

SENATE BILL NO. 44 (Duplicate of House Bill No. 76)

BY SENATOR HOLLIS AND REPRESENTATIVE PINAC AND COAUTHORED BY SENATORS HEITMEIER, HINES AND MOUNT AND REPRESENTATIVES ALARIO, DAMICO, DEWITT, DORSEY, HAMMETT, JOHNS AND SALTER

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AN ACT

To amend and reenact R.S. 33:4773(D) and to enact R.S. 22:1407(J) and Part IV-B of Chapter 8 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1730.21 through 1730.39, and to repeal Part IV-A of Chapter 8 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1725 through 1730.1, relative to state building codes; to provide for scope of building codes; to provide for public policy; to provide for the creation and authority of the Louisiana State Uniform Construction Code Council; to provide for enforcement; to provide for agreements with other governmental entities or certified third-party providers; to provide for appointment of building officials; to provide for council's code adoption authority; to provide for adoption of emergency wind and flood provisions; to provide for adoption of state uniform construction code; to provide for construction of industrial facilities; to provide for construction of farm or recreational structures; to provide for mandamus and injunctive relief; to provide for applicable codes for inspections; to provide for application and issuance of certificates of registration; to provide for revocation authority and injunctive relief; to provide for continuing education; to provide for authority of state fire marshal; to repeal the current state uniform construction code; to provide for reduced rates or discounts on insurance premiums for insureds who comply with the state uniform construction code; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 33:4773(D) is hereby amended and reenacted to read as follows:

§4773. Scope of building codes

* * *

1 D. ~~The performance of any enforcement procedure in connection with any~~
2 ~~building code shall be deemed to be a discretionary act and shall be subject to the~~
3 ~~provisions of R.S. 9:2798.1.~~ In connection with the construction of any building,
4 structure, or other improvement to immovable property, neither the performance of
5 any enforcement procedure nor any provision of a building code shall constitute or
6 be construed as a warranty or guarantee by an enforcement agency as to durability
7 or fitness, or as a warranty or guarantee by an enforcement agency that said building,
8 structure, or other improvement to immovable property or any material, equipment,
9 or method or type of construction used therein is or will be free from defects, will
10 perform in a particular manner, is fit for a particular purpose, or will last in any
11 particular way.

* * *

13 Section 2. R.S. 22:1407(J) and Part IV-B of Chapter 8 of Title 40 of the Louisiana
14 Revised Statutes of 1950, comprised of R.S. 40:1730.21 through 1730.39, are hereby enacted
15 to read as follows:

§1407. Rate filing

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18 **J. Any insurer who makes application to the Louisiana Rating**
19 **Commission for a rate filing shall provide in their application details as to what**
20 **discount or reduced rate will be given to insureds who comply with the State**
21 **Uniform Construction Code.**

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PART IV-B. STATE UNIFORM CONSTRUCTION CODE

§1730.21. Public policy for state uniform construction code

25 **A. The public policy of Louisiana is to maintain reasonable standards**
26 **of construction in buildings and other structures in the state consistent with the**
27 **public health, safety, and welfare of its citizens.**

28 **B. This Part is enacted to enable the state of Louisiana to promulgate a**
29 **state uniform construction code to govern the construction, reconstruction,**
30 **alteration, and repair of buildings and other structures and the installation of**

1 mechanical devices and equipment therein. The state uniform construction code
 2 shall establish uniform performance standards providing reasonable safeguards
 3 for health, safety, welfare, comfort, and security balanced with affordability for
 4 the residents of this state who are occupants and users of buildings, and will
 5 provide for the use of modern methods, devices, materials, and techniques. The
 6 state uniform construction code will encourage the use of construction materials
 7 of the greatest durability, lower long-term costs, and provide greater storm
 8 resistance.

9 C. To clarify the intent of the legislature and address questions which
 10 might arise or have arisen with respect to provisions of the nationally known
 11 codes which have been or are in place, only those portions or provisions of the
 12 nationally known building and safety codes which relate to building standards
 13 and safety are binding upon a state or local governmental entity or agency
 14 which adopts the building and safety codes authorized or required by this Part.

15 D. To further clarify the intent of the legislature, this Part continues to
 16 apply to a person who may act under authority of the Department of Public
 17 Safety and Corrections and that the allocation of inspection duties among local
 18 officials is not dictated by this Part but remains a matter for the local authority.

19 E. To secure these purposes, the Louisiana State Uniform Construction
 20 Code Council shall certify a person performing building codes enforcement
 21 including building officials, plans reviewers, and inspectors.

22 §1730.22. Louisiana State Uniform Construction Code Council; membership;
 23 function of council; meeting requirements; immunity

24 A. The Louisiana State Uniform Construction Code Council, hereinafter
 25 referred to as the "council," is hereby created and shall consist of nineteen
 26 members. Each member of the council shall be appointed by the governor,
 27 subject to Senate confirmation, for a term of three years and until a successor
 28 is appointed and qualifies. No member of the council shall receive per diem or
 29 other compensation for their duties on the commission.

30 B. A vacancy must be filled in the manner of the original appointment

1 for the unexpired portion of the term.

2 C. The primary function of the council is to review and adopt the state
3 uniform construction code, provide for training and education of code officials,
4 and accept all requests for amendments of the code, except the Louisiana State
5 Plumbing Code [Part XIV (Plumbing) of the State Sanitary Code]. Specifically,
6 the council shall establish the requirements and process for the certification and
7 continuing education of code enforcement officers, code enforcement inspectors,
8 and building officials and determine if any amendments to the state uniform
9 construction code are justified. If the council determines that an amendment
10 is justified, it may enact such an amendment after a finding on the record that
11 the modification provides a reasonable degree of public health, safety, and
12 welfare. The council shall adopt rules in accordance with the Administrative
13 Procedure Act in order to implement the provisions of this Part.

14 D. The council shall elect from its members a chairman and vice
15 chairman. The council shall adopt regulations under the Administrative
16 Procedure Act in order to implement the provisions of this Part. A meeting may
17 be called by the chairman on his own initiative and must be called by him at the
18 request of three or more members of the council within fourteen days of such
19 request. Each member must be notified by the chairman in writing of the time
20 and place of the meeting at least seven days before the meeting. Each meeting
21 shall be open to the public and any official decision of the council may be made
22 only by a vote of at least two-thirds of those members in attendance at the
23 meeting provided that a quorum is established prior to a vote. A majority of
24 members of the council shall constitute a quorum.

25 E. The council and its members shall be immune from personal liability
26 for actions taken in good faith in the discharge of their responsibilities. The
27 state shall hold the council and its members harmless from all costs, damages,
28 and attorney fees arising from claims and suits against them with respect to
29 matters to which such immunity applies.

30 §1730.23. Enforcement of building codes by municipalities and parishes

1 A. Notwithstanding any other law to the contrary, all municipalities and
2 parishes in this state shall enforce only codes provided for in this Part.

3 B. Nothing in this Part shall conflict with the Federal Department of
4 Housing and Urban Development's regulations regarding manufactured
5 housing construction or the provisions of R.S. 51:912.21 et seq., as it relates to
6 manufactured housing installation.

7 C. In connection with the construction of any building, structure, or
8 other improvement to immovable property, neither the performance of any
9 enforcement procedure nor any provision of a building code shall constitute or
10 be construed as a warranty or guarantee by a governmental enforcement
11 agency as to durability or fitness, or as a warranty or guarantee by a
12 governmental enforcement official that said building, structure, or other
13 improvement to immovable property or any materials, equipment, or method
14 or type of construction used therein is or will be free from defects, will perform
15 in a particular manner, is fit for a particular purpose, or will last in any
16 particular way.

17 §1730.24. Agreements with other governmental entities for provision of
18 services; private agreements

19 A. Municipalities and parishes may establish agreements with other
20 governmental entities of the state or certified third-party providers to issue
21 permits and enforce the state uniform construction code in order to provide the
22 services required by this Part. The council may assist in arranging for
23 municipalities, parishes, or certified third-party providers to provide the
24 services required by this Part to other municipalities or parishes if a written
25 request from the governing body of the municipality or parish is submitted to
26 the council.

27 B. Commercial and residential contractors may establish agreements
28 with certified third-party providers to conduct plans review and inspections and
29 enforce the state uniform construction code. A third-party provider shall be a
30 Louisiana licensed architect or engineer or certified by the International Code

1 Council for purposes of the emergency provisions of R.S. 40:1730.27.
2 Thereafter, a third-party provider shall meet the requirements imposed by the
3 council for certificates of registration. During the time period that the
4 provisions of R.S. 40:1730.27 of this Part are in effect, every certified third-
5 party provider doing business within the state shall notify the Department of
6 Public Safety and Corrections of their intention to do business within the state
7 and the department shall maintain a listing of the name of the provider and the
8 name and location of the person or entity with whom the provider has
9 contracted to provide enforcement services. Once the council meets for the first
10 time, certified third-party providers shall notify the council of their intention
11 to do business within the state and the council shall maintain a listing of all
12 certified third-party providers.

13 §1730.25. Appointment of building official or contractual arrangement for
14 such services; affidavit for exemption

15 Each parish and municipality shall appoint a council-certified building
16 official or contract with other governmental entities or third parties as
17 authorized in R.S. 40:1730.24 of this Part so that the unincorporated area of the
18 parish is under the jurisdiction of a council-certified building official. A parish
19 or municipality may use a certified building inspector in lieu of a certified
20 building official for a period not to exceed four years from the date the state
21 uniform construction code becomes effective in the parish or municipality.
22 Nothing in this Part shall prevent a municipality or parish from appointing and
23 employing other council-certified personnel and assistants necessary to perform
24 the required inspections and technical duties and prescribing fees for
25 construction permits and inspections as provided by law.

26 §1730.26. Adoption and promulgation of certain building codes and standards
27 as state uniform construction code; procedures

28 The council shall review, adopt, modify, and promulgate the building
29 codes referenced in R.S. 40:1730.28 of this Part, provided that:

30 (1) The council shall promulgate rules and regulations to modify portions

1 of the state uniform construction code referenced in R.S. 40:1730.28 of this Part
2 under the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.
3 The Senate and House committees on commerce shall receive notice of intent to
4 modify portions of the state uniform construction code and shall have oversight
5 of any such modifications under the provisions of the Administrative Procedure
6 Act.

7 (2) The state uniform construction code shall be updated every three
8 years.

9 §1730.27. Adoption and enforcement of emergency wind and flood mitigation
10 requirements

11 A. The wind and flood mitigation requirements prescribed by the 2003
12 International Building Code and the 2003 International Residential Code, as
13 modified in R.S. 40:1730.28(A)(3), shall apply within the parishes of Calcasieu,
14 Cameron, Vermilion, Iberia, St. Tammany, Orleans, Jefferson, St. Bernard,
15 Plaquemines, Terrebonne, and Lafourche.

16 B. Emergency wind and flood building requirements adopted in this
17 Section shall remain in force until the council adopts the latest editions of both
18 the International Building Code and the International Residential Code, as
19 modified by this Part, as minimum mandatory statewide codes.

20 C. Except as otherwise provided herein, the emergency wind and flood
21 mitigation requirements adopted by this Section shall be enforced pursuant to
22 R.S. 40:1730.23 and 1730.24 of this Part. If municipalities and parishes are
23 unable to enforce the emergency wind and flood mitigation requirements
24 prescribed in this Section on the effective dates provided for in Subsection D of
25 this Section, the Louisiana Department of Public Safety and Corrections shall
26 enforce them as long as they remain in effect.

27 D. The provisions of this Section shall go into effect thirty days from the
28 effective date of this Part for parishes and municipalities that have code
29 enforcement procedures in place on the effective date of this Part. For those
30 parishes and municipalities without code enforcement procedures, the

1 provisions of this Section shall be applied no later than ninety days from the
2 effective date of this Part.

3 E. The Department of Public Safety and Corrections, office of state fire
4 marshal, may establish contract agreements with parishes, municipalities, and
5 third-party providers in order to provide enforcement of this Section.

6 §1730.28. Mandatory adoption of certain nationally recognized codes and
7 standards as the state uniform construction code; adoption by
8 reference

9 A. The council shall adopt and amend only the latest editions of the
10 following as the state uniform construction code:

11 (1) International Building Code, not including Chapter 27-Electrical and
12 Chapter 29-Plumbing Systems. The applicable standards referenced in that
13 code are included for regulation of construction within this state. The
14 appendices of that code may be adopted as needed, but the specific appendix or
15 appendices must be referenced by name or letter designation at the time of
16 adoption.

17 (2) International Existing Building Code and the standards referenced
18 in that code for regulation of construction within this state. The appendices of
19 that code may be adopted as needed, but the specific appendix or appendices
20 must be referenced by name or letter designation at the time of adoption.

21 (3) International Residential Code, not including Parts I-Administrative,
22 V-Mechanical, VII-Plumbing and VIII-Electrical. The applicable standards
23 referenced in that code are included for regulation of construction within this
24 state. The appendices of that code may be adopted as needed, but the specific
25 appendix or appendices must be referenced by name or letter designation at the
26 time of adoption, with the exception of Appendix J, Existing Buildings and
27 Structures, which is hereby adopted by this reference. For the purposes of this
28 Part, IRC R301.2.1.1 (Design Criteria) shall be amended as follows and shall
29 only apply to the International Residential Code, 2003 edition:

30 (a) Amendment of R301.2.1.1 (Design Criteria).

1 **(b) Item 6, the American Concrete Institute, *Guide to Concrete Masonry***
2 ***Residential Construction in High Winds Areas*, shall be added.**

3 **(c) Item 7, Institute for Business & Home Safety, *Optional Code-plus***
4 ***Fortified for Safer Living*, shall be added.**

5 **(d) Item 8, Federal Alliance for Same Homes, *Optional Code-plus***
6 ***Blueprint for Safety*, shall be added.**

7 **(4) International Mechanical Code and the standards referenced in that**
8 **code for regulation of construction within this state. The appendices of the code**
9 **provided in this Paragraph may be adopted as needed, but the specific appendix**
10 **or appendices must be referenced by name or letter designation at the time of**
11 **adoption.**

12 **(5) The Louisiana State Plumbing Code [Part XIV (Plumbing) of the**
13 **State Sanitary Code] as amended by the state health officer acting through the**
14 **office of public health of the Department of Health and Hospitals. Nothing in**
15 **this Part shall be construed so as to prevent the state health officer from**
16 **enforcing Part XIV (Plumbing) of the State Sanitary Code, the enforcement of**
17 **which is his statutory and regulatory responsibility.**

18 **(6) International Fuel Gas Code and the standards referenced in that**
19 **code for regulation of construction within this state. The appendices of the code**
20 **provided in this Paragraph may be adopted as needed, but the specific appendix**
21 **or appendices must be referenced by name or letter designation at the time of**
22 **adoption.**

23 **(7) National Electric Code.**

24 **B. The initial code adopted by the council under the provisions of this**
25 **Part shall become effective on January 1, 2007.**

26 **§1730.29. Regulation of construction or improvement of industrial facilities**

27 **Excluding the applicable requirements of the Louisiana State Plumbing**
28 **Code, the provisions of this Part shall not apply to the construction or**
29 **improvement of the following types of industrial facilities that are engaged in**
30 **activities defined or classified under one or more of the following subsectors,**

1 industry groups, or industries of the 1997 North American Industry
 2 Classification System (NAICS):

3 (1) 22111 electric power generation.

4 (2) 321 wood products manufacturing.

5 (3) 322 paper manufacturing.

6 (4) 324 petroleum and coal products manufacturing.

7 (5) 325 chemical manufacturing.

8 (6) 326 plastics and rubber products manufacturing.

9 (7) 331 primary metals manufacturing.

10 (8) 562211/562212 hazardous and solid waste landfills.

11 (9) 422710 bulk stations and materials.

12 (10) 486110 crude oil pipelines.

13 (11) 486910 refined petroleum products pipelines.

14 (12) 486210 natural gas pipelines.

15 (13) 486990 other pipelines.

16 (14) 211112 natural gas processing plants.

17 §1730.30. Regulation of construction or improvement of farm or recreational
 18 structure; authority to issue building permits

19 A. For purposes of this Section, "farm structure" means a structure
 20 which is constructed on a farm, other than a residence or a structure attached
 21 to it, for use on the farm including but not limited to barns, sheds, and poultry
 22 houses, but not public livestock areas. For purposes of this Section, "farm
 23 structure" does not include a structure originally qualifying as a "farm
 24 structure" but later converted to another use.

25 B. The governing authority of a parish or municipality may not enforce
 26 that portion of the state uniform construction code which regulates the
 27 construction or improvement of a farm structure or private outdoor
 28 recreational structure, other than a residence or structure attached to a
 29 residence, such as a hunting or fishing camp.

30 C. For residential construction, the standards published by the Federal

1 Emergency Management Agency for the National Flood Insurance Program
2 shall apply.

3 D. The provisions of this Section shall not affect the power of the
4 governing authority of a parish or municipality to issue building permits before
5 the construction or improvement of a farm or private outdoor recreational
6 structure.

7 §1730.31. Mandamus and injunctive relief for violation of code or regulation;
8 penalties

9 For a violation of the building codes or regulations adopted pursuant to
10 this Part, the local building official may enjoin further construction of the
11 project as provided by local ordinance. The municipal, district, or parish
12 attorney, attorney general, or other appropriate authorities of a political
13 subdivision, in addition to other remedies, may apply for injunctive relief,
14 mandamus, or other appropriate proceeding in the district court of the parish
15 where the violation occurred.

16 §1730.32. Imposition of fees

17 Nothing in this Part shall prohibit the governing authority of a parish or
18 municipality from imposing fees necessary to implement and continue the
19 provisions required by this Part as provided by law.

20 §1730.33. Codes applicable to building inspections

21 Buildings must be inspected in accordance with the codes in effect for the
22 locality on the date of the issuance of the original building permit, except that:

23 (1) If no date of issuance of original building permit can be found, the
24 date of submission of the completed application to the local authority must be
25 used.

26 (2) If no date of application for, or date of issuance of, building permit
27 is available, the director of the applicable parish planning and development
28 service or similar agency shall determine the nearest possible date by using
29 available documents, such as transfer of property records, mortgage records,
30 tax records, or rent records.

1 **§1730.34. Responsibility of Louisiana State Construction Code Council for**
2 **registration of building codes enforcement officers; record of**
3 **hearings and proceedings; register of applications for certificates**
4 **of registration**

5 **A. The Louisiana State Uniform Construction Code Council is**
6 **responsible for the registration of building codes enforcement officers pursuant**
7 **to this Part. When used in this Part "building codes enforcement officer"**
8 **means a person employed by a public entity who is primarily responsible for the**
9 **overall inspection or enforcement of applicable building code requirements**
10 **within the jurisdiction of the employer.**

11 **B. The council or its designated representatives may conduct hearings**
12 **and proceedings required by law or considered necessary by the council. The**
13 **council and its members shall be subject to the Open Meetings Law, the Public**
14 **Records Law, and the Code of Governmental Ethics, provided however, that**
15 **when any member of the council has a real or perceived conflict of interest upon**
16 **an issue before the council, he shall recuse himself from participation in that**
17 **issue by providing a verbal explanation of the real or perceived conflict to the**
18 **council. The Department of Public Safety and Corrections shall employ and**
19 **supervise personnel necessary for the administration of this Part. The council**
20 **may promulgate regulations under the provisions of the Administrative**
21 **Procedure Act for the proper enforcement of this Part.**

22 **C. The council shall keep a record of its hearings and proceedings and**
23 **a register of applications for the certificates of registration showing the date of**
24 **application, name, qualifications, and addresses of the business and residence**
25 **of the applicant and whether the certificate is approved or denied. The council**
26 **shall publish at least annually the applications in the register which are**
27 **approved. Applicants and registrants shall notify the council of changes in**
28 **required information within ten days of a change.**

29 **§1730.35. Application and issuance of certificates of registration; provisional**
30 **certificates of registration; registration**

1 A. A person desiring to be registered as a building code enforcement
2 officer as required by this Part shall apply upon a form prescribed by the
3 council.

4 B. An applicant shall furnish satisfactory proof to the council of valid
5 certification by a recognized code organization or testing agency that is
6 prescribed by the council in the general or special capacity in which he desires
7 to be registered. Special certificates of registration authorize the registrant to
8 practice in the named specialty only. General certificates of registration are not
9 restricted. The council or its designated representatives shall review the
10 guidelines employed by the organization or agency in order to determine their
11 continued compatibility with the requirements considered by the council to be
12 consistent with this Part.

13 C. Certificates of registration may be issued without certification by a
14 recognized code organization or testing agency to building code enforcement
15 officers employed in code enforcement on the effective date of this Part only for
16 the position and locality held at the time of registration pursuant to this Section.
17 This registration is valid for three years for building officials and six months for
18 building inspectors and plans reviewers. The certificates of registration
19 provided for in this Subsection may not be renewed except as provided in
20 Subsection B of this Section.

21 D. Upon initial employment by a parish, municipality, or other political
22 subdivision, an individual must be granted a provisional certificate of
23 registration without certification by a recognized code organization or testing
24 agency, provided that such individual is under the supervision of a code
25 enforcement officer who is certified by the International Code Council. Such
26 provisional certificate of registration is valid for the time period stipulated by
27 regulation of the council for each registration classification from the date of
28 issuance. The provisional certificate of registration may not be renewed except
29 as provided in Subsection B of this Section.

30 E. The council shall have the authority to suspend or revoke certificates

1 of registration upon any violation of this Part after notice and a proper hearing.

2 The council shall implement rules for such proceedings under the
3 Administrative Procedure Act.

4 §1730.36. Registration required to practice as code enforcement officer;
5 violations; penalty

6 No person may practice as a code enforcement officer in this state unless
7 registered as provided in this Part. A person violating the provisions of this Part
8 shall be guilty of a misdemeanor and, upon conviction, shall be fined not more
9 than two hundred dollars or imprisoned not more than thirty days. Each day
10 the violation continues is a separate offense.

11 §1730.37. Injunction to restrain person from violating this Part

12 If the council has reason to believe that a person is violating or intends
13 to violate a provision of this Part, in addition to other remedies, it may order the
14 person immediately to refrain from the conduct. The council may apply to the
15 district court of the parish for an injunction restraining the person from the
16 conduct. The court may issue a temporary injunction ex parte not to exceed ten
17 days and upon notice and full hearing may issue other orders in the matter it
18 considers proper. No bond is required of the council by the court as a condition
19 to the issuance of an injunction or other order pursuant to this Part.

20 §1730.38. Duration of certificates; renewal; continuing education requirements;
21 funding

22 A certificate of registration issued under R.S. 40:1730.35(B) is valid for
23 one year and expires on the last day of the month of issuance. Renewal of all
24 registrations must be based upon a determination by the council of the
25 applicant's participation in council-approved continuing education programs.
26 The council must promulgate regulations setting forth the continuing education
27 requirements for building code enforcement officers. A person failing to make
28 timely renewal of his certificate is not registered unless qualified in the manner
29 provided for new registrants under R.S. 40:1730.35(B) and may not practice
30 until registered in accordance with this Part.

1 §1730.39. Powers of state fire marshal

2 A. The state fire marshal may establish contract agreements with
3 municipalities and parishes in order to provide code enforcement on behalf of
4 the municipality or parish as provided in R.S. 40:1730.24 of this Part.

5 B. Nothing in this Part shall be construed so as to prevent the state fire
6 marshal from enforcing the fire protection, life safety, handicapped
7 accessibility, and high rise laws of this state, the enforcement of which are his
8 statutory and regulatory responsibility.

9 C. Nothing in this Part shall be construed so as to prevent the state fire
10 marshal from enforcing the Commercial Building Energy Conservation Code
11 as provided in R.S. 40:1730.41 et seq.

12 Section 3. Part IV-A of Chapter 8 of Title 40 of the Louisiana Revised Statutes of
13 1950, comprised of R.S. 40:1725 through 1730.1, is hereby repealed in its entirety.

14 Section 4. This Act shall become effective upon signature by the governor or, if not
15 signed by the governor, upon expiration of the time for bills to become law without signature
16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
18 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____