

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

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

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 33:9613(A)(3) and 9614(B) and (C) are hereby amended and
14 reenacted and R.S. 33:9613(A)(4) and 9614(D) are hereby enacted to read as follows:

15 §9613. Investigative powers

16 A.

17 * * *

18 (3) In the performance of its duties, a local ethics entity, ethics review board,
19 or office of the inspector general may compel the attendance of witnesses to be
20 deposed under oath or the production of public and private records by issuing a
21 subpoena. ~~However~~ Except as provided in Paragraph (4) of this Subsection, such

1 a subpoena or subpoena duces tecum shall be issued only upon approval of a judge
2 of the district court of the parish in which a local ethics entity, ethics review board,
3 or office of inspector general is domiciled upon application in writing by such entity,
4 board, or office. The judge shall issue a written decision within seventy-two hours
5 after receipt of such application. Any subpoena for production of private records
6 shall be in compliance with all applicable constitutionally established rights and
7 processes. Any request for financial records in the possession or under the control
8 of a bank pursuant to this Chapter is subject to and shall comply with the
9 requirements and procedures of R.S. 6:333. The subpoena may be served by
10 certified mail, return receipt requested, at the addressee's residence or business
11 address, or by representatives appointed by the local ethics entity, ethics review
12 board, or office of inspector general, or may be directed for service to the office of
13 the municipal police. If a person refuses to obey a subpoena issued by the local
14 ethics entity, ethics review board, or office of inspector general, the district court of
15 the parish in which the local ethics entity, ethics review board, or office of inspector
16 general is domiciled may issue an order to the person requiring the person to appear
17 before the court to show cause why an order shall not be issued ordering such person
18 to obey the subpoena.

19 (4)(a) In the performance of its duties, a local office of inspector general in
20 the city of New Orleans or parish of Jefferson may issue an administrative subpoena
21 duces tecum to require the production of books, records, documents, or other
22 evidence deemed relevant or material to an investigation, audit, or inspection. The
23 subpoena duces tecum shall only be issued in furtherance of the authority provided
24 by respective local ordinance and by Subsections D and E of this Section and shall
25 comply with all applicable constitutionally established rights and processes.

26 (b) The subpoena duces tecum may be served by certified mail, return receipt
27 requested, at the addressee's residence or business address.

28 (c) The entity receiving the subpoena duces tecum may file a motion with
29 the district court of the parish in which the office of inspector general is domiciled

1 to amend or quash the subpoena. The motion shall be filed any time before the date
 2 for attendance or compulsion specified in the subpoena or within twenty days after
 3 the subpoena duces tecum has been served, whichever is earlier. In no event shall
 4 any penalty attach to the recipient of such an administrative subpoena duces tecum
 5 for failure to respond without an order from the district court of the parish in which
 6 the office of inspector general is domiciled.

7 (d) If the subpoena duces tecum is not quashed and is not complied with by
 8 the date for production of documents, the office of the inspector general may apply
 9 to the district court of the parish in which the office of inspector general is domiciled
 10 for an order compelling compliance with the subpoena. Any person failing to
 11 comply with the order compelling compliance shall be adjudged in contempt of
 12 court.

13 * * *

14 §9614. Confidentiality of ~~preliminary investigations~~ certain records

15 * * *

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

27 C. Except for the completed reports, findings, advisories, letters, and
 28 recommendations of investigations, audits, inspections, performance reviews,
 29 qualitative assurance reviews, peer reviews, annual operating budgets, and annual

1 office reports, the records prepared or obtained by the ethics entity, ethics review
2 board, or office of inspector general shall be deemed privileged and confidential and
3 protected from disclosure pursuant to R.S. 44:3. In order to maintain the
4 confidentiality of such materials, the ethics entity, ethics review board, or office of
5 inspector general may meet and make decisions in executive session. No privilege
6 established by law shall be deemed waived on any record obtained by the ethics
7 entity, ethics review board, or office of inspector general in connection with the
8 performance of duties established by this Chapter. Any record or information
9 obtained by the ethics entity, ethics review board, or office of inspector general
10 which is confidential or privileged pursuant to any other provision of law shall
11 remain confidential or privileged, and it shall be a misdemeanor punishable by a fine
12 of not more than two thousand dollars or imprisonment for not more than one year,
13 or both, for the ethics entity, ethics review board, or office of inspector general or
14 any designated staff member or any other public official, corporation, or individual
15 to make public any such information or record.

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

23 Section 2. This Act shall become effective upon signature by the governor or, if not
24 signed by the governor, upon expiration of the time for bills to become law without signature
25 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
26 vetoed by the governor and subsequently approved by the legislature, this Act shall become
27 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: Authorizes the inspectors general in New Orleans and Jefferson Parish to issue administrative subpoenas for the production of documents and evidence. Provides relative to the records 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. Present law authorizes such a subpoena to be served by certified mail, return receipt requested, at the addressee's residence or business address or in person by an appointed representative of the local ethics entity or by allowing the local municipal police to make service. 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 retains present law and additionally authorizes an inspector general in New Orleans or Jefferson Parish to issue an administrative subpoena duces tecum to require the production of books, records, documents, or other evidence deemed relevant or material to an investigation, audit, or inspection.

With respect to such subpoena duces tecum, proposed law provides that the subpoena may be served by certified mail, return receipt requested, at the addressee's residence or business address. Provides that 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. Provides that no penalty shall attach to the recipient of the subpoena for failure to respond without an order from the district court.

Proposed law further provides that if the subpoena is not quashed and is not timely complied with, then the inspector general may seek an order from the district court ordering the person to comply. Further provides that a person who fails to comply with an order from the court directing the party to act in accordance with the subpoena shall be adjudged in 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 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)(3) and 9614(B) and (C); Adds R.S. 33:9613(4) and 9614(D))

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.

House Floor Amendments to the reengrossed bill.

1. With respect to subpoenas, changes proposed law from modifying present law procedures with respect to issuance of any subpoena by a local ethics entity to authorizing and providing with respect to issuance of administrative subpoenas duces tecum by the office of inspector general in New Orleans or Jefferson Parish.