



PAR Statement

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PAR Releases Statement on Impact of House Bill 1034

The Louisiana Board of Ethics voted Friday to oppose House Bill 1034, a piece of legislation that would exempt several professional classes from an important though somewhat vague area of the Code of Ethics. The legislation began as a limited exclusion for engineers, architects and landscape architects who choose to perform work for the government under the state's professional services public contracting law. Certified Public Accountants, abstracting and land surveying were added to the bill and given total exclusions from the Code of Ethics no matter what governmental function they might be contracted to provide. The bill has become a bandwagon and more professions could climb on for an exemption when the full Senate takes up the measure as early as this week.

This legislation would significantly alter and weaken the Code of Ethics. Rather than attempting to provide better guidance and clarity about the application of the Code of Ethics, the bill simply excludes entire professional categories from any responsibility for upholding state ethics laws while providing government contracting services. These contractors performing a governmental function would not be covered by Ethics Code restrictions on various types of conflicts that could arise, such as the taking of gifts and finder's fees from persons being supervised.

At the same time, these business interests have a legitimate concern about the clarity of the Ethics Code. Private companies and organizations that fulfill a "governmental function" are considered "public employees" under the law. This means that for the duration of services under the public contract, these contractors must comply with the state Ethics Code, as do other professionals performing governmental functions, such as attorneys. If liberally interpreted, this law could have wide-ranging and overly restrictive implications for businesses providing contractual services. The law does not define "governmental function," leaving some doubt about how and when it might be construed to apply. Furthermore, the full implications of being considered a "public employee" are unclear. The Board of Ethics has issued advisory opinions over the years offering guidance about how this law should be applied. The Board has been generally but not entirely consistent. Board members have sometimes disagreed about the types of contracts that should be considered a governmental function.

Whereas better guidance and a definition of the scope and meaning of "governmental function" would possibly strengthen the Ethics Code, wholesale exemptions of industry categories from the Code would have the opposite effect. House Bill 1034 does not address the central problem of the lack of clarity in the Code. Should it become law, other professions can be expected to seek exclusion in future legislative sessions.