

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

1 Ethics Adjudicatory Board or a court or when the enforcement proceedings are
2 concluded, subject to the limitations in R.S. 42:1141.4.

3 * * *

4 §4.1. Exceptions

5 * * *

6 B. The legislature further recognizes that there exist exceptions, exemptions,
7 and limitations to the laws pertaining to public records throughout the revised
8 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
9 limitations are hereby continued in effect by incorporation into this Chapter by
10 citation:

11 * * *

12 (28) R.S. 42:17, 57, 1111, ~~1141~~ 1141.4, 1158, 1161, 1193, 1194

13 * * *

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)]

HB 296 Engrossed

2015 Regular Session

Tim Burns

Abstract: Provides an exception to the Public Records Law for certain records of the Board of Ethics and for the expungement of records relative to ethics code enforcement under certain circumstances and pursuant to certain procedures.

Present law (Code of Governmental Ethics, R.S. 42:1101 et seq.) provides ethical standards for public officials and employees and certain other persons, including prohibited conflicts of interest involving payments from nonpublic sources, prohibited participation in transactions, prohibited contractual arrangements, prohibited gifts, abuse of office, nepotism, financial disclosure, and post public service restrictions. Provides for exceptions.

Present law provides for the Board of Ethics and the Ethics Adjudicatory Board. Provides for the composition and the powers and duties of each board. Provides that the ethics board receives complaints, conducts investigations concerning alleged violations of laws within its jurisdiction (including the Code of Governmental Ethics), and issues charges based on such alleged violations. Provides that the adjudicatory board conducts hearings on the charges to determine whether a violation has in fact occurred and, if a violation has occurred, determines what penalties or other sanctions should be imposed.

Present law (Public Records Law, R.S. 44:1 et seq.) provides that all books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscoped are additions.

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.