

2015 Regular Session

HOUSE BILL NO. 296

BY REPRESENTATIVE TIM BURNS

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

ETHICS: Provides relative to records related to enforcement of provisions under the jurisdiction of the Board of Ethics

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(28) and to enact Part V of Chapter 15 of Title 42 of  
3 the Louisiana Revised Statutes of 1950, to be comprised of R.S. 42:1191 through  
4 1194, and R.S. 44:3.4, relative to records related to the enforcement of provisions of  
5 law under the jurisdiction of the Board of Ethics; to provide an exception to the  
6 Public Records Law for certain records of the Board of Ethics; to authorize the  
7 expungement of records relative to ethics code enforcement under certain  
8 circumstances; to provide for eligibility for obtaining expungement; to provide for  
9 the confidentiality of expunged records; to provide procedures for obtaining  
10 expungement; to provide for consideration of requests for expungement; to provide  
11 relative to the powers and duties of the ethics administrator and the Board of Ethics  
12 relative to expungement; to provide for orders of expungement; to provide for the  
13 confidentiality of deliberations and records relative to requests for expungement; to  
14 provide for the effects of expungement; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Part V of Chapter 15 of Title 42 of the Louisiana Revised Statutes of  
17 1950, comprised of R.S. 42:1191 through 1194, is hereby enacted to read as follows:

1 PART V. EXPUNGEMENT2 §1191. Eligibility; applicability

3 A. A person may request expungement of ethics enforcement records relative  
4 to a complaint filed with the Board of Ethics in which it is alleged that the person  
5 violated one or more provisions of this Chapter if each of the following requirements  
6 is satisfied:

7 (1) The allegations in the complaint involved the person's status as a public  
8 employee.

9 (2) The person was a public employee solely because of his uncompensated  
10 service on a board or commission.

11 (3) The Board of Ethics issued charges based on the complaint that, at the  
12 conclusion of enforcement proceedings, did not result in a finding of a violation of  
13 this Chapter.

14 B. This Part shall not apply to enforcement proceedings that are concluded  
15 by consent opinion.

16 §1192. Procedure

17 A.(1) A person who seeks expungement pursuant to this Part shall file a  
18 written request for expungement with the ethics administrator. The person shall set  
19 forth in the request facts that demonstrate that the requirements listed in R.S.  
20 42:1191 are satisfied.

21 (2) The ethics administrator shall consider the request, and, if the facts stated  
22 in the request demonstrate that the requirements listed in R.S. 42:1191 are satisfied,  
23 the ethics administrator shall grant the request and order expungement of the ethics  
24 enforcement records relative to the complaint that is the subject of the request.

25 B.(1) If the ethics administrator denies the request or fails to grant the  
26 request within thirty days after filing, the requestor may file a written request for  
27 expungement with the Board of Ethics.

28 (2) The Board of Ethics shall consider the request in executive session, and,  
29 if the facts stated in the request demonstrate that the requirements listed in R.S.

1        42:1191 are satisfied, the board shall grant the request and order expungement of the  
2        ethics enforcement records relative to the complaint that is the subject of the request.

3                C. If an order of expungement involves records of the Ethics Adjudicatory  
4        Board, the Board of Ethics or the ethics administrator, as the case may be, shall  
5        ensure that the order of expungement is served on the Ethics Adjudicatory Board as  
6        soon as practicable after issuance.

7        §1193. Effect of expungement

8                A. The Board of Ethics and the Ethics Adjudicatory Board shall remove  
9        from public access all ethics enforcement records that are ordered to be expunged.  
10        The records shall not be destroyed.

11                B. An expunged ethics enforcement record shall be privileged, confidential,  
12        no longer be considered a public record, and not be made available to any person or  
13        other entity, except that any such record shall be available to each member of the  
14        Board of Ethics and the Ethics Adjudicatory Board and to their respective staff  
15        members.

16        §1194. Confidentiality

17                All records and deliberations concerning a request for expungement shall be  
18        confidential and shall not be made available to any person or other entity, except that  
19        any such record shall be available to each member of the Board of Ethics and its  
20        staff.

21        Section 2. R.S. 44:4.1(B)(28) is hereby amended and reenacted and R.S. 44:3.4 is  
22 hereby enacted to read as follows:

23        §3.4. Records of the Board of Ethics

24                Nothing in this Chapter shall be construed to require the disclosure of  
25        records, or the information contained therein, held by the Board of Ethics pertaining  
26        to enforcement proceedings. However, any such record shall be public record and  
27        subject to the provisions of this Chapter when introduced as evidence before the



processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of the state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of the state are "public records". Establishes a framework for the ready availability of public records to requesting persons, and specifically provides that it is the duty of the custodian of the public records for a public entity or agency to provide copies to persons so requesting.

Present law provides for certain exceptions, exemptions, and limitations. Specifies that any exception, exemption, or limitation to the laws pertaining to public records not provided for in the Public Records Law or in the constitution shall have no effect.

Present law (R.S. 42:1141.4 - Code of Governmental Ethics) provides that the records of the Board of Ethics prepared or obtained in connection with investigations and private hearings conducted by the board, including all extracts of minutes and votes to take any matter under consideration in connection therewith, shall be deemed confidential and privileged, except that such records shall be available to each member of the board. Further specifies that except as provided in this provision of present law and in a provision of present law relative to certain transactional disclosure reports, all records, including the results and conclusions reached in connection with any investigation or hearing, shall be public.

Proposed law provides an additional exception to present law (Public Records Law) for records, or the information contained therein, held by the Board of Ethics pertaining to enforcement proceedings. Provides, however, that any such record shall be public record and subject to the provisions of present law when introduced as evidence before the Ethics Adjudicatory Board or a court or when the enforcement proceedings are concluded, subject to the limitations in present law (R.S. 42:1141.4).

In addition, proposed law provides that a person may request expungement of ethics enforcement records relative to a complaint filed with the Board of Ethics alleging that the person violated one or more provisions of present law (Code of Governmental Ethics) if each of the following requirements is satisfied:

- (1) The allegations in the complaint involved the person's status as a public employee.
- (2) The person was a public employee solely because of his uncompensated service on a board or commission.
- (3) The Board of Ethics issued charges based on the complaint that, at the conclusion of enforcement proceedings, did not result in a finding of a violation of present law (Code of Governmental Ethics).

Provides, however, that proposed law does not apply to enforcement proceedings that are concluded by consent opinion.

Proposed law provides requirements and procedures for expungement. Provides that if expungement is ordered, the Board of Ethics and the Ethics Adjudicatory Board shall remove from public access all ethics enforcement records that are ordered to be expunged. Provides, however, that the records shall not be destroyed. Provides that an expunged ethics enforcement record shall be privileged, confidential, no longer be considered a public record, and not be made available to any person or other entity, except that any such record shall be available to each member of the Board of Ethics and the Ethics Adjudicatory Board and to their respective staff members.

Proposed law provides further that all records and deliberations concerning a request for expungement shall be confidential and shall not be made available to any person or other

entity, except that any such record shall be available to each member of the Board of Ethics and its staff.

(Amends R.S. 44:4.1(B)(28); Adds R.S. 42:1191-1194 and R.S. 44:3.4)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the original bill:

1. Provide that proposed provisions relative to expungement do not apply to enforcement proceedings that are concluded by consent opinion.