



The Unfinished Business of Ethics Reform

*Public Affairs Research
Council of Louisiana*

EXECUTIVE SUMMARY

The primary goals of ethics oversight are to establish ethical standards for public servants and promote public confidence in government. Strength of oversight can be reduced to two elements—what is required from those who serve the public and to what extent can the requirements be enforced? Louisiana’s Code of Governmental Ethics defines what conduct is required from public servants, as well as the process for enforcing those requirements. If the rules of conduct or enforcement process are fundamentally flawed, even the most stringent ethics laws are meaningless and public confidence ultimately falters.

In 2008, Louisiana made positive strides toward the often-touted “gold standard” of governmental ethics by strengthening what is required from the state’s public servants. Ethics laws were made stronger, with more expansive campaign and personal financial disclosure requirements; enhanced expenditure reporting from lobbyists; and new limitations on gifts that public servants can accept. However even these improvements have produced a mixed bag of results, from meaningful reform to minimal enforceability. New financial disclosure requirements cannot be fully enforced and new restrictions on gifts for public servants already have been watered down.

While the ethical standards have been made stronger, certain procedural changes have reduced the ethics board’s ability to administer the code successfully and have weakened enforcement at several stages of the process, including investigation, prosecution and adjudication.

Two legal deficiencies frustrate investigation and enforcement of financial disclosure reforms: (1) the ethics board lacks a complete picture of which persons are required to report since a complete listing of board and commission members is highly variable and not easily attainable; and (2) the ethics board lacks the legal authority to perform random audits of disclosure reports to ensure accuracy. As such, the board has only an estimate of how many reports it is expected to track, cannot know if all required filers are fulfilling their duty to report, and cannot make certain that filers are reporting truthfully.

As to prosecution, it is unclear how long the board has to act against alleged offenders of the code, a problem that already has caused confusion in ethics hearings.

Changes to the adjudication process also have created problems. New procedural laws take away the board's ability to judge whether or not ethics violations have occurred; transfer that responsibility to civil service administrative law judges (ALJs); do not allow the board to appeal ALJ decisions; and force the board to adopt each ALJ decision as its own, even if the board disagrees with the outcome of the case. These changes put the board in a position unlike any other disciplinary board in the state.

Instead of ethics cases being judged by the 11-member board originally created to do so, cases now are judged by civil service ALJs who answer to one person who is appointed by the governor. As a result, the ethics administration process now resembles the model that 1973 constitutional convention delegates attempted to avoid—one that places inordinate power in the hands of the governor.

The board retained the power to assess fines against those who violate the code and to issue advisory opinions. However, ALJs already have substituted their own judgment in place of the board's opinion as to what constitutes a reasonable fine and/or a violation of the law, and taking adjudicatory power away from the ethics board has reduced the usefulness of board advisory opinions. The collective impact of the 2008 procedural changes is an enforcement system that is fundamentally flawed and undercuts the force of ethics reform.

Transparency in ethics administration also should be improved. Although ethics meetings and hearings are open to the public, neither are broadcast live via the Internet; nor are online archives (audio and/or video recordings) of past meetings and hearings made available. This all but ensures that citizens are excluded from the ethics administration and public hearing process unless they have time to attend meetings in Baton Rouge where they are held. The ethics board recently began to provide online the full agenda for its current meeting and written minutes from its most recent meeting. It is unclear whether these documents will be archived online long-term. The ethics board also provides online copies of rulings, advisory opinions, settlement agreements and charges it has issued in the past. Likewise, ALJs provide online copies of legal decisions rendered in ethics matters.

Key data relative to numbers of complaints received, consent opinions offered and accepted, and the status of penalties imposed are not tracked by the ethics board. Most data that are collected are not stored in a way that allows citizens to search, sort and make meaningful connections between dollars spent on public servants and potential conflicts of interest.

This report focuses on changes made during the 2008 "ethics session" and whether those changes have resulted in stronger or weaker governmental ethics in Louisiana. This report is not intended to be a comprehensive legal review of Louisiana's ethics code, although that review is long overdue and even more relevant due to all the recent changes.

Based on ethics commissions in other states and the structure of other disciplinary bodies within Louisiana, this report offers a model of how ethics oversight might be more soundly structured and recommends that the Legislature:

Strengthen Investigation

1. Require the executive officer of every board and commission within the state to report annually to the secretary of state (1) the names of members and (2) the amount spent, disbursed and/or invested by the board/commission in the most recent fiscal year; and require that the secretary of state maintain such information online for public use.
2. Authorize and require ethics investigation staff to audit for truthfulness a randomly selected group of financial reports submitted each calendar year.

Strengthen Prosecution

3. Resolve legal discrepancies regarding time frames within which action may be taken to enforce ethics laws.

Strengthen Adjudication

4. Re-establish the ethics board as the only adjudicatory body responsible for the administration and enforcement of the ethics code and other laws within the board's jurisdiction; remove the ethics board's ability to collect financial reports, initiate investigations and consider complaints prior to formal charges being issued.
5. Establish a separate, independent ethics investigatory commission, similar to the ethics board, dedicated to the collection and auditing of financial reports and the investigation and prosecution of alleged violations of the ethics code and other laws within the ethics board's jurisdiction.

Improve Transparency

6. Require that public ethics meetings and hearings be broadcast live via the Internet and that audio/video archives and written minutes of prior meetings and hearings be provided online, as well.
7. Require all financial information submitted to the ethics investigation commission be entered into an online data system, which would allow the information to be sorted by any combination of fields.

INTRODUCTION

Federal and state governments require public servants to abide by certain principles of conduct and establish agencies for the oversight of such conduct. At the federal level, ethics offices regulate the conduct of public officials, employees and candidates within all branches of government. Among the states, ethics oversight practices vary widely. Thirty-nine states, including Louisiana, utilize ethics commissions for ethics oversight.

In 1964, Louisiana established its first two ethics commissions and corresponding ethics codes—one to govern elected state officials and another to govern non-elected state officials and employees. Lawmakers later replaced the state's two ethics codes with a single Code of Governmental Ethics (the ethics code), which streamlined ethics laws and expanded regulation to local government officials and employees. In 1996, the Legislature eliminated its two-commission system and established a single ethics commission, known as the Board of Ethics (the ethics board). Today Louisiana's ethics board enforces campaign finance disclosure laws; lobbyist registration and reporting; certain gaming and election fraud provisions; and the state's ethics code, which includes personal financial disclosure.

During the 2008 First Extraordinary Legislative Session (the ethics session), the Legislature passed a number of positive reforms to ethics laws, which were designed to redefine and increase expectations from public servants. Those reforms have received considerable attention and praise. However, other changes made to the process of ethics oversight collectively have undermined the administration and enforcement of new reforms. Shortly after those changes were made, the majority of ethics board members resigned.

Since the ethics session, members of the newly appointed ethics board, citizen advocates and good government groups have urged the Legislature to revisit the

procedural changes enacted during the ethics session. In 2009, the current ethics board adopted a white paper written by the board's chairman, which detailed specific concerns about the law and urged legislators to reconsider the changes made. To date however, legislative leaders have indicated an unwillingness to make more than minor changes.

UNDERSTANDING ETHICS OVERSIGHT

Federal and state ethics laws generally include provisions for financial disclosure, lobbying, campaign finance and other common ethics issues—such as gifts for public officials and employees, nepotism, conflicts of interest, contracting with government and post-employment restrictions.

Federal oversight is conducted by designated ethics offices, each of which is responsible for the regulation of certain public servants and candidates (see Table 1). Federal ethics offices administer the law, issue advisory opinions and investigate complaints for the positions they regulate. Depending on the process established by law, federal ethics offices may refer a violation to the U.S. attorney general for prosecution in federal district court or may prosecute and judge (adjudicate) the matter in-house.

Ethics oversight at the state level varies in breadth, depth and process. States utilize a mix of ethics committees, ethics commissions and other state agencies (attorney general, inspector general, secretary of state) to enforce ethics laws. The terms "ethics committee" and "ethics commission" often are used interchangeably, but they are quite different.

Ethics committees generally are composed of legislative members only and are designed to provide internal legislative oversight. Thirty-two states have ethics committees in one or both legislative chambers and/or a joint committee to oversee both chambers, which meet regularly. Eight states, including

Table 1. Federal Ethics Oversight

Positions Regulated	Designated Ethics Office
President, Vice President, Independent Counsel, and certain executive branch officers, employees and appointees	Office of Government Ethics
U.S. Representatives and certain officers and employees of Congress/House	Committee on Standards of Official Conduct
U.S. Senators and certain officers and certain employees of Congress/Senate	Senate Select Committee on Ethics
Judicial officers and employees	Judicial Conference
Candidates for certain positions, including President, Vice President and Congress, are required to file limited financial disclosure information.	Federal Election Commission

Source: United States Code Annotated

Louisiana, have ethics committees that meet only when necessary. Ten states have no ethics committees whatsoever; the majority of those states, however, depend on other state agencies or ethics commissions for legislative oversight.

By contrast, ethics commissions are composed of interested and qualified citizens, who serve set, often staggered, terms, and are created to provide external oversight for a wide range of elected and appointed officials, public employees and other public servants. There are 46 ethics commissions among 39 states—33 states, including Louisiana, utilize one commission for oversight; six states (Alaska, Illinois, Indiana, Kentucky, New Jersey and Washington) divide oversight between two or more commissions (see Table 2).

As a general rule, when states use more than one commission for ethics oversight, the commissions are divided either in terms of positions they regulate or laws under their jurisdiction. That is, there is little to no overlap in their respective duties and missions. State ethics commissions differ in terms of staff size, operating budget, and number of persons and topics for which they are responsible.

HISTORY OF ETHICS ADMINISTRATION IN LOUISIANA

Creation of the Louisiana Board of Ethics

Louisiana’s first ethics commissions were created in 1964. At that time, two separate commissions and two corresponding codes of ethics were established—one to govern elected state officials and another to govern non-elected state officials and employees. Local government officials and employees were not included.

During the Louisiana Constitutional Convention of 1973, delegates debated the creation of a single code of ethics for all officials and employees of the state and its political subdivisions and a single board to administer the code. The originally proposed language would have created a seven-person board whose members would be appointed by the governor and confirmed by the Senate for five-year terms. The proposed structure of the board was hotly debated, primarily as to whether all board members should be appointed by the governor and whether local officials should be included in ethics regulation.

Table 2. Overview of state ethics commissions (Part II of II)

State	Positions Regulated						Issues Regulated				Burden of Proof ²	Do commission or staff enforce criminal penalties? ³	Do central panel ALJs adjudicate ethics cases? ⁴	Are any reports audited for truthfulness/accuracy?
	Appointed Officials	Boards and/or Commissions	Candidates	Elected Officials ¹	Employees ¹	Lobbyists	Campaign Finance	Ethics	Financial Disclosure	Lobbyist Laws and/or Reports				
MI	Yes	No	No	No	EB	No	No	No	Yes	No	POE	No	Not used for ethics cases	N/A
MN	No	No	Yes	EB	EB	Yes	Yes	Yes	No	Yes	PC	No	Not used for ethics cases	No
MS	Yes	Yes	Yes	EB, LB, LG	No	No	No	No	Yes	No	CC	No	Not a central panel state	No
MO	Yes	Yes	Yes	EB, LB, LG	No	Yes	Yes	Yes	Yes	Yes	PC	No	Yes, for appeal of board's ruling	Yes
NE	Yes	Yes	Yes	EB, LB, LG	EB, LB, LG	Yes	Yes	Yes	Yes	Yes	CE	No	Not a central panel state	No
NV	Yes	Yes	No	EB, LB, LG	EB, LB, LG	No	No	No	Yes	Yes	POE	No	Not a central panel state	No
NJ(1)	Yes	Yes	No	EB	EB	No	No	No	Yes	No	POE	No	Yes, but not final decision	No
NJ(2)	No	No	Yes	EB, LB, LG	No	No	No	No	No	Yes	POE	No	Yes, but not final decision	Yes
NY	No	Yes	No	EB	EB	Yes	Yes	No	Yes	No	K&J, K&W	No	Not a central panel state	No
NC	Yes	Yes	No	EB, LB	EB, LB	Yes	Yes	No	Yes	Yes	CC	No	Yes, but not final decision	No
OH	Yes	Yes	Yes	EB, LG	EB, LG	No	No	No	Yes	Yes	RC, POE	No	Not a central panel state	No
OK	Yes	Yes	Yes	EB, LB, LG	EB, LB, LG	Yes	Yes	Yes	Yes	Yes	SE	No	Not a central panel state	No
OR	Yes	Yes	Yes	EB, LB, LG	EB, LB, LG	Yes	Yes	No	Yes	Yes	POE	No	Yes, but not final decision	Yes
PA	Yes	Yes	Yes	EB, LB, LG	EB, LB, LG	Yes	Yes	No	Yes	Yes	PC	No	Not a central panel state	No
RI	Yes	Yes	Yes	EB, LB, LG	EB, LB, LG	No	No	No	Yes	No	POE	No	Not a central panel state	No
SC	Yes	Yes	Yes	EB, LG	EB, LG	Yes	Yes	Yes	Yes	Yes	POE	No	Not used for ethics cases	Yes
TN	Yes	Yes	Yes	EB, LB, LG	EB, LB	Yes	Yes	Yes	Yes	Yes	PC	No	Yes, but not final decision	Yes
TX	Yes	Yes	Yes	EB, LB, LG	EB, LB	Yes	Yes	Yes	Yes	Yes	POE	No	Not used for ethics cases	Yes
WA(1)	No	No	No	LB	LB	No	No	No	Yes	No	POE	No	Yes, but not final decision	N/A
WA(2)	No	No	No	EB	EB	No	No	No	Yes	No	RC	No	Yes, but not final decision	N/A
WA(3)	Yes	Yes	Yes	EB, LB, LG	EB, LB, LG	Yes	Yes	Yes	No	Yes	POE	No	Not used for disclosure cases	Yes
WV	Yes	Yes	Yes	EB, LB, LG	EB, LB, LG	Yes	Yes	No	Yes	Yes	PC	No	Not a central panel state	No
WI	Yes	Yes	Yes	EB, LB, LG	No	Yes	Yes	Yes	Yes	Yes	RS, CC	No	Not used for ethics cases	No

Source: PAR survey of ethics commissions, central panels and research of statutes

Eleven states (AZ, ID, MT, NH, NM, ND, SD, UT, VT, VA, WY) do not utilize ethics commissions.

¹ **(EB)** Executive branch, **(LB)** Legislative branch, **(LG)** Local government [Some states also regulate the judicial branch; not indicated on Table 2.]

² **(CC)** Clear and convincing; **(CE)** Competent evidence; **(K&I)** Knowing and intentional; **(K&W)** Knowing and willful; **(POE)** Preponderance of the evidence; **(PC)** Probable cause; **(RC)** Reasonable cause; **(RD)** Reasonable doubt; **(RS)** Reasonable suspicion; **(SE)** Sufficient evidence [More than one burden of proof may be used, depending on the nature/type/stage of charges.]

³ The majority of states provide for criminal penalties to be enforced by a third party, such as the attorney general or appropriate district attorney. Delaware's staff is charged with prosecution of violations of any statute under the commission's jurisdiction, even if the hearing would be criminal in nature and would be heard in a court of law.

⁴ This column indicates normal procedure for ethics hearings and the use of central panel administrative law judges. It is not a statement as to whether central panels can be used legally, but rather a measurement of whether they are used routinely.

Final language adopted in the 1974 Constitution directed the Legislature to “enact a single code of ethics for all officials and employees of the state and its political subdivisions” and to create “one or more boards” to administer the code. Qualifications, terms of office, duties and powers were detailed in statute rather than the Constitution because delegates were wary of a constitutionally created ethics board that placed too much power in the hands of the governor.

In 1979, the Legislature enacted a single ethics code to streamline ethics laws and include the regulation of local government officials and employees. The state retained its two ethics commissions to administer the code.

In September 1995, PAR and the Bureau of Governmental Research (BGR) issued a joint report (Governmental Ethics Laws in Louisiana: Public Trust or Private Gain) that recommended sweeping changes to ethics laws relative to conflicts of interest, ethics administration and enforcement, campaign finance and lobbying laws. PAR/BGR also recommended the creation of a single board of ethics primarily because the two-commission model created a potential double-standard between the groups being regulated. That is, each commission could enforce the same provision of law in an entirely different manner, which would result in dissimilar standards for elected officials as opposed to non-elected officials and employees—an inherent problem in a model that allows two independent bodies to adjudicate (judge) the same law.

Shortly thereafter (1996), newly-elected Gov. Mike Foster, who had campaigned on the promise of ethics reform, and the Legislature instituted several significant changes to ethics laws. Those changes incorporated a number of recommendations from the PAR/BGR report, including the creation of a new, single board of ethics to administer, enforce and adjudicate ethics laws instead of the state’s two-commission system, which had existed since 1964.

Function of the Louisiana Board of Ethics

Currently, the ethics board is responsible for administering campaign finance disclosure laws; lobbyist registration and reporting; certain gaming and election fraud provisions; and the ethics code, which includes personal financial disclosure and restrictions on gifts, nepotism, contracting and employment after public service. The board administers those laws as they apply to candidates, lobbyists and certain appointed officials, as well as to state and local public employees and elected officials. Louisiana law uses the term “public servant” to describe public employees, elected officials or both. Presently, the board has a variety of powers/duties, including the ability to offer ethics education and training; promulgate rules and issue advisory opinions; investigate alleged violations of law; and assess fines, negotiate settlements and issue charges.

Members of the judiciary are the only elected officials in Louisiana whose ethical conduct is regulated by an entity other than the ethics board. Ethics oversight for the judiciary is provided by the Judiciary Commission of Louisiana, which—like the ethics board—is established in the Louisiana Constitution.

Until 2008, the ethics board was responsible for the investigation, prosecution and adjudication of alleged violations of laws within the board’s jurisdiction. Louisiana courts have frowned on the commingling of all three functions (investigative, prosecutorial and adjudicative) within an administrative agency. In 1997, the Louisiana Supreme Court considered the commingling of such functions, specifically as to the ethics board, in two separate cases. The court admonished the ethics board for failing to clearly delineate and differentiate the functions of prosecution and adjudication, thereby creating an appearance of impropriety in the ethics administration process. In response, the board changed its procedural rules and practices to address the concerns of the court.

The Louisiana First Circuit Court of Appeals has considered the commingling issue as to the ethics board, post-1997 changes. In that particular case, where the ethics board had allowed its lead prosecuting attorney to also draft the board's final opinion, the court found there had been "no commingled prosecutorial and adjudicative functions" that resulted in adverse consequences to the respondent. Regardless, common practice in administrative law is to separate investigative and prosecutorial functions from adjudicatory function in order to balance the state's right to pursue wrongdoers with the due process rights of the accused. Ideally, Louisiana's ethics administration should fairly separate administrative functions between two or more entities that are sufficiently insulated from political pressure.

ETHICS REFORM IN 2008

Three principal factors set the stage for ethics reform in Louisiana in 2008. First, the state's long-standing history of political corruption combined with its difficulty in attracting new business created an atmosphere ripe for change. Many political leaders ran on a reform stance, promising to break the cycle of "business as usual" in Louisiana. Secondly, 2008 was the first year that many career politicians were forced out of the system due to term limits passed in 1995. As a result, 55 percent of House members and 18 percent of Senate members were new to the legislative process in 2008. Finally, 2008 saw the election of a new governor who ran on the promise of change and placed ethics reform at the top of his list.

In Gov. Bobby Jindal's first executive order, he imposed a new level of financial disclosure (equivalent to his own) on his cabinet members and required that all of his appointees and cabinet officials participate in annual ethics training. As a rationale for comprehensive ethics reform, the governor noted Louisiana's long-suffering, national image of public corruption and connected it to hampered efforts to attract

new businesses to the state. The governor established an ethics task force composed of prominent business and civic leaders to make recommendations regarding changes to ethics laws. On Feb. 1, 2008, the governor issued his call for a special legislative session dedicated to ethics reform.

Improvements to ethics laws include more rigorous campaign and personal financial disclosure from candidates, lobbyists and public officials; more stringent conflict-of-interest provisions; limitations on gifts that public servants can accept; and enhanced expenditure reporting from lobbyists. These reforms have bolstered ethics laws in Louisiana and, more importantly, have created a perception outside of the state that the previous atmosphere of political corruption in Louisiana no longer will be tolerated. However, changes to the ethics oversight process—including changes in the way that information is reported to the ethics board; inconsistencies in the time frames in which alleged ethics violations are investigated; and changes to the process by which alleged violations are judged—collectively have weakened enforcement.

One of the most contentious procedural changes was the transfer of adjudicatory power from the ethics board to administrative law judges employed within the executive branch. During the ethics session, the board offered an alternative approach to this radical change by suggesting the creation of stronger internal firewalls and utilization of board-member panels for certain functions. However, the Legislature failed to significantly debate or adopt the board's solution. Shortly after the ethics session, all but one board member resigned.

In 2009, a newly appointed (the current) ethics board adopted a white paper written by the board's chairman that details concerns regarding procedural changes in the law and urges the Legislature to forward the issues to the Louisiana State Law Institute (LSLI) for further study. Specifically, the paper recommends that

lawmakers resolve certain procedural conflicts within the law; return adjudicatory authority to the ethics board; and place the power to prosecute cases in the hands of an attorney who is independent of the board. The recommendations do not address whether the board would retain its ability to initiate investigations. Regardless, legislative leaders have indicated that the Legislature will not revisit most of the changes made nor ask the LSLI to study the ramifications of such.

STRONGER ETHICS LAWS

In October 2008, the Better Government Association (BGA)—a well-known government watchdog group—released its “Integrity Index,” which compares the states on conflicts of interest, campaign finance, whistleblower protection and transparency laws. Due largely to the reforms established in the ethics session, BGA upgraded Louisiana’s overall ranking from 46th (2002) to fifth among states (2008). Even with the improved ranking, Louisiana still scored only a little better than 61 out of 100 percent on the total index scale, which indicates that considerable work remains if Louisiana is to attain the “gold standard” in ethics that public officials so often tout. The states were ranked primarily on the strength of their ethics laws (as written) rather than the ability to actually enforce the laws.

Solid Reform

Campaign finance disclosure

Campaign finance reporting allows citizens to identify relationships between candidates and those who fund their efforts to run for office. Relationships that may create a conflict of interest, or even the appearance of a conflict, are not evident to voters unless proper reporting is required. In the 2008 BGA analysis, Louisiana scored poorly on campaign finance overall; however, BGA did grade the state positively on newly adopted campaign finance disclosure laws.

Prior to the ethics session, candidates running for statewide elected office and their principal campaign committees were

required to file financial activity reports only if they received or spent more than \$50,000 within a designated time period. During the ethics session, disclosure was expanded to require electronic filing from candidates for all major and district offices and their principal campaign committees, regardless of how much they received or spent. Major and district offices include many of the offices listed in Table 4 and certain members of the judiciary. Additionally, other political action committees (that do not raise money for a single, certain candidate or political party) are required to report their financial activity if they receive or spend more than \$50,000 annually. New campaign finance requirements are being phased in over time and should be implemented fully by 2012.

Additional campaign-related reforms passed during the ethics session included laws that prohibit persons with outstanding ethics fines from running for office; mandate the disclosure of pertinent information in political advertisements funded by third-party groups; and establish felony offenses for persons who violate campaign finance laws. Campaign finance laws were strengthened further in 2009 by an act that requires disclosure of certain contributions by persons who later are hired to serve as agency heads or appointed to certain boards and commissions.

Lobbyist reporting

Prior to the ethics session of 2008, lobbyists were only required to report certain expenditures made for legislative and executive branch officials. To enable the public to better track the influence that special interests could have over public servants, reporting requirements for lobbyists were strengthened during the ethics session. New requirements mandate that lobbyists annually disclose some broad details about their compensation, the subject matters they lobby and business relationships they have with public officials and/or their spouses. Additionally, lobbyist expenditure reports now must be filed monthly instead of semiannually; must be filed electronically into the board’s online

data management system instead of being mailed or hand-delivered; and must include expenditures made on legislative branch public servants and the spouses and children of legislators and executive branch officials.

Personal financial disclosure

Disclosure is intended to build citizen confidence and trust in government. The public wants to know how the people who make decisions on their behalf are paid and where their interests lie. A cornerstone of the governor’s ethics reform agenda was to require increased levels of financial disclosure from all elected and certain appointed officials.

Prior to the 2008 ethics session, Louisiana law required limited financial disclosure from legislators and public servants other than legislators (see Table 3). Legislators were required to disclose income if it was received from the state, its political subdivisions or gaming interests and if it exceeded \$250. Public servants, other

than legislators, were required to disclose things of economic value they received from persons who were regulated by or doing business with the public servant’s agency. Louisiana did require rigorous and meaningful financial disclosure only from its governor and candidates for governor. As a result, the Center for Public Integrity (CPI), a national research organization, ranked Louisiana third among states as to financial disclosure for governors (2007) but 44th among states in terms of legislative financial disclosure (2006) in its “States of Disclosure” comparison. During the 2008 ethics session, legislators focused on raising Louisiana’s national ranking to improve the image of the state.

After significant legislative wrangling, three distinct reporting levels for financial disclosure were created during the ethics session. Informally the levels of disclosure are known as Tier 1, Tier 2 and Tier 3—with Tier 1 being the most detailed. Candidates for elected positions in each tier, as well as office holders, are now required to disclose

Table 3. Financial disclosure requirements prior to 2008 legislative sessions

Position required to disclose	Information to be disclosed
Governor ⁽¹⁾ R.S. 42:1124	<ul style="list-style-type: none"> - Name and residence address - Spouse’s name, occupation and principal business address - Description of and amount of interest in businesses, where interest > 10 percent or where fiduciary relationship exists - Name, type and categorical amount of each income source > \$1,000 - Description of immovable property when value > \$2,000 - Description of purchase/sale of immovable property > \$1,000 - Description of purchase/sale of tax securities, stocks, bonds > \$1,000 - Nature of liabilities owed to creditors > \$10,000, with certain exclusions
Legislators ⁽²⁾ R.S. 42:1114 R.S. 42:1114.1	<ul style="list-style-type: none"> - Name, type and specific amount of each income source from the state, any political subdivision of the state or gaming interests only when it exceeds \$250. - Things of economic value derived from the legislator’s agency by a person who has a bid on or has a financial interest in a contract or subcontract under supervision or jurisdiction of the legislator’s agency.
Public servants other than legislators ⁽²⁾ R.S. 42:1114	<ul style="list-style-type: none"> - Things of economic value derived from the public servant’s agency by a person who is regulated by the public servant’s agency or a person who has a bid on or has a financial interest in a contract or subcontract under supervision or jurisdiction of the public servant’s agency.
Elected officials other than legislators ⁽¹⁾ R.S. 42:1114	<ul style="list-style-type: none"> - Things of economic value derived from a contract with the state or any political subdivision of the state.

Source: Louisiana Revised Statutes

¹ Includes information relative to filer’s spouse and/or business in which filer, spouse or both own 10 percent or more.

² Including information relative to filer’s immediate family members.

personal financial details as provided in their respective tier. Shortly after the ethics session, the CPI raised Louisiana's ranking of legislative financial disclosure from 44th to first in the nation. Like the BGA comparison, however, the CPI analysis focused more on the strength of each state's disclosure laws, as written, rather than on whether the laws could be adequately enforced.

During the 2008 regular session, the Legislature added an intermediate reporting tier (Tier 2.1) to ease concerns that numerous appointed board and commission members, initially placed in the more rigorous Tier 2 reporting level, would resign their positions based on the detail of reporting required. Presently, Louisiana requires financial disclosure from a vast array of political leaders and public officials and candidates, broken down into four reporting levels often referred to as Tiers 1, 2, 2.1 and 3 (see Table 4). None of the new tiers of disclosure, however, require electronic submission of information. Unlike reforms made for campaign finance and lobbyist reporting, personal financial information may be submitted via online form, faxed, mailed or hand-delivered to the ethics board office.

Muddled Efforts

The state's ethics code generally prohibits public servants from accepting "things of value" other than their usual compensation. Specifically, ethics laws limit things that can be received by public servants (1) because of the position the public servant holds or (2) from certain prohibited sources, such as lobbyists and those who are regulated by or doing business with government.

Prior to the ethics session, exceptions to the general rule allowed public servants to accept numerous gifts, including admission and transportation to popular entertainment and sporting events; expense-paid hunting, fishing and golf trips; and lavish meals where special interest groups could buy access to public servants. Such exceptions

fostered cozy relationships between lawmakers and special interests and fueled the perception that policy decisions were made in favor of those who provide perks instead of Louisiana citizens as a whole. During the ethics session, considerable strides were made to limit several of the perks that public servants can accept. Complimentary admission was limited to civic, nonprofit, educational and political events where the public servant was an honoree, speaker or panelist; complimentary admission to professional or collegiate sporting events, fishing trips, hunting trips or golf outings was prohibited except for fundraising events open to the general public. Additionally, a \$50 cap was placed on food and drink that could be provided to public servants at a single event. One exception to the food and drink cap was carved out—the cap would not apply to gatherings "held in conjunction with national or regional organizations or meetings of statewide organizations of governmental officials or employees."

Legislators subsequently weakened these reforms during the 2008 and 2009 regular legislative sessions (see Table 5). Exceptions for free admission were expanded to include additional fundraising events (not necessarily open to the public) and to allow for free transportation, lodging and admission to "educational or professional development seminars." Further, free admission to certain events was expanded to include public servants who attend the event simply "to assist" an elected official who is an honoree, speaker or panelist. Most disturbing was the deliberate undermining of the \$50 cap on food and drink. Following an ethics board decision that legislators did not agree with, the Legislature passed new loopholes, which significantly weaken the cap and exempt many gatherings from the \$50 restriction as long as there are certain national, regional or statewide meetings nearby.

PAR previously has recommended a "no cup of coffee rule," which would prohibit public servants from receiving anything of economic

Table 4. Financial disclosure requirements after 2008 legislative sessions

Level of disclosure	Position required to disclose ¹	Information to be disclosed
Tier 1 ^(2, 5) R.S. 42:1124	Statewide elected officials State department secretaries heads Certain staff within the office of the governor Commissioner of administration Superintendent of education Commissioner of higher education University system presidents	A. Name, occupation, <u>residence</u> address, business address B. Employers, titles, job descriptions for full-time/part-time employment C. Description of and amount of interest in businesses, where interest > 10 percent <u>or</u> where fiduciary relationship exists D. Description of nonprofits, where person is a director or officer E. Name, type and specific amount of each income source from the state, any political subdivision of the state or gaming interests F. Description of immovable property when value > \$2,000 G. Description of purchase/sale of immovable property > <u>\$1,000</u> H. Description of purchase/sale of tax certificates, stocks, bonds > <u>\$1,000</u> I. Description of investment securities > <u>\$1,000</u> J. Nature of liabilities owed to creditors > \$10,000, with certain exclusions K. <u>Name, type and categorical amount of each income source > \$1,000</u>
Tier 2 ^(2, 5) R.S. 42:1124.2	Legislators Public officials representing voting districts of 5,000+ people Members of the Board of Elementary and Secondary Education Members of the Louisiana Board of Ethics, and the ethics administrator Members of the Ethics Adjudicatory Board (EAB)⁶	A. Name, occupation, <u>mailing</u> address, business address B. Employers, titles, job descriptions for full-time/part-time employment C. Description of and amount of interest in businesses, where interest > 10 percent <u>or</u> where fiduciary relationship exists D. Description of nonprofits, where person is a director or officer E. Name, type and specific amount of each income source from the state, any political subdivision of the state or gaming interests F. Description of immovable property when value > \$2,000 G. Description of purchase/sale of immovable property > <u>\$5,000</u> H. Description of purchase/sale of tax certificates, stocks, bonds > <u>\$5,000</u> I. Description of investment securities > <u>\$5,000</u> J. Nature of liabilities owed to creditors > \$10,000, with certain exclusions K. <u>Description and categorical amount of any other income > \$1,000</u> L. <u>Employers/businesses which provide income and description of services</u>
Tier 2.1 ^(2, 3) R.S. 42:1124.2.1	Civil Service commissioners Stadium and Exposition District Board of Commissioners Members of boards and/or commissions that can expend, disburse or invest \$10,000 or more in a fiscal year	A. Name, occupation, <u>mailing</u> address, business address B. Employers, titles, job descriptions for full-time/part-time employment C. Description of and amount of interest in businesses, where interest > 10 percent <u>and</u> where fiduciary relationship exists D. Description of nonprofits, where person is a director or officer E. Name, type and specific amount of each income source from the state, any political subdivision of the state or gaming interests
Tier 3 ^(2, 4, 5) R.S. 42:1124.3	Public officials representing voting districts of < 5,000 people	E. Name, type and specific amount of each income source from the state, any political subdivision of the state or gaming interests <u>only when it exceeds \$250</u>

Source: Louisiana Revised Statutes

¹ Persons whose public service terminated prior to July 1, 2008, are not required to file a financial disclosure statement.
² Includes information relative to filer's spouse and/or business in which filer, spouse or both own 10 percent or more.
³ Certain boards and commissions specifically are exempted by law.
⁴ Law took effect on Jan. 1, 2010.
⁵ Candidates for elected positions within this tier also are required to disclose.
⁶ LSA-R.S. 42:1141(C)(4)(b).

Table 5. Evolution of gifts for public servants

Topic	2008 Ethics Session	2008 Regular Session	2009 Regular Session
Free Admission	<p>Law provides free admission for elected officials limited to civic, nonprofit, educational and political events where the official is an honoree, speaker or panelist.</p> <p><u>Note:</u> Above does not allow free admission for elected officials to professional, semi-professional or collegiate sporting events; fishing trips hunting trips or golf outings unless it is a fundraising event open to the general public.</p>	<p>Law provides free admission restriction applicable to all public servants instead of just elected officials.</p> <p><u>Exception:</u> Free admission to fundraising events for a candidate or political party is allowed.</p> <p><u>Exception:</u> Free admission, lodging and transportation for educational or professional development seminars in the U.S. or Canada under certain circumstances.</p>	<p><u>Exception:</u> Allows free admission to civic, nonprofit, educational and political events for those public servants who attend the event to assist an elected official who is an honoree, speaker or panelist.</p>
Food and Drink	<p>Law provides \$50 cap on food, drink and refreshments provided to public servants at a single event.</p> <p><u>Exception:</u> \$50 cap on food, drink and refreshments does not apply to gatherings “held in conjunction with” national or regional organizations or meetings of statewide organizations of government officials or employees.</p> <p><u>Note:</u> Beginning on July 1, 2009, and each year thereafter, the \$50 cap on food, drink and refreshments shall be increased in direct proportion to any percentage increase in the unadjusted Consumer Price Index.</p>	<p><u>Exception:</u> \$50 cap on food, drink and refreshment does not apply for public servants of postsecondary education institutions at events to solicit donations or contributions for the public servant’s agency.</p> <p><u>Note:</u> Defines “event” as a single activity at a given time and place - could have more than one “event” in a 24-hour period.</p>	<p>Law provides that lobbyists are required to report expenditures associated with gatherings “held in conjunction with” meetings of national or regional organizations of legislators or their staff or executive branch officials.</p> <p><u>Exception:</u> Above expenditures are not attributable to the aggregate amount or per occasion amount reported for a legislator or executive branch official, their spouses/minor children.</p> <p><u>Note:</u> Defines “gathering held in conjunction with” to include any event held during the same time period and same general locale as the exempted national, regional or statewide meeting, as long as at least 10 persons are invited to the gathering.</p>

Source: Louisiana Acts No. 9 & 19 (2008, 1st E.S.); No. 514 (2008, R.S.); and No. 534 (2009, R.S.).

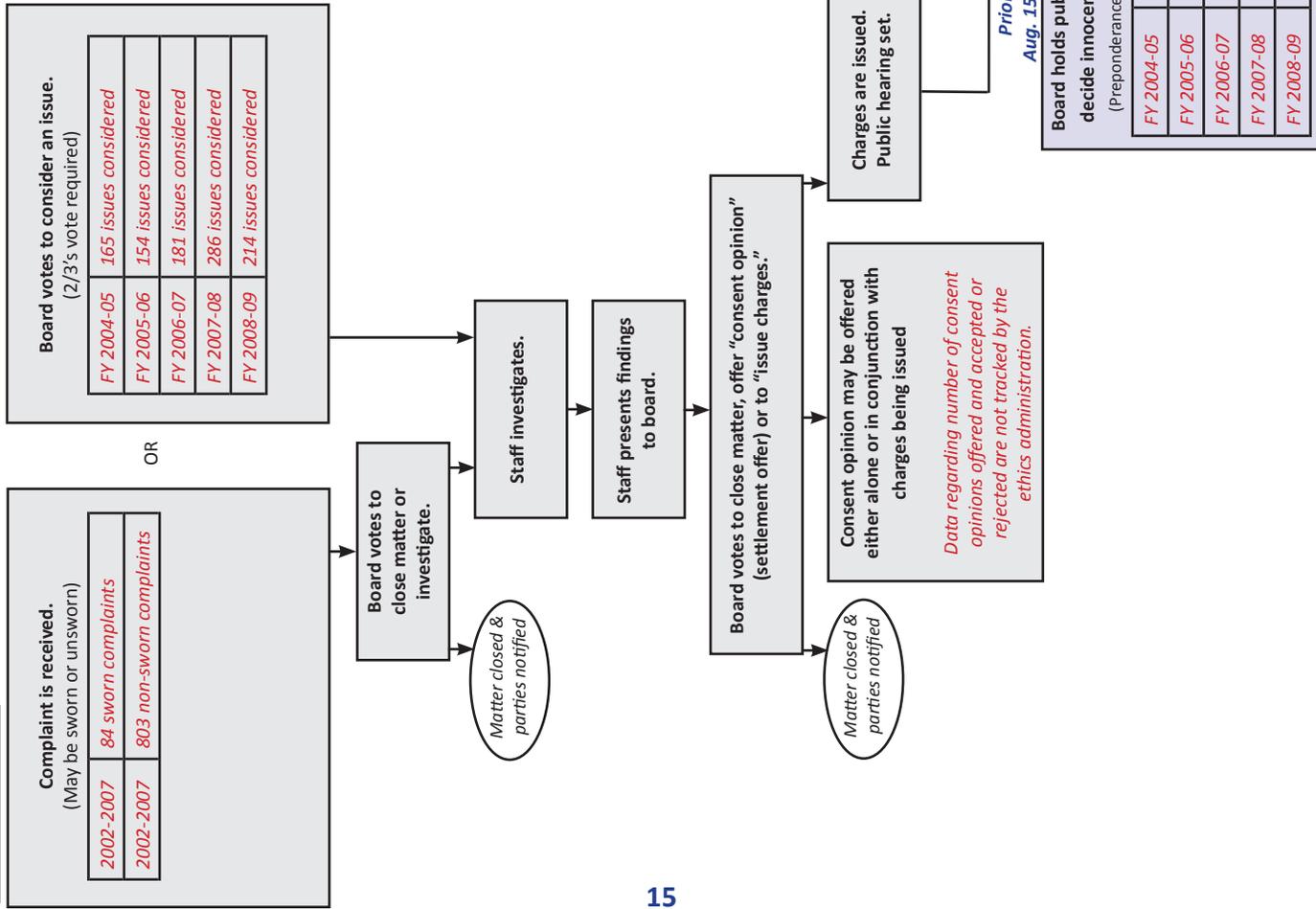
value (including complimentary food, drink and admission to events) because of their public position. The giver is provided with access to public servants that the general public does not have. These relationships promote the appearance of favoritism for a chosen few and intensify citizens’ mistrust of government. The amount of post-reform backtracking by legislators on gifts sends the message that lawmakers are not willing to sacrifice their perks in order to improve the image of the state and build confidence in government.

WEAKER ETHICS ENFORCEMENT

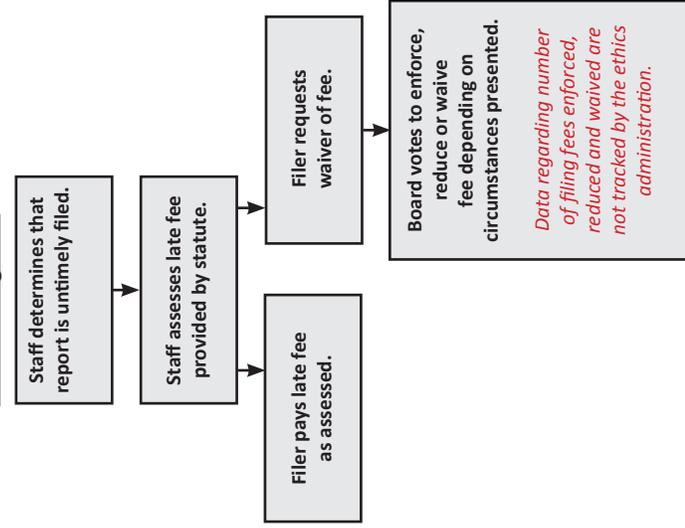
Figure 1 provides an overview of the ethics enforcement process, including the handling of ethics violations, the assessment of late filing fees and the issuance of advisory opinions. Additionally, Figure 1 provides data currently collected by the ethics board relative to complaints received, consent opinions (settlement offers) extended, adjudicatory hearings held and advisory opinions issued.

Figure 1. Overview of ethics oversight process and data collection

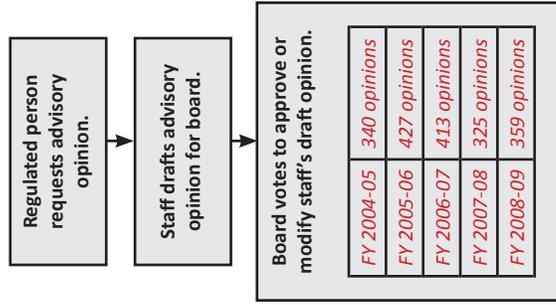
1. Ethics Violations



2. Late Filing Fees



3. Advisory Opinions



Source: Review of Louisiana Revised Statutes, Rules of Louisiana Ethics Board
All data provided by the Louisiana ethics administration.

¹ Hearing data include matters other than ethics violations.
² As of Jan. 20, 2010.

Investigation

To strengthen investigation, PAR recommends that the Legislature:

- 1. Require the executive officer of every board and commission within the state to report annually to the secretary of state (1) the names of members and (2) the amount spent, disbursed and/or invested by their board/commission in the most recent fiscal year; and require that the secretary of state maintain such information online for public use.**
- 2. Authorize and require ethics investigation staff to audit for truthfulness a randomly selected group of financial reports submitted each calendar year.**

While the increase in required financial reporting from public officials strengthens ethics laws in Louisiana, questions remain about legal barriers to the board's ability to implement these changes.

First, the sheer volume of reports that will be submitted when phase-in is completed is a concern. Currently, some reports are required to be submitted electronically while others are allowed to be mailed, faxed or hand-delivered. Scanning copies of reports that are not electronically submitted is a hefty task, as is the process of ensuring that all persons who should be reporting are in fact doing so. Not only is the board's workload expected to increase by thousands of reports because of the number of new groups required to disclose, but the number of reports will constantly fluctuate as volumes of candidates enter races for elected positions in some years and numerous appointed officials and board and commission members are replaced throughout each calendar year. New reporting requirements are being phased in over time, and the board has been given additional financial resources to meet its goals. Whether delayed implementation and a budget increase will be enough to ensure that the board is ready for this monumental change is not yet determined.

Second, the ethics board lacks the capability to fully enforce the law, as written, with respect to certain filers. Throughout the process of defining the tiers of financial disclosure, the scope of discussion generally was limited to state boards and commissions—an easily definable group. In the final stages of creating Tier 2.1, however, legislators changed the proposed language to include all board and commission members when the board or commission is authorized to spend, disburse or invest \$10,000 or more in a fiscal year. Those boards and commissions may be created by the state Constitution; by statute; by a political subdivision, which includes any unit of local government (including special districts) authorized to perform governmental functions; or jointly by two or more political subdivisions, as defined.

Even working with the secretary of state and administration officials, the ethics board will be hard-pressed to identify every board and commission whose members will be required to file under the new law. As such, the board can only estimate how many reports it will be expected to track and cannot know if all required filers are fulfilling their duty to report. Requiring the ethics board to monitor and enforce what it cannot even identify (boards/commission members as defined) sets up the board to fail before it even begins to implement reform.

There is no single resource that lists every board and commission operating in the state. The Legislature should require all boards and commissions to register each fiscal year with the Louisiana Secretary of State's Office and provide a description of the board's or commission's mission, its powers and duties, and its fiscal responsibilities. The Secretary of State's Office should make this information available for public viewing on its Web site. This would provide a central hub for the information, which would assist the ethics board in identifying everyone who should be filing financial disclosure forms.

Finally, even if the ethics board can accept this unknown, increased number of reports without a glitch and identify all persons

who are not filing as required, there is no auditing process established in law to encourage filers to be diligent and truthful when completing financial reports. In order for a filer to be investigated, a complaint has to be lodged by some third party or two-thirds of the board has to vote to consider a potential violation of the reporting requirement. With thousands of reports being submitted and no staff dedicated (or legal authority granted) to perform random audits, it is unlikely that less-than-honest filers will be persuaded to take reporting seriously. Adopting a process whereby reports submitted to the board could be selected randomly for investigation (much like federal and state tax returns) would give more “teeth” to the new disclosure requirements. For example, the Louisiana Department of Revenue randomly chooses 3 percent to 4 percent of business tax returns submitted annually to be audited.

Several states’ ethics commissions audit financial disclosure and/or expenditure reports submitted to them (see Table 2). Some commissions set a certain goal in terms of how many reports should be audited annually. For instance, Tennessee’s commission audits approximately 4 percent of lobbyist reports each year and also posts the audit findings online for public viewing.

Commissions vary in how they define the task of auditing—some simply cross-check lobbyist expenditure reports against reports received from public officials on whom lobbyists made expenditures, while other commissions send investigators to collect receipts from filers and verify the information in reports that are chosen for audit. The powers and duties of Louisiana’s ethics staff should be expanded to include some type and level of auditing for financial reports submitted. The staff should set a performance goal each year as to what percentage of reports will be audited, and the results of the audits should be available online.

Prosecution

To strengthen prosecution, PAR recommends that the Legislature:

3. Resolve legal discrepancies regarding time frames within which action may be taken to enforce ethics laws.

In 2008, the Legislature made two significant changes to the prosecution stage of ethics hearings—one regarding the time frame for issuing charges; the other regarding what burden of proof must be met in order to establish that an ethics violation has occurred.

Because the changes were complex; were made without significant debate by lawmakers; and were passed in spite of the fact that no problems had been publicly noted with prior law, they are included in this analysis. Both issues are extremely subjective in nature.

There is no inherent problem with requiring the board to issue charges within one year or with requiring the board to satisfy a higher standard of proof in order to establish its cases. In fact, the board has shown that it is capable of meeting both requirements. However, legal discrepancies regarding the board’s time to take certain action are causing confusion and should be resolved.

Prescription

Prescription is the Louisiana equivalent of a statute of limitations. Essentially, a prescriptive period is the legal time frame in which a person can initiate an action against another. If the legal action is not initiated within the prescriptive period provided, the right to that action will expire (prescribe).

Prior to 2008, Louisiana law established a certain prescriptive period relative to enforcement of the ethics code. During the ethics reform session, an additional time frame was inserted into the law (relative to issuing charges) but the previous

prescriptive period was not repealed. The entanglement of these two legal provisions and how they are intended to work together already is causing significant debate. Legal scholars disagree as to how and whether the two time frames conflict.

Prior to 2008, the law established two time frames for the board to bring an “action to enforce” the code—either within two years of discovering an alleged violation or four years after the occurrence of an alleged violation, whichever was shorter. During the ethics session, the Legislature added a new legal provision that requires the board to “issue charges” within a certain time frame—either within one year of receiving a sworn complaint or one year after voting to consider the matter when there is no sworn complaint. If the board fails to “issue charges” within that time, the action will be dismissed.

Since the code does not define “action to enforce” (for which the board has two/four years) there is disagreement over whether “action to enforce” includes the task of “issuing charges” (for which the board has one year). If the act of “issuing charges” is considered an “action to enforce” the code, then the time frames established for the board to take certain action may contradict one another. Louisiana courts have held (as to civil cases) that filing a lawsuit is the first step to enforce an action. This conclusion makes sense given that in civil cases the way to begin the process is to file suit. Similarly, in ethics matters the way to begin the process of prosecution is to issue charges. Arguably then, issuing charges could constitute an action to enforce the code. This issue is significant. The potential contradiction creates confusion as to how long the board has to take certain action and at what point the legal clock begins to tick.

Figure 1 illustrates the typical work flow for handling an alleged ethics violation. The only significant tasks that remain to be completed after the board has issued charges are to prepare for and hold a public hearing.

Internal rules of the board already had required the board to issue charges within one year of receiving a sworn complaint about alleged possible wrongdoing, so inserting this language into statute was not necessarily a change from how the board already was operating in those cases. However, if the board chose to investigate a matter on its own volition or because of a non-sworn complaint, staff typically was given two years (as provided by law) to complete its investigation. With the new one-year legal provision, the board and staff have less time to investigate a substantial number of cases the board decides to pursue.

Both provisions being in law together and the fact that “action to enforce” is not defined create confusion as to how long the board has to perform certain tasks. How the two time frames will be resolved and to what extent they conflict remains unsettled, as does the long-term effect of these provisions on ethics cases.

Finally, it is unclear whether the Legislature meant for the new one-year time frame to be applied to cases retroactively and to cases already in progress, or whether the new period was meant to apply only to complaints filed after the new law became effective (Aug. 15, 2008). Allowing the new time frame to be applied retroactively would fly in the face of ethics reform as it would result in extinguishing cases that otherwise still would be active under previous law. The Louisiana Supreme Court has held that procedural laws (like time frames for action) may be given retroactive effect in certain circumstances. The “retroactivity argument” has been denied in ethics adjudicatory hearings, but the argument has yet to be tested in a court of law.

The prescriptive period could reasonably be set at the old or the new timeframe as long as it is clearly defined. The legal change regarding the board’s time to act has caused a great deal of confusion in recent ethics cases, so lawmakers should reconcile the discrepancies regarding the board’s time to act.

Burden of proof

Burden of proof establishes the degree to which a person must prove a disputed assertion or charge. Louisiana courts generally recognize three burdens of proof—“preponderance of the evidence” for civil cases; “beyond a reasonable doubt” for criminal cases; and a “clear and convincing” standard as a middle ground between civil and criminal burdens. The preponderance of the evidence (lowest) standard of proof requires that a disputed fact be “more likely true than not true” in order to be proven. The clear and convincing (intermediate) standard requires that a disputed fact be “much more probable than its nonexistence” to be proven true. The higher the burden of proof required, the more difficult a case is to prove.

Several states report using burdens of proof for ethics cases that more closely resemble intermediate or criminal-level burdens than civil-level burdens, although the terminology used to express those burdens differs among states (see Table 2). Additionally in Louisiana, an intermediate burden of proof frequently is used in other professional disciplinary proceedings, such as those for judges and attorneys.

Some states require different burdens of proof based on the nature of the charge. For instance in Iowa, campaign finance issues are considered at a lower (preponderance of the evidence) standard, while ethics and lobbying violations are considered at a higher (clear and convincing) standard. Additionally, states may use a lower burden of proof at the initial stage of a proceeding—to determine if the matter will be investigated further—and a higher burden of proof at the final determination stage. Louisiana’s ethics code specifies only one burden of proof, specifically for the final determination of whether an ethics violation has occurred. The state does not stipulate a specific burden of proof for the first stage of the process, where the board initially considers whether to investigate an issue.

During the ethics session, lawmakers raised the burden of proof required in Louisiana ethics cases from “reliable and substantial”

(similar to a preponderance of the evidence standard) to “clear and convincing.” The primary author of this change argued that a heightened standard of proof was more appropriate in ethics cases since the charges were similar in nature to criminal offenses.

The Louisiana ethics code does not provide for criminal penalties and the Louisiana First Circuit Court of Appeals has held that the code is not a “criminal statute.” Penalties that may be assessed by the board include censure, civil fines, removal or suspension and, when relevant, the return of gifts and illegal gains or payments received. Since 1996, the code has provided (and still provides) that if there is probable cause to believe that any criminal law of the state has been violated, the board is required to forward the information to the appropriate district attorney. The more rigorous standard concerning potential criminal investigations (probable cause), which the Legislature argued was needed, already was in place.

The clear and convincing burden of proof is not out of line with other states’ laws nor does it does not set an unobtainable standard, and there is no reason to believe that ethics administration would be hindered by it once other matters regarding who adjudicates and who investigates are settled.

Adjudication

To strengthen adjudication, PAR recommends that the Legislature:

4. Re-establish the ethics board as the only adjudicatory body responsible for the administration and enforcement of the ethics code and other laws within the board’s jurisdiction; remove the ethics board’s ability to collect financial reports, initiate investigations and consider complaints prior to formal charges being issued.

5. Establish a separate, independent ethics investigatory commission, similar to the ethics board, dedicated to

the collection and auditing of financial reports, and the investigation and prosecution of alleged violations of the ethics code and other laws within the ethics board's jurisdiction.

Administrative adjudication

Administrative agencies are created to help government implement the law. To allow agencies to operate fluidly, they often are granted internal powers similar to the three formal branches of government. Agencies can make rules (quasi-legislative) to further the law, provide services or regulation in order to implement the law (quasi-executive), and decide whether people are eligible for services or have violated the law (quasi-judicial). To keep the power of agencies in check, the Legislature can change their powers and duties if needed, and courts typically can review agency decisions and overturn them if they are flawed. Courts may rule that an agency's level of power is unconstitutional if it is found to impinge too greatly on any of the three branches of government.

The ethics board is an executive branch, regulatory agency. Until recently, the ethics board operated like many agencies having the ability to administer the laws within its jurisdiction and decide whether a violation of the law had occurred. To balance that power, the law provided for immediate judicial review when persons disputed a decision of the board.

One of the most controversial changes made during the ethics session was the Legislature's transfer of adjudicatory power (the power to judge) in ethics cases from the ethics board to civil service administrative law judges (ALJs) situated within the Division of Administrative Law (DAL). The DAL, created in 1995, also is an executive branch administrative agency. Prior to 1995, ALJs—hearing officers—typically were located within agencies to hear disputes between the agency and aggrieved persons. Based on the facts presented, the ALJ would render a recommended decision, which the agency

was free to accept or reject. If the aggrieved person did not agree with the agency's decision, he or she could appeal directly to a court of law.

Louisiana created the DAL to provide an insulated, centralized tribunal of ALJs. The “central panel” model often is perceived as more fair than the “in-house” model (where ALJs work within the agencies themselves) since it allows ALJs the freedom to rule as they see fit with no fear of reprisal from the agency. Twenty-seven states, including Louisiana, use this model for at least some of their administrative hearings and generally are known as “central panel states.”

However, Louisiana's central panel model grants more power to ALJs than models in most states. In Louisiana, ALJs within the DAL are given final decision-making power, meaning that agencies are not allowed to seek judicial review of the ALJ decision if they do not agree with it. According to a 2006 Louisiana Law Review article, only three other states (Florida, Missouri and South Carolina) utilize a central panel model where ALJ decisions are final and the agency does not have the right to judicial appeal. This often is referred to as the “administrative court” model.

In 2005, the constitutionality of Louisiana's ALJ model was tested during a dispute between the commissioner of insurance (Robert Wooley) and an insurance provider (State Farm). In the *Wooley* case, the court opined that Louisiana ALJ decisions “are not subject to enforcement and do not have the force of law,” so it saw no problem with not allowing agencies to request judicial review. The court upheld Louisiana's ALJ model as being constitutional.

Thereafter however, the Legislature enacted even more stringent language that mandates that agencies “comply fully” with the decision of the ALJ. This extra step effectively requires agencies to accept and enforce ALJ decisions as their own even if they disagree with the ruling. Legal scholars

argue that this new requirement gives ALJ decisions “the force of law” and suggest that the constitutionality of Louisiana’s model might be judged differently today. It is unclear who would bring such a challenge, however, since the U.S. Fifth Circuit Court of Appeals has ruled that agencies lack standing to challenge the constitutionality of statutes except in very limited circumstances.

Ethics Adjudicatory Board

Aside from the complex constitutional issues surrounding the use of centralized panels is the more pressing question of whether ethics oversight has been weakened or strengthened by inserting ALJs into the adjudication process.

To date, the newly created Ethics Adjudicatory Board (EAB)—the two central panels of ALJs who are designated to hear ethics disputes—has 71 docketed cases, some of which concern multiple respondents. Cases have been dismissed against 21 respondents; legal decisions have been rendered against eight. Forty-four cases are still active. Hearings are scheduled in seven of those cases; one case is stayed pending appeal, another is stayed pending the resolution of criminal charges, and two others are stayed pending settlement approval. The remaining active cases are at various stages of the pre-hearing process.

Procedural changes in the ethics code already have become a point of contention in several decisions that have been rendered (see Table 6).

Clear and convincing standard. The board has successfully met the new burden of proof in four of the eight cases where the EAB has rendered a decision thus far.

Burden of proof is a subjective measure and will be an issue in all EAB cases to some extent. That is, burden of proof will always have to be satisfied in order for the board’s charges to be upheld. Whether burden of proof is deemed to be satisfied depends

on a host of factors, including credibility of witnesses, admission of evidence and whether the ALJ panel ultimately agrees with the board’s interpretation of the law.

The fact that the board has lost three cases for failure to meet the burden of proof is not necessarily indicative of an inability by the board to get the job done or recklessness in issuing charges, as some have suggested. Nor is it an automatic indication that the new burden of proof is unfair or overly burdensome. It is simply a higher standard of proof than what previously was required and will call for some adjustments as to how the board and staff investigate and prosecute cases.

What the board formerly considered sufficient evidence to issue charges (as per the “reliable and substantial” standard) may no longer be enough to satisfy ALJs who now handle adjudication. Many of the cases in which the board has failed to meet the new burden of proof were in motion prior to the change in burden of proof. Presumably, the board and ethics staff will better understand the EAB’s interpretation of what satisfies the clear and convincing standard as time goes on. However, three factors will frustrate this process:

(1) EAB members are appointed for one year only (as opposed to five-year terms for board members) so it will be difficult for the staff to anticipate how the EAB’s interpretation of laws may change from year to year;

(2) EAB members sit as two separate panels of three instead of one group (such as the ethics board), and there is no requirement that the panels interpret or enforce the law in similar fashion. Further, there is no requirement that precedence established by one panel should be persuasive authority for the other panel when faced with a comparable set of facts; and

(3) There is no vehicle for the EAB to deliver advisory or declaratory opinions—the ethics board is tasked with those functions.

Table 6. Decisions rendered by the Division of Administrative Law, Ethics Adjudicatory Board (EAB)

Rulings in Favor of the Ethics Board			
Respondent, Date, Panel, Vote	Issue	Holding	Additional Findings/ <i>Points of Interest</i>
Bertram F. Babers, III Heard: 05/08/09 Panel: Perrault, Cooper, and Lightfoot Vote: 3-0	Conflict of interest	Board satisfied burden of proof; respondent violated ethics code by participating in a vote regarding property that bordered property owned by himself and/or his immediate family members.	Once the board determines that there is sufficient evidence to warrant a public hearing, all records prepared or obtained during investigations and for private hearings become public after charges are issued, except for complainant's identity.
Ernest Stephens Heard: 07/10/09 Panel: Perrault, Cooper, and Lightfoot Vote: 3-0	Lobbyist reporting	Board satisfied burden of proof; respondent failed to file lobbyist expenditure report.	<i>Respondent did not answer or respond to any notices issued by the board, nor did the Respondent not appear for the EAB hearing. The ethics board satisfied the requisite burden of proof via sworn affidavit of staff member, which stated that report had not been filed.</i>
Boasso Campaign Committee Heard: 08/28/09 Panel: Perrault, Cooper, and Lightfoot Vote: 3-0	Campaign reporting	Board satisfied burden of proof; respondent failed to itemize campaign finance report.	<i>The EAB agreed with the board's interpretation and application of the law, however, the EAB substituted its own judgment in place of the board's judgment as to what amount of fine would be reasonable given the circumstances of the case.</i>
Caesar Comeaux Heard: 12/11/09 Panel: Perrault, Cooper, and Lightfoot Vote: 3-0	Conflict of interest	Board satisfied burden of proof; respondent violated ethics code by accepting a position of Interim Parish President while he was a member of Parish Council.	<i>The EAB agreed that the Respondent did violate the law, however, waived the fine because the violation was unintentional.</i>
Rulings in Favor of the Respondent			
Respondent, Date, Panel, Vote	Issue	Holding	Additional Findings
Mary Irvin Heard: 02/27/09 Panel: Aguiluz, Domingue and Kopynec Vote: 3-0	Prohibited contractual arrangement	Board failed to prove charges by clear and convincing burden of proof.	Ethics code is not a criminal statute.
Richard Gallot, Jr. Heard: 08/28/09 Panel: Kopynec and Basile; Aguiluz dissented with majority opinion. Vote: 2-1	Payment for nonpublic service Prohibited contractual arrangement	Board's cause of action against respondent has prescribed.	"Discovery" of the occurrence of an alleged violation of the ethics code equates to the date that the board receives a complaint alleging a violation. The board had (as provided by law) two years from that discovery date to bring an "action to enforce" the code. <i>Members of the EAB panel disagreed on whether the two-year prescription period had been interrupted when the board voted to investigate the matter.</i>
Leonard "Pop" Hataway Heard: 09/11/09 Panel: Perrault, Kopynec and Lightfoot Vote: 3-0	Abuse of office	Board failed to prove charges by clear and convincing burden of proof.	Letters and reports have no evidentiary value unless properly authenticated.
Craig Webre Heard: 10/23/09 Panel: Aguiluz, Basile and Kopynec Vote: 3-0	Conflict of interest Payment for nonpublic service	Board failed to prove charges by clear and convincing burden of proof.	

Source: Review of decisions rendered by the Ethics Adjudicatory Board

As such, neither the ethics staff nor persons regulated have any way of knowing how the EAB will interpret the law except to rely on previous opinions, which the EAB may choose to ignore in the future.

The ethics board was never required to give weight to earlier board rulings when it handled adjudication, either. However, because board members served five-year terms, issued advisory opinions to assist staff with their interpretation of the law and sat as one (and the only) adjudicating body, staff could more easily anticipate whether the evidence would satisfy the board.

Prescription. Newly created inconsistencies between the various time frames the board has to act have been raised several times in front of the EAB and debated at length. To date, the issues surrounding prescription have only resulted in one case (*Gallot*) being thrown out. In that case, the EAB ruled (2-1) that prescription had run, which meant that the board's right to prosecute the case had extinguished.

The *Gallot* case is the only one in which ALJs have disagreed on the outcome of a case. One ALJ wrote a separate, dissenting opinion as to why he felt that prescription had not run and that the board should be able to continue the matter. The dissenting ALJ argued that certain actions taken by the board constituted an interruption of the prescriptive time period. The *Gallot* case is one example of how new inconsistencies within the law are confusing the discussion of prescription, and is evidence that legal minds do not yet agree on the issue.

Imposition of fines. Technically the ethics board retained the power and duty to impose fines against those who violate the law. Most commonly, fines are associated with untimely filing of reports; those fines are automatically assessed by staff and the amounts are mandated by statute. If the respondent fails to pay his or her fine, the staff can request that the board issue an order to pay, which can be converted into a judgment by the 19th Judicial District

Court. If however, the respondent has filed a report incorrectly, failed to file a report altogether, or has potentially violated the code in any other way, the staff may investigate. If a violation is found, the board will issue charges, the matter will be heard by the EAB, and the EAB will decide what (if any) penalties are appropriate.

In two separate cases (*Boasso Campaign Committee* and *Comeaux*), the EAB agreed with the board's interpretation of law but set aside or significantly reduced the fines recommended by the board. Presumably then, the board has not only lost the power to judge ethics cases but also the authority to decide what penalties are appropriate and how the penalties will be assessed in certain instances.

The new oversight process requires the ethics board to close its file on a matter if the EAB finds that the board did not meet its burden of proof. If the EAB determines that a violation of the law has occurred, the ethics board is required to adopt the EAB decision. Until recently, the board had not agreed to take either action on any case decided by the EAB. In January 2010, after substantial debate, the board voted (6-5) to adopt the EAB's most recent decision (*Comeaux*) in which the EAB determined that the respondent had violated the law, but chose not to assess any fine or penalty for the violation. Board members who supported adopting the *Comeaux* decision did not necessarily agree with the EAB decision but believed the board was under a legal obligation to adopt the decision.

Flaws in adjudication models

Prior to 2008, many people perceived that the investigation, prosecution and adjudication functions of the ethics board were too closely intertwined. That is, that the system was structured so that alleged ethics violators could not get a "fair shake" in front of the ethics board.

In fact, Louisiana courts previously had ruled that the ethics board must take steps

to separate those functions. The following factors created a perception of unfairness with respect to board adjudication:

- (1) Upon receipt of ethics complaints by the staff, complaints were presented to the board for initial review and direction as to whether the matter should be investigated further;
- (2) The board was allowed to initiate investigation into matters without a complaint if two-thirds of the board voted to do so; and
- (3) The same staff and board members involved with the investigation and prosecution stages of a case also often handled the adjudication phase.

The general perception was that the board was made aware of complaints early in the process and thus was prone to give them more validity when later serving as an impartial adjudicatory body. Although the ethics staff made efforts to separate functions internally, few people understand or trust administrative firewalls unless they are clearly defined and rigorously enforced.

Similarly, the use of central panel ALJs in Louisiana ethics cases also creates problems:

- (1) ALJs work for one director (the director of DAL), who is appointed by the governor, is not term-limited and is not subject to personal financial disclosure laws; and
- (2) Unlike ethics board members, ALJs are full-time, civil service employees who ultimately are dependent upon the state for their income and benefits; they are not nominated by an independent body prior to being appointed, nor are they interviewed and appointed through a transparent selection process—except that their names are randomly drawn from a hat at a public meeting. Also there is no requirement that they be representative of the citizens of the state in terms of demographics or place of residence (see Figure 2).

The link between the governor and the division director causes concern that the governor could exert control over the

outcome of ethics cases and that results from the new process may unfairly favor certain public officials. Conceptually, ALJs who answer to one gubernatorially-appointed director who may serve unlimited six-year terms, are more susceptible to political influence than a multi-person board whose members serve staggered, five-year terms and who are nominated by private college presidents and then appointed by the governor (seven members), the House of Representatives (two members) and the Senate (two members).

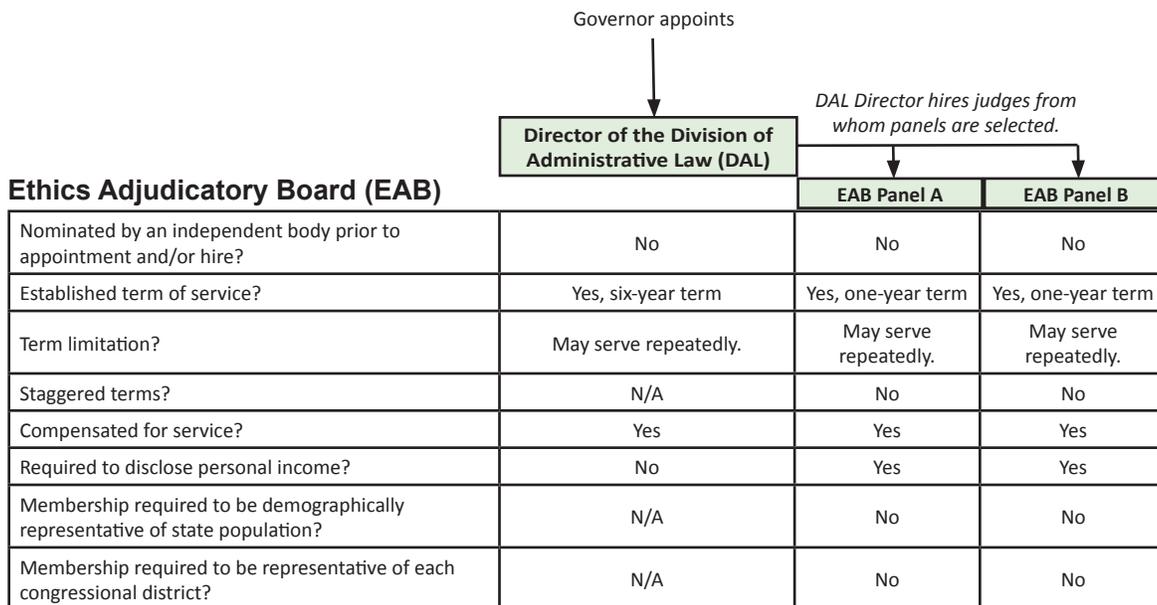
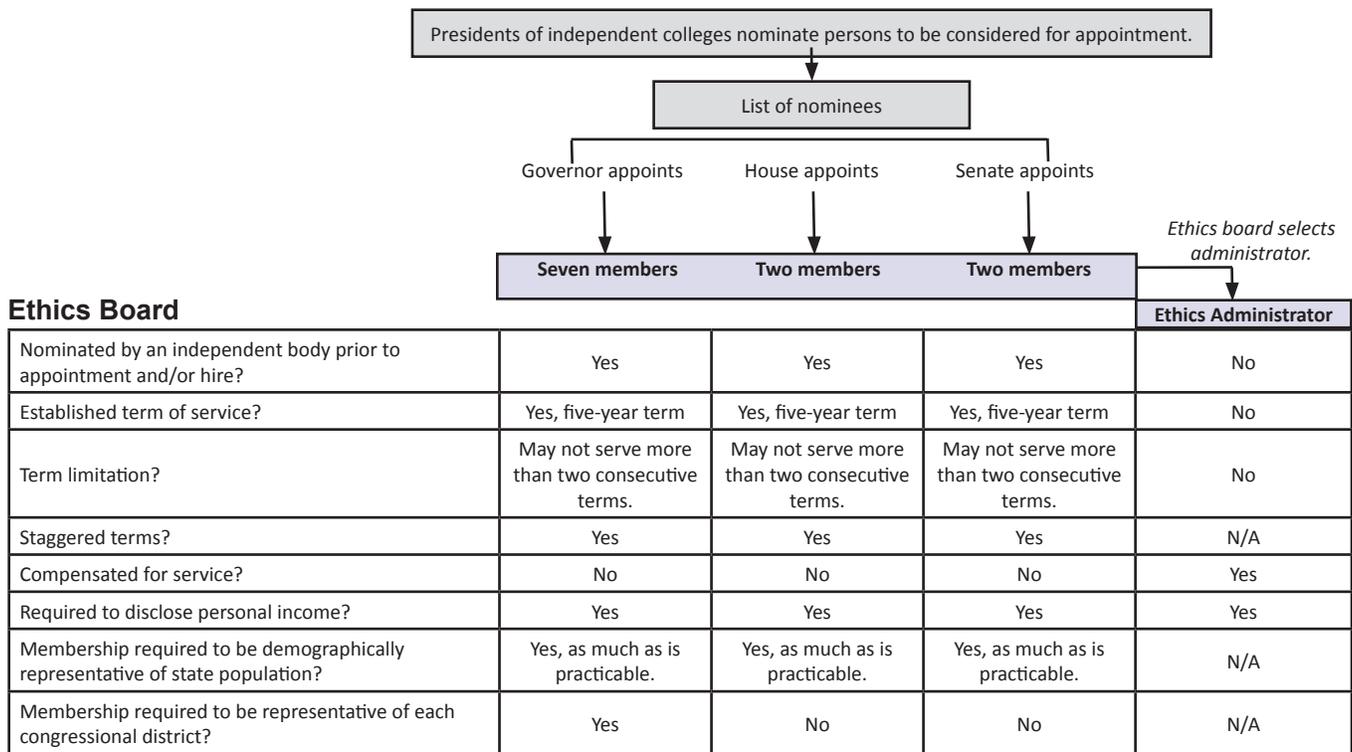
Advisory and declaratory opinions

Closely related to the problems with adjudication is the effect that the new process will have on advisory opinions issued by the ethics board. The ethics board routinely issues advisory opinions for persons who request clarification on any law administered by the board. The opinions are designed to provide guidance as to how the board would apply the law if adjudicated later, so the requestor can avoid violating the law inadvertently. Persons who request (but do not agree with) an advisory opinion issued by the board can accept the opinion given by the board or choose to ignore it and risk being charged with an ethics violation.

Advisory opinions are not intended to be final determinations of law and are not subject to appeal by a court of law. The new adjudication process, however, diminishes the value and importance of the board's advisory opinions. While advisory opinions still may give the requestor some indication of whether the board would issue charges, they do not hold the weight of advisory opinions issued by the body that ultimately will judge whether an ethics violation has occurred.

An additional factor surrounding advisory opinions post-ethics reform is the newly established “declaratory opinion” that the board may now render. During the ethics session, the Legislature created a new (presumably alternate) process whereby a person can request a declaratory opinion

Figure 2. Comparison of Ethics Board and Ethics Adjudicatory Board (EAB) Characteristics



Source: Louisiana Revised Statutes

and the board has the option of issuing such. Unlike the advisory opinion, the Legislature intended that the declaratory opinion “settle... uncertainty and insecurity” with respect to legal rights. Declaratory opinions are designed to be final determinations of the board and are directly appealable to the Louisiana First Circuit Court of Appeal.

However, some argue that this new legal avenue is not valid. Courts will not issue or review opinions unless an actual controversy exists. Regardless of what the Legislature calls an opinion (advisory or declaratory), situations where persons request an opinion regarding an action they have not yet taken do not involve a controversy, so it is unlikely

that Louisiana courts would consider an appeal of the board's interpretation of the law. Like prescription, the nuances between advisory and declaratory opinions likely will create confusion going forward.

IMPROVING ETHICS IN LOUISIANA

A Better Model

Meaningful ethics oversight requires rigorous enforcement of high standards for public servants—including thorough investigation, strong prosecution of alleged wrongdoers and an evenhanded adjudication process. The original impetus behind transferring adjudicatory authority from the ethics board to central panel ALJs in 2008 was the desire to separate the tasks of investigation and prosecution from the process of judging whether an ethics violation had occurred, and to prohibit the board from being involved in all three stages of a case, so the board's adjudication hearings would be fair and impartial. The current model is one of several forms that Louisiana's ethics administration system has taken over the years. Each model has had its own unique set of strengths and weaknesses.

Louisiana's current system of enforcement is overly complex and leaves many unanswered questions among legal scholars, those regulated and the public in general. Instead of the procedural overhaul made by legislators in 2008, a more prudent approach would have been to sharpen the system in place. The Legislature could have better defined the board's powers and duties with respect to certain stages of the oversight process and created statutory administrative firewalls to separate the functions of internal staff.

Several models exist within the state that shed light on how to better separate the prosecutorial and adjudicatory functions of an agency. The only other Louisiana body responsible for disciplining elected officials is the Judiciary Commission of Louisiana, which enforces the Code of Judiciary Conduct as to members of the judiciary.

Like the ethics board, the commission is responsible for the investigation and prosecution of judicial misconduct, and for recommending penalties to the adjudicator (the Louisiana Supreme Court). However, the commission establishes stringent internal firewalls to fairly separate its functions. Investigation and prosecution of potential conduct violations are handled by the special counsel (an employee of the commission) within the Office of Special Counsel, which is housed in a different physical locale than the commission itself. The commission employs another attorney (commission counsel) whose primary function is to advise the commission with respect to matters coming before it. Rules prohibiting ex-parte communications between the two sides regarding cases under review are strictly enforced. Weaknesses of this model are that the special counsel is an employee of the commission and the commission still may initiate investigations on its own motion.

Additionally, there are several professional boards within the state that are responsible for disciplining their members if their codes of professional conduct are breached. None of those boards must share its disciplinary responsibility with the Division of Administrative Law, as the ethics board now is required to do. One example of a professional disciplinary board with strict firewalls is the Louisiana Attorney Disciplinary Board (LADB). Like the ethics board and the judiciary commission, the LADB is a multi-member group whose members are appointed from different sources and who serve staggered, set terms. The LADB divides itself into a number of committees to separate the functions it serves and ensure fairness in the disciplinary process. The LADB appoints a "disciplinary counsel" who is dedicated fully to investigation and prosecution of potential ethics violations. LADB "hearing committees" review recommendations submitted by the disciplinary counsel; conduct pre-hearing conferences; and determine if there is probable cause to believe that a violation occurred. The

LADB as a whole reviews decisions by hearing committees and makes disciplinary recommendations to the adjudicatory body (the Louisiana Supreme Court), which decides whether the LADB recommendations should be enforced.

In both examples, the investigation/prosecution functions and the adjudicatory function are handled by multi-member groups who are either appointed from a variety of sources (Judiciary Commission/LADB) or are elected and accountable to the people of Louisiana (Supreme Court). The functions are effectively separated and ultimately implemented by two separate groups—however, none of the process is handed over to state employees who are dependent upon a single, appointed person for their salary, promotions and benefits. Regardless of the character of the people involved, the current ethics administration model cannot be as insulated from political influence as the model PAR proposes.

Considering such disciplinary bodies within the state and their inherent strengths and weaknesses, Figure 3 presents a proposed model for ethics enforcement going forward. Much like the recommendations advanced by the ethics board through its white paper, Figure 3 proposes that the ethics board be re-established as the only authority responsible for administering and enforcing the ethics code, and that the function of investigation and collection/auditing of financial reports be managed by a multi-member entity that acts independently of the board. Figure 3 proposes to reassign, not to expand, the existing staff and resources of the ethics administration. Currently the board has funding for 41 total positions—28 of which are vacant.

Audit, investigation and prosecution functions

The proposed ethics model in Figure 3 transfers investigation authority to an ethics investigation commission dedicated to the collection and auditing of financial reports and investigation and prosecution of ethics violations, and gives that commission control over which complaints or issues will be

pursued. It is vital that investigations may be initiated by some mechanism other than a complaint; otherwise there would be no way for potential violations to be investigated unless a complainant was brave enough to come forward. However, that power does not need to lie with the ethics board, as it may be perceived as the commingling of investigation and adjudication. The ethics board would serve as an advisory and enforcement/adjudicatory board only. The board would not be involved in the investigation stage of ethics enforcement.

In the proposed model, all ethics complaints would be filed with a three-person Ethics Investigation Commission (EIC) and its staff, which would be responsible for investigation and prosecution (EIC Division I). Additionally, the EIC would collect all financial reports, audit a random selection of them for truthfulness and assess fines or issue charges where reporting laws had been violated (EIC Division II).

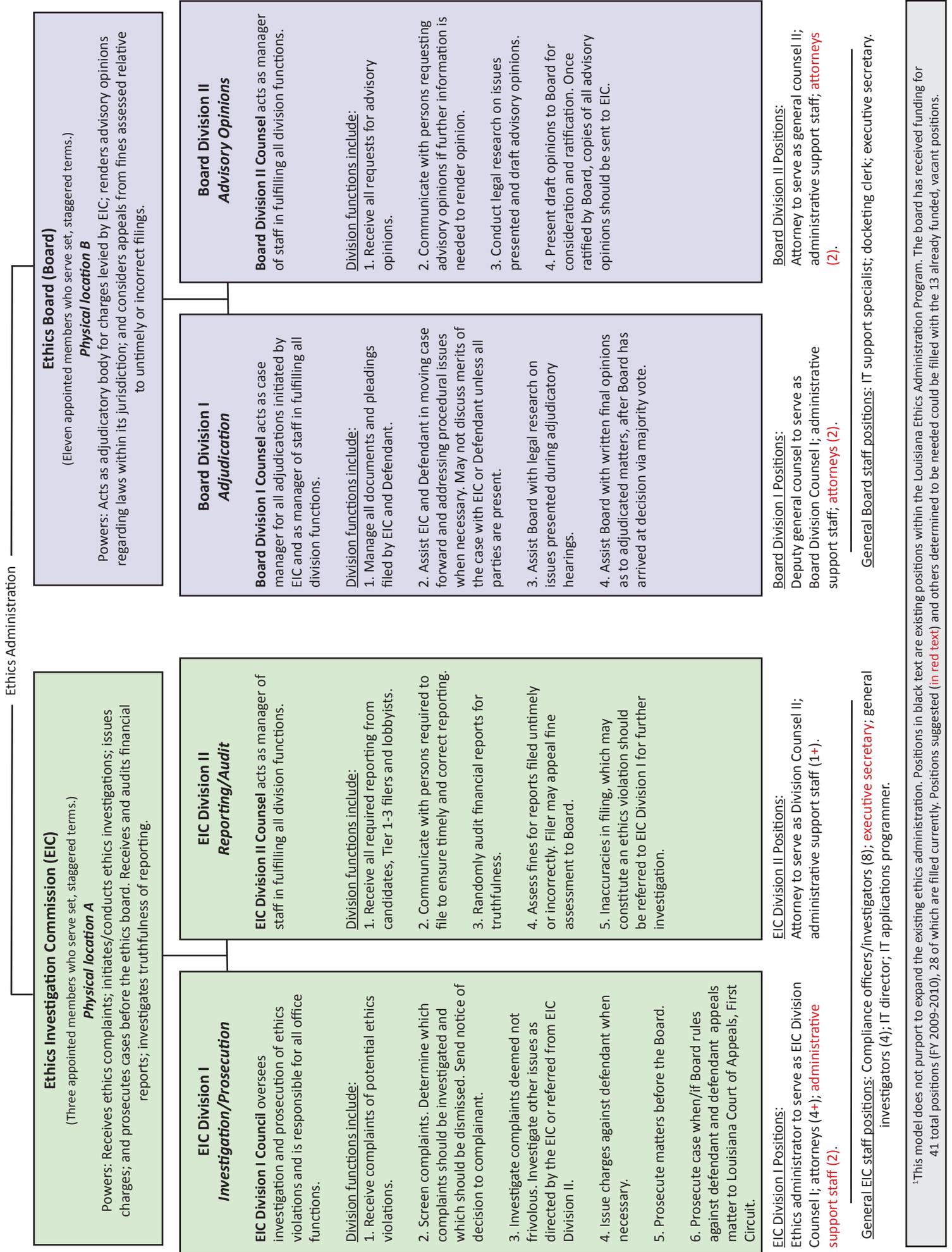
Applicants for the EIC would be nominated by the same nominating committee that nominates ethics board members. One member would be selected by the governor and one by each chamber of the Legislature. Like ethics board staff positions, staff positions within the EIC would be created within the Department of Civil Service to provide reasonable insulation from political power plays. Ideally, the EIC would be housed in a separate physical location from the ethics board and its staff.

Advisory and adjudication functions

The ethics board would serve as an advisory and adjudicatory body, with an internal division (Division I) dedicated to the management of ethics cases filed by the EIC. No communications between the EIC (or its staff) and the ethics board (or its staff) would be allowed relative to the merits of a case without the accused having notice of such and an opportunity to participate.

The ethics board would not have authority to initiate investigations nor would it receive details on the merits of a case

Figure 3. PAR's Proposed Ethics Administration Model for Louisiana¹



unless and until the case advanced to the adjudication stage. This would create meaningful firewalls between the different functions of the ethics enforcement process—investigations would be handled in one place (EIC) with a dedicated staff, while adjudications would be decided by the ethics board with the assistance of its staff.

If the accused did not like the adjudication result, the case (as was previously done) could be appealed immediately to the Louisiana First Circuit Court of Appeals. The complex constitutional issues and perception problems regarding the board's current lack of right to appeal would be moot, as the board would not need to appeal its own rulings.

The ethics board would retain the power to issue advisory opinions (Division II). The power of advisory opinions would be clear, as opinions would once again be rendered by the body responsible for interpreting the law and rendering judgment.

IMPROVING TRANSPARENCY

To improve transparency, PAR recommends that the Legislature:

6. Require that public ethics meetings and hearings be broadcast live via the Internet and that audio/video archives and written minutes of prior meetings and hearings be provided online, as well.

7. Require all financial information submitted to the ethics investigation commission be entered into an online data system, which would allow the information to be sorted by any combination of fields.

The Louisiana ethics board has been improving its Web site to provide a more user-friendly experience for those seeking information. Currently, the site features information regarding when meetings will be held, along with the full agenda for those meetings and written minutes from the

board's most recent meeting; copies of the laws the board administers and the internal rules that the board and staff follow; information relative to filing complaints and requesting advisory opinions; and an RSS feed, which allows citizens to receive e-mail alerts when any information on the site changes. Copies of advisory opinions issued by the board and reports (financial disclosure, campaign finance and lobbying) collected by the board also are posted on the site, although searchability of the reporting is limited.

The board can enhance transparency further by streaming its meetings live via the Internet; providing archived audio and video recordings of previous meetings; and providing archived written minutes of previous meetings to allow citizens to access meeting information at a later date. Very few states offer this level of transparency (see Table 7). Only Georgia offers a higher level of transparency on its Web site than Louisiana currently provides. And none provides what is being proposed by this report. Louisiana's ethics administrator has estimated the startup costs of providing live and archived meetings online would be close to \$165,000. Whether the current ethics' budget could cover the cost of transparency without additional funds is unclear.

Additionally, the Legislature should require that all reports be filed electronically into a data system that allows the information to be sorted by any relevant fields. Citizens should be able to search the data in order to identify relationships and potential influence. For instance, voters should be able to sort contributions to see how much money a lawmaker has received from a certain type of industry, company or lobbyist; or whether significant amounts of money were given to or spent on a lawmaker within a certain date range to identify the possible effect on legislation passed shortly thereafter. Collecting financial data is a good first step. However, to be truly effective, the data should be stored in such a way that citizens can make use of and draw meaningful conclusions from the information.

Table 7. Comparison of state ethics commission Web sites relative to transparency

Ranking for state	State, in order of rank	Dedicated Web site?	Schedules/agendas posted online?	Laws administered posted online?	Procedural rules posted online?	Process for complaints or advisory opinions posted online?	Reports filed with agency online?	Advisory opinions issued by agency online?	Live audio/video of meetings online?	Archived audio/video of meetings online?	Documents discussed at meetings online?	Minutes taken at meetings online?	E-mail list serv/RSS feed for changes to site?	Total Points for state ¹ (of 12 possible)
1	GA	1	1	1	1	1	1	1	1	1	0	1	1	11
2	LA	1	1	1	1	1	1	1	0	0	1	1	1	10
2	ME	1	1	1	1	1	1	1	1	1	0	1	0	10
2	TN	1	1	1	1	1	1	1	1	1	0	1	0	10
3	CA	1	1	1	1	1	0	1	0	0	1	1	1	9
3	MN	1	1	1	1	1	1	1	0	0	0	1	1	9
3	NY	1	1	1	1	1	1	1	1	0	0	0	1	9
4	WA(2)	1	1	1	1	1	N/A	1	1	0	0	1	0	8 of 11
5	AK(1)	1	1	1	1	1	1	1	0	0	0	1	0	8
5	AK(2)	1	1	1	1	1	1	1	0	0	0	1	0	8
5	CT	1	1	1	1	1	0	1	0	0	0	1	1	8
5	KS	1	1	1	1	1	1	1	0	0	0	0	1	8
5	NE	1	1	1	1	1	1	1	0	0	0	1	0	8
5	NV	1	1	1	1	1	1	1	0	0	0	1	0	8
5	OK	1	1	1	1	1	1	1	0	0	0	1	0	8
5	PA	1	1	1	1	1	1	0	0	1	0	0	1	8
5	RI	1	1	1	1	1	1	1	0	0	0	0	1	8
5	TX	1	1	1	1	1	1	1	0	0	0	1	0	8
6	WA(3)	1	1	1	1	1	0	1	0	0	0	1	0	7
6	IA	1	1	1	1	0	1	1	0	0	0	1	0	7
6	KY(1)	1	1	1	1	0	1	1	0	0	0	1	0	7
6	KY(2)	1	1	1	1	1	1	1	0	0	0	0	0	7
6	MA	1	1	1	1	1	0	1	0	0	0	0	1	7
6	MO	1	1	1	1	1	1	1	0	0	0	0	0	7
6	OR	1	1	1	0	1	1	1	0	0	0	1	0	7
6	SC	1	1	1	0	1	1	1	0	0	0	1	0	7
6	WI	1	1	1	1	0	1	1	0	0	0	1	0	7
7	CO	1	1	0	1	1	N/A	1	0	0	0	1	0	6 of 11
7	MI	1	1	1	1	1	N/A	1	0	0	0	0	0	6 of 11
7	WA(1)	1	1	1	1	1	N/A	1	0	0	0	0	0	6 of 11
8	DE	1	1	1	1	0	0	1	0	0	0	1	0	6
8	FL	1	1	1	1	1	0	1	0	0	0	0	0	6
8	IN(1)	1	1	1	1	1	1	0	0	0	0	0	0	6
8	MS	1	0	1	1	1	0	1	0	0	1	0	0	6
8	NJ(1)	1	1	1	1	1	1	0	0	0	0	0	0	6
8	NC	1	1	1	1	1	0	1	0	0	0	0	0	6
8	OH	1	1	1	1	1	0	1	0	0	0	0	0	6
8	WV	1	1	1	1	1	0	1	0	0	0	0	0	6
9	AL	1	1	1	0	1	0	1	0	0	0	0	0	5
9	HI	1	0	1	1	0	1	1	0	0	0	0	0	5
9	IN(2)	1	1	0	0	1	0	1	0	0	0	1	0	5
10	AR	1	0	1	1	0	N/A	1	0	0	0	0	0	4 of 11
11	NJ(2)	1	1	0	0	0	1	1	0	0	0	0	0	4
12	MD	1	0	1	0	0	0	1	0	0	0	0	0	3
13	IL(1)	0	0	1	1	0	N/A	0	0	0	0	0	0	2 of 11
14	IL(2)	0	0	1	0	0	0	0	0	0	0	0	0	1
States scored positively		96%	87%	93%	85%	78%	57%	87%	11%	9%	7%	50%	22%	

Source: Review of commission Web sites

¹Only 11 points possible for commissions that do not collect/store reports.

CONCLUSION

Strength of ethics oversight can be measured by considering what is required from those who serve the public and to what extent the requirements can be enforced. Louisiana has made positive strides in ethics reform by strengthening campaign and personal financial disclosure requirements, limitations on gifts that public servants can receive, and lobbyist reporting requirements. For these efforts, the state has received national praise.

A closer look behind the veil of reform, however, reveals that much work remains to be done. Although the state has increased what is required from public servants, procedural changes have confused the ethics board's ability to administer the law. In an effort to separate functions (investigation, prosecution and adjudication) within the board, the Legislature has created an alternate system that is wrought with procedural pitfalls. Instead of ethics cases being judged by the 11-member board originally created to do so, cases now are judged by civil service administrative law judges who answer to one person who is appointed by the governor. As a

result, the ethics administration process now resembles the model that 1973 constitutional convention delegates attempted to avoid—one that places inordinate power in the hands of the governor.

The new process removes significant power from the ethics board. It no longer can judge whether a violation of the law has occurred; the fines it recommends can be set aside by the EAB; the advisory opinions it issues hold less value; it is forced to accept and adopt the rulings of the EAB with no opportunity to appeal when it disagrees with the outcome of a case; and it is required to close its file on the matter even if it objects to doing so.

Ultimately, the goals of ethics oversight are to establish ethical standards for public servants and promote public confidence in government. Recently passed, more stringent expectations of public servants hint that a new day has dawned in Louisiana's governmental culture. However, until the Legislature designs a solid enforcement system that is as insulated from political interference as possible, improved ethics laws will mean little to voters, and public confidence in ethics reform will decline.

Primary author of this report is Ann W. Heath, PAR staff attorney and research analyst.



The Public Affairs Research Council (PAR) is a private, nonprofit, non-partisan public policy research organization focused on pointing the way toward a more efficient, effective, transparent and accountable Louisiana government. PAR was founded in 1950 and is a 501(c)(3) tax-exempt organization supported by foundation and corporate grants and individual donations. PAR has never taken state government funds.

Public Affairs Research Council of Louisiana
4664 Jamestown Ave., Suite 300
Baton Rouge, LA 70808
Phone: (225) 926-8414
www.la-par.org

Donna Saurage, *Chairman of the Board*

Jim Brandt, *President*
jimbrandt@la-par.org

Jennifer Pike, *Research Director*
jpik@la-par.org

Ann W. Heath, *Staff Attorney and Research Analyst*
ann@la-par.org