

Regular Session, 2013

HOUSE BILL NO. 19

BY REPRESENTATIVE RICHARD AND SENATOR GALLOT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PUBLIC RECORDS: Provides relative to records of the office of the governor

1 AN ACT

2 To enact R.S. 44:5.1 and to repeal R.S. 44:5, relative to public records; to provide for the
3 application of the laws relative to public records to the records of the governor and
4 the office of the governor; to provide for the transfer of the records to state archives;
5 to provide certain exceptions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 44:5.1 is hereby enacted to read as follows:

8 §5.1. Records of the office of the governor

9 A. The legislature recognizes that it is essential to the maintenance of a
10 democratic society that public business be performed in an open and public manner
11 and that the citizens be advised and aware of the performance of public officials and
12 the deliberations and decisions that go into making public policy. Toward this end,
13 the provisions of this Section, as well as the other provisions of this Chapter, shall
14 be construed liberally so as to facilitate, rather than hinder, access to public records.

15 B. Records of the office of the governor shall be public records and shall be
16 subject to the provisions of this Chapter.

17 C.(1) Notwithstanding Subsection B of this Section, a record of the executive
18 office of the governor that is an intraoffice communication between the governor and
19 his staff shall be privileged from disclosure.

1 (2) For purposes of this Subsection, "executive office of the governor" means
2 the governor, his chief of staff, and his executive counsel.

3 (3)(a) Notwithstanding Subsection B of this Section, any record of the office
4 of the governor pertaining to the schedule of the governor, his spouse, or his child
5 that contains security details that if made public may endanger the governor, his
6 spouse, or his child may be held confidential for a period not to exceed seven days
7 following the scheduled event.

8 (b) Notwithstanding Subsection B of this Section, the governor may keep a
9 record concerning a meeting or event that the governor attends and transportation
10 related thereto confidential for a period not to exceed seven days after the occurrence
11 of the meeting or event.

12 (c) Nothing in this Paragraph shall be interpreted or construed in a manner
13 to make confidential all records concerning a meeting or event that the governor
14 attends and transportation related thereto.

15 (4)(a) When the office of the governor receives a request for a record that is
16 privileged pursuant to this Subsection, the governor may either waive the privilege
17 and allow the inspection, examining, copying, or reproduction of the record in the
18 manner provided by this Chapter, or the governor may claim the privilege, and the
19 response in writing to the requestor shall state his claim along with the period of time
20 the governor intends the record to remain privileged which period shall not exceed
21 ten years.

22 (b) When the office of the governor receives a request for a record that is
23 confidential pursuant to this Subsection, the record shall be made available for
24 inspection, examining, copying, or reproduction as soon as the period of
25 confidentiality lapses.

26 D. The provisions of Subsection C of this Section shall not prevent any
27 person from inspecting, examining, copying, or obtaining a reproduction of any
28 record pertaining to any money or monies, any assets or items of economic value to

1 the state, or any financial transactions in the control of or handled by or through the
2 governor or the office of the governor.

3 E. All records of the office of the governor shall be retained and preserved
4 in the manner provided by this Chapter. The governor and his internal staff shall
5 preserve all records that are privileged in accordance with Subsection C of this
6 Section and any other records of the office of the governor of historical value as
7 determined by the state archivist, and at the conclusion of his term of office, the
8 governor shall transfer all such records to the custody of the division of archives,
9 records management, and history in the Department of State. Any privilege from
10 disclosure granted by this Section for such records shall continue in accordance with
11 Subsection F of this Section. For purposes of this Subsection, "internal staff" of the
12 governor includes the governor's chief of staff, executive counsel, and director of
13 policy and employees who work for each of these persons.

14 F. Any privilege from disclosure granted by this Section shall lapse ten years
15 after the creation of the record to which the privilege is applicable. If the date of
16 creation of the record is unknown by the state archivist after receipt of the record
17 pursuant to Subsection E of this Section, the record shall be available to the public
18 and subject to inspection, examination, copying, and reproduction in accordance with
19 R.S. 44:417 after the lapse of ten years from the receipt of the record.

20 Section 2. R.S. 44:5 is hereby repealed in its entirety.

21 Section 3. The Louisiana State Law Institute is hereby directed to change the
22 reference of "R.S. 44:5" to "R.S. 44:5.1(C)" in R.S. 29:725.2(B) and to change the reference
23 of "R.S. 44:5(A)" to "R.S. 44:5.1(C)" in R.S. 49:214.5.1 and 214.6.1.

24 Section 4. This Act shall become effective upon signature by the governor or, if not
25 signed by the governor, upon expiration of the time for bills to become law without signature
26 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
27 vetoed by the governor and subsequently approved by the legislature, this Act shall become
28 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Richard

HB No. 19

Abstract: Makes all records of the governor's office subject to public records laws. Provides that certain records of the executive office of the governor relating to intraoffice communications are privileged. Requires the governor to transfer certain records of his office, at the conclusion of his term of office, to the archives division of the Dept. of State. Provides that any privilege from disclosure shall lapse 10 years after the creation of the record or, if creation date is unknown, from date of receipt by archives.

Present law (R.S. 44:5) provides that the laws relative to public records shall not apply to records having been used, being in use, possessed, or retained for use by the governor in the usual course of the duties and business of his office relating to the deliberative process of the governor, intraoffice communications of the governor and his internal staff, the governor's security and schedule, or communications with or the security and schedule of the governor's spouse or children. Present law provides definitions for "deliberative process", "relating to the deliberative process of the governor", and "internal staff of the governor".

Present law specifies that the exemption does not apply to agencies transferred or placed within the office of the governor; however, provides that a record that is limited to pre-decisional advice and recommendations to the governor concerning budgeting and that is in the custody of any agency or department headed by an unclassified gubernatorial appointee shall be privileged for six months from the date the record is prepared.

Present law provides that the exemption shall not prevent any person from examining and copying any records pertaining to any money or monies or any financial transactions in the control of or handled by or through the governor.

Present law requires state police to maintain a travel log identifying the date and location of all travel by the governor in a state police helicopter, which record shall be available for inspection and copying in accordance with the public records laws. Provides that entries to the state police helicopter travel log shall be made within seven days after the date of travel.

Proposed law repeals all of the above provisions of present law and provides instead that records of the office of the governor are public records and subject to the provisions of present law relative to public records.

Proposed law provides that, notwithstanding proposed law, a record of the executive office of the governor which is an intraoffice communication between the governor and his staff shall be privileged from disclosure. Proposed law provides for these purposes that "executive office of the governor" means the governor, his chief of staff, and his executive counsel. Proposed law further provides that any record of the office of the governor pertaining to the schedule of the governor or that of his spouse or child that contains security details that, if made public, may endanger the governor or his spouse or child may be held confidential for a period not to exceed seven days following the scheduled event. Proposed law further provides that the governor may keep a record concerning a meeting or event that he attends and transportation related thereto confidential for a period not to exceed seven days after the occurrence of the meeting or event. Proposed law further provides that nothing in proposed law is to be interpreted or construed in a manner to make confidential all records concerning a meeting or event that the governor attends and transportation related

thereto. Further specifies that if a request is received for a record which is privileged, the governor may waive the privilege and make the requested record available or may claim the privilege and specify the period of time (not to exceed 10 years) the record will remain privileged. Specifies that if a request is received for a confidential record, the record shall be made available as soon as the period of confidentiality lapses.

Proposed law specifies that the above provisions of proposed law shall not prevent any person from inspecting, copying, or obtaining a reproduction of any record pertaining to money or monies, assets or items of economic value to the state, or any financial transactions in the control of or handled by or through the governor or the office of the governor.

Proposed law specifies that all records of the office of the governor are to be retained and preserved in the manner provided by the Public Records Law and further provides that the governor and his internal staff (the governor's chief of staff, executive counsel, and director of policy and employees who work for each of these persons) are to preserve all records to which proposed law privilege applies and any other record of the office of the governor of historical value as determined by the state archivist, and at the conclusion of his term of office, the governor is to transfer all such records to the custody of the archives division of the Dept. of State.

Proposed law provides that any privilege granted by proposed law lapses 10 years after the creation of the record to which the privilege is applicable. Proposed law further provides that if the date of creation of a record is unknown, then the record shall become available 10 years after receipt by the state archivist in accordance with present law (R.S. 44:417).

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 44:5.1; Repeals R.S. 44:5)