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Ethics revamp effects mixed

Law said too much — or not enough

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It's been called both a "gold standard" and a "toothless tiger."

Two years after Gov. Bobby Jindal's push to revamp state ethics laws, the changes have been praised as a giant step toward openness in government and criticized as undermining enforcement of the rules.

The Legislature convened in February 2008, soon after Jindal was inaugurated, and quickly pushed through an ethics package.

The new laws require personal financial disclosures for elected officials at all levels of government, for appointees on state commissions and local boards, and for others who serve in key government jobs.

New rules were imposed on lobbyists. They must file monthly electronic reports stating what they spend and who hires them to lobby. Lavish wining and dining of officials was ended.

The laws also altered the way ethics violations are prosecuted and judged. That change remains contentious — the heads of the new Ethics Board and the Louisiana Public Affairs Research Council both recently proposed restructuring the system again.

Barry Erwin, president of the government policy group Council for a Better Louisiana, said the new laws did increase transparency.

"We have more disclosure," he said. "Where we have muddied the water is on the enforcement end of it."

"What you have got is the toothless tiger," said Jim Brandt, president of PAR, a policy research group.

Major concerns voiced by policy groups, current Ethics Board members and others include:

- The design of the new system, with the board and a separate panel of judges, is creating confusion and is more open to political interference than the old one.
- The state ethics agency is inundated with thousands of new reports, but no audits are being done to determine their accuracy.
- Too many disclosure reports are not being filed electronically, making it hard for the public to search them.
- The law spells out categories of people who must file reports, but it is hard to determine who fits those specific descriptions, meaning some who should be filing probably aren't.

The Jindal administration often points out the high rankings national groups have given Louisiana's new ethics laws.

But PAR notes in a recent report that those ratings — from groups such as the Better Government Association — are based more on "the strength of each state's disclosure laws, as written, rather than on whether the laws could be adequately enforced."

"We want no excuses for strong enforcement, and so if there's some way to do it better, we definitely want to listen," said Stephen Waguespack, Jindal's executive counsel.

The judges and the board

The biggest change — and perhaps the most controversial — targeted how the Ethics Board operates.

The 2008 law stripped the Board of Ethics of its power to decide whether conflict-of-interest, nepotism and other laws have been violated.

The new law made the 11-member Ethics Board and its staff operate as investigators and prosecutors. A panel of administrative law judges now hears the evidence and decides guilt or innocence — which was a key function of the old board.

Most Ethics Board members at the time, along with the state's ethics administrator, abruptly resigned after the new structure was imposed.

Since then, few cases have been heard overall. And charges brought by the new board against high-profile elected officials have been dismissed by the administrative judges.

The board members, all but one of whom were appointed under the new system, often disagrees with how the administrative judges interpret ethics rules.

While Jindal and his top aides acknowledge some problems, he and state legislators, including House Speaker Jim Tucker, defend the separation of duties.

They argue the rights of the accused were being trampled under the old system because the board acted as both prosecutor and judge.

But some Ethics Board members say dividing the duties has caused so much confusion over the rules that enforcement is suffering.

“I am very concerned that the Legislature’s removal of the board’s authority to interpret and apply these laws will lead to inconsistent rulings which undermine enforcement,” said Ethics Board Vice Chairman Scott Frazier.

Ethics Board Chairman Frank Simoneaux and PAR independently have recommended alternatives to Jindal’s system.

They suggest that the Ethics Board take the role now being filled by the administrative judges, interpreting whether the facts of a particular case violate the law. The prosecutorial function would be shifted from the board to a new, independent entity.

But Jindal’s executive counsel, Stephen Waguespack, and a key legislative ethics leader, state Rep. Rick Gallot, see no need to change the new system.

“What people like PAR and others are doing is trying to find an issue that makes them have some relevance,” said Gallot, D-Ruston.

Dan Garrett, counsel for the Police Jury Association of Louisiana, said his members like the administrative judge panels, saying they make the system seem more fair.

“They really feel like you have the opportunity to make your case to a third-party arbiter of facts,” Garrett said.

Some critics of the new system contend it is more susceptible to outside influence because the law judges are hired by a political appointee who is in the executive branch. Powerful politicians could, they say, use their influence in the executive branch to sway the outcome of cases before the administrative judges, who are state government employees.

Waguespack dismisses that concern.

“Any argument that a board of political appointees will do a better job … doesn’t hold water,” he said.

He notes the Ethics Board itself consists of political appointees. Seven are selected by the governor and four by the Legislature.

Jindal to propose changes

During the next legislative session, which begins March 29, Jindal plans to propose fixes for flaws encountered during the new system's first year, Waguespack said. Some are in response to complaints from the Ethics Board.

For instance, board members say the law requires them to sign off on rulings by the administrative judges even when they disagree with the rulings.

"No one should be forced to rubber-stamp rulings, especially when you disagree," said Ethics Board member Scott Schneider, of Mandeville.

One such disagreement centered on how long the board has to bring charges against people. The administrative judges dismissed ethics charges against Gallot, saying the board had taken too long to lodge them.

The Ethics Board asked the state 1st Circuit Court of Appeal to review the matter. The court recently ruled the board doesn't have the right to appeal.

Waguespack said Jindal will ask the Legislature to give the Ethics Board limited authority to appeal the rulings of the administrative judges for "questions of law" like the one that arose in Gallot's case.

The Legislature needs to clarify when appeals must be filed and when decisions become final, said Ann Wise, director of the Administrative Law Judge Division.

Another issue Jindal's team hopes to address is term lengths for administrative judges. The panels are chosen randomly each year from a pool of candidates. Two panels of three each are selected.

Critics say it takes a year for the judges to truly understand the nuances of ethics laws — and just when they get up to speed, they are rotated off the panels.

Waguespack said the administration is willing to consider two- to three-year terms.

Accuracy not checked

Since the new laws went into effect, the number of personal financial disclosure reports has skyrocketed.

Fewer than 200 were filed in 2008, when only the governor, candidates for governor and legislators were required to report personal finances. In 2009 — under the new laws — the office handled 5,371.

That number is expected to jump in May by an additional 2,500 to 3,000 as local officials start disclosing their business dealings with governments and the gambling industry.

Reports from lobbyists also have ballooned, rising from 3,536 in 2008 to 11,813 in 2009, when the monthly electronic reporting kicked in.

Ethics Board member Scott Schneider, of Mandeville, said there should be some mechanism similar to an IRS audit on a sample of filers.

“The public thinks there is transparency, but I don’t think there’s anything in place to ensure we are getting accurate information,” he said.

The ethics agency punishes late report filers, he noted.

“What we don’t crack down on is inaccurate information,” he added. “Inaccurate information is worse than untimely information.”

Allen said the law has no provision instructing her agency to conduct audits, an authority common in other states.

“If there’s some question about the accuracy of the information, it has to be generated by a complaint,” she said.

Adding the audit function to the agency’s responsibilities would cost more because additional personnel would be required, Allen said.

CABL’s Erwin said the threat of a possible audit would deter people from filing fraudulent information.

If the Ethics Board is not in a position to conduct audits, the reports should at least be filed electronically “so the public would be able to go sort information and get a good idea of what’s going on out there,” Erwin said.

PAR echoed those concerns in its recent report “The Unfinished Business of Ethics Reform.” PAR noted electronic submission is not required for any of the newly mandated reporting by public officials.

PAR also concluded that shortcomings on the enforcement end of Louisiana’s laws could undermine them.