OVERVIEW

A number of major PAR reform recommendations were enacted in the governor's first special session. These include:

- the creation of a strong, independent single ethics board;

- computerization of campaign finance records and reports to vastly expand citizen access to this information;

- a ban on campaign contributions by gambling interests; and

- a proposed constitutional amendment to end public retirement benefits for future legislators, school board members and other part-time elected and appointed officials.

By tightening lobbyist reporting requirements, the Legislature may have achieved another PAR objective, that of limiting lobbyist spending on meals and gifts for legislators.

Prior to the special session, PAR expressed serious reservations concerning two proposals being considered for the call—an initiative process and a constitutional convention. Ultimately, neither was enacted.

The far-ranging special session call covered 138 specific topics including administration proposals and requests from state and local agencies and others to deal with current problems which could not be addressed in the upcoming fiscal-only regular session. Of the 447 bills filed, 102 were finally passed including four proposed constitutional amendments for voters to consider on the ballot this fall.

A large number of complex issues were handled in a short period during the special session because they could not be dealt with in the regular session. This suggests that it might be useful to take another look at the recent constitutional imposition of short, fiscal-only regular sessions in even-numbered years.

The following analysis examines the major issue areas considered in the special session and assesses the future impact of the Legislature's actions and inactions. And, particularly in the area of ethics reform, it indicates changes which remain to be made to implement PAR's recommendations which were developed in a recent joint study with Bureau of Governmental Research (BGR) entitled, Governmental Ethics Laws in Louisiana: Public Trust or Private Gain?
The Ethics Reform Checklist provided in this report compares the recommendations of the PAR/BGR study with the results of the special session in the areas of conflict-of-interest laws, ethics administration, campaign finance disclosure and lobbyist disclosure.

ETHICS ADMINISTRATION

Passage of SB 5 creating a strong, single Board of Ethics was a major first step towards ethics reform. Beginning January 1, 1997, the new 11-member board will combine duties of the present board for elected officials and the commission for other public servants. This will provide greater consistency in the application and interpretation of the ethics laws. The new board will also administer laws on campaign finance disclosure, lobbyist disclosure, elections integrity and ethics related to gambling regulation.

The new structure differs somewhat from the PAR/BGR five-member proposal. The 11 members would include seven appointed by the governor and two each by the House and the Senate. Importantly, the new law includes the process recommended by PAR/BGR of appointing members from nominees submitted by an independent nominating committee. Members of the new board may not be lobbyists, public servants or political activists.

The use of three-person panels of the new board to hear different types of cases and a consent agenda for issuing routine opinions should minimize the workload of individual members and promises to be workable.

At one point, the House stripped the proposed power of the new board to initiate investigations by a two-thirds vote of its members, when it added an amendment to require a sworn complaint before the board could look into an alleged wrongdoing by an elected or non-elected official. The Senate refused the change and the House relented. Thus the new board will have adequate authority to undertake investigations of both elected and non-elected officials as it sees fit. Currently non-elected officials can be investigated on the Commission’s initiative. However, a sworn complaint is needed for elected officials, and this has prevented investigations in some cases.

The computerized data management system required under the new law will vastly expand citizen access to campaign finance and other records. The governor has proposed additional funding for this purpose in his budget for 1996-97.

Passage of SB 58 gives the new board the added power to assess penalties and the staff the ability to collect automatic late filing fees without having to go to court as is presently required. It also increases from $5,000 to $10,000 the maximum ethics violation penalty that the board may impose.

CONFLICT OF INTEREST

While the special session call included most of the PAR/BGR recommendations to strengthen ethics administration, it excluded consideration of the significant proposals to strengthen conflict-of-interest provisions. While some bills on these subjects were filed, they were clearly not germane to the call and were not considered.

Excluded from the call were bills to further limit legislators and other elected officials from contracting or doing business with state or local governments. Also omitted was the PAR/BGR proposal to require personal financial disclosure by elected and top non-elected officials. Perhaps a bad omen was the failure of the Senate to adopt a rule similar to a House rule requiring members to report income from public sources.

Proposed changes in conflict-of-interest provisions will now have to wait until 1997. However, many legislators appear reticent to further restrict their own ability to do business with the state.

CAMPAIGN FINANCE DISCLOSURE

A ban on campaign contributions by certain gambling interests was the only significant campaign finance reform to pass this session. The new law applies to owners, operators and senior management in video poker, riverboat and casino enterprises and related device distributing businesses. Excluded are owners of a 10% or less interest and “mom and pop” video poker operators.

Several other PAR/BGR-inspired bills were unsuccessful. One would have counted contributions by minors as if given by their parents. Another would have barred contributions to the governor and legislators during a legislative session.

Unsuccessful efforts were made to limit contributions by political party PACs. However, these bills did not address a major PAR/BGR concern—that of preventing legislative leaders and other politicians from operating their own PACs or using their own campaign funds to help other candidates. A number of other PAR/BGR campaign finance proposals were not included in the call and remain for another day.
LOBBYIST DISCLOSURE

Under SB 202, lobbyists will have to file reports twice a year listing any spending to entertain a legislator which exceeds $50 per event or $250 during the six-month period. Currently, lobbyists do not have to report wining and dining of individual legislators if they spend less than $100 per event or $1,000 a year. As originally filed, the bill set a $10 threshold.

The PAR/BGR study proposed either a ban or limit on gifts and meals a legislator could receive from lobbyists. The new law takes a different approach assuming legislators will not accept expensive or frequent treats if they are to be reported. This argument was borne out recently in Nevada where lobbyist spending on legislators nearly disappeared after full disclosure was required. The new $50/$250 reporting thresholds will allow lobbyists to continue hosting meal-time meetings with legislators but the frequency and extravagance of those meals may be curtailed.

As recommended by PAR/BGR, SB 5 will place responsibility for lobbyist regulation solely under the new single ethics board. Oversight is currently split among four separate entities.

There was no attempt to extend the law to cover lobbying of the executive branch nor to require more disclosure by lobbyists’ clients.

PUBLIC RETIREMENT

For many years, PAR has recommended eliminating retirement benefits for legislators and other part-time elected officials. A proposed constitutional amendment, SB 16, will give voters a chance to do just that at the November 5 election. The amendment would prohibit part-time elected or appointed officials from using that service to participate in a public retirement system.

The retirement ban would apply to legislators; members of school boards, levee boards, police juries, parish councils, city councils, city-parish councils or town councils; and aldermen or constables. In addition, members of any other state or local board or commission would be prohibited unless authorized by two-thirds vote of the Legislature. Further, the Legislature could define other positions as part-time by two-thirds vote. A companion bill, SB 15, would implement the change upon approval of the amendment. Officials serving on January 1, 1997 would not be affected.

Participation in the public retirement systems has long created a conflict of interest for legislators who must legislate provisions of those systems. Legislators took advantage of this to give themselves extra benefits and early retirement options. Some legislators and local officials abused the systems by taking full-time public jobs for a couple of years to boost their retirement benefits.

The main argument for the change is that retirement benefits are simply not appropriate for part-time service either in the private or public sector. Such benefits are costly, undermine the purpose of a retirement system and distort the concept of public service.

INITIATIVE

The governor pressed hard to give voters the power to place proposals directly on the ballot by petition. The administration’s initiative bill was heavily amended in both houses assuring limited and infrequent use of the process, and it was finally killed.

Prior to the session, PAR warned of various problems other states have had with direct initiatives.

CONSTITUTIONAL CONVENTION

The administration unsuccessfully proposed a constitutional convention to run concurrently with the regular fiscal-only session with legislators serving as members. The purpose was to permit passage of proposed constitutional amendments by majority vote on issues that might not receive the two-thirds vote required during a legislative session.

Prior to the session, PAR had urged that the use of the convention be reserved for major revisions of the constitution.

Turning a regular session into a mini-convention would have set a bad precedent.

GAMBLING

A major point of controversy in the session was how to give voters a voice in deciding whether to keep various forms of gambling. The Legislature refused to go along with the governor’s proposed statewide up or down vote. Proponents of a local-option, menu-style election prevailed.

The local option gambling election bill that passed (HB 7) will give voters in each parish an opportunity this fall to decide whether to continue certain forms of gambling now authorized for their parish. This means that voters in each parish will decide on the fate of video-poker, and Orleans parish residents will vote on the land-based casino. In addition, due to a misplaced amendment, voters in the 43 parishes (those having waterways approved for riverboat gambling) will vote on riverboats even though only six parishes presently have them.

If voted down, the land-based casino would be out of business; however, riverboats could finish their
# Ethics Reform Checklist

## BGR/PAR Recommendations

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ban all state and local government contracts for legislators.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Ban or limit gifts of food and drink for legislators.</td>
<td>Not in call. (See alternate approach under lobbyist disclosure.)</td>
</tr>
<tr>
<td>Require recusal from voting by elected officials who have a conflict of interest.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Prohibit elected officials from doing business with their government.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Prohibit former public servants from representing themselves before their former agency, for two years.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Prohibit appointment of legislators to state jobs for two years after leaving Legislature.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Require annual personal financial disclosure reports from all elected and key appointed state officials and parishwide officers.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Require legislators and other state-elected officials to report any gains from doing business with governments.</td>
<td>Not in call.</td>
</tr>
</tbody>
</table>

## Ethics Administration

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Status</th>
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<tbody>
<tr>
<td>Create single five-member ethics board for all public servants.</td>
<td>Enacted, but 11-member Board of Ethics.</td>
</tr>
<tr>
<td>Members appointed by governor from nominees by a civic non-partisan panel; five-year, staggered terms. One term limit.</td>
<td>Enacted, but seven members, including a former judge, appointed by governor; two members by House and two by Senate. Two term limit.</td>
</tr>
<tr>
<td>Prohibit appointment of persons who are public servants or lobbyists.</td>
<td>Enacted.</td>
</tr>
<tr>
<td>Bar ethics body members from political activities.</td>
<td>Enacted, also bans service on other boards.</td>
</tr>
<tr>
<td>Allow use of hearing officers; board to make final decision.</td>
<td>Enacted¹, board to hear cases in three-member subject matter panels. Whole board may take case, review panel decision or hear appeals of panel decisions.</td>
</tr>
<tr>
<td>Allow ethics board to initiate investigation of any public servant by majority vote.</td>
<td>Enacted, except requires vote of 2/3rds of board members.</td>
</tr>
<tr>
<td>Require complainant's name remain confidential.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Give complainant right of private action against accused.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Allow consent agenda for proposed advisory opinions.</td>
<td>Enacted.</td>
</tr>
<tr>
<td>Require procedural rules, deadlines and notification.</td>
<td>Enacted.</td>
</tr>
<tr>
<td>Provide added staff and fund computerization.</td>
<td>(Requires budget action in fiscal session.)</td>
</tr>
<tr>
<td>Develop computerized data management system to handle all reports, permit electronic filing and give citizens access by computer.</td>
<td>Enacted.</td>
</tr>
<tr>
<td>Authorize ethics body to impose and collect any civil penalty, order forfeiture of illegal gifts or payments and order recovery of economic advantage gained by ethics violation without filing civil suit.</td>
<td>Enacted, but allows full recovery plus an additional penalty of up to one-half of economic advantage. Allows appeal to Court of Appeal. Increases maximum penalty for ethics violation from $5,000 to $10,000.</td>
</tr>
</tbody>
</table>
### Campaign Finance Disclosure

<table>
<thead>
<tr>
<th>Prohibit contributions to legislators from 30 days before to 15 days after session.</th>
<th>Bill died.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Require occupation and employment data for contributor and spouse on campaign reports when amount exceeds $1,000.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Prohibit PACs created or controlled by elected officials.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Prohibit transfers of funds among political committees.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Prohibit use of contributions to run for office other than for which given.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Aggregate contributions of subsidiary or related PACs, committees and individuals to apply limits.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Count contributions by minors as if made by their parents.</td>
<td>Bill died.</td>
</tr>
<tr>
<td>Limit to $50,000 the amount of loans by the candidate or his family that can be repaid after election.</td>
<td>Not in call.</td>
</tr>
<tr>
<td>Prohibit an owner, director, officer or key employee of a gambling interest from making political contributions.</td>
<td>Enacted, but excludes “mom and pop” video poker entities and owners or 10% or less. Penalizes givers, not receivers.</td>
</tr>
</tbody>
</table>

### Lobbyist Disclosure

| Extend lobbying law to cover lobbying executive branch. | Not in call. |
| Place administration of lobbying law in ethics agency. | Enacted. |
| Require lobbyist’s clients to register, list lobbyists and report spending on lobbying; if an association, to list member organizations. | Not in call. |
| No recommendation. | Requires lobbyist to report each six months any spending for a legislator on food, drink or gifts over $50 per event, or $250 in six months. |

### Gambling Law Ethics Provisions

| Prohibit elected and other key officials from doing business with a gambling interest. | Not in call. |
| Authorize state ethics body to interpret and enforce all ethics provisions of gambling laws. | Enacted. |
| Enact civil penalties for violations of standards of conduct in gambling laws. | Enacted. |

1 Achieves objective through different approach.
2 Bill introduced but died.
five-year licenses but could not then move to a parish which currently has no riverboat. Video poker would continue until mid-1999.

In addition a proposed constitutional amendment (HB 2) would require local elections to approve any new forms of gambling in a parish authorized by the Legislature or moving a riverboat to a new location.

Although HB 7 allows a vote on riverboats in 37 parishes that now do not have one, a yes vote would not have any real effect. The Legislature would still have to act, and HB 7 would require a second local vote to authorize riverboat gambling in a new parish.

The local option elections create uncertainties for gambling interests and future governmental revenues. However, the revenue loss would be eased somewhat by the phasing out of permits.

Another bill, HB 8 creates a single gambling regulation board to oversee video poker, riverboats, the land-based casino and aspects of Indian land casino regulation.

CIVIL LAW

The administration was successful in passing a key component of its special session proposal, a package of bills affecting the civil law system. HB 18, HB 20, and HB 21 won early passage in the session and have already been signed into law. Businesses and property owners will be the primary beneficiaries of the changes. In addition, HB 239 limits the damages plaintiffs can be awarded in suits against government.

The concept of strict liability will be limited by HB 18. Strict liability means liability stems simply from ownership. Under HB 18, the burden is on the plaintiff to show that the defendant failed to exercise reasonable care regarding mainte-
nance of a building or property, things in his custody, harm caused by an animal he owns (except dogs), or defects in a building’s design.

HB 20 repealed the civil code provision that allowed the award of exemplary (punitive) damages if it were proved a defendant’s reckless disregard for public safety in the storage, handling or transportation of hazardous or toxic substances caused a plaintiff’s injuries.

HB 21 requires defendants to pay only for the percentage of damages for which they are responsible. Previously, a defendant could be made to pay for up to 50% of the damages if others were responsible but unable to pay. Now the percentage of fault corresponds with the percentage of damages a defendant must pay.

HB 239 (The Louisiana Governmental Claims Act) reduces from $750,000 to $500,000 the general damages (“pain and suffering”) a plaintiff can collect from a lawsuit against the state, its political subdivisions, and employees thereof. The bill would also allow jury trials in suits against political subdivisions.

AUTO INSURANCE

A key goal of the governor’s was a reduction in car insurance rates. Although SB 30, the administration bill, failed even to get out of the Senate and was eventually withdrawn, HB 196 was passed in its place. The governor has not yet decided whether he will sign it.

SB 30 would have created a hybrid no-fault system in which drivers would have chosen whether to surrender their rights to sue for pain and suffering in exchange for lower auto rates or remain in the tort system and pay the current rates but retain the right to sue. Uninsured drivers would have forfeited their rights to sue for non-economic losses. Under HB 196 all drivers would remain in the tort system but uninsured drivers would give up their right to sue for non-economic losses and face stiffer consequences than they do now if caught driving without insurance.

During debate on HB 196, legislators raised questions about the constitutionality of the mandated rate reduction the bill requires. To address those questions, the bill allows for expeditious declaratory judgement if the new law is challenged.

The key provisions of HB 196 are:

* Requires a 10% reduction in the premiums for bodily injury liability.

* Prohibits uninsured drivers from recovering for non-economic losses caused by another.

* Allows insurers to seek a rate review from the Insurance Rating Commission if they believe their rates are inadequate as a result of the mandated reduction. The rate reduction mandate would be voided in a year if 40% of insurers could not achieve and maintain it. It is unclear who would make the final determination whether the reduction should be voided.

* If a rate reduction does not materialize, requires all auto insurers to offer cash-back incentive plans. Policyholders who do not make a claim during a consecutive three-year period would receive a rebate of at least 25 percent of their annual premium. It would be paid on the policy’s third year anniversary date and annually thereafter until coverage is terminated or a claim for damage or loss is reported. Additionally, to qualify, the insured and family members must be accident free for the first three years and maintain comprehensive and collision coverage on at least one vehicle.
Under current law, an uninsured driver’s license plate may be removed by a law enforcement officer and replaced with a 10-day temporary sticker. This would remain the same under HB 196. However, law enforcement officials could immediately impound the car of a driver caught with an expired sticker who cannot show proof of insurance.

Creates the Louisiana Automobile Insurance Cost Reduction Commission within the Department of Insurance. It would study the state’s auto insurance costs and issue a report of its findings and recommendations to the Legislature by February 1, 1997.

HB 196 makes far less drastic changes to the auto insurance system than SB 30 would have. Whether HB 196 will achieve the goal of lower rates is unclear. While the mandatory rate reduction is a step toward that goal, the rebate plan may not be the best approach to lowering rates. If the initial mandatory rate reduction does not succeed, it will be replaced by the rebate provision. But the bill does not include a review of the effectiveness of the rebate provision after its implementation. Although intended to reward good drivers, instead the rebate provision rewards lucky drivers. If a driver is hit by an uninsured motorist and files a claim against his policy, he would then be ineligible for the rebate even though he was not at fault in the accident. Additionally, if a driver does not carry comprehensive and collision coverage on at least one car, he cannot receive the rebate. This may be unfair to those who own older cars.

A positive aspect of the bill is the creation of the commission to study the state’s auto insurance problems and to make recommendations to the Legislature next year. In 1995, the Senate passed a resolution directing its Insurance Committee to study those problems and make recommendations to the 1996 Legislature. However, the study and the recommendations never materialized.

EDUCATION

Three key administration-backed, education-related bills failed to pass this session. SB 34 would have created a single, 22-member board for higher education, replacing the Board of Regents as well as the three management boards. The bill was withdrawn near the end of the session due to an apparent lack of support.

Administration bill SB 33 would have constitutionally protected higher education funding and supplemental pay for full-time policemen and firefighters as well as created a budget cutting mechanism that would have allowed the governor, during a fiscal crisis, to cut areas that generally cannot be cut. PAR has recommended in the past that supplemental pay to municipal employees be terminated because it is inequitable and generally an unfair way to distribute state aid. Also, including it in a bill to protect higher education funding may help build political support but is inappropriate since the topics are unrelated.

SB 23, a bill to expand the pilot charter school program approved last year, failed to pass the Senate and was later withdrawn.

OTHER ISSUES

Concealed Weapons

SB 2, already signed into law by the governor, allows the Department of Public Safety and Corrections to issue statewide concealed weapons permits to citizens who meet the qualifications. This replaces the prior system in which such permits could be issued by sheriffs on a parishwide basis and for which there were no standardized qualification requirements.

Redistricting

Legislators approved HB 49, a congressional redistricting plan drawn by a three-judge panel earlier this year. How the state’s congressional district lines will be drawn has been in the federal courts since 1992 and has been an extremely volatile political issue. Prior to the session, the governor and attorney general were at odds over whether the most recent court-drawn plan should be challenged. During the session, the Black Caucus initiated a filibuster as an attempt to kill the bill.

In 1991, PAR recommended the state consider establishing an independent commission to redraw legislative districts. An independent commission to draw Congressional districts may help distance the process from politics.
Proposed Constitutional Amendments
To Be Voted on This Fall

On October 5, 1996 ballot:

- To require a local vote to approve any new gambling in a parish (HB2).

On November 5, 1996 ballot:

- To prohibit public retirement based on part-time public service (HB 16).
- To allow the Legislature to prohibit or limit the sale, purchase, possession or consumption of alcoholic beverages by persons under the age of 21 (SB 125).*
- To authorize municipalities and parishes to donate abandoned or blighted housing to nonprofit organizations (SB 175).

* Will not appear on the ballot if the Louisiana Supreme Court upholds the validity of Act 639 of 1995.