessor, then by the lessee, who is the User Agency or Department. Then the lease package, containing four copies of the executed lease, the purchase order, the RL-1, and the Fire Marshal's report is approved or disapproved by the Rental and Lease Section. Should a lease be disapproved it is returned to the Requisitioning Agency. Copies of executed leases are distributed, two copies to the User Agency, and one copy each to the lessor and the Legislative Fiscal Office and the original retained by the Rental and Lease Section. Copies of the Standard State Lease, the RL-2 and RL-2A Forms are given in the Appendix.

C. Space 2500 Square Feet or Greater

1. Advertisement and Notice

As required by R.S. 39:1643, leases for the use of 2500 square feet or more of space are to be awarded pursuant to R.S. 39:1594 which requires adequate public notice of the invitation for bids to be given at least ten days prior to bid opening date. This notice is by written notice to bidders on a bid list maintained by Rentals and Leases and by advertising in the official journal of the state and in a newspaper of general circulation in the parish where the property is to be leased. The requirement of R.S. 39:1643 is implemented in the following manner.

2. The Bid Package

The Rental and Lease Section receives the RL-2 Form from the User Agency and prepares the bid package, which includes: RL-3 Invitation to Bid,

La. Register of 6-20-81

RL-4 Bid Proposal Form,
RL-5 Specifications for Lease,
RL-6 Sample Lease.

The Rental and Lease Section forwards the bid package to the User Agency for its final opportunity to review and comment prior to distribution to prospective bidders. Any reservations or objections to the bid package must be submitted to the Rental and Lease Section within five days, and the decision of the Rental and Lease Section as to the reflection of any requested changes is final. Copies of RL-3, RL-4, RL-5 and RL-6, which constitute the bid package, are given in the Appendix.

3. Bid Opening

The bid package is then advertised and transmitted to prospective bidders. Bids are opened by the Rental and Lease Section on the specified date. The Rental and Lease Section evaluates the bids and sends a tabulation to the Assistant Commissioner with a copy to the Legislative Fiscal Officer.

4. Agency Notification and Report

On receipt of bids, the User Agency is notified and has a representative visit all bid premises and the agency reports to the Rental and Lease Section concerning conformity with advertised specifications. The apparent successful bidder is notified of the intent to award and the agency is notified.

5. RL-1 Form and Lease Completion.

Just as for space less than 2500 square feet, the User Agency requesting space of 2500 square feet or more must submit a Space Rental Requisition RL-1 Form to the Rental and Lease Section. The Rental and Lease Section will transmit this form to the State Budget Office to ascertain that the required funds are budgeted.

The lease completion procedure is also the same as for space less than 2500 square feet. The Rental and Lease Section requests the Fire Marshal to make his inspection and report; the Rental and Lease Section also requests liability insurance for the user space. The lease is executed, first by the lessor, then by the lessee. The lessor must furnish evidence of acceptable financial resources to the Rental and Lease Section as provided in Section V below. The lease package, containing four copies of the executed lease, the purchase order, the RL-1, the Fire Marshal's report and a copy of the advertisement of the bid, is approved by the Rental and Lease Section. Following this approval, copies of the executed and approved lease are distributed, two copies to the User Agency, and one copy each to the lessor, the Legislative Fiscal Office and the original retained by the Rental and Lease Section.

III.

Renovation and New Construction

Space requirements of the state may be met by lessors utilizing any of the following:

Owned or leased space ready for occupancy.

Owned or leased space renovatable for occupancy on or before the proposed or required due date.

Owned or leased new construction to be completed on or before the proposed or required due date.

Bidders or prospective lessors shall indicate which type space is being offered, the specific space to be confirmed in an affidavit by the successful lessor at the time he executed his lease.

Offerors of space not ready for occupancy shall provide sketch plans and outline specifications, or such equivalent representations of the planned renovations or remodeling, or the building to be constructed, so as to demonstrate suitability of the space offered for the use intended.

If such an offeror is the apparent successful offeror or bidder, he must submit suitable evidence of his financial responsibility. Such suitable evidence is described below in Section V. He

must also submit preliminary plans and outline specifications of the space which he will provide.

IV.

Additional Requirements of Lessor

Any lessor of space, either less than 2500 square feet or 2500 square feet or greater, must return a signed lease, and the accompanying affidavit, within ten days after receipt of same for his execution.

V.

Determination of Responsibility

A. In addition to providing preliminary plans, outline specifications, or equivalent satisfactory representations of planned renovations or building construction, to qualify as responsible a prospective lessor must:

1. Have adequate financial resources for performance, or have the ability to obtain such resources as required during performance;

2. Have the necessary experience, organization, technical qualifications, skills, and facilities, or have the ability to obtain them (this may include subcontractor arrangements);

3. Be able to comply with the proposed or required occupancy date;

4. Have a satisfactory record of contract performance.

B. In order to make a determination of responsibility on the part of the lessor and to assist him in determining that the lessor meets the standards in Section A, the Rental and Lease Administrator may request information as follows:

1. A letter of commitment from the bank or other institution financing the project and addressed to the Rental and Lease Administrator stating the amount and terms of commitment to the lessor;

2. Information from the prospective lessor, including representations and other data contained in proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements;

3. Other existing information within the agency or another State department, including financial data, the list of debarred and ineligible bidders and records concerning lessor performance;

4. Publications, including credit ratings and trade and financial journals;

5. Information from other sources, including banks, other financial companies, State departments and agencies, and courts.

VI.

Resolution of Controversies

A. Right to Protest

Any prospective lessor who is aggrieved in connection with the solicitation or award of a contract may protest to the Rental and Lease Administrator. Protests with respect to a solicitation shall be submitted in writing prior to the opening of bids. If a person protests a solicitation, an award cannot be made until said protest is resolved. Protests with respect to the award of a contract shall be submitted in writing within sixty days after bid opening or fourteen days after contract award, whichever is later. Said protest shall state fully and in particularity the reason for protest. If a protest is made with respect to the award of a contract, work on the contract cannot be commenced until it is resolved administratively.

B. Decision

The Rental and Lease Administrator must notify the protesting party in writing and the Legal Counsel of the Division of Administration within fourteen days after receipt of said protest whether or not the protest is denied or granted. If the protest with reference to the solicitation is granted the solicitation will be canceled and reissued. If the protest with reference to the award is granted, then the lease will be voided and the remaining solicitations may be re-evaluated for another selection. If another selec-

tion cannot be made or if it appears to be in the best interest of the State, a new solicitation will be issued.

C. Appeal

If an aggrieved party is not satisfied with the Rental and Lease Administrator's decision then that party may appeal said decision in writing to the Commissioner of Administration within seven days of the decision. The protesting party should fully explain the basis of his appeal. The Commissioner then must render a decision in writing within fourteen days of receipt of the appeal. The Commissioner's decision is final and an aggrieved party may bring judicial action within six months from receipt of said decision; but, the Rental and Lease Administrator may proceed with an award after the Commissioner so decides.

VII.

Emergency Procurement

The Rental and Lease Administrator may make emergency procurements when there exists an imminent threat to the public health, welfare, safety or public property. The declaration of an emergency must be made in writing fully documenting the nature of the emergency, the circumstances leading up to the emergency and a description of the threat to public health, welfare, safety or public property.

VIII.

Alterations, Modifications, and Additional Space Requirements

In the event alterations or modifications of space currently under lease are required to meet changed operating requirements (e.g., a change in functional usage such as from business office to clinic or clinic to computer room), and the provisions of Section II,

Subsection A of these Regulations have been complied with, a lease may be amended. Such lease amendment may provide an adjustment in monthly lease payments sufficient to reimburse the lessor paying for the leasehold improvements, but must be approved by the Division of Administration.

The Division will consider the length of time remaining on the lease and its options, favorability of the lease rental rate, and such other factors as may be presented with the agency-approved rental requisition (RL-1) proposing the lease amendment.

Alterations for the sake of aesthetics alone, or repairs which are properly the responsibility of the lessor under the existing lease, will not be approved.

In the even a lessee agency requires additional adjacent space and it is available at the same price as that now occupied, the agency may contract for up to 2500 additional square feet, in accordance with Section II, Subsection A and B. Additions of 2500 square feet or more are to be bid in accordance with Section II, Subsection C.

The additional space added is to be only that for which the requirement could not reasonably have been foreseen at the time of execution of the lease or at option renewal; the additional adjacent space provision is not to be used to circumvent the bid law.

IX.

Revised Statutes

These regulations shall be read and interpreted jointly with Chapter 17 of Title 39.

Exhibit "A"

RL-2

REQUEST FOR APPROVAL

TO: Rental and Lease Section
Division of Administration
P. O. Box 44095, Capitol Station
Baton Rouge, Louisiana 70804

LEASE BID PROPOSAL

PROPOSAL TO NEGOTIATE LEASE

(Check Applicable Proposal)

FROM: _____

(Department, Office, Division, Board, Commission, etc.)

Currently located at _____

1. Date Submitted: _____

Prepared By: _____

(Name, Title): _____

Address, Telephone No.: _____

2. Space Required For: _____

3. Anticipated Occupancy Date: _____

Property

Present
(If Applicable)

Requested

4. Total Number of Square Feet _____

5. Administrative Area (Sq. Ft.) _____

Rooms _____

Rooms _____

Rooms _____

Rooms _____

Rooms _____

Rooms _____

Rooms _____