

Regular Session, 2012

HOUSE BILL NO. 955

BY REPRESENTATIVE TIM BURNS

CAMPAIGN FINANCE: Provides relative to enforcement of certain provisions of the Campaign Finance Disclosure Act

1 AN ACT

2 To amend and reenact R.S. 18:463(A)(2)(c)(i), 1505.4(A)(1) and (4), (C), and (D)(1),
3 1511.4(D), and 1511.5(A)(1) and (2), (B), and (D) and to enact R.S. 18:1511.4.1,
4 relative to the Campaign Finance Disclosure Act; to clarify the enforcement of
5 certain violations of the Campaign Finance Disclosure Act; to the provide for the
6 powers, functions, and duties of the Supervisory Committee on Campaign Finance
7 Disclosure and the Ethics Adjudicatory Board relative to such enforcement; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 18:463(A)(2)(c)(i), 1505.4(A)(1) and (4), (C), and (D)(1), 1511.4(D),
11 and 1511.5(A)(1) and (2), (B), and (D) are hereby amended and reenacted and
12 R.S.18:1511.4.1 is hereby enacted to read as follows:

13 §463. Notice of candidacy; financial disclosure; political advertising; penalties

14 A.

15 * * *

16 (2)

17 * * *

18 (c) For the purposes of this Paragraph:

19 (i) "Outstanding fine, fee, or penalty pursuant to the Campaign Finance
20 Disclosure Act" shall mean a fine, fee, or penalty equal to an amount of two hundred

1 fifty dollars or more assessed by order of the Supervisory Committee on Campaign
 2 Finance Disclosure or by final decision of an adjudicatory panel of the Ethics
 3 Adjudicatory Board pursuant to the Campaign Finance Disclosure Act that has been
 4 converted into a court order for which all appeals have been exhausted or a judgment
 5 of a district court assessing civil penalties pursuant to the Campaign Finance
 6 Disclosure Act and that has become executory pursuant to ~~R.S. 18:1511.5~~ R.S.
 7 18:1511.4.1 or 1511.5.

8 * * *

9 §1505.4. Civil penalties; failure to file; timely and accurate filing; forfeiture

10 A.(1) Any candidate, the treasurer or chairman of a political committee, or
 11 any other person required to file any reports under this Chapter, who knowingly fails
 12 to file or who knowingly fails to timely file any such reports as are required by this
 13 Chapter may be assessed a civil penalty as provided in ~~R.S. 42:1157~~ R.S.
 14 18:1511.4.1 for each day until such report is filed.

15 * * *

16 (4)(a) For reports required by this Chapter which are required to be filed
 17 between the time a candidate qualifies and election day, in addition to any penalties
 18 which may be imposed under this Section or any other law, the supervisory
 19 committee may impose on any person required to file such a report who has not filed
 20 such report by the sixth day after the report is due, after ~~a hearing by the supervisory~~
 21 ~~committee pursuant to the provisions of R.S. 18:1511.4(C)~~ an adjudicatory hearing
 22 by an adjudicatory panel of the Ethics Adjudicatory Board conducted in accordance
 23 with the provisions of the Code of Governmental Ethics, with notice to the party who
 24 is the subject of the hearing, an additional civil penalty not to exceed ten thousand
 25 dollars.

26 (b) For all other reports required by this Chapter, in addition to any penalties
 27 which may be imposed by this Section or any other law, the supervisory committee
 28 may impose on any person required to file such a report who has not filed such report
 29 by the eleventh day after the report is due, after ~~a hearing by the supervisory~~

1 D. Upon petition by the supervisory committee or an adjudicatory panel of
2 the Ethics Adjudicatory Board any district court within the jurisdiction of which any
3 inquiry is being carried on may, in case of refusal to obey a subpoena or order of the
4 supervisory committee or an adjudicatory panel of the Ethics Adjudicatory Board
5 issued pursuant to this Chapter, issue an order requiring compliance. Any failure to
6 obey the order of the court may be punished by the court as a contempt thereof.

7 §1511.4.1. Enforcement; failure to file; failure to timely file

8 A. The staff of the supervisory committee may assess and issue a final order
9 for the payment of civil penalties for knowingly failing to file or knowingly failing
10 to timely file in accordance with R.S. 18:1505.4 and rules adopted by the supervisory
11 committee.

12 B. The supervisory committee may waive all or part of any civil penalties
13 assessed pursuant to Subsection A of this Section. A request for waiver of such
14 penalties shall be made in writing to the supervisory committee, which shall
15 promulgate rules governing the procedure to request a waiver. The supervisory
16 committee may take into consideration the provisions of R.S. 18:1511.5(B) in its
17 consideration of the request for waiver of civil penalties. The final disposition of a
18 waiver request shall not be appealable to the Ethics Adjudicatory Board or a panel
19 thereof.

20 C.(1) A final order issued pursuant to Subsection A of this Section shall be
21 appealable to an adjudicatory panel of the Ethics Adjudicatory Board which shall
22 conduct an adjudicatory hearing in accordance with the Code of Governmental
23 Ethics.

24 (2) If a final order is appealed pursuant to Paragraph (1) of this Subsection,
25 an adjudicatory panel of the Ethics Adjudicatory Board shall determine the penalties,
26 if any, that should be imposed in accordance with this Chapter, and shall issue a final
27 decision. The final decision may be appealed as provided in R.S. 42:1142.

28 (3) The Ethics Adjudicatory Board, or a panel thereof, shall have the power
29 and authority to subpoena witnesses, administer oaths, compel the production of

1 books, records, and papers, public and private, require the submission under oath of
2 written reports or answers to questions, and to do all that is necessary to effect the
3 provisions of this Chapter.

4 D. When all delays for a request for waiver or appeal have expired, a final
5 order of the supervisory committee or its staff or final decision of an adjudicatory
6 panel of the Ethics Adjudicatory Board shall become executory and may be enforced
7 as any other money judgement. The supervisory committee may file civil
8 proceedings to collect such civil penalties in the district court of the parish in which
9 the candidate, chairman, or treasurer of the political committee or other person
10 required to file reports is domiciled. The proceedings shall be conducted pursuant
11 to the relevant provisions of the Louisiana Code of Civil Procedure. The proceeds
12 of such civil penalties shall be paid directly to the treasurer of the state of Louisiana.

13 §1511.5. Procedure for enforcement; civil

14 A.(1) When the results of the investigation by the supervisory committee
15 indicate that a violation of this Chapter has occurred which is subject to civil
16 penalties, the supervisory committee is authorized to file civil proceedings to collect
17 the civil penalties provided in R.S. 18:1505.4(B) or 1505.5.

18 (2) The provisions of this Section shall not apply to any action for the
19 payment of ~~late filing fees for reports or statements~~ civil penalties due pursuant to
20 R.S. 18:1505.4 for knowingly failing to file or knowingly failing to timely file,
21 which shall be governed by R.S. ~~42:1157~~, ~~except that the board may take into~~
22 ~~consideration the provisions of Subsection B of this Section in its consideration of~~
23 ~~"good cause" shown for waiver of any late fees, pursuant to R.S. 42:1157.2~~ R.S.
24 18:1511.4.1.

25 * * *

26 B. In determining the amount of the civil penalty to be assessed, the district
27 court shall take into consideration, ~~where applicable~~, the reason for the failure to file
28 timely, ~~or~~ the reason for failing to disclose required information, ~~or~~ the reason for
29 inaccurately disclosing required information; the nature of the office sought by the

1 candidate, ~~or the nature of the office or offices sought by a candidate~~ supported or
 2 opposed, ~~in the case of~~ by a political committee or other person~~;~~, the significance of
 3 the information undisclosed or, ~~where appropriate,~~ inaccurately disclosed to the
 4 voting public~~;~~, and whether or not the candidate, chairman or treasurer of the
 5 political committee, or other person actually has filed a report or disclosed such
 6 information prior to the election or prior to the institution of the rule to show cause.

7 * * *

8 D. A judgment assessing civil penalties shall become executory when all
 9 delays for appeal have expired according to the Louisiana Code of Civil Procedure,
 10 and may be enforced as any other money judgment~~;~~ however. However, the
 11 proceeds of such civil penalties shall be paid directly to the treasurer of the state of
 12 Louisiana.

13 Section 2. This Act shall become effective upon signature by the governor or, if not
 14 signed by the governor, upon expiration of the time for bills to become law without signature
 15 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 16 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 17 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)]

Tim Burns

HB No. 955

Abstract: Clarifies the powers, functions, and duties of the Supervisory Committee on Campaign Finance Disclosure and the Ethics Adjudicatory Board relative to the assessment of penalties and the enforcement of certain violations of the Campaign Finance Disclosure Act.

Present law provides the supervisory committee (which is the Board of Ethics) with the authority to investigate apparent or alleged violations of the Campaign Finance Disclosure Act (CFDA). Proposed law retains present law.

Present law (Campaign Finance Disclosure Act) provides for civil penalties for late filing to be assessed on persons required to file reports who knowingly fail to file or timely file the report. Present law provisions in the Code of Governmental Ethics (ethics code) authorize the staff to assess and order the payment of these civil penalties and provide that a person may request a waiver or may appeal the assessment to the Board of Ethics.

Proposed law removes reference to the present law provisions in the ethics code and provides in the CFDA that the staff may assess and issue an order for the payment of the civil penalties for failure to file and failure to timely file. Proposed law further provides that the supervisory committee may waive all or part of such civil penalties and provides that the disposition of the waiver request is not appealable to the Ethics Adjudicatory Board (EAB), or a panel thereof (EAB panel). Also provides that the order by the staff is appealable to an EAB panel which shall conduct an adjudicatory hearing in accordance with the ethics code. Provides, in such case, that an EAB panel determines the penalties, if any, that should be imposed in accordance with the CFDA. Specifies that the final decision of an EAB panel may be appealed as provided in the ethics code. Provides that when all delays for waiver requests and appeal have expired, a final order or decision shall become executory and may be enforced as any other money judgement.

Present law further authorizes the supervisory committee to impose additional civil penalties up to \$10,000 on any person required to file certain election related reports who has not filed the report by the sixth day after it is due or in the case of other reports by the eleventh day after its due, with notice to the party who is the subject of the hearing.

Proposed law provides instead that an adjudicatory panel of the Ethics Adjudicatory Board conducts an adjudicatory hearing in accordance with the provisions of the ethics code and otherwise retains present law. Proposed law authorizes the EAB or panel thereof to subpoena witnesses, administer oaths, compel production of documents, and to do all as necessary to effect the provisions of the CFDA.

Present law provides that any person required to file reports under the CFDA who knowingly and willfully fails to disclose, or knowingly and willfully fails to accurately disclose, any information required to be disclosed in the reports required herein, may be assessed a civil penalty for each day until such information is disclosed by amendment to the appropriate report. Defines "knowingly and willfully", as conduct which could have been avoided through the exercise of due diligence.

Proposed law retains present law but specifies that the supervisory committee, when an investigation indicates a violation has occurred, may file civil proceedings to collect these penalties.

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

(Amends R.S. 18:463(A)(2)(c)(i), 1505.4(A)(1) and (4), (C), and (D)(1), 1511.4(D), and 1511.5(A)(1) and (2), (B), and (D); Adds 18:1511.4.1)

Summary of Amendments Adopted by House

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

1. Provides that the supervisory committee, when an investigation indicates a violation has occurred, may file civil proceedings to collect per day civil penalties for willfully failing to disclose or knowingly and willfully failing to accurately disclose any information required until such information is disclosed by amendment.