



COMMENTARY

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THE BIG CHILL

The Senate's recent overwhelming vote to criminalize the release of certain information about draft legislation will have a chilling effect on public employees' willingness to discuss public policy issues. Under SB 892, an officer or employee of any state or local government agency who has received a draft of legislation for review or a request for information from a legislator must keep the draft or request a secret. If the officer or employee divulges the information, he could be fined \$5,000 and fired from his job. In addition, an officer could be prosecuted for malfeasance in office which could net him another \$5,000 fine and up to five years in prison, with or without hard labor.

Those interested in public policy including PAR, the news media, numerous associations and interest groups throughout the state, all depend on contacts within state and local agencies to keep them informed of policy developments. If SB 892 were enacted, a public servant would have to be very careful to keep secret any contacts the 144 legislators might have made with his agency. If he slipped up and mentioned a legislator's interest in drafting legislation, he could lose his livelihood and even his freedom. The bill could be interpreted to apply penalties as well to non-public servants who might receive secret information.

(MORE)

PAR Says, Add One

One reason given for the bill is that it would protect from political retaliation a constituent who has requested the legislator to look into a sensitive subject. However, a legislator might wish to keep his work on legislation secret prior to formal introduction for a number of other reasons. He can avoid the embarrassment of being associated with an unworkable idea which may be abandoned after an initial review. He can avoid having his ego bruised when a colleague steals his idea and introduces a similar bill. But more importantly, he can avoid forewarning his political opponents or the parties adversely affected by his legislation.

A legislator can wait as long as 30 days into a regular session to introduce a bill. Under SB 892 it would become a criminal act to tip off the opposition before the author was ready to spring his bill on them. Application of the penalties would apparently be at the whim of the offended legislator. Legislators themselves, however, would be exempt from the penalties.

While legislators may find it convenient to prepare legislation in secret, we cannot think of an instance where the state would suffer significant damage due to disclosure. Legislation generally benefits from open discussion at all stages of its development. Louisiana's strong open meeting and public records laws are designed to give citizens access to the public policy process.

It is one thing for the Legislature to gag its own staff. It is quite another thing to apply severe penalties and extend the gag order to every public servant in the state. The proposed law is prone to selective enforcement, sets a dangerous precedent and takes a long step backward from open government.