

Regular Session, 2012

HOUSE BILL NO. 950

BY REPRESENTATIVE TIM BURNS

ETHICS: Provides relative to the enforcement of provisions of law under the jurisdiction of the Board of Ethics

1 AN ACT
2 To amend and reenact R.S. 42:1132(A), (B)(introductory paragraph), (C), and (D),
3 1134(A)(1) and (K), 1135, 1141(A), (B)(1)(a), (C)(1), (2), and (3)(c) and (d), and
4 1151 through 1157, to enact R.S. 42:1141(B)(3) and (C)(3)(e) and (f) and 1141.2
5 through 1141.6, and to repeal R.S. 42:1141(C)(4), (5), (6), (7), and (8), (D), (E), and
6 (F), 1141.1, and 1157.2, relative to enforcement of the laws under the jurisdiction of
7 the Board of Ethics; to clarify the powers and duties of the Board of Ethics and the
8 Ethics Adjudicatory Board relative to such enforcement; to provide relative to certain
9 time limitations; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 42:1132(A), (B)(introductory paragraph), (C), and (D), 1134(A)(1)
12 and (K), 1135, 1141(A), (B)(1)(a), (C)(1), (2), and (3)(c) and (d), and 1151 through 1157 are
13 hereby amended and reenacted and R.S. 42:1141(B)(3) and (C)(3)(e) and (f) and 1141.2
14 through 1141.6 are hereby enacted to read as follows:

15 §1132. Board of Ethics

16 A. Board of Ethics established. There is hereby established in the
17 Department of State Civil Service the Board of Ethics to be domiciled in the city of
18 Baton Rouge.

1 B. Membership; terms; vacancies; qualifications. (1) The ~~board~~ Board of
2 Ethics shall consist of eleven members to be selected as follows:

3 * * *

4 C. Jurisdiction. The ~~board~~ Board of Ethics shall administer and enforce the
5 provisions of this Chapter and the rules, regulations, and orders issued hereunder
6 with respect to public employees and elected officials, including final decisions of
7 Ethics Adjudicatory Board. In addition, the ~~board~~ Board of Ethics, functioning as
8 the Supervisory Committee on Campaign Finance Disclosure, shall administer and
9 enforce the provisions of Chapter 11 of Title 18 of the Louisiana Revised Statutes
10 of 1950, and the rules, regulations, and orders issued thereunder. In addition, the
11 ~~board~~ Board of Ethics shall administer the provisions of Part IV of Chapter 2 of Title
12 18 of the Louisiana Revised Statutes of 1950, relative to elections integrity.

13 D. Additional Jurisdiction. The ~~board~~ Board of Ethics shall administer and
14 enforce the provisions of R.S. 27:63, 96, 226, 261, ~~and 316,~~ and 373, Part III of
15 Chapter 1 of Title 24 of the Louisiana Revised Statutes of 1950, Part IV of Chapter
16 1 of Title 49 of the Louisiana Revised Statutes of 1950, Chapter 46 of Title 33 of the
17 Louisiana Revised Statutes of 1950, and R.S. 47:9072.

18 * * *

19 §1134. Powers, duties, and responsibilities of the board

20 A.(1) The ~~board~~ Board of Ethics may adopt, amend, repeal, and enforce rules
21 and regulations in the manner provided by the Administrative Procedure Act to carry
22 out the provisions and purposes of this Chapter and any other law within its
23 jurisdiction.

24 * * *

25 K. The board shall do and perform such other acts, duties, and functions as
26 are provided elsewhere in this Chapter as it shall deem appropriate in connection
27 with the provisions of this Chapter within its jurisdiction, except those duties and
28 functions of the Ethics Adjudicatory Board.

29 * * *

1 §1135. Enforcement of regulation, decision, or order of the ~~board~~ Board of Ethics

2 ~~Any~~ The Board of Ethics shall have the right to enforce any valid regulation,
3 final decision, or final order of the board shall be enforceable Board of Ethics or the
4 Ethics Adjudicatory Board in any court of competent jurisdiction in this state by a
5 mandamus or injunction suit brought for that purpose. The district court for the
6 parish wherein the ~~board~~ Board of Ethics is domiciled shall have authority to convert
7 a valid final decision or final order ~~of the board~~ into a court order, upon receipt from
8 the ~~board~~ Board of Ethics of a rule to show cause for that purpose.

9 §1141. ~~Procedure; adjudicatory board~~ Complaints and investigations

10 A. Panels: (1) The ~~board~~ Board of Ethics members ~~shall~~ may sit en banc ~~and~~
11 or in panels in such order and at such times as the board directs.

12 (2) The ~~board shall~~ Board of Ethics may authorize the hearing and
13 determination of matters by separate panels, each consisting of not less than three
14 members. Such panels shall sit at the times and places to hear matters assigned as
15 the chairman directs. Such hearings shall be public except those provided for in
16 Subsection C of this Section. The presence of the three members of the panel shall
17 be required to conduct the business of the panel. Each panel shall be vested with
18 specific subject matter jurisdiction. The ~~board~~ Board of Ethics may determine by
19 rule a procedure to rotate members among different subject matter panels to
20 encourage the participation of each member of the board in, and the knowledge of
21 each member of the board of, matters concerning the different provisions of law
22 under the jurisdiction of the board.

23 (3) ~~Matters shall be heard and determined by the board or panel of not less~~
24 ~~than three members, unless a hearing before the board en banc is ordered by a~~
25 ~~majority of the members of the board. The presence of the three members of the~~
26 ~~panel shall be required to conduct the business of the panel.~~

27 (4) Notwithstanding any other provision of this Chapter, the presence of nine
28 members shall be required to conduct the business of the ~~board~~ Board of Ethics
29 sitting en banc.

1 ~~(5)~~ (4) The ~~board~~ Board of Ethics shall promulgate procedural and
2 jurisdictional rules relative to the establishment of the several panels. The rules shall
3 specify procedures wherein the chairman may refer matters to the appropriate panel
4 with proper subject matter jurisdiction.

5 ~~(6)~~ (5) The ~~board~~, Board of Ethics by a majority vote of its membership, may
6 review any opinion, decision, finding, or ruling of any panel.

7 B. ~~Complaints~~: (1)(a) The ~~board~~ Board of Ethics shall consider any signed
8 sworn complaint from any elector, hereinafter referred to as complainant, concerning
9 a violation of this Chapter which is within its jurisdiction or the regulations or orders
10 issued by the ~~board~~ Board of Ethics, or may, by a two-thirds majority vote of its
11 membership, consider any matter which it has reason to believe may be a violation
12 of this Chapter. Additionally, the board may consider any matter which it has reason
13 to believe may be a violation of any other provision of law within its jurisdiction as
14 provided in this Subsection or as may be otherwise provided by law. A certified
15 copy of the vote; a detailed explanation of the matter, including the specific factual
16 allegations upon which the board based its decision to investigate; and a copy of any
17 complaint received by the board, from which the name of the complainant has been
18 redacted, shall be sent by certified mail to the accused and the complainant within
19 ten days after the vote occurs or after receipt of a signed sworn complaint. The
20 chairman of the ~~board~~ shall Board of Ethics may assign ~~each such~~ a matter to the
21 appropriate panel for investigation, in which case the panel shall conduct a private
22 investigation to elicit evidence upon which the panel shall determine whether to
23 recommend to the board that a public hearing be conducted or that a violation has not
24 occurred.

25 * * *

26 (3) Any person who, with knowledge of its falsity, makes a false complaint
27 shall be subject to the penalties set forth in R.S. 42:1153.

28 C. ~~Investigation and hearing~~: (1) Upon receiving a sworn complaint or
29 voting to consider a matter as provided in Subsection B of this Section, a private

1 investigation shall be conducted to elicit evidence upon which the ~~panel as provided~~
 2 ~~in this Section~~ Board of Ethics shall determine whether ~~to recommend to the board~~
 3 ~~that~~ a public hearing should be conducted or that a violation has not occurred. The
 4 accused and the complainant shall be given written notification of the
 5 commencement of the investigation not less than ten days prior to the date set for the
 6 commencement of the investigation. All determinations in this Subsection shall be
 7 by a majority vote ~~of the panel~~. However, in cases where the panel consists of three
 8 members, all determinations of such a panel shall require a unanimous vote of the
 9 members of the panel.

10 (2) After the investigation has been completed, the ~~board~~ Board of Ethics
 11 shall determine whether a public hearing should be conducted to receive evidence
 12 and to determine whether any violation of any provision of law within its jurisdiction
 13 has occurred. If a violation has not occurred, the defendant and the complainant
 14 shall be notified within ten days of the ruling.

15 (3)

16 * * *

17 (c) If the ~~board~~ Board of Ethics does not issue charges within one year from
 18 the date upon which a sworn complaint is received or, if no sworn complaint was
 19 received, within one year from the date the board voted to consider the matter, the
 20 matter shall be dismissed. The one-year period shall be prescriptive. The
 21 prescriptive period may be suspended, interrupted, or renounced. The prescriptive
 22 period shall be suspended by any of the following:

23 (i) The person who is the subject of the investigation or complaint files any
 24 pleading or proceeding in a state or federal court or with the Ethics Adjudicatory
 25 Board related to the matter under investigation.

26 (ii) The person who is the subject of the investigation or complaint provides
 27 false, fraudulent, or misleading information related to or in connection with the
 28 investigation of the Board of Ethics.

1 (iii) The person who is the subject of the investigation or complaint fails
2 to comply with a subpoena or other request from the Board of Ethics for information
3 related to or in connection with the investigation of the Board of Ethics.

4 (d) The person who is the subject of the investigation or complaint may
5 consent in writing to the suspension of the prescriptive period.

6 (e) Determinations concerning the prescriptive period provided for in
7 Subparagraph (c) of this Paragraph shall be made by the Ethics Adjudicatory Board.

8 ~~(d) The board~~ (f) The Board of Ethics shall consider offering a consent
9 opinion to each person who is the subject of an investigation.

10 §1141.2. Ethics Adjudicatory Board

11 A. The director of the division of administrative law shall, at a public
12 meeting of the Board of Ethics in December of the year preceding the year in which
13 the terms are to begin, randomly select seven administrative law judges from among
14 those who meet the qualifications to comprise the Ethics Adjudicatory Board. The
15 last selected judge shall serve as the alternate. Members of the adjudicatory board
16 shall have not less than two years of experience as an administrative law judge or not
17 less than ten years experience in the practice of law.

18 B.(1) The members shall each serve a three-year term, which term shall
19 begin on January first. There shall be no limitation on the number of times a
20 qualified member may be selected to serve.

21 (2) A vacancy on either three-judge panel shall be filled by the alternate
22 judge.

23 (3) A vacancy on the Ethics Adjudicatory Board shall be filled for the
24 unexpired term at the next public meeting of the Board of Ethics and in the same
25 manner as for the original selection. The last selected judge shall serve as the
26 alternate.

27 C. Members of the Ethics Adjudicatory Board shall be subject to the same
28 financial disclosure requirements as are provided by law for members of the Board
29 of Ethics. Such members shall also be subject to the same limitations regarding

1 contracting as are applicable to the members of the Board of Ethics as provided by
2 law.

3 D. If an administrative law judge who is a member of the Ethics
4 Adjudicatory Board begins work on a matter prior to the end of his term, he shall not
5 be prohibited from completing work on the matter following the end of his term. He
6 shall be considered a member of the Ethics Adjudicatory Board until such work is
7 complete, and such status shall not affect the selection of members for the Ethics
8 Adjudicatory Board.

9 E. Any member of the Ethics Adjudicatory Board who has a personal interest
10 in or who becomes the subject of a hearing pursuant to this Part shall recuse himself
11 from participation in such hearing.

12 §1141.3. Location of hearings

13 The Board of Ethics, a panel thereof, or the Ethics Adjudicatory Board may
14 conduct any hearing provided in this Chapter in the parish wherein the public servant
15 or person alleged to have violated any provision of law within the jurisdiction of the
16 Board of Ethics resides, or in the parish of the official domicile of any office or
17 employment held by the defendant, or in the parish of domicile of the Board of
18 Ethics or the Ethics Adjudicatory Board.

19 §1141.4. Notice and procedure

20 A.(1) Any public servant or other person who is to be the subject of a public
21 or private hearing and the complainant shall be given written notification of the
22 pending charges and of the time and place such hearing is to be held. Such
23 notification shall not be less than sixty days prior to the date set for the hearing.
24 Upon the request of a public servant or other person charged, the hearing may be
25 held sooner.

26 (2) The Ethics Adjudicatory Board shall give public notice of its hearings
27 that are conducted pursuant to R.S. 42:1141.5.

28 B.(1) For purposes of an investigation or a hearing, the Board of Ethics, any
29 panel thereof, or its staff, or the Ethics Adjudicatory Board, or panel thereof, may

1 administer oaths and affirmations, subpoena witnesses, compel their attendance, take
2 evidence, and require the production of any records which a board or panel deems
3 relevant or material to the investigation or hearing. Such attendance of witnesses and
4 the production of any such records may be required at any place designated by a
5 board or panel at no cost to the public servant or other person charged as permitted
6 by the rules of the board requiring such attendance or production or the board of the
7 panel requiring such attendance or production.

8 (2) The Board of Ethics and the Ethics Adjudicatory Board shall adopt rules
9 providing for discovery consistent with Chapter 3 of Title III of Book II of the Code
10 of Civil Procedure, to the extent and in the manner appropriate to its proceedings.

11 C. In case of contumacy or refusal to obey a subpoena issued to any public
12 servant or other person, any district court of this state within the jurisdiction of which
13 the inquiry is carried on, or within which said public servant or other person is found,
14 resides, or transacts business, upon application by the Board of Ethics or the Ethics
15 Adjudicatory Board shall have jurisdiction to issue to such public servant or other
16 person an order requiring him to appear before the board or its staff and to produce
17 evidence, if so ordered, or to give testimony touching on the matter under
18 consideration. Any failure to obey such order of the court may be punished by the
19 court as a contempt thereof.

20 D.(1) If any public employee willfully refuses or fails to appear before the
21 Board of Ethics or the Ethics Adjudicatory Board or any court authorized to conduct
22 any hearing or inquiry pertaining to the provisions of this Chapter, or having
23 appeared refuses to testify or answer any question specifically, directly, and narrowly
24 relating to the performance of his official duties on the ground that his testimony or
25 answers would tend to incriminate him, or refuses to accept immunity from
26 prosecution on account of any matter about which he may be asked to testify at any
27 such hearing or inquiry, such action shall be grounds for dismissal or forfeiture of
28 his office or position, and if dismissed, he shall not be eligible thereafter for
29 employment by the governmental entity for a period of five years, unless such

1 reemployment is authorized by a majority vote of the membership of the Board of
2 Ethics.

3 (2) If any elected official willfully refuses or fails to appear before the Board
4 of Ethics or the Ethics Adjudicatory Board or any court authorized to conduct any
5 hearing or inquiry pertaining to the provisions of this Chapter or having appeared
6 refuses to testify or answer any question specifically, directly, and narrowly relating
7 to the performance of his official duties on the ground that his testimony or answers
8 would tend to incriminate him, or refuses to accept immunity from prosecution on
9 account of any matter about which he may be asked to testify at such hearing or
10 inquiry, such action shall be grounds for the imposition of penalties as provided in
11 R.S. 42:1153.

12 E. Any public servant or other person who is the subject of any hearing may
13 have legal counsel, cross-examine witnesses, call witnesses, and present evidence in
14 his own behalf.

15 F. Any public servant or other person who is the subject of any investigation
16 shall be advised of his right to have an attorney present.

17 G. Any witness may be accompanied by counsel at investigations or
18 hearings, which counsel may advise the witness of his rights, subject to reasonable
19 limitations to prevent obstruction of or interference with the orderly conduct of the
20 investigation or hearing. His counsel may also submit proposed questions to be asked
21 for his client.

22 H. Any witness at any investigation or hearing, subject to rules and
23 regulations promulgated by the Board of Ethics or Ethics Adjudicatory Board, shall
24 be entitled to a copy of his testimony when the same becomes important and relevant
25 in a criminal proceeding or subsequent investigation or hearing, provided that the
26 furnishing of such copy will not prejudice the public safety or security.

27 I. In making any official determination of whether any provision of law
28 within the jurisdiction of the Board of Ethics has been violated, the Ethics

1 Adjudicatory Board may consider testimony only if it is given under oath and
2 transcribed verbatim by a reporter.

3 J. Any public servant or other person who is aggrieved by any action taken
4 by a panel of the Board of Ethics may request a review of the panel's decision by the
5 full Board of Ethics within thirty days of the panel's decision. The Board of Ethics
6 shall determine whether or not to review the panel's action within thirty days of the
7 request for review.

8 K. The records of the Board of Ethics prepared or obtained in connection
9 with investigations and private hearings conducted by the Board of Ethics, including
10 all extracts of minutes and votes to take any matter under consideration in connection
11 therewith, shall be deemed confidential and privileged, except that such records shall
12 be available to each member of the Board of Ethics upon request. Except as
13 provided in this Section and in R.S. 42:1111(E)(2)(c), all records, including the
14 results and conclusions reached in connection with any investigation or hearing, shall
15 be public.

16 L.(1) It shall be a misdemeanor, punishable by a fine of not more than two
17 thousand dollars or imprisonment for not more than one year, or both, for any
18 member of the Board of Ethics, its executive secretary, other employee, or any other
19 person, to make public the testimony taken at a private investigation or private
20 hearing of the Board of Ethics or to make any public statement or give out any
21 information concerning a private investigation or private hearing of the Board of
22 Ethics without the written request of the public servant or other person investigated.

23 (2) Upon receipt of a written request by the public servant or person charged,
24 the Board of Ethics shall furnish the requestor with a certified copy of the entire
25 proceedings of a private hearing, including a verbatim transcript of all testimony
26 considered at such hearing, and make public the findings of any private investigation
27 or hearing in connection with the charges.

28 M. The provisions of the Open Meetings Law shall not apply to
29 investigations and private hearings conducted by the Board of Ethics.

1 §1141.5. Adjudicatory hearings

2 A. The Ethics Adjudicatory Board shall sit in rotating panels composed of
3 three administrative law judges randomly selected from among the members of the
4 Ethics Adjudicatory Board. The panel shall select the administrative law judge who
5 will preside over the hearing. The determination of the majority of the panel in a
6 particular case shall be the determination of the Ethics Adjudicatory Board. After
7 the hearing, the presiding administrative law judge shall assign authorship
8 responsibility for the determination.

9 B. After the hearing, the adjudicatory panel shall determine whether a
10 violation of any provision of law within the jurisdiction of the Board of Ethics has
11 occurred. If the adjudicatory panel determines that a violation has occurred, it shall
12 determine what authorized penalties or other sanctions, if any, should be imposed
13 and shall issue a final decision.

14 C. If the public hearing of the adjudicatory panel fails to disclose clear and
15 convincing evidence to support the charges, the adjudicatory panel shall make an
16 official determination of its findings, and shall issue a final decision. The person
17 charged and the complainant shall be notified in writing within ten days of the
18 adjudicatory panel's rendition of a final decision. The person charged may require
19 the adjudicatory panel to make an official determination of the validity of the charges
20 against him.

21 D. If the adjudicatory panel determines that a violation has occurred and
22 prescribes authorized penalties or other sanctions, the public servant or person may
23 appeal as set forth in R.S. 42:1142.

24 §1141.6. Declaratory opinions

25 A. Upon application of a public servant, other person, or agency, the Board
26 of Ethics may declare rights, status, and other legal relations established by the
27 provisions of this Chapter or by any other law within its jurisdiction or under
28 opinions issued by the board, either before or after there has been a breach thereof.
29 The applicant may seek to have the Board of Ethics determine any question of

1 construction or validity arising under the provisions of this Chapter or by any other
2 law within its jurisdiction.

3 B. The Board of Ethics' power to declare rights, status, or legal relations
4 established by the provisions of this Chapter or by any other law within its
5 jurisdiction or under opinions issued by the board, or the construction of said laws
6 or opinions, is not limited or restricted to any proceeding where a declaratory opinion
7 is sought in order to terminate a controversy or remove an uncertainty.

8 C. The purpose of a declaratory opinion is to settle and afford relief from
9 uncertainty and insecurity with respect to rights, status, and other legal relations
10 established by the provisions of this Chapter or by any other law within the Board
11 of Ethics' jurisdiction or under opinions issued by the board, or the construction of
12 said laws and opinions.

13 D. A declaratory opinion is a final decision of the Board of Ethics. The
14 decision of the board on an application for a declaratory opinion shall be rendered
15 after a public hearing and only after the requesting party, all other interested parties,
16 and the board's staff have been afforded full and complete opportunity to present
17 evidence, testimony, and argument. A declaratory opinion of the board shall be
18 considered a final decision and shall be reviewable by the Court of Appeal, First
19 Circuit, pursuant to R.S. 42:1142.

20 E. The Board of Ethics may refuse to render a declaratory opinion where
21 such opinion, if rendered, would not terminate the uncertainty or controversy giving
22 rise to the proceeding.

23 F. When a declaratory opinion is sought, the public servant, other person, or
24 agency, as necessary and appropriate for the rendition of a declaratory opinion, who
25 has or claims any interest which would be affected by the opinion shall be made a
26 respondent and given notice of the request and of all public hearings conducted
27 pursuant to the request.

1 G. The procedures for seeking a declaratory opinion and for the public
 2 hearing on such request shall be provided by rule adopted by the Board of Ethics
 3 pursuant to the Administrative Procedure Act.

4 * * *

5 §1151. Administrative enforcement

6 A. Enforcement as to current public employees. An agency head and any
 7 other public servant having the authority to appoint a person to a position of public
 8 service, regardless of whether or not such appointment requires the approval of the
 9 Senate or any other body, employee, or person, shall take such action as may be
 10 ordered by ~~the board or panel~~ a final decision of the Ethics Adjudicatory Board with
 11 respect to any public employee within his agency or any such appointee, upon a
 12 ~~finding by the board or panel~~ determination that such employee or appointee has
 13 violated any provision of law within the jurisdiction of the ~~board~~ Board of Ethics or
 14 any order, rule, or regulation promulgated thereunder. Such action may include the
 15 imposition of the conditions described in Subsection B of this Section.

16 B. Enforcement as to former public servants and other persons. Upon a
 17 ~~finding~~ determination by the ~~board or panel~~ Ethics Adjudicatory Board or a court
 18 of competent jurisdiction, that a former public servant or other person has violated
 19 any provision of law within the jurisdiction of the ~~board~~ Board of Ethics or any
 20 order, rule, or regulation promulgated hereunder, the agency head or the ~~board or~~
 21 ~~panel~~ Ethics Adjudicatory Board shall bar or impose reasonable conditions upon:

22 (1) The appearance before such agency of such former public servant or
 23 other person.

24 (2) The conduct of, or negotiation or competition for, business with such
 25 agency by such former public servant or other person, for such period of time as may
 26 be necessary or appropriate to effectuate the purposes of this Chapter.

27 §1152. Rescission of action of a governmental entity

28 A. Subject to the limitations ~~hereinafter~~ set forth in this Section, the ~~board~~
 29 ~~or panel~~ Ethics Adjudicatory Board may cancel or rescind any contract of or permit

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 or license issued by a governmental entity without liability to the governmental
2 entity when:

3 (1) The ~~board or panel~~ Ethics Adjudicatory Board has found that a violation
4 of law within the jurisdiction of the ~~board~~ Board of Ethics has influenced the issuing
5 of the permit or license or the making of such contract.

6 (2) The ~~board or panel~~ Ethics Adjudicatory Board finds under all of the
7 circumstances that the interests of the governmental entity so require; however, such
8 rescission is to be limited so as to not adversely affect the interests of innocent third
9 parties.

10 B. The ~~finding~~ determination referred to in Subsection A of this Section shall
11 be made in accordance with the procedures set forth in ~~R.S. 42:1141~~ this Part and
12 shall be subject to judicial review in accordance with the provisions of R.S. 42:1142,
13 provided that the ~~board or panel~~ Ethics Adjudicatory Board may suspend the
14 contract, permit, or license of the governmental entity subject to the limitations in
15 Paragraph ~~A~~ (A)(2) of this Section pending the determination of the merits of the
16 controversy.

17 §1153. Penalties

18 A. Upon ~~finding~~ a determination that any elected official or other person has
19 violated any provision of any law within the jurisdiction of the ~~board~~ Board of Ethics
20 except violations of the Campaign Finance Disclosure Act which shall be governed
21 by Chapter 11 of Title 18 of the Louisiana Revised Statutes of 1950, the ~~board by a~~
22 ~~majority vote of the membership,~~ Ethics Adjudicatory Board may censure the elected
23 official or person, or impose a fine of not more than ten thousand dollars, or both.

24 B. Upon ~~finding~~ a determination that any public employee or other person
25 has violated any provision of any law within the jurisdiction of the ~~board~~ Board of
26 Ethics except violations of the Campaign Finance Disclosure Act which shall be
27 governed by Chapter 11 of Title 18 of the Louisiana Revised Statutes of 1950, the
28 ~~board by a majority vote of the membership,~~ Ethics Adjudicatory Board may

1 remove, suspend, or order a reduction in pay, or demotion of the public employee or
2 other person, or impose a fine of not more than ten thousand dollars, or both.

3 §1154. Civil penalties for illegal payments

4 When the results of a ~~board~~ an investigation conducted pursuant to ~~R.S.~~
5 ~~42:1141~~ this Part indicates that a violation of R.S. 42:1117 has occurred, ~~the board~~
6 and after an adjudicatory hearing on the matter, the Ethics Adjudicatory Board may
7 order the payment of a penalty by any person who violates R.S. 42:1117. The
8 penalty shall be limited to an amount not in excess of ten thousand dollars. Any
9 appeal of such ~~order by the board~~ final decision by the Ethics Adjudicatory Board
10 shall be to the Court of Appeal, First Circuit, pursuant to R.S. 42:1142.

11 §1155. Penalties for illegal gain; forfeiture of gifts, payments

12 A. If an investigation conducted pursuant to ~~R.S. 42:1141~~ this Part reveals
13 that any public servant or other person has violated any law within the jurisdiction
14 of the ~~board~~ Board of Ethics to his economic advantage, ~~the board~~ and after an
15 adjudicatory hearing on the matter, the Ethics Adjudicatory Board may order the
16 payment of penalties. Recovery may include, in addition to an amount equal to such
17 economic advantage, penalties not to exceed one half of the amount of the economic
18 advantage. Any appeal of such ~~order~~ final decision by the Ethics Adjudicatory
19 Board shall be to the Court of Appeal, First Circuit, pursuant to R.S. 42:1142.

20 B. The ~~board~~ Ethics Adjudicatory Board is authorized to order the forfeiture
21 of any gifts or payments made in violation of this Chapter.

22 §1156. Finding of possible criminal violation

23 Upon finding at a public hearing that there is probable cause to believe that
24 any public servant or other person has violated any criminal law of this state, the
25 ~~board or panel~~ Board of Ethics or the Ethics Adjudicatory Board shall forward a
26 copy of its findings to the district attorney of the parish in which the violation
27 occurred, for appropriate action. Thereafter, notwithstanding any other provision of
28 this Chapter, such district attorney shall have access to all records of the board
29 relative to such charges.

1 §1157. Late filing fees

2 A.(1)(a) The staff of the ~~board~~ Board of Ethics may ~~automatically~~ assess and
3 issue a final order for the payment of late filing fees, in accordance with rules
4 adopted by the ~~board~~ Board of Ethics, for any failure to timely file any report or
5 statement due under any law under its jurisdiction as provided in R.S. 42:1132(C),
6 R.S. 24:50 et seq., R.S. 49:71 et seq., or R.S. 33:9661 et seq. A final order issued
7 pursuant to this Subparagraph shall be appealable to the Ethics Adjudicatory Board
8 for an adjudicatory hearing conducted in accordance with R.S. 42:1141.5.

9 (b) The Board of Ethics may waive all or any part of late filing fees assessed
10 pursuant to Subparagraph (a) of this Paragraph. Any request for waiver of late filing
11 fees assessed in a final order of the staff of the Board of Ethics shall be to the Board
12 of Ethics, which shall promulgate rules governing the procedure to request a waiver
13 as well as to provide for waiver for "good cause" shown. "Good cause" shall be
14 defined as any action or circumstance which, in the considered judgment of the
15 Board of Ethics, were not within the control of the late filer and which were the
16 direct cause of the late filing or any applicable provision in R.S. 18:1511.5(B). The
17 final disposition of the Board of Ethics on a request for waiver shall not be
18 appealable to the Ethics Adjudicatory Board.

19 (c) ~~The board~~ Board of Ethics shall promulgate rules to facilitate the carrying
20 out of the provisions of this Chapter regarding order for, ~~and~~ payment of, ~~and~~ waiver
21 of late filing fees. Any appeal of such order for the payment of late fees shall be to
22 ~~the board, which shall promulgate rules governing the procedure for appeals of late~~
23 ~~filing fees.~~

24 (2) ~~The late filing fees for election campaign finance reports shall be as~~
25 ~~provided in R.S. 18:1505.4.~~

26 (3) (2) The late filing fees for any lobbyist required to register and file
27 reports under the provisions of R.S. 24:50 et seq., shall be as provided in R.S.
28 24:58(D). The late filing fees for any lobbyist required to register and file reports
29 under the provisions of R.S. 49:71 et seq., shall be as provided in R.S. 49:78(D);

1 however, the late filing fees applicable to a lobbyist for a lobbyist expenditure report
2 filed pursuant to R.S. 24:55(G) or R.S. 49:76(G) which contains all of the
3 information required by Part IV of Chapter 1 of Title 49 of the Louisiana Revised
4 Statutes of 1950 and all of the information required by Part III of Chapter 1 of Title
5 24 of the Louisiana Revised Statutes of 1950 shall be fifty dollars per day. The late
6 filing fees for any lobbyist required to register and file reports under the provisions
7 of R.S. 33:9661 et seq., shall be as provided in R.S. 33:9668(D).

8 ~~(4)(a)(i)~~ (3)(a)(i) The late filing fees for any violation of R.S. 42:1114 shall
9 be as provided in R.S. 42:1124.1(A).

10 (ii) The late penalties for any violation of R.S. 42:1124, 1124.2, 1124.2.1,
11 or 1124.3 shall be as provided in R.S. 42:1124.4.

12 (b) The late filing fees for any violation of R.S. 42:1114.2 shall be as
13 provided in R.S. 42:1114.2(G).

14 ~~(5)~~ (4) Any late filing fees assessed by the ~~board~~ Board of Ethics or ~~the its~~
15 staff ~~of the board~~, for any failure to timely file any report or statement due, shall not
16 exceed the following:

17 (a) If the fee is forty dollars per day, the maximum shall be one thousand
18 dollars.

19 (b) If the fee is fifty dollars per day, the maximum shall be one thousand five
20 hundred dollars.

21 (c) If the fee is sixty dollars per day, the maximum shall be two thousand
22 dollars.

23 (d) If the fee is one hundred dollars per day, the maximum shall be two
24 thousand five hundred dollars.

25 (e) If the fee is two hundred dollars per day, the maximum shall be three
26 thousand dollars.

27 B. The staff of the ~~board~~ Board of Ethics shall mail by certified mail a notice
28 of delinquency within four days after the due date of which the staff knows or has

1 reason to know, for any report or statement due under the laws within its jurisdiction
2 which has not been timely filed.

3 C. All funds collected by the staff of the ~~board~~ Board of Ethics as provided
4 in Subsection A of this Section shall be deposited upon receipt in the state treasury.

5 Section 2. R.S. 42:1141(C)(4), (5), (6), (7), and (8), (D), (E), and (F), 1141.1, and
6 1157.2 are hereby repealed in their entirety.

7 Section 3. This Act shall become effective upon signature by the governor or, if not
8 signed by the governor, upon expiration of the time for bills to become law without signature
9 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
10 vetoed by the governor and subsequently approved by the legislature, this Act shall become
11 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Tim Burns

HB No. 950

Abstract: Provides relative to the enforcement of provisions of law under the jurisdiction of the Board of Ethics.

Present law (Code of Governmental Ethics) provides for the Board of Ethics (BOE) and the Ethics Adjudicatory Board (EAB). Provides for the composition and the powers and duties of each board.

Present law (R.S. 42:1141) provides that the BOE receives complaints, conducts investigations concerning alleged violations of laws within its jurisdiction, and issues charges based on such alleged violations. Provides that the EAB conducts hearings on the charges to determine whether a violation has in fact occurred and, if a violation has occurred, determines what authorized penalties or other sanctions should be imposed. Provides that if the public hearing of the EAB fails to disclose clear and convincing evidence to support the charges, the EAB must make an official determination of its findings, and thereupon the BOE must close its file on the charges.

Proposed law makes technical changes to clarify which powers, functions, and duties are performed by the BOE and the EAB. Proposed law clarifies that BOE may use panels to conduct investigations and hearings concerning alleged violations of laws within its jurisdiction. Proposed law further clarifies that the BOE shall enforce any final decision or final order of the EAB in the same manner as it enforces its own.

Present law provides that any complainant who, with knowledge of its falsity, makes a false non-sworn complaint shall be subject to the penalties set forth in present law (R.S. 42:1153).

Proposed law provides instead that any person who, with knowledge of its falsity, makes a false complaint shall be subject to the penalties set forth in present law (R.S. 42:1153).

Present law provides that if the BOE does not issue charges within one year from the date upon which a sworn complaint is received or, if no sworn complaint was received, within one year from the date the board voted to consider the matter, the matter shall be dismissed.

Proposed law retains present law but specifically provides that the one year period shall be prescriptive. Provides that the prescriptive period may be suspended, interrupted, or renounced. Provides that the prescriptive period shall be suspended by the following:

- (1) The subject of the investigation or complaint files any pleading or proceeding in a state or federal court or with the EAB related to the matter under investigation.
- (2) The subject of the investigation or complaint provides false, fraudulent, or misleading information related to or in connection with the investigation of the BOE.
- (3) The subject of the investigation or complaint fails to comply with a subpoena or other request from the BOE for information related to or in connection with the investigation of the BOE.

Proposed law provides that the subject of the investigation or complaint may consent in writing to the suspension of the prescriptive period. Provides that determinations concerning the prescriptive period shall be made by the EAB.

Present law provides for actions of the board or panel may order relative to enforcement of violations of the laws within the jurisdiction of the BOE and penalties which may be assessed for such violations.

Proposed law retains present law but specifies that the actions may be taken and penalties may be assessed after a determination by the EAB and makes other technical changes relative thereto.

Present law provides that the staff of the board may assess and issue an order for payment of late filing fees and provides that a person may request a waiver of such fees from the BOE. Proposed law specifies that the staff of the board may assess and issue a final order for payment of late filing fees; provides that the BOE may waive all or part of late filing fees so assessed; and provides that the final disposition of the BOE on a request for waiver shall not be appealable to the EAB. Proposed law provides that an appeal of late fees so assessed shall be made to the EAB.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 42:1132(A), (B)(intro. para.), (C), and (D), 1134(A)(1) and (K), 1135, 1141(A), (B)(1)(a), (C)(1), (2), and (3)(c) and (d), and 1151-1157; Adds R.S. 42:1141(B)(3) and (C)(3)(e) and (f) and 1141.2-1141.6; Repeals R.S. 42:1141(C)(4), (5), (6), (7), and (8), (D), (E), and (F), 1141.1, and 1157.2)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on House and Governmental Affairs to the original bill.

1. Specifies that the one-year prescriptive period for the Board of Ethics to issue charges may be suspended, interrupted, or renounced.
2. Provides that the person who is the subject of the investigation or complaint may consent in writing to suspend the prescriptive period.
3. In provisions of proposed law providing that the prescriptive period is suspended upon the filing of an action in court or with the Ethics Adjudicatory Board,

removes requirement that such action be filed with intent to delay or impede the investigation and specifies that the action must be related to the matter under investigation.

4. In provisions of proposed law providing that the prescriptive period is suspended upon providing false, fraudulent, or misleading information with the Board of Ethics, removes requirement that provision of such information be intentional.
5. Specifies that all determinations concerning the prescriptive period, not suspensions only, shall be made by the Ethics Adjudicatory Board.
6. Makes various technical changes to present law and proposed law.