

EXECUTIVE COMMITTEE MEETING

November 18, 2005

1. Call to Order

Chairman Boudreaux called to order the Executive Committee of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College in the Board Room of the LSU System Building, Baton Rouge, Louisiana at 9:20 a.m. on November 18, 2005.

Present

The secretary called the roll:

Mr. Bernard E. Boudreaux, Jr. Chairman	Mr. Roderick K. West Chairman-Elect
Mr. C. Stewart Slack	Mr. Jerry E. Shea, Jr.
Mr. James P. Roy	
Mr. Charles S. Weems, III	

ABSENT

Mr. Ronald Anderson

Also present for the meeting were the following: Mr. P. Raymond Lamonica, General Counsel, LSU System; Mr. William L. Silvia, Senior Executive Vice President, LSU System; and Dr. Robert H. Rasmussen, Assistant Vice President, System Relations.

2. Invocation and Pledge of Allegiance

Mr. Weems gave the invocation and led the Pledge of Allegiance.

3. President's Report

Due to a Senate Finance Committee hearing in the Legislature; President Jenkins was unable to attend; therefore, no report was made.

4. Consideration of the Recovery Plans for the University of New Orleans, the LSU Health Sciences Center in New Orleans, and the Health Care Services Division

Dr. Tim Ryan, Chancellor, University of New Orleans and Mr. Don Smithburg, CEO, LSU Health Care Services Division, had to leave the meeting to testify before the Senate Finance Committee. In their absence, Mr. William Silvia, Senior Executive Vice-President and Chief Operating Officer, LSU System; Mr. Rick Barton, Provost and Vice-Chancellor for Academic and Student Affairs, University of New Orleans; Mr. Joel Chatelain, Vice-Chancellor for Campus Services, University of New Orleans; Mr. Robert Plaisance, Deputy CEO, LSU Health Care Services Division; and Dean Larry Hollier, Acting Interim Chancellor, LSU Health Sciences Center-New Orleans, provided this report. **(Copy of Recovery Plan on file in the Office of the LSU Board of Supervisors).**

5. Consideration of the Force Majeure Exigency Plan for Hurricanes Katrina and Rita-
LSU Health Sciences Center in New Orleans

Mr. Ray Lamonica, General Counsel, LSU System, addressed this matter.

Upon motion of Mr. Roy, seconded by Mr. Shea, the Board voted unanimously to approve the following Force Majeure Exigency Plan for LSUHSC-NO:

**LSUHSC-NO
Force Majeure Exigency Plan
For Hurricanes Katrina and Rita**

1. **Board Findings.** The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College hereby finds that:
 - a. The twin catastrophic disasters of Hurricanes Katrina and Rita have forced significant institutional changes at the LSU Health Sciences Center in New Orleans ("LSUHSC"); this policy shall apply only to circumstances arising directly or indirectly as a result of those hurricanes, including the subsequent displacement of much of the population of New Orleans;
 - b. The Governor of Louisiana, in Proclamations 48 KBB 2005, 53 KBB 2005, 54 KBB 2005, and 60 KBB 2005, and the President of the United States of America have declared states of major disaster and emergency in the city of New Orleans and throughout affected parishes of Louisiana recognizing the severe and historical damage caused by the two hurricanes;
 - c. The effects of the two hurricanes have significantly altered the capabilities of LSUHSC to provide the programs and services previously provided;
 - d. LSUHSC will have to consider modifying or discontinuing some programs and activities;
 - e. Article VII, Section 14 of the Louisiana Constitution prohibits the donation of public funds and therefore prohibits payment of salary to employees for whom no work is available;
 - f. A substantial portion of the budget of LSUHSC relies on revenue streams which no longer exist because they were generated by hospitals and clinical practices in New Orleans which have been destroyed, closed, or are non-operational, and restoration of such revenue streams will take substantial time;
 - g. Emergency measures are necessary to enable LSUHSC to continue its fundamental missions;
 - h. The responsibility and authority to address such issues is placed upon the Board of Supervisors by Article 8, Section 7 of the Louisiana *Constitution* by mandating that the Board "shall supervise and manage the institutions, statewide agricultural programs, and other programs administered through its system;"

- i. As part of that responsibility, the Board has previously recognized in its *Regulations* the fundamental principle that even with respect to the traditionally most protected academic employees of a higher education institution: "Tenure is not a guarantee of lifetime employment, **particularly in the face of institutional change or financial exigency**. It does assure that the employee will not be dismissed without adequate justification and without due process." (Section 2-7, emphasis added);
- j. The *Regulations* previously adopted by the Board and upon which all related employment contracts are predicated recognize that the time periods for notice of termination or non-re-appointment are predicated upon ordinary circumstances ("ordinarily") and are not controlling during a circumstance such as that in which LSUHSC finds itself as a result of the effects of Hurricanes Katrina and Rita;
- k. The circumstances described above have caused and will, for the foreseeable future, continue to cause significant institutional change and revenue shortfalls at LSUHSC;
- l. As a consequence of the destruction caused by those two hurricanes, LSUHSC and other health-related components of the LSU System have or are expected to soon lay off over 3,000 classified employees; and
- m. The following procedures to modify or discontinue programs and take Disaster-caused Employment Actions at LSUHSC are appropriate for the Board to respond to this crisis in an orderly and reasonable manner while respecting the needs and rights of the affected employees to the fullest extent possible under these extraordinary conditions.

2. Procedures for Program Discontinuance

- a. The procedures set forth below shall be followed by the President of the LSU System and the Chancellor of LSUHSC to modify or discontinue programs and activities, including furlough, lay-off, or termination of tenured and non-tenured faculty members, unclassified staff, and other contract employees before the end of their contract term ("Disaster-caused Employment Actions") when such modification or discontinuance is implemented as a result of hurricanes Katrina and Rita.
- b. In implementing these procedures, the President and the Chancellor shall give primary consideration to the maintenance of sound and balanced educational and other programs that are consistent with the functions and responsibilities of each institution.
- c. Prior to making a recommendation to discontinue a program, the Chancellor shall take reasonable steps under the circumstances to consult with deans, department heads and faculty representatives.
- d. Upon a determination by the Chancellor that it is in the best interests of the institution to discontinue a program, the Chancellor shall make such a recommendation to the President. The President shall make a recommendation to the Board, which shall make the final decision.

- e. Upon a determination by the Board that a program should be discontinued, the President of the LSU System shall have final authority to implement the plan, including Disaster-caused Employment Actions.
- f. The authority of the Chancellor to transfer any employee from one program to another (or participate in multiple programs) within LSUHSC to meet the new needs of the institution is recognized and affirmed.
- g. After a determination by the Board to discontinue a program, each employee remaining within the program shall be furloughed, laid off, or terminated and provided notice and opportunity to be heard pursuant to the provisions of Section 4 of this plan.

3. Procedures for Program Modification

- a. The Chancellor shall determine how many and what type of positions are currently needed, can be funded, and have work to be done in programs: (i) not recommended for discontinuance and (ii) for which modification is feasible and appropriate. The Chancellor shall consult with the deans, department heads and, as reasonable under the circumstances in his determination, faculty members.
- b. For purposes of these procedures, the following words shall have the given meaning: (1) "Furlough" means the employee is placed on temporary leave without pay status before the end of the employee's contract term; (2) "Lay-off" means the employee is temporarily dismissed before the end of the employee's contract term; (3) "Terminate" means the employee is permanently separated from the institution. Both furloughs and lay-offs may lead to eventual termination.
- c. Whenever practicable and reasonable, employees should be furloughed rather than laid off or terminated, until more information is available to determine the institution's future needs and capabilities.
- d. The initial decision to take Disaster-caused Employment Action as to a particular employee shall be made by the Dean (or equivalent) after consultation with the department head (or equivalent). The Dean shall recommend any such action to the Chancellor based on the following criteria:
 - i. The needs and requirements of the institution and the program, with the primary focus on the maintenance of sound and balanced programs that are consistent with the functions and responsibilities of the institution; and
 - ii. The value an individual employee provides toward meeting the needs and requirements of the institution, which may be based upon:
 - 1. The existence of a revenue stream dedicated to or based on the work of the employee (e.g., grants, contracts, or practice collections);
 - 2. The employee's specific clinical, research, or teaching skill set, particularly when that skill set is rare and would be difficult to replace;

3. The employee's recent performance and productivity, including academic (teaching and other scholarship), research, clinical service, and administrative accomplishments;
4. The employee's history of productivity, including academic (teaching and other scholarship), research, clinical service, and administrative accomplishments;
5. Evidence of the employee's long-standing commitment and contributions to the institution;
6. Evidence of the employee's outstanding service to the institution in the immediate aftermath of Hurricanes Katrina and Rita; and
7. Other relevant and compelling institutional considerations.

4. Procedures for Notification and Review

- a. Once a program has been discontinued or the Dean (or equivalent) has made a recommendation, LSUHSC shall notify each affected employee of the proposed Disaster-caused Employment Action in writing (including e-mail when available and reliable). The notice shall include a summary of the proposed action, the reasons therefore, and the available review procedures.
- b. An employee notified of a proposed Disaster-caused Employment Action may respond in writing to the proposed action within five (5) days, exclusive of Saturday, Sunday, and legal holidays, from their receipt of the notice and request an opportunity to be heard. The request shall be sent to the Vice-Chancellor for Academic Affairs who, with the Dean (or designee), shall meet with the employee within five (5) days of the request. The Vice-Chancellor and the Dean (or designee) shall listen to and consider any facts and contentions presented by the employee and review the initial recommendation as to that employee. Unless the recommendation is modified, the Vice-Chancellor shall submit the recommendation, along with any written materials submitted by the employee, for the Chancellor's review and decision.
- c. After reviewing the Dean's recommendation, any submittal by the Vice-Chancellor, and any written materials submitted by the employee, the Chancellor shall notify the employee in writing of the final decision. The employee may apply to the office of the LSU System President for review of the decision by submitting a written request to that office within three (3) days, exclusive of Saturday, Sunday, and legal holidays, from the receipt of the notice of the final action of the Chancellor. Such review shall be at the President's sole discretion and in his sole discretion may be on the record only.
- d. The Human Resources Departments of LSUHSC and the LSU System shall work with affected employees, even when Disaster-caused Employment Action is final, to assist them with:

- i. retirement system issues;
 - ii. insurance and other benefit issues;
 - iii. alternative employment availability;
 - iv. immigration issues; and
 - v. other appropriate matters which reasonably will assist the employee during this difficult time.
5. **Limited Policy.** This Force Majeure Exigency Plan shall be limited to responding to the circumstances arising out of the catastrophic destruction caused by Hurricanes Katrina and Rita, and for that purpose this Plan shall supplement and satisfy the provisions of Section 5-13 of the Regulations of the Board of Supervisors.

6. Report from the LSU Health Sciences Center in Shreveport on the Shriners Hospital for Children Initiative

Dr. John McDonald, Chancellor, LSU Health Sciences Center-Shreveport, presented this report. After his presentation, Messrs. Weems and Roy requested that Chancellor McDonald request his staff to make available to Mr. Lamonica and Mr. Silvia for review and consideration the following documents: (i) feasibility study, (ii) proposed conveyance agreements, (iii) joint venture and (iv) financial/operational statements. Chairman Boudreaux noted documents regarding the transaction between Shriners and Temple and asked that these documents also be included in this request and furnished to Mr. Lamonica and Mr. Silvia.

No official Board action is required.

7. Other Business

Mr. Slack requested that at the next scheduled Board meeting, the Tuition Policy matter be placed on the agenda.

8. Adjournment

There being no further business to come before the Board, the meeting was adjourned at 12:10 p.m.

Carleen N. Smith
Administrative Secretary