

Regular Session, 2012

HOUSE BILL NO. 334

BY REPRESENTATIVES BROSSETT AND LEGER

LOCAL AGENCIES: Provides relative to the records and subpoena powers of certain local ethics entities

1 AN ACT

2 To amend and reenact R.S. 33:9613(A)(2) and (B) through (G) and 9614(B) and (C), to
3 enact R.S. 33:9613(H) and (I) and 9614(D), and to repeal R.S. 33:9613(A)(3),
4 relative to local ethics entities, including but not limited to an ethics review board or
5 office of inspector general in the parishes of East Baton Rouge, Jefferson, and
6 Orleans; to provide relative to subpoena powers; to provide for protective orders; to
7 provide relative to enforcement of subpoenas; to provide relative to the privileged
8 nature of certain documents; to provide relative to public access to public
9 documents; and to provide for related matters.

10 Notice of intention to introduce this Act has been published
11 as provided by Article III, Section 13 of the Constitution of
12 Louisiana.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 33:9613(A)(2) and (B) through (G) and 9614(B) and (C) are hereby
15 amended and reenacted and R.S. 33:9613(H) and (I) and 9614(D) are hereby enacted to read
16 as follows:

17 §9613. Investigative powers

18 A.

19 * * *

20 (2)(a) ~~In the performance of its duties, a local ethics entity, ethics review~~
21 ~~board, or office of the inspector general may administer oaths and take the testimony~~

1 ~~of those sworn.~~ In the performance of its duties, a local ethics entity, ethics review
2 board, or office of the inspector general may administer oaths or affirmations,
3 subpoena witnesses, compel their attendance, examine them under oath or
4 affirmation, and require the production of books, records, documents, or other
5 evidence deemed relevant or material to the investigation or hearing. The subpoena
6 may be served by certified mail, return receipt requested, at the addressee's residence
7 or business address.

8 (b) For the purposes of this Section, the term "subpoena" shall include a
9 subpoena duces tecum.

10 B. The entity receiving the subpoena may file a motion with the district court
11 having civil jurisdiction in the parish where the local ethics entity, ethics review
12 board, or office of the inspector general is located to amend or quash the subpoena.
13 The motion must be filed before the date for attendance or compulsion specified in
14 the subpoena or within twenty days after the subpoena has been served, whichever
15 is earlier.

16 C. If the subpoena is not quashed and is not complied with by the date for
17 attendance or compulsion, the local ethics entity, ethics review board, or office of the
18 inspector general may apply to the district court having civil jurisdiction in the parish
19 where it is located for an order compelling compliance with the subpoena. Any
20 person failing to comply with the order compelling compliance shall be adjudged in
21 contempt of the court which issued the order.

22 D. Any costs and ~~attorney's attorney~~ fees incurred by the local ethics entity,
23 ethics review board, or office of inspector general may be taxed against the person
24 who failed or refused to comply with the terms of the subpoena.

25 ~~E.~~ E. When the local ethics entity, ethics review board, or office of inspector
26 general issuing the subpoena has reason to believe that a person may attempt to
27 conceal or destroy materials essential to an investigation, examination, audit,
28 inspection, or performance review, the local ethics entity, ethics review board, or
29 office of inspector general may apply by verified petition to the district court of the

1 parish in which the person resides or is found or has a principal place of business or
2 in which the materials may be found for an order protecting the materials from
3 concealment or destruction. The court may order and fix the amount of a bond to be
4 posted and conditioned upon compliance with the terms of the subpoena. The order
5 shall be directed to the person upon whom the subpoena will be served and to any
6 other person necessary to protect the materials from concealment or destruction.

7 ~~D. E.~~ (1) A local ethics entity, ethics review board, or office of inspector
8 general shall have the authority to examine, review, audit, inspect, and investigate
9 the records, books, reports, documents, papers, correspondence, accounts, audits,
10 inspections, reviews, recommendations, plans, films, tapes, pictures, computer hard
11 drives, software data, hardware data, e-mails, instant messages, text messages, and
12 any other data and material relevant to any matter under audit, investigation,
13 inspection, or performance review of all entities of the local governmental
14 subdivision or entities receiving funds through or for the benefit of the local
15 governmental subdivision.

16 (2) For the purposes of this Section, these entities shall include but not be
17 limited to every local governmental subdivision officer, employee, elected official,
18 department, agency, board, commission, public benefit corporation, quasi public
19 agency or body, contractor, subcontractor, licensee of the local governmental
20 subdivision, and every applicant for certification of eligibility for a municipal
21 contract or program.

22 (3) These entities shall also include all local governmental subdivision
23 governing authorities, all districts, boards, and commissions created by local
24 governmental subdivision governing authorities either independently or in
25 conjunction with other units of government, and all independently elected parish
26 public officials whose offices receive funds from the municipality.

27 E. G. For the purposes of this Section, a quasi public agency or body shall
28 be defined as:

1 (1) An organization, either not-for-profit or for profit, that is a component
2 unit of local government established to perform a public purpose, and created by the
3 state of Louisiana or any political subdivision or agency thereof or any special
4 district or authority operating within the municipality.

5 (2) An organization, either not-for-profit or for profit, that is a component
6 unit of a local governmental subdivision reporting entity, as defined under generally
7 accepted accounting principles.

8 (3) An organization, either not-for-profit or for profit, created to perform a
9 public purpose and having one or more of the following characteristics:

10 (a) The governing body is elected by the general public.

11 (b) A majority of the governing body is appointed by or authorized to be
12 appointed by a governmental entity or individual governmental official as a part of
13 their official duties.

14 (c) The entity is the recipient of proceeds of an ad valorem tax or general
15 sales tax levied specifically for its operations.

16 (d) The entity is able to directly issue debt, the interest on which is exempt
17 from federal taxation.

18 (e) The entity can be dissolved unilaterally by a governmental entity and its
19 net assets assumed without compensation by that governmental entity.

20 (4) Any not-for-profit organization operating within the municipality which
21 receives or expends in excess of twenty-five thousand dollars in local assistance in
22 any fiscal year. Assistance includes grants, loans, awards, transfer of property, and
23 direct appropriations of local public funds.

24 (5) Any organization, either not-for-profit or for profit, operating within the
25 local governmental subdivision which is subject to the Open Meetings Law and
26 derives a portion of its income from payments received from any local governmental
27 subdivision agency or body.

28 ~~F. H.~~ Nothing in R.S. 42:61 et seq. shall be construed to prohibit local ethics
29 entity attorneys, ethics review board attorneys, or office of inspector general

1 attorneys from also holding the position of assistant United States attorney, assistant
2 attorney general, or assistant district attorney when so designated for cooperative
3 efforts in criminal prosecutions and without additional compensation.

4 ~~G. I.~~ A local ethics entity, ethics review board, or office of inspector general
5 may employ its own legal counsel. A local ethics entity or ethics review board may
6 also employ, contract with, or accept the assistance of other legal counsel in the
7 conduct of a civil or criminal case.

8 §9614. Confidentiality of ~~preliminary investigations~~ certain records

9 * * *

10 B. Any material, records, data, and information compiled by an office of
11 inspector general in an investigation, examination, audit, inspection, or performance
12 review under this Chapter is confidential and privileged and not subject to R.S. 44:1
13 et seq., until the investigation, examination, audit, inspection, or performance review
14 is complete. The investigation, examination, audit, inspection, or performance
15 review is not deemed complete if the office of inspector general has submitted
16 material, records, data, and information from or the results of such investigation,
17 examination, audit, inspection, or performance review to any other law enforcement
18 or regulatory agency for further investigation or for the filing of criminal or civil
19 prosecution, and if such investigation or prosecution has not been completed or
20 become inactive.

21 C. Except for the completed reports, findings, advisories, letters, and
22 recommendations of investigations, audits, inspections, performance reviews,
23 qualitative assurance reviews, peer reviews, annual operating budgets, and annual
24 office reports, the records prepared or obtained by the ethics entity, ethics review
25 board, or office of inspector general shall be deemed privileged and confidential and
26 protected from disclosure pursuant to R.S. 44:3. In order to maintain the
27 confidentiality of such materials, the ethics entity, ethics review board, or office of
28 inspector general may meet and make decisions in executive session. No privilege
29 established by law shall be deemed waived on any record obtained by the ethics

1 entity, ethics review board, or office of inspector general in connection with the
 2 performance of duties established by this Chapter. Any record or information
 3 obtained by the ethics entity, ethics review board, or office of inspector general
 4 which is confidential or privileged pursuant to any other provision of law shall
 5 remain confidential or privileged, and it shall be a misdemeanor punishable by a fine
 6 of not more than two thousand dollars or imprisonment for not more than one year,
 7 or both, for the ethics entity, ethics review board, or office of inspector general or
 8 any designated staff member or any other public official, corporation, or individual
 9 to make public any such information or record.

10 D. The provisions of this Section shall not prevent public access during the
 11 course of an inspector general investigation to public records that are not otherwise
 12 privileged or confidential. The custodian of any public record shall provide such
 13 record to any person having the right to examine public records. If the only copy of
 14 such public record is in the hands of the inspector general, the custodian of that
 15 record shall so certify and the requestor may examine and copy the record at the
 16 office of the inspector general.

17 * * *

18 Section 2. R.S. 33:9613(A)(3) is hereby repealed in its entirety.

19 Section 3. This Act shall become effective upon signature by the governor or, if not
 20 signed by the governor, upon expiration of the time for bills to become law without signature
 21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 22 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 23 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)]

Brossett

HB No. 334

Abstract: Provides relative to the records and subpoena powers of "local ethics entities" in Orleans, East Baton Rouge, and Jefferson parishes, including but not limited to an ethics review board or office of inspector general.

Present law (R.S. 33:9613) authorizes the parishes of Orleans, Jefferson, and East Baton Rouge to establish local ethics entities. Such entities include a local ethics review board and a local inspector general. Further provides for the powers, rights, and duties of such organizations. Proposed law retains present law.

Present law authorizes these local ethics entities to make investigations and examinations and to gather evidence in any matter subject to present law. Further provides that such entities may administer oaths and take the testimony of the sworn party. Proposed law retains present law.

Present law authorizes the local ethics entities to compel the attendance of witnesses or the production of documents by issuing a subpoena or a subpoena duces tecum with the approval of the district court of the parish in which the local ethics entity is domiciled. Proposed law authorizes the local ethics entity to issue such subpoenas without the approval of the district court in which the entity is domiciled.

Present law provides mechanisms for service of the subpoena:

- (1) Present law authorizes the subpoena to be served by certified mail, return receipt requested, at the addressee's residence or business address. Proposed law retains this portion of present law.
- (2) Present law further authorizes service of the subpoena in person by an appointed representative of the local ethics entity or by allowing the local municipal police to make service. Proposed law repeals these options in present law.

Present law provides that if the party receiving a subpoena issued under present law refuses to obey such subpoena, then the district court which approved the subpoena may order the person to appear before the court and show cause why they should not be ordered to comply. Proposed law changes this process. Under proposed law, the person receiving the subpoena may file a motion with the district court to quash the subpoena or to modify its terms. Proposed law requires such motion to be filed prior to the date for compliance with the subpoena or within 20 days of service of the subpoena, whichever is earlier.

Proposed law further provides that if the subpoena is not quashed, and the person refuses to comply, then the local ethics entity may seek an order from the district court ordering the person to comply. Further provides that failure to comply with an order from the court directing the party to act in accordance with the subpoena shall be punished as a contempt of the district court.

Present law (R.S. 33:9614) provides relative to the confidential nature of records in the possession of the local ethics entity.

Present law provides that any confidential records in the possession of the local ethics entity in certain circumstances shall remain confidential. Proposed law retains present law.

Present law further provides that certain materials, records, data, and information compiled by an office of inspector general during the performance of his duties and, with certain exceptions, any records prepared or obtained by the local ethics entity are deemed confidential. Proposed law retains present law and further provides that such materials, records, data, etc., are also privileged.

Proposed law further provides that any record in the possession of a local inspector general that is not privileged and confidential is a public record and the public shall have full access to such record. Further provides that if the only copy of an otherwise public record is in the possession of a local inspector general, then any individual possessing the right to view such document may view and copy it at the local inspector general's office.

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

(Amends R.S. 33:9613(A)(2) and (B)-(G) and 9614(B) and (C); Adds R.S. 33:9613(H) and (I) and 9614(D); Repeals R.S. 33:9613(A)(3))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill.

1. Adds provision that makes proposed law effective upon signature of governor or lapse of time for gubernatorial action.