

First Extraordinary Session, 2008

HOUSE BILL NO. 80

BY REPRESENTATIVES MORRELL, ABRAMSON, BALDONE, LEGER, LORUSSO,
AND PETERSON AND SENATOR SCALISE

1 AN ACT

2 To enact Chapter 44 of Title 33 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 33:9611 through 9614, relative to certain local entities; to provide relative to
4 certain powers of a local ethics entity, ethics review board, or office of inspector
5 general in certain municipalities; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Chapter 44 of Title 33 of the Louisiana Revised Statutes of 1950,
8 comprised of R.S. 33:9611 through 9614, is hereby enacted to read as follows:

9 CHAPTER 44. ETHICS ADMINISTRATION; LOCAL ENTITIES

10 §9611. Application and purpose

11 A. This Chapter applies to municipalities that are governed by a home rule
12 charter and that have a population in excess of two hundred fifty thousand persons
13 according to the latest federal decennial census.

14 B. The proper operation of democratic government requires that elected
15 officials and public employees be accountable for their actions, that governmental
16 decisions are made in a transparent manner subject to complete ethical and
17 operational review, that public office and employment serve the highest standards
18 of honesty and competence, and that there be public confidence in the integrity of
19 government. The purpose of this Chapter is to serve these objectives by empowering
20 the applicable municipalities and public officials and employees thereof to
21 implement and enforce vigorous ethical standards and codes of conduct, and to that
22 end these provisions are to be liberally construed in support of the purposes for
23 which this Chapter is enacted.

1 §9612. Local ethics entities

2 A municipality that is authorized by its home rule charter, by statute, or by
3 ordinance to create local ethics entities, including but not limited to an ethics review
4 board or office of inspector general, or both, may designate the local ethics entity,
5 ethics review board, or office of inspector general as a law enforcement agency and
6 may thereby confer upon the local ethics entity, ethics review board, or office of
7 inspector general all investigative powers and privileges appurtenant to a law
8 enforcement agency under state law, which shall include access to computer systems,
9 information maintained for the use of law enforcement personnel, and any
10 information contained in the criminal history record and identification file of the
11 Louisiana Bureau of Criminal Identification and Information.

12 §9613. Investigative powers

13 A.(1) A local ethics entity, ethics review board, or office of inspector general
14 may make investigations and examinations, within or outside of the state of
15 Louisiana as each deems necessary, in order to carry out the duties of its mandate
16 under law, and may gather evidence in any matter in any legally appropriate manner.

17 (2) In the performance of its duties, a local ethics entity, ethics review board,
18 or office of the inspector general may administer oaths and take the testimony of
19 those sworn.

20 (3) In the performance of its duties, a local ethics entity, ethics review board,
21 or office of the inspector general may compel the attendance of witnesses to be
22 deposed under oath or the production of public and private records by issuing a
23 subpoena. However, such a subpoena or subpoena duces tecum shall be issued only
24 upon approval of a judge of the district court of the parish in which a local ethics
25 entity, ethics review board, or office of inspector general is domiciled upon
26 application in writing by such entity, board, or office. The judge shall issue a written
27 decision within seventy-two hours after receipt of such application. Any subpoena
28 for production of private records shall be in compliance with all applicable
29 constitutionally established rights and processes. Any request for financial records
30 in the possession or under the control of a bank pursuant to this Chapter is subject

1 to and shall comply with the requirements and procedures of R.S. 6:333. The
2 subpoena may be served by certified mail, return receipt requested, at the addressee's
3 residence or business address, or by representatives appointed by the local ethics
4 entity, ethics review board, or office of inspector general, or may be directed for
5 service to the office of the municipal police. If a person refuses to obey a subpoena
6 issued by the local ethics entity, ethics review board, or office of inspector general,
7 the district court of the parish in which the local ethics entity, ethics review board,
8 or office of inspector general is domiciled may issue an order to the person requiring
9 the person to appear before the court to show cause why an order shall not be issued
10 ordering such person to obey the subpoena.

11 B. Any costs and attorney's fees incurred by the local ethics entity, ethics
12 review board, or office of inspector general may be taxed against the person who
13 failed or refused to comply with the terms of the subpoena.

14 C. When the local ethics entity, ethics review board, or office of inspector
15 general issuing the subpoena has reason to believe that a person may attempt to
16 conceal or destroy materials essential to an investigation, examination, audit,
17 inspection, or performance review, the local ethics entity, ethics review board, or
18 office of inspector general may apply by verified petition to the district court of the
19 parish in which the person resides or is found or has a principal place of business or
20 in which the materials may be found for an order protecting the materials from
21 concealment or destruction. The court may order and fix the amount of a bond to be
22 posted and conditioned upon compliance with the terms of the subpoena. The order
23 shall be directed to the person upon whom the subpoena will be served and to any
24 other person necessary to protect the materials from concealment or destruction.

25 D.(1) A local ethics entity, ethics review board, or office of inspector general
26 shall have the authority to examine, review, audit, inspect, and investigate the
27 records, books, reports, documents, papers, correspondence, accounts, audits,
28 inspections, reviews, recommendations, plans, films, tapes, pictures, computer hard
29 drives, software data, hardware data, e-mails, instant messages, text messages, and
30 any other data and material relevant to any matter under audit, investigation,

1 inspection, or performance review of all entities of municipal government or entities
 2 receiving funds through or for the benefit of municipal government.

3 (2) For the purposes of this Section, these entities shall include but not be
 4 limited to every municipal officer, employee, elected official, department, agency,
 5 board, commission, public benefit corporation, quasi public agency or body,
 6 contractor, subcontractor, licensee of the municipality, and every applicant for
 7 certification of eligibility for a municipal contract or program.

8 (3) These entities shall also include all municipal governing authorities, all
 9 districts, boards, and commissions created by municipal governing authorities either
 10 independently or in conjunction with other units of government, and all
 11 independently elected parish public officials whose offices receive funds from the
 12 municipality.

13 E. For the purposes of this Section, a quasi public agency or body shall be
 14 defined as:

15 (1) An organization, either not-for-profit or for profit, that is a component
 16 unit of local government established to perform a public purpose, and created by the
 17 state of Louisiana or any political subdivision or agency thereof or any special
 18 district or authority operating within the municipality.

19 (2) An organization, either not-for-profit or for profit, that is a component
 20 unit of a municipal reporting entity, as defined under generally accepted accounting
 21 principles.

22 (3) An organization, either not-for-profit or for profit, created to perform a
 23 public purpose and having one or more of the following characteristics:

24 (a) The governing body is elected by the general public.

25 (b) A majority of the governing body is appointed by or authorized to be
 26 appointed by a governmental entity or individual governmental official as a part of
 27 their official duties.

28 (c) The entity is the recipient of proceeds of an ad valorem tax or general
 29 sales tax levied specifically for its operations.

1 (d) The entity is able to directly issue debt, the interest on which is exempt
 2 from federal taxation.

3 (e) The entity can be dissolved unilaterally by a governmental entity and its
 4 net assets assumed without compensation by that governmental entity.

5 (4) Any not-for-profit organization operating within the municipality which
 6 receives or expends in excess of twenty-five thousand dollars in local assistance in
 7 any fiscal year. Assistance includes grants, loans, awards, transfer of property, and
 8 direct appropriations of local public funds.

9 (5) Any organization, either not-for-profit or for profit, operating within the
 10 municipality which is subject to the open meetings law and derives a portion of its
 11 income from payments received from any municipal agency or body.

12 F. Nothing in R.S. 42:61 et seq. shall be construed to prohibit local ethics
 13 entity attorneys, ethics review board attorneys, or office of inspector general
 14 attorneys from also holding the position of assistant United States attorney, assistant
 15 attorney general, or assistant district attorney when so designated for cooperative
 16 efforts in criminal prosecutions and without additional compensation.

17 G. A local ethics entity, ethics review board, or office of inspector general
 18 may employ its own legal counsel. A local ethics entity or ethics review board may
 19 also employ, contract with, or accept the assistance of other legal counsel in the
 20 conduct of a civil or criminal case.

21 §9614. Confidentiality of preliminary investigations

22 A. A local ethics entity, including an ethics review board, shall maintain the
 23 confidentiality of records gathered and proceedings conducted during its preliminary
 24 investigation of any matters within its jurisdiction. The local ethics entity or ethics
 25 review board shall maintain the confidentiality of records submitted to any law
 26 enforcement or regulatory agency for further investigation or for criminal or civil
 27 prosecution until such investigation or prosecution has been completed or becomes
 28 inactive. If the local ethics entity decides to issue a report or to file charges after a
 29 preliminary investigation, all subsequent records and proceedings in connection with

1 the matter are subject to public review and scrutiny, except as otherwise provided by
2 law.

3 B. Any material, records, data, and information compiled by an office of
4 inspector general in an investigation, examination, audit, inspection, or performance
5 review under this Chapter is confidential and not subject to R.S. 44:1 et seq., until
6 the investigation, examination, audit, inspection, or performance review is complete.
7 The investigation, examination, audit, inspection, or performance review is not
8 deemed complete if the office of inspector general has submitted material, records,
9 data, and information from or the results of such investigation, examination, audit,
10 inspection, or performance review to any other law enforcement or regulatory agency
11 for further investigation or for the filing of criminal or civil prosecution, and if such
12 investigation or prosecution has not been completed or become inactive.

13 C. Except for the completed reports, findings, advisories, letters, and
14 recommendations of investigations, audits, inspections, performance reviews,
15 qualitative assurance reviews, peer reviews, annual operating budgets, and annual
16 office reports, the records prepared or obtained by the ethics entity, ethics review
17 board, or office of inspector general shall be deemed confidential and protected from
18 disclosure pursuant to R.S. 44:3 and 44:5. In order to maintain the confidentiality
19 of such materials, the ethics entity, ethics review board, or office of inspector general
20 may meet and make decisions in executive session. No privilege established by law
21 shall be deemed waived on any record obtained by the ethics entity, ethics review
22 board, or office of inspector general in connection with the performance of duties
23 established by this Chapter. Any record or information obtained by the ethics entity,
24 ethics review board, or office of inspector general which is confidential pursuant to
25 any other provision of law shall remain confidential, and it shall be a misdemeanor
26 punishable by a fine of not more than two thousand dollars or imprisonment for not

1 more than one year, or both, for the ethics entity, ethics review board, or office of
2 inspector general or any designated staff member or any other public official,
3 corporation, or individual to make public any such information or record.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____