

# NEW ORLEANS CITY BUSINESS

## **PAR wants ethics board reorganization slowed**

by COMMENTARY  
ADVERTISEMENT

February 18, 2008

BATON ROUGE - The Public Affairs Research Council of Louisiana Inc. today criticized a proposal by the Louisiana Legislature to allow administrative law judges to rule on state ethics issues.

*The administration proposal to insert administrative law judges into the process of ruling on ethics violations would dilute the existing power of the Board of Ethics. While most of the ethics reform package is in line with previous PAR recommendations, this one raises some troubling questions that require additional research. There should be no rush during this special session to change the power and authority of the Board of Ethics.*

*The ethics board and staff currently share responsibility for all phases - initiation of an investigation, investigation, prosecution and judgment - of deciding guilt or innocence in an ethics case. This does seem to create inherent conflicts of interest that could lead to biased decisions, despite the fact that several courts have upheld the due process of the Board of Ethics and no one is questioning the fairness of the actual decisions rendered by the board, only the potential for unfairness. Five proposals have been suggested as ways to separate the judgment and penalty phases from other phases of the process to avoid this conflict. The leading proposal, to incorporate ALJs, has passed the House and has the support of the governor.*

*The Board of Ethics has asserted that the ALJ solution could unconstitutionally usurp its responsibility to hear and decide ethics violations. As an alternative, the board has presented its own solution. The board would split itself into two panels, one to perform the investigatory/charging duties and the other to perform adjudicatory functions. Each of the 11 members would be assigned only to a single panel for each complaint.*

*Similarly, the ethics administration staff would be separated by function, one to perform the advisory/writing duties and the other to perform the investigatory and prosecutorial duties. This would prevent cross-influence between staff who advise the panel in adjudication decisions and staff who investigate complaints and present matters to a different adjudicatory panel.*

*In addition to the solutions proposed by the governor's administration and the Board of Ethics, several other alternatives have been proposed, including:*

- Using elected district court judges for the hearing and penalty phases;*
- Using retired judges for the hearing and penalty phases;*
- Splitting the current ethics administrator's job into two positions: an administrator with management responsibilities and an executive counsel to advise the board. The executive counsel would be shielded procedurally from developing an interest in the outcome of cases.*

*Each approach has costs and benefits for the efficiency, independence and accountability of the process that must be weighed carefully. The most closely examined of the approaches has been the ALJ alternative, though it has only been a part of the public discourse for a few weeks. While improvements to the ethics board enforcement process were discussed as a part of the (Gov. Bobby) Jindal transition advisory council on ethics meetings, the specific use of ALJs to render judgment was not a part of either the Jindal campaign platform or the recommendations of the ethics advisory council.*

*Some argue that the ALJ approach would create a new opportunity for political pressure on ethics decisions, because the ALJs are selected by a gubernatorial appointee. A variety of accountability safeguards are in place to foster the integrity and independence of the ALJ decisions. The Division of Administrative Law is a centralized panel of ALJs, which conducts impartial hearings for aggrieved citizens when state agencies take actions against them. Upon completion of a hearing, an ALJ renders a decision regarding the dispute between the parties. Citizens may appeal an ALJ decision to the courts should they disagree with the ruling, but state agencies have no right of appeal. This process has been reviewed by the Supreme Court of Louisiana and found to be constitutionally sound. ALJ hearings are generally open to the public.*

*As proposed, the new ALJ process would grant the right of appeal only to the defendant. The Board of Ethics would have no right to appeal a judgment by the ALJ. Defendants, however, would be entitled to appeal to the First Circuit Court of Appeals. The ethics board would have its final judgment authority stripped, yet would not be granted a final right to appeal the judgment imposed by an outside entity. Not having the right to appeal might make sense for many state agencies involved in administrative hearings, but it may not make sense for the ethics administration. The state's role as enforcer of the code of ethics should not be seen as impotent. The unintended consequences of well-meaning reform could lead to this perception.*

*Of the five proposals being considered, only the internal reorganization proposed by the Board of Ethics would not dilute the strength and authority of the board. The other proposals could potentially weaken the gains to be made by passage of the entire package of more stringent ethics requirements, because they could weaken citizen confidence in the ability of the board to interpret and enforce the law. Thus far, however, there has been little opportunity for a thorough, substantive discussion of any of the proposals. More time should be given to explore alternatives fully and structure a system that will best serve the citizens of Louisiana.*