

**Governor-Elect Bobby Jindal's Transition
Advisory Council on Ethics
Final Report**

January 2008

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Governor-Elect Bobby Jindal’s Transition Advisory Council on Ethics

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January 14, 2008

Governor-Elect Bobby Jindal
Louisiana Transition Office
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Dear Governor-Elect Jindal:

It has been our privilege and pleasure to lead your Advisory Council on Ethics. We commend you for making ethics in government a centerpiece in your campaign and for beginning your administration with a special legislative session dedicated to ethics reform. The Council has been guided by your firm belief that progress in Louisiana must be built upon a foundation of ethical and transparent government at all levels.

Over the course of three public hearings in five weeks, we heard from experts across the country, gathered "best practices," and engaged in active discussion with our fellow council members. The following report highlights the key findings and issues that arose in our meetings and outlines our joint recommendations to your new administration.

Ethics reform is an enormous undertaking for Louisiana with opportunities for progress on many fronts. Building upon the key principle that public officials should not use their public offices for personal gain, we make specific recommendations in the areas of financial disclosure for elected officials, more rigorous regulation and disclosure for lobbyists, and the elimination of exceptions in our Code of Governmental Ethics that open the door for real and apparent conflicts of interest. Equally important, we offer structural and procedural suggestions to improve the administrative, enforcement, and educational capacity of Louisiana's Board of Ethics.

Thank you for the opportunity to contribute during this critical time in Louisiana. Please know that every member of the Council considered this service an honor and that we took to heart your charge that the citizens of Louisiana deserve no less than the best ethics provisions in the country. We look forward to supporting your ethics package in the special legislative session and to continued progress toward the goal of good government throughout the next four years.

Sincerely,

Sean Reilly
Chair

Virginia Shehee
Vice Chair

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Note: All members of the Advisory Council on Ethics were provided the opportunity to contribute to and review this report. However, it should not be assumed that every member subscribes to all recommendations, observations, and findings.

Introduction

The perception and reality of corruption and poor governance in Louisiana has far-reaching consequences for citizen trust, political engagement, and economic development. Louisiana is rich in natural resources and rich in talented people. We squander those assets in a culture that tolerates cronyism over merit, and the result is often incompetence or worse, rather than exceptional government service that citizens deserve.

The first step toward overcoming this legacy is ethics reform. Louisiana must take bold and specific action to show our citizens and the nation that “business as usual” has been re-defined in our state and that “what you know” is more important than “who you know.” Not only is ethics reform the right thing to do, but stronger ethics laws will encourage more businesses to come here and help existing ones to grow, meaning more and better jobs, a growing economy, and a reason for our kids to stay here.

“Corruption is stealing opportunity from our children, stealing opportunity for our state.”

--Governor-Elect Bobby Jindal at the first hearing
of the Advisory Council on Ethics, 15 November 2007, Baton Rouge

Where We Stand

In a 2005 survey of out-of-state businesses, 56 percent noted that corruption in Louisiana was “important to their location decision” and ranked it #2 among issues to address to attract business investment to our state.¹ Equally important, nearly 60 percent of businesses inside Louisiana “strongly agree” or “agree” with the negative perceptions expressed by business leaders outside of Louisiana.² As recently as October 2007, the *Corporate Crime Reporter* announced that Louisiana was “the most corrupt state in the nation” based on their analysis of federal convictions of public corruption across the country.³

These findings are reflected in national rankings produced by non-governmental institutions. Louisiana traditionally scores very low on a series of ethics indicators applied to the 50 states. These rankings highlight weaknesses in the state’s ethics laws, inhibiting our prospects for greater investment and economic growth. Louisiana scores as follows on two major national indices:

The Better Government Association’s Integrity Index⁴

Louisiana ranked #46 and received a cumulative score of 34.1% across the following five categories: freedom of information, whistleblower protection, campaign finance, gifts, trip, and honoraria, and conflicts of interest.

Table 1: Louisiana’s BGA Rank and Score

BGA Category	Rank	Percentage Score
Freedom of Information	#3	78%
Whistleblower Protection	#46	0%
Campaign Finance	#19	46%

Gifts, Trips, and Honoraria	#41	15%
Conflicts of Interest	#46	32%

The Center for Public Integrity⁵

CPI ranks states on the level of disclosure of the governor, the legislators, and lobbyists. While the governor’s financial disclosure receives a grade of “B” and ranks third in the nation, Louisiana’s requirements for legislators rank #44.

Table 2: Louisiana’s CPI Rank and Score

CPI Category	Rank	Percentage Score
Governor’s Disclosure	#3	89.5%
Legislator’s Disclosure	#44	43%
Lobbyist Disclosure	#33	55%

Various states are in the process of reviewing and strengthening ethics laws. In recent years, Florida, Georgia, Tennessee, and other states adopted various measures to improve citizen trust. These reforms include enhanced financial disclosure for legislators, tougher lobbyist laws, restrictions on gifts to elected officials, and expanded training on ethics.

Why Ethics Reform, Why Now

While a culture and practice of integrity has become a much higher priority in the state in recent years, Louisiana’s citizens are demanding stronger action. In a 2007 survey, 87 percent of “likely Louisiana voters” believe it is “very important for Louisiana to improve its standings in national rankings of governmental ethics laws from the bottom five to the top five states in the country.”⁶ Coalitions of citizens and business leaders, such as LA Ethics 1 and Blueprint Louisiana, have formed over the past year to advocate for specific reforms before the legislature, including legislative financial disclosure and lobbyist regulation. As a result, numerous new legislators ran on a platform that included ethics reform.

This growing wave of public support was underscored by the election of Governor Bobby Jindal, who pledged that changing the political culture in our state is “Job One.” He will call a special session of the legislature to focus on ethics reform within a month of assuming office on January 14, 2008. Governor Jindal’s stated goal is to “make our state the standard-bearer for ethics, transparency, and government accountability.”⁷

The Advisory Council on Ethics

To this end, Governor Jindal invited 47 citizens from across the state to join an Advisory Council on Ethics. This group was charged with three goals:

1. To collect testimony from expert presentations;
2. To receive input from interested constituents who have reached out to the Advisory Council with questions or ideas for ethics in Louisiana; and
3. To produce this outcome document with recommendations on ethics reform for Governor Jindal when he assumes office in January.

The Advisory Council on Ethics held three public meetings. The first hearing was opened by the governor-elect in Baton Rouge on November 15. Invited speakers outlined the national picture

on ethics laws and trends, including best practices from Texas and other states, and made the case for ethics reform, highlighting the link with economic development. On December 4, the Council re-convened in Shreveport to discuss enacting and enforcing ethics laws, hearing presentations on Louisiana's current ethics laws and structures, recommendations and examples from Georgia and Ohio, and lessons learned from the 2007 legislative financial disclosures bill and process. Finally, the third and final meeting was held in Baton Rouge on December 19, where individual council members were invited to raise issues of concern and present their recommendations for consideration before their fellow members.

This report represents a summary of the issues, themes, and findings that arose as a result of this process. We respectfully submit our analysis and recommendations to Governor Jindal and offer our full support as he begins this monumental and historic undertaking. We view the special session on ethics reform as the first step in a "fresh start" for Louisiana and look ahead with anticipation as our state moves forward in the years to come.

"This kind of change only happens if the public demands it."

--Peggy Kerns, Director, Center for Ethics in Government,
the National Conference of State Legislatures (NCSL) at the
first hearing of the Advisory Council on Ethics, 15 November 2007, Baton Rouge

Key Issues, Themes, and Findings

The Advisory Council discussed a variety of issues related to ethics reform, including financial disclosure, conflicts of interest, lobbyist regulation, and education and enforcement, among other topics.

Financial Disclosure

The public has a right to know the financial motivations of their elected and appointed leadership. Financial disclosures serve a two-fold purpose, according to David Freel, Executive Director, Ohio Ethics Commission; Former President, the Council on Governmental Ethics Laws (COGEL): disclosures both remind filers of potential conflicts of interest and inform the public of these potential conflicts.

According to current law, only a few Louisiana legislators must publicly disclose information regarding their income sources and amounts. Legislators, their spouses, and their business enterprises must disclose income in excess of \$250 received from the state and political subdivisions or gaming interests. All other forms of legislators' income are not disclosed to the public, which results in a national ranking of #44 by the Center for Public Integrity.

The requirements for the governor and gubernatorial candidates, however, are far more extensive and include income, officer and director positions, investments, and liabilities in value range categories, as well as disclosure of real property holdings. In almost perfect contrast with the legislative ranking, Louisiana is #3 in the nation for gubernatorial disclosure.

Table 3: CPI Disclosure Rankings

SREB State	Legislature	Governor
Alabama	9	13
Arkansas	11	16
Delaware	24	25
Florida	25	24
Georgia	6	7
Kentucky	17	23
Louisiana	44	3
Maryland	21	27
Mississippi	36	35
North Carolina	19	22
Oklahoma	34	35
South Carolina	28	30
Tennessee	32	33
Texas	3	4
Virginia	28	28
West Virginia	43	43

In order to shed light on potential conflicts of interest, over half of states nationwide require legislators to state their occupation, the sources of their income, the names of corporations in which they hold a position, the addresses of their property, the names of creditors and debtors, and the names of businesses in which they hold a financial interest. Seventeen states require legislators to disclose an exact amount or value range of income.⁸ Strong Southern states in the national rankings include Alabama and Texas, which require extensive disclosure even though they maintain part-time “citizen legislatures” similar to Louisiana. In Texas, legislators complete a 24-page form for themselves, their spouses, and their dependent children that includes income sources, value ranges of stocks and mutual funds, liabilities in value ranges, the address and description of real property, interests in business entities, assets and liabilities of business associations in value ranges, interests in business in common with lobbyists, and boards and executive positions, among other items (see appendix). This is accompanied by misdemeanor criminal penalties for “knowingly and willingly failing to file.” The Texas model clearly shows that the part-time nature of the state legislator’s job does not negate potential conflicts of interest or the importance of public access to this information. Louisiana might go in this direction or consider creative mechanisms, such as “redacted disclosure,” for example, whereby full and complete disclosure forms could be submitted to the ethics staff for a confidential, full review with a summary version made available to the general public.

In the 2007 legislative session in Louisiana, Representatives Don Cazayoux (D-New Roads), Michael Jackson (D-Baton Rouge), and Eric Lafleur (D-Ville Platte) filed House Bill 730 to require legislative financial disclosure. The bill passed the House and was sent to the Senate, where a different version passed, resulting in the appointment of a Conference Committee. The bill was set aside in the waning moments of the legislative session, and no final action was taken.

The major point of contention in the 2007 debates on House Bill 730 was the reach of financial disclosures—specifically, whether the requirements should be extended to local officials. A number of states require financial disclosure at the local level. Of the 16 Southern Regional Education Board (SREB) states, 10 require financial disclosure by at least some local officials.

Several require financial disclosure of some sort by *all public servants*, which includes all state government employees, not just elected officials. Alabama, for example, requires public officials and public servants to complete the same Statement of Economic Interest, including elected and appointed officials and candidates at the state, county, and municipal levels of government as well as all public employees at the state, county, and municipal levels of government who earn \$50,000 annually or more.⁹

Some good government groups recommend extending financial disclosure requirements to judges in addition to local officials. While 28 states require statutory financial disclosure filings by judges, Louisiana and South Carolina are the only two of the 16 SREB states that do not.¹⁰ Instead, judges file annual reports with the Office of the Judicial Administrator of the Louisiana Supreme Court solely on income received in connection with quasi-judicial activity or disaster-related contracts. In a 2007 report by the US Chamber of Commerce, Louisiana ranks 49th in judges' impartiality and 49th in judges' competence.¹¹ The Public Affairs Research Council of Louisiana (PAR) posits that "If the principle is to shed light on conflicts of interest, it should apply to judges and prosecutors as other elected officials."¹²

Conflicts of Interest

While financial disclosure can expose potential conflicts of interest, laws to directly prohibit or restrict potential conflicts are equally important. Louisiana prohibits all public servants in which the individual has a controlling interest (defined as greater than 25 percent ownership in a legal entity) from entering into or being in any way interested in any contract or transaction involving their *own* agency, although there is nothing to prohibit contractual arrangements with *other* state agencies. However, legislators and their spouses are prohibited from entering into any contract or subcontract with *any* branch, agency, or institution of state government unless the contract is awarded by competitive bidding or is competitively negotiated through a request for proposal process.

As of 2004, at least 28 states restrict legislators from having certain contracts with the state, and at least 26 states, including Louisiana, require legislators to disclose information about these arrangements, either on financial disclosure forms or separate statements. In addition to contracts with state agencies, at least 13 states restrict legislators from entering into certain contracts with local governments.¹³

Still, several states have stronger restrictions than Louisiana. Some states restrict legislators from entering into competitively bid contracts authorized during their term and for a period of time *after* they have left office, ranging from six months to two years. Some states allow legislators to enter into competitively bid contracts only under strict, well-defined circumstances. Massachusetts allows the practice if the legislator and his/her immediate family's interest aggregates to less than a 10 percent interest in the entity entering into the contract.¹⁴ In Mississippi, public servants (including legislators) can only bid on contracts with their agency if the goods or services are available from two or fewer sources or if the contract involves research into intellectual property they created.

“There needs to be a level playing field where the laws are applied equally and fairly regardless of political influence and connection.”

--Ruthie Frierson, Founder and Chairperson, Citizens for 1 Greater New Orleans at the first hearing of the Advisory Council on Ethics, 15 November 2007, Baton Rouge

Lobbyist Regulation

According to Peggy Kerns of NCSL, lobbyist reform has been the main emphasis of the “surge of ethics law reforms” with the U.S. Congress and at least 15 states, including Louisiana, enacting changes in the past two years. She notes: “Proponents of strict regulation of lobbyists maintain that it levels the playing field... Opponents say that relationships between lawmakers and the people who provide information are important and necessary in the Capitol and elsewhere, so lawmakers can make informed decisions.” Regardless of one’s position, lobbyist regulation is on the rise nationwide.¹⁵

Louisiana ranks #33 on the Center for Public Integrity lobby ranking. Both legislative and executive branch lobbyists must register annually with the ethics board for a fee of \$110. This form includes their employers and a photograph. Semi-annually, registered lobbyists must submit expenditure reports to the ethics board, which include a list of total expenditures (\$10 or more) for each official that exceeded \$50 on any one occasion or \$250 in the six-month period, among other items. However, in contrast with many other states, Louisiana lobbyists do not report compensation, business relationships with legislators, or subject matter for lobbying. Currently, reports are filed with the ethics administration (in hard copy or electronically), scanned, and posted on the web in a form only accessible by first downloading software and obtaining a password. The format is not user-friendly, as it cannot be easily searched or sorted, and the lag time between submission and public availability is significant. Texas, on the other hand, requires all lobbyist filing to be electronic.

Table 4: CPI Lobbyist Disclosure Rankings

SREB State	Rank
Kentucky	2
South Carolina	3
Maryland	10
Texas	12
Mississippi	14
Virginia	16
Georgia	18
North Carolina	27
Arkansas	30
Delaware	30
Florida	33
Louisiana	33
West Virginia	40
Alabama	40
Oklahoma	42
Tennessee	45

Among the major lobbying reforms in states that have recently strengthened their laws are restrictions and prohibitions on gifts from lobbyists, including food and beverage. Seven states recently enacted a total ban on gifts from lobbyists, while others continue to enhance the restrictions.¹⁶ Louisiana prohibits gifts (termed a “thing of economic value”) to public servants with several significant exceptions. The following are exempted from the definition of “a thing of economic value” in Louisiana law:

- “Food, drink, or refreshments consumed by a public servant, including reasonable transportation and entertainment incidental thereto...”¹⁷ In this way, elected officials can accept food and beverage from lobbyists or others without limits.
- A gift or gratuity related to a “cultural or sporting event” within the state when the value of such gift does not exceed \$100 per event (up to an aggregate amount of \$500 in a calendar year from any person).¹⁸ Lobbyists are required to report these expenditures to the ethics board, but only when the expense exceeds \$50 on any one occasion or \$250 in the six-month period for any one official.
- For legislators, specifically—“food, refreshments, and lodging reasonably related making [a public] speech, as well as reasonable transportation from his home, or the capitol, to and from the site of the speaking engagement from the sponsoring group or organization, provided the public speech is given in any state of the United States or Canada and provided such member of the legislature files an affidavit with the Board of Ethics...”¹⁹ If the presentation was given in-state, lobbyists are then exempted from reporting these amounts on expenditure reports.

At a January 2008 hearing, the members of the ethics board recommended repeal of only one of these exceptions: the allowance for cultural and sporting events.

Louisiana also continues to allow contingency fees for lobbyists. These commissions for lobbyists hinge on a favorable result in the legislative or executive branch. Contingency fees are prohibited in 38 states and restricted in four others because “a majority of legislators seem to agree that legislation should be prompted solely from considerations of the public good.”²⁰ In Texas, violation of the prohibition on contingency fees is a third-degree felony with penalties of imprisonment for no more than ten years and no less than two years, as well as fines of no more than \$10,000.²¹

Education and Enforcement

Strengthening ethics laws without improving enforcement does not lead to meaningful reform. To fulfill this mandate, 44 states have ethics oversight bodies in the form of ethics commissions or boards, of which 18, including Louisiana, have jurisdiction over both the executive and legislative branches.²² Frederick Herrmann, Executive Director of the New Jersey Election Law Enforcement Commission, points out: “Simply enacting new or strengthened ethics laws will prove meaningless unless the regulatory agencies charged with administering and enforcing these laws are empowered to do so.”²³ David Reisman, the Executive Director of the Texas Ethics Commission, concurs, ranking “tough, fair, and consistent enforcement of the laws” as the #1 reason that his Commission is successful.²⁴ The ethics board and staff must have the adequate resources to implement fair, consistent, and transparent enforcement of Louisiana’s ethics laws.

In 1997, Louisiana consolidated the Board of Ethics for Elected Officials and the Commission on Ethics for Public Employees into a single body: the Louisiana Board of Ethics. Since then, the board has consisted of 11 uncompensated members with five-year terms and a two-term limit. Seven members are appointed by the governor with Senate approval, while two are elected

directly by the House and two by the Senate. The pool of candidates is nominated by the presidents of the private colleges of Louisiana.

The board meets monthly in Baton Rouge and is charged with oversight and enforcement of the ethics code, campaign finance laws, and lobbying laws. The board has the authority to issue non-binding advisory opinions and initiate investigations on its own or in response to a complaint. Louisiana—like most ethics commissions—can levy fines and penalties for late filings, mis-filings, and other violations of the Code of Governmental Ethics, the Campaign Finance Disclosure Act, and the Lobbying Disclosure Acts. When there is “probable cause” that a criminal violation may have occurred,²⁵ the board is required to forward its findings to the district attorney of the relevant parish for appropriate action, although this reportedly has never happened in the history of the ethics administration. Furthermore, while the ethics administration recently entered into a voluntary agreement with the Attorney General’s office to collect fines, the backlog remains very high, valued at approximately \$880,000 in uncollected fines.²⁶ In contrast, for example, the Texas Ethics Commission has absolutely no backlog, which Executive Director David Reisman attributes to a well-defined notification and collections process and the strong, swift response of his Attorney General’s office.²⁷ The *Shreveport Times* surveyed 10 state ethics commissions about their policies and practices in October 2007, which provides a useful snapshot for comparative purposes.

Table 5: Excerpt of the Shreveport Times’ Ethics Survey²⁸

	AL	AR	CA	GA	LA	MD	MS	NE	OK	TX
Issue annual report?	Y	N	Y	Y	N	Y	Y	N	Y	Y
Track complaints?	Y	Y	Y	Y	N	Y	Y	N	Y	Y
Track investigations?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Track subpoenas, witnesses, documents?	N/A	N	Not sure	Y	N	N	Y	N	N	Y
Accept anonymous complaints?	N	N	Y	N	N	Y	N	N	Y	N
Release complaint details?	N	N	Y	Y	N	N	Not usually	N	N	N
Release details after a finding is made?	Yes, limited	limited	Yes, with public records request	Y	N	limited	Y	limited	Y	Y
Made a finding against a legislator in past 5 years?	Y	Y	Y	N/A	Y	N/A	Y	N	Y	Y
Made a finding against other elected official in past 5 years?	Y	Y	Y	N/A	Y	Y	Y	Y	Y	Y
Findings enforceable in court?	No, except in some cases	Y	Y	Y	Y	N/A	N	Y	Y	Y
Ability to recommend criminal prosecution?	Y	Shares info and makes recom.	Y	Y	Y	Y	Y	Y	N	Y

Number of recommendations for prosecution in past 5 years?	35	2 in past 10 years	often	2	0	N/A	0	Regularly talks to AG	N/A	1
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The Louisiana Board of Ethics is assisted by a professional staff of 21 (as of January 2008), including attorneys, investigators, compliance officers, an IT specialist, and support staff.²⁹ In 2007, the budget of the ethics administration was approved by the legislature at \$1.98 million.³⁰

Table 6: Budget and Staffing of Ethics Administrations

SREB State ³¹	2006-07 Budget	2006-07 Staff
Alabama	\$1.37 million	13
Arkansas	\$662 thousand	9
Delaware	\$164 thousand	2
Florida	\$2.67 million	23
Georgia	\$1.60 million	19
Kentucky	\$947 thousand	10
Louisiana	\$1.71 million	20
Maryland	\$750 thousand	9
Mississippi	\$500 thousand	8
North Carolina	\$740 thousand	9
Oklahoma	\$593 thousand	7
South Carolina	N/A	2
Tennessee	\$400 thousand	6
Texas	\$2.00 million	35
Virginia	N/A	N/A
West Virginia	\$700 thousand	6

Louisiana became the 19th state to require ethics training with the adoption of House Bill 493 in 2007. This law responds to the fact that the vast majority of violators of ethics laws, including campaign finance, are simply not aware of the rules in the first place. The new law requires statewide elected officials, legislators, and public service commissioners to receive a minimum of two hours of education and training on ethics during their term (beginning in 2008). This requirement extends to all elected officials in Louisiana beginning in 2010 and to all public servants in 2012. While this bill included a budget request of approximately \$850,000, the legislature passed the law without adding funds to the ethics administration budget.³² Prior to this new mandate, ethics training was provided only on request, in-person by an ethics administration staff member.

A critical component of transparency and enforcement is Information Technology (IT). States with strong records and reputations for effective enforcement also utilize state-of-the-art technology. Information is submitted electronically and is quickly available online to the public. This is not the case in Louisiana, where complaints about poor website design and inaccessibility abound. While campaign finance and lobbyist records are available online, this information is not user-friendly and significant time is required to even view the documentation, which is frequently illegible due to low-quality scanned hard copies.

Following the trend of increased state oversight of ethics, cities and counties across the country have formed ethics agencies, including Chicago, Los Angeles, and New York City, among others. The city of New Orleans recently established an Ethics Review Board, recruited a nationally renowned Inspector General, Robert Cerasoli of Massachusetts, and committed a budget of \$3.4 million for these agencies in 2008.³³

States have established a wide variety of ethics commissions to oversee and enforce ethics laws. Louisiana's appointment process for board members is widely considered a strong model with significant independence, although there is potentially room for re-structuring the board and its processes to improve fair and consistent enforcement. The jurisdiction and functions of campaign finance might be shifted to the Secretary of State, for example, although there are some concerns about politicizing the process by placing these tasks under the purview of an elected official. Some states structure the ethics board so that a chairperson and vice-chairperson are appointed from both political parties, for example, or so that board members are equally distributed by party affiliation.

*"If there is insufficient funding to support the mission,
the mission has failed from the beginning."*

--David E. Freel, Executive Director, Ohio Ethics Commission;
Former President, the Council on Governmental Ethics Laws
at the second hearing of the Advisory Council on Ethics, 4 December 2007, Shreveport

Additional Issues

There are over 100 exceptions to Louisiana's Code of Governmental Ethics.³⁴ While this is consistent with other states—Tennessee's recent ethics statute reportedly defines "gift" in two lines while exceptions make up six pages—the legal framework is confusing and complicated for the public servants who must follow these guidelines.³⁵ Some exceptions have a significant impact, such as the "food and beverage" allowance discussed above, while others were constructed for specific instances that may no longer exist. On December 12, 2007, the Louisiana Board of Ethics held a public symposium to review exceptions, where the staff of the ethics administration recommended a repeal of approximately half of all exceptions to the ethics code. At the subsequent board meeting in January 2008, members voted to repeal several significant exceptions, as described in detail in the recommendations section below.

A few council members posed questions to expert speakers regarding lawmakers' access to tickets for major sporting events, such as the Bowl Championship Series game in New Orleans in January 2008. Because legislators pay face value for these tickets, which are offered by Louisiana State University's Tiger Athletic Foundation and the Sugar Bowl Committee in this case, then technically no "gift" is given. This practice is common in other states, as well. Some question whether *access* to tickets, in and of itself, is a "thing of economic value," but that is not explicitly defined in current ethics laws. In 2006, then Senator Jay Dardenne offered a bill that was amended to specifically ban higher education institutions from "offering" tickets to public servants, but the law did not pass.³⁶

While Louisiana ranks #19 for Campaign Finance Laws on the BGA Integrity Index and #17 for Campaign Disclosure Laws by the Center for Governmental Studies,³⁷ proposals have been put forward to close loopholes, clarify language, and further strengthen this section of the law. Ideas raised in Advisory Council meetings include: requiring electronic filing and improving public access to information; increasing the details on campaign finance reports; limiting the direct contributions of individuals and companies; restricting lobbyist donations; and restricting the use of campaign funds for certain campaign expenditures (i.e. paying family members, spending money on entertainment, or using donor funds to pay ethics fines).

Louisiana law currently prescribes criminal penalties to some serious ethics violations, such as public bribery and malfeasance in office. For the most part, however, late and inaccurate filings are punished with civil penalties, although there are specific criminal provisions for those who “knowingly, willfully, and fraudulently” fail to file or provide inaccurate information on disclosure statements and campaign finance reports.³⁸ As mentioned above, the board is required to forward its findings to the district attorney for prosecution if the board members believe a criminal violation has occurred. Increasing penalties, particularly for campaign finance, would raise Louisiana’s score in the national rankings. Still, the board must find a criminal violation has occurred before prosecution will actually take place.

In addition to judicial disclosure, the Advisory Council discussed other aspects of reform in the judicial branch as it relates to ethics. First, members raised the issue of merit selection of judges, defined as: “a way of choosing judges that uses a nonpartisan commission of lawyers and non-lawyers to locate, recruit, investigate, and evaluate applicants for judgeships. The commission then submits the names of the most highly qualified applicants (usually three) to the appointing authority (usually the governor), who must make a final selection from the list.”³⁹ Some experts note that expensive judicial campaigns can increase the prospects of inappropriate behavior on the bench, such as favoritism to campaign contributors. On the other hand, proponents of elections believe voters should have the right to elect judges in the American democratic tradition. Twenty-four states and the District of Columbia make initial appointments to most or all of their courts through nominating commissions, and five other states use gubernatorial or legislative appointment without nominating commissions. Seven states, including Louisiana, elect all judges through partisan elections, while 13 states use nonpartisan elections to select all judges.⁴⁰ Changing the judicial selection system requires a constitutional change in Louisiana.

“It’s time to engage the judicial community in the discussion as we go forward with financial disclosure...If the principle is to shed light on conflicts of interest, it should apply to judges and prosecutors as other elected officials.”

--James Brandt, President, Public Affairs Research Council of Louisiana, at the second hearing of the Advisory Council on Ethics, 4 December 2007, Shreveport

Second, a related issue that arose in council discussions is judicial recusal to “reduce the potential link between interest group pressure and case decisions... But judges have declined to disqualify themselves or their peers because of campaign contributions.”⁴¹ The only mandatory recusal in Louisiana law is if a judge is also a witness; otherwise, recusal is optional.⁴² Louisiana could change the law to reflect the American Bar Association’s recommendation that a “judge *shall* disqualify himself or herself in a proceeding in which the judge’s impartiality might

reasonably be questioned...” [emphasis added]⁴³ Increased judicial disclosure would also highlight some potential conflicts.

Recusal issues in Louisiana are not confined to judges. Although elected officials are required to recuse themselves from voting on matters where they have a “substantial economic interest,” they are still allowed to vote if they file a written statement noting “the reasons why, despite the conflict, the elected official is able to cast a vote that is fair, objective, and in the public interest.”⁴⁴ While many would argue that this should not be allowed, appointed members of boards or commissions have absolutely no recusal recourse. Rather, they are prohibited from participation or interest in any transaction involving the agency if there is a potential conflict. In reality, this means that members must either remain absent from meetings when they are aware of a conflict, or resign their membership entirely. While legislators may recuse themselves from a vote when they feel there is a conflict of interest, there is no statutory measure to record that they abstained purposefully to avoid this conflict.

While perhaps not directly related to the Code of Governmental Ethics, council members noted several problems with public bid laws. In particular, state law does not require competitive bidding or negotiation on state contracts for “professional and personal services” or for “consulting services” with compensation less than \$50,000.⁴⁵ Some good government groups believe this to be a loophole that can be exploited. PAR recommends requiring a “competitive selection process for all professional, personal, consulting, and social service contracts—a Request for Proposal (RFP) for contracts over \$50,000 and a Request for Qualifications (RFQ) or RFP for contracts under \$50,000.”⁴⁶

Finally, although governments can create laws to codify ethics, in reality, individual behavior is rooted in regional culture and traditions as well as individual principles and moral values. However, as Peggy Kerns notes: “Public ethics is different from personal ethics... the burdens are heavier since the public’s interest is at play.”⁴⁷ Those who wish to break the law will break the law, yet that should not deter us from creating a sound framework with strong enforcement measures to set high expectations for our leadership.

Recommendations

Based on the findings and issues raised above, the Advisory Council on Ethics makes the following recommendations to Governor Jindal:

1. **Be a national model in governmental ethics laws.** In order to change our image at home and across the country, Louisiana should take bold steps and undertake serious reforms.
2. **Adopt financial disclosure for legislators; statewide elected officials; the heads of major executive branch departments and other key gubernatorial appointments; judges; elected officials at the parish and municipal level (excluding localities with fewer than 5,000 citizens); and spouses and candidates for these positions.** Include employment, income, client information, officer and director positions, investments, property, and liabilities. For personal income, replicate the value ranges in the governor’s nationally recognized personal financial disclosure form:
 - I. less than \$5,000
 - II. \$5,000 to \$24,999
 - III. \$25,000 to \$49,999

- IV. \$50,000 to \$99,999
- V. \$100,000 to \$199,999
- VI. \$200,000 or more.

The burden of disclosure should not be so onerous that the pool of potential candidates is discouraged, yet the public has a right to know the financial motivations of their elected and appointed leadership. Work closely with these parties to determine specifics, such as appropriate value ranges, enforcement mechanisms, and penalties. Some believe that disclosure should be uniform for all elected officials. Others believe that, depending on their role and duties, different groups of elected officials may require different standards for financial disclosure. Under no circumstances should this be an excuse to avoid or limit the adoption of strong laws for legislators and statewide elected officials.

3. **Enact greater restrictions on legislators doing business with the state, even when competitively bid, and increase disclosure requirements.** Follow the lead of model states and prohibit legislators from entering new state contracts during their term. Legislators should not be lobbyists and should not profit from their position, especially at the expense of other businesses in the state. When legislators propose amendments to the budget on behalf of non-governmental entities, full disclosure should accompany these requests. Moreover, any action taken by an elected official—at the state or local level—should be solely in the interests of the people and for the good of the state.
4. **Enhance disclosure on lobbyist registration forms and expenditure reports.** Current lobbyist disclosure laws must be improved and strengthened in order to increase public awareness of external influences on lawmakers. Draw on the Texas form as a model and include the type and level of compensation, the subject matter lobbied, expenditure totals by category, and all direct business relationships with legislators and elected and appointed officials. Require lobbyists to register with the state prior to initiating lobbying activities, increase the frequency of reporting, and require all filings to be electronic and posted online.
5. **Ban contingency fee contracts for lobbyists.**
6. **Repeal the following exceptions to the ethics code based on the recommendations of the Louisiana Board of Ethics in January 2008:**
 - Elected officials should be required to recuse themselves in all circumstances; they should no longer be allowed to prepare a written statement disclosing the conflict and proceed with casting a vote [RS 42:1120(A)].
 - Elected officials should no longer accept gifts for cultural and sporting events [RS 42:1123(13)].
 - Legislators should no longer enter into competitively bid or negotiated contracts [RS 42:1113(D)].
7. **Target two additional major exceptions:**
 - Legislators should no longer receive food, transportation, and lodging in connection with a speech or panel presentation given outside the state [RS 42:1123(16)]. While these events may be important to professional development and information sharing, the legislature maintains a budget for such participation; it is not necessary to accept gifts from lobbyists or other associations.

- Common-sense limits should be imposed on the food and drink that public servants are allowed to receive, and disclosure requirements for these items should be enhanced [RS 42:1102(22)(a)].
8. **Improve the mandatory governmental ethics training program for all state employees.** First, ensure that resources are increased to ensure implementation. Ethics administration staff should be empowered and enabled to provide training on ethics laws to prevent violations and to monitor and enforce the law when necessary. Second, require that training be conducted online for statewide elected officials and legislators. Finally, require passage of a simple “test” on ethics laws to demonstrate completion of mandatory training, and consider asking candidates to turn in this certificate as a condition of qualifying.
 9. **Mandate the referral of late fines to the Attorney General’s office** immediately after the board reaches a decision to levy a fine. The Attorney General should contact the violator directly to notify them that they are beginning criminal proceedings, while filing suit and obtaining a judgment. In addition, prohibit candidates with unpaid fines from qualifying to run for public office.
 10. **Undertake a review to reform campaign finance laws.** Because this issue was not a primary focus of the Council, members recommend conducting additional research to determine specific measures for campaign finance reform. From preliminary discussions, the following steps should be considered:
 - Restrict the timing of campaign contributions from lobbyists.
 - Add details to campaign finance reports.
 - Increase electronic filing requirements for campaign finance reports.
 - Prohibit the payment of ethics fines from campaign funds.
 - Restrict the use of campaign dollars to campaign expenditures by prohibiting payments to family members or for entertainment, for example.
 11. **Ensure the independence of the Louisiana Board of Ethics and the Ethics Administration Program.** Consider a review of the appointment process to minimize the impact of the governor and the legislature—who fall under the purview of the ethics board—on the budget and the selection of board members.
 12. **Improve the procedures of the ethics board to promote transparency and consistency.** Consider specific mechanisms to promote effective, uniform and fair enforcement; achieve a better balance of confidentiality during hearings with the public’s right to be informed; create and adhere to concrete guidelines and criteria for requests for waivers of reduction of fines and corrected reports.
 13. **Improve the procedures of the ethics administration to promote transparency, efficiency, and enforcement.** Authorize a management and efficiency review to make recommendations that will improve the ethics administration’s current practices. Require better record keeping and an annual report from the ethics board. Mandate random audits of filings for campaign finance, personal financial disclosures, and lobbyist reports so that information can be verified and investigated if questions arise.
 14. **Increase the budget and staffing of the ethics administration** to improve technology, expand training programs, and respond to other new responsibilities.

15. **Create a Louisiana “hot line” to report waste, fraud, and abuse, and protect whistleblowers who come forward.** This measure should replicate the system required by the Sarbanes-Oxley Act, whereby public companies must provide a fraud reporting hotline. To encourage reporting, this hot line is available online, accepts anonymous complaints, and forwards these issues directly to the audit committee of the company. In similar fashion, Louisiana should encourage reports of abuse and take such pragmatic steps to deter retaliation against employees.
16. **Engage citizen groups in ethics reform.** Public support and pressure will be critical to enact real ethics reform. The Governor’s Office should work with a variety of constituent groups in this effort, including the LA Ethics 1 Coalition, Blueprint Louisiana, Citizens for 1 Greater New Orleans, chambers of commerce, professional associations, student groups and others. Citizens should have an opportunity for input and an invitation to participate in the special session.
17. **Broadcast our progress.** When—not *if*, but *when*—Louisiana makes significant advancements in reforming our ethics laws, we must broadcast both the symbolic and the substantive nature of these changes. From the grassroots to the global level, Louisiana should proudly announce our commitment to a fresh start, to transparency and accountability to the public, and to good governance for all our citizens.

Appendix

1. Materials from Hearing #1
2. Materials from Hearing #2
3. Materials from Hearing #3
4. Submission from Individual Council Members

Endnotes

- ¹ *Louisiana Business Image Survey*. Baton Rouge, LA: The Public Policy Research Lab, 2005 <http://www.lsu.edu/survey/downloads/LouisianaBusinessImageReport2004.pdf>.
- ² *2004 Employer Survey Questionnaire*. Baton Rouge, LA: Council for a Better Louisiana, 2004 http://www.cabl.org/pdfs/CABL_Employer_Survey_Results.pdf.
- ³ “Louisiana Most Corrupt State in the Nation, Mississippi Second, Illinois Sixth, New Jersey Ninth.” *Corporate Crime Reporter* 21.40 8 October 2007 <http://www.corporatecrimereporter.com/corrupt100807.htm>.
- ⁴ *The BGA Integrity Index*. Chicago, IL: Better Government Association, 2002 http://www.bettergov.org/pdfs/policy_integrityindex_2002.pdf.
- ⁵ *Disclosure Ranking 2006*. Washington, DC: The Center for Public Integrity, 2006 <http://www.publicintegrity.org/oi/db.aspx?act=rank>;
Governor’s Disclosure Ranking. Washington, DC: The Center for Public Integrity, 2007 <http://www.publicintegrity.org/StateDisclosure/db.aspx?act=rank>; *Hired Guns: A Comprehensive Look at Lobbying in the 50 States*. Washington, DC: The Center for Public Integrity, 2003 <http://www.publicintegrity.org/hiredguns/>.
- ⁶ *Transforming Louisiana into a National Model for Governmental Ethics—A Statewide Reform Initiative*. Baton Rouge, LA: La Ethics 1, 2007 <http://www.laethics1.com/white%20paper.pdf>.
- ⁷ *Ethics Reform: Ending Corruption*. Baton Rouge, LA: Friends of Bobby Jindal, 2007 http://www.louisianatransition.com/downloads/Jindal_Ethics_Pressrelease.pdf.
- ⁸ *Personal Financial Disclosure for Legislators*. Denver, CO: National Conference of State Legislatures, 2007 http://www.ncsl.org/programs/ethics/fd_home.htm.
- ⁹ *Guidelines for Public Officials/Public Employees for Compliance Under Alabama’s Ethics Law*. Montgomery, AL: Alabama Ethics Commission, n.d. http://www.ethics.alalinc.net/docs/guide_ecint.pdf.
- ¹⁰ *Judges’ Disclosure Comparison*. Washington, DC: The Center for Public Integrity, 2007 <http://www.publicintegrity.org/StateDisclosure/db.aspx?act=disco&cat=judicial>.
- ¹¹ *Lawsuit Climate 2007: Rating the States*. Washington, DC: US Chamber Institute for Legal Reform, 2007 http://www.instituteforlegalreform.com/lawsuitclimate2007/pdf/Individual_State_Rankings.pdf.
- ¹² Brandt, Jim. Presentation to the Advisory Council on Ethics. 4 December 2007.
- ¹³ *Contracting with Government: Laws for Legislators*. Denver, CO: The National Conference of State Legislatures, 2004 http://www.ncsl.org/programs/ethics/contracting_home.htm.
- ¹⁴ *Part IV. Crimes, Punishments and Proceedings in Criminal Cases. Title I. Crimes and Punishments. Chapter 268A. Conduct of Public Officials and Employees*. Boston, MA: The Commonwealth of Massachusetts, n.d. <http://www.mass.gov/legis/laws/mgl/268a-7.htm>.
- ¹⁵ Kerns, Peggy. Written submission to the Advisory Council on Ethics. 15 November 2007.
- ¹⁶ Kerns, Peggy. Hand-out to the Advisory Council on Ethics. 15 November 2007.
- ¹⁷ *RS 42:1102 (22)(a)*. Baton Rouge, LA: State of Louisiana, n.d. <http://www.legis.state.la.us/lss/lss.asp?doc=99214>.
- ¹⁸ *RS 42:1123 (13)*. Baton Rouge, LA: State of Louisiana, n.d. <http://www.legis.state.la.us/lss/lss.asp?doc=99232>.
- ¹⁹ *RS 42:1123(16)(a)*. Baton Rouge, LA: State of Louisiana, n.d. <http://www.legis.state.la.us/lss/lss.asp?doc=99232>.
- ²⁰ *Contingency Fees for Lobbyists*. Denver, CO: The National Conference of State Legislatures, 2007 http://www.ncsl.org/programs/ethics/contingency_fees.htm.
- ²¹ *Lobbying in Texas: A Guide to the Texas Law*. Austin, TX: Texas Ethics Commission, 2007 http://www.ethics.state.tx.us/guides/lobby_guide.pdf.
- ²² Freel, David. Handout to the Advisory Council on Ethics. 4 December 2007.
- ²³ Herrmann, Frederick M. “Empowering Governmental Ethics Agencies.” *Spectrum: The Journal of State Government* 77:3 (2004) http://www.csg.org/pubs/Documents/spec_su04.pdf.
- ²⁴ Reisman, David. Presentation to the Advisory Council on Ethics. 15 November 2007.
- ²⁵ *RS 42:1156*. Baton Rouge, LA: State of Louisiana, n.d. <http://www.legis.state.la.us/lss/lss.asp?doc=99249>.
- ²⁶ Bath, Allison. “Nearly \$880,000 in Ethics Fines Remain Unpaid.” *The Shreveport Times* 7 October 2007 <http://www.shreveporttimes.com/apps/pbcs.dll/article?AID=/20071007/NEWS01/710070323/1002/NEWS>.
- ²⁷ Reisman, David. Email to the staff of the Advisory Council on Ethics. 15 November 2007.
- ²⁸ *Ethics Survey*. Shreveport, LA: The Shreveport Times, 2007 <http://www.shreveporttimes.com/apps/pbcs.dll/section?Category=ETHICSSURVEY>.
- ²⁹ *Staff and Services Available*. Baton Rouge, LA: Louisiana Ethics Administration Program, 2007 <http://www.ethics.state.la.us/general/staff.htm>.
- ³⁰ *House Bill No. 1—Act. No. 18 Enrolled*. Baton Rouge, LA: Louisiana State Legislature, 2007 <http://www.legis.state.la.us/billdata/streamdocument.asp?did=450256>.
- ³¹ The information in this table was compiled from the following: Freel, David E. and LeeAnn Pelham. *COGEL Blue Book 2007 Ethics Update*. Athens, GA: The Council on Governmental Ethics Laws, 2007.
- ³² *House Bill 493—Act 315 Enrolled*. Baton Rouge, LA: Louisiana State Legislature, 2007 <http://www.legis.state.la.us/billdata/byinst.asp?sessionid=07RS&billid=HB493>.
- ³³ Egger, Bruce. “N.O. Council Approves Increased 2008 Budget.” *The Times-Picayune* 1 December 2007 <http://www.nola.com/news/t-p/neworleans/index.ssf?/base/news-8/1196493197179550.xml&coll=1>.
- ³⁴ *Chart of Exceptions to the Code of Governmental Ethics Classified by Individuals Affected*. Baton Rouge, LA: Louisiana Ethics Administration Program, 2007 <http://www.ethics.state.la.us/chart.pdf>.
- ³⁵ Kerns, Peggy. Written submission to the Advisory Council on Ethics. 15 November 2007.
- ³⁶ *Amendments Proposed by House Committee on House and Governmental Affairs to Engrossed Senate Bill No. 382 by Senator Dardenne*. Baton Rouge, LA: Louisiana State Legislature, 2006 <http://www.legis.state.la.us/billdata/streamdocument.asp?did=398548>.
- ³⁷ *Grading State Disclosure 2007: Louisiana*. Los Angeles, CA: The Campaign Disclosure Project, 2007 <http://www.campaigndisclosure.org/gradingstate/la.html>.
- ³⁸ *RS 18:1505.6*. Baton Rouge, LA: State of Louisiana, n.d. <http://www.legis.state.la.us/lss/lss.asp?doc=81470>.
- ³⁹ *Merit Selection: The Best Way to Choose the Best Judges*. Des Moines, IA: American Judicature Society, n.d. http://www.judicialselection.us/uploads/documents/ms_descrip_1185462202120.pdf.
- ⁴⁰ Berkson, Larry C. and Rachel Caulfield. *Judicial Selection in the United States: A Special Report*. Des Moines, IA: American Judicature Society, 2004 http://www.judicialselection.us/uploads/documents/Berkson_1196091951709.pdf.

⁴¹ Sample, James, Lauren Jones, and Rachel Weiss. *The New Politics of Judicial Elections 2006*. Ed. Jesse Rutledge. Washington, DC: Justice at Stake Campaign, 2006 <http://www.justiceatstake.org/files/NewPoliticsofJudicialElections2006.pdf>.

⁴² *Louisiana Code of Civil Procedure. Chapter 3. Recusation of Judges. Art.151. Grounds*. Baton Rouge, LA: Louisiana State Legislature, n.d. <http://www.legis.state.la.us/lss/lss.asp?doc=111252>.

⁴³ *Model Code of Judicial Conduct 3.E.1*. Chicago, IL: American Bar Association, n.d. http://www.abanet.org/cpr/mcjc/canon_3.html.

⁴⁴ RS 42:1120A. Baton Rouge, LA: Louisiana State Legislature, n.d. <http://www.legis.state.la.us/lss/lss.asp?doc=99227>.

⁴⁵ RS 39:1494, 1495, 1496. Baton Rouge, LA: Louisiana State Legislature, n.d. <http://www.legis.state.la.us/lss/lss.asp?doc=95971>.

⁴⁶ *White Paper on Governmental Ethics and Constitutional Revision*. Baton Rouge, LA: Public Affairs Research Council of Louisiana, 2003 <http://www.la-par.org/Publications/HTM/whiteethics.htm>.

⁴⁷ Kerns, Peggy. Hand-out to the Advisory Council on Ethics. 15 November 2007.