

STRATEGY PAPER 

April 29, 2008 • Volume 3



Holding the Line and Moving Forward:
Supporting Strong State Governmental Ethics Laws for Louisiana



Baton Rouge Area Chamber®

Executive Summary: *The state has made tremendous strides in becoming a national model in governmental ethics laws and enforcement through reforms enacted in 2007 and 2008. While most of the critical areas have been addressed, it is important to highlight the relevance of currently proposed legislation in this Regular Session and the potential impact it could have on our ethics laws. BRAC advocates for maintaining alignment with the following targeted priorities: (i) ensuring that current ethics laws are not repealed or weakened; (ii) establishing strong conflict of interest laws for all branches of state government; (iii) making sure that there is consistency in the expansion of financial disclosure requirements for state boards and commissions; and (iv) supporting clarification in the definition of a lobbyist. Our state's new ethics laws have become an asset for economic development. BRAC is proud to have taken a leading role in the reform process and will remain engaged to ensure that Louisiana continues moving in the right direction. While BRAC is an active member in the LA Ethics 1 coalition, the views expressed in this paper are BRAC's own.*

Leading the Charge for Governmental Ethics Reform in Louisiana

Recognizing the impact that Louisiana's long and colorful history of government corruption has had on economic development across the state, last year the Baton Rouge Area Chamber (BRAC) undertook an extensive review of the Louisiana Code of Governmental Ethics and related statutes, benchmarked key laws against other states, and interviewed national experts to learn more about best practices. Forming the *LA Ethics 1* coalition, BRAC and its partners released their findings in *Transforming Louisiana into a National Model for Governmental Ethics: A Statewide Reform Initiative*, a white paper that not only makes the case for reform, but establishes priorities for a multi-year effort and plan for legislative action. (The full white paper is available on *LA Ethics 1*'s website at www.laethics1.com.)

The white paper served as a catalyst for the governmental ethics reform movement in Louisiana. *LA Ethics 1* and BRAC successfully passed three of their six pieces of legislation during the 2007 regular session, strengthening state whistleblower laws, establishing an ethics training and education requirement for public servants, and enhancing the independence of the office of State Ethics Administrator. However, the coalition's signature bill, relative to financial disclosure, was defeated in the final hours of session. The much publicized defeat resulted in public outrage, ensuring that governmental ethics reform would be a key issue in the November general election. Across the state, candidates at

every level of government ran on governmental ethics reform platforms—including the man who would become governor, Bobby Jindal.

BRAC worked side-by-side with the Jindal administration leading up to, and during, the 2008 First Extraordinary Session on governmental ethics reform. BRAC and the coalition enthusiastically supported the Governor's entire legislative package, helping pass additional reforms in the areas of financial disclosure, conflict of interest, and lobbyist regulation, among others.

The past year has seen historic progress made on Louisiana's quest to become a national model for governmental ethics laws and enforcement—and the public has taken notice. Nationally, the state received a great deal of attention when the Center for Public Integrity (CPI) announced that Louisiana had taken the number one position in its ranking of state legislative financial disclosure requirements, an announcement that garnered a front-page story in the *New York Times*. The progress has had an impact within the state as well. A 2008 study conducted by the Louisiana State University Public Policy Research Lab found that relative to 2007, there was a significant decrease in the percent of Louisianans saying that the state is corrupt.

BRAC is proud to have taken a leading role in Louisiana's governmental ethics reform process. However, with more than 100 ethics bills proposed during this year's regular session, it must remain engaged to ensure that Louisiana continues moving in the right direction. With this goal in mind, BRAC has identified targeted priorities for the 2008 legislative session:

- Ensure that current ethics laws are not repealed or weakened
- Require the establishment of strong conflict of interest laws for all branches of state government
- Make sure that common sense and consistency are used in the expansion of financial disclosure requirements for state boards and commissions
- Support clarification in the definition of a lobbyist

State laws are always evolving, and Louisiana's governmental ethics laws are no exception. Clarifications will be needed to clean up unintended ambiguities, and over time, laws may have to be altered to keep pace with an ever-rising model standard. The business community, legislature, and the public at large must remain engaged in these issues to ensure that progress made in the past year is not lost and that the perception of our state government becomes an asset, rather than an obstacle, for economic development.

Based on these priorities, BRAC supports HBs 758, 769, 904, 390, and SB 499, but opposes HBs 635, 648, and 902.

BRAC Priorities for 2008 Regular Session:

1. *Ensure that current ethics laws are not repealed or weakened*

After making tremendous progress in the past year toward becoming a national model for governmental ethics laws and enforcement, it is critical that the state not lose ground. CPI recently announced that Louisiana had taken the #1 position in its ranking of legislative financial disclosure standards. The removal of certain investment and real estate information from the requirement, as proposed in HB 902, would not only weaken current law, but would have a significant impact on Louisiana's national rank. The passage of HB 902 would cause Louisiana to fall in national rankings, and likely lose the #1 spot that it only recently achieved.

2. *Require the establishment of strong conflict of interest laws for all branches of state government*

During the 2008 First Extraordinary Session on governmental ethics reform, strong conflict of interest laws were passed for officials in the executive and legislative branches of state government. HBs 758 and 769 use model language from the American Bar Association (ABA) to strengthen conflict of interest laws for elected judges in the judicial branch, ensuring transparency and accountability across the board.

The 2007 State Liability Systems Ranking Study, issued by the U.S. Chamber of Commerce, ranked Louisiana 49th in the country for "judge impartiality." In line with other studies demonstrating the link between governmental ethics and economic development, the study found that 57% of those surveyed felt that factors like these were important to companies deciding where to locate or do business.

Legislation proposed this session would improve the perception of judicial impartiality in Louisiana by mandating recusal under specified circumstances. Currently, unless a judge is serving as a witness in a case, recusal is optional. This level of discretion is particularly problematic in a state where judges are elected and eligible to receive campaign contributions; the potential for partiality and bias, whether real or only imagined, is great. Legislators and executive branch officials have strict guidelines in place to avoid even the slightest perception of self interest—similar standards should be established for judges.

3. *Make sure that common sense and consistency are used in the expansion of financial disclosure requirements for state boards and commissions*

A great deal of effort went into the creation of the three-tiered financial disclosure system during the 2008 First Extraordinary Session on governmental ethics reform. As the scope of the requirement is expanded and applied to state boards and commissions not included in the original legislation, BRAC supports a consistent application of the system's rules. Under current law, there are two criteria that determine whether state board and commission members report under tier II of the financial disclosure requirement, tier III, or not at all: spending authority and salary.

BRAC remains neutral on the scope of the expansion, but feels that it is crucial that these common sense criteria be applied consistently and fairly to newly included bodies. Two bills, HB 390 and HB 904, expand the scope of the requirement in this manner—the former to levee boards only, the latter to all state boards and commissions. Conversely, two bills, HB 648 and HB 635, expand the scope of the requirement in an inconsistent manner. HB 648 inserts all levee boards and port commissions into tier II regardless of the unique characteristics of individual boards, while HB 635 singles out Civil Service Commission members for tier II reporting, even though their spending authority and aggregate per diems do not warrant that level of disclosure.

An inconsistent and unfair application of the three-tiered structure's rules to newly included boards and commissions undermines the validity of the entire system. Furthermore, the singling out of particular bodies for higher levels of disclosure will likely cause quality board and commission members to leave public service.

4. *Support clarification in the definition of a lobbyist*

Louisiana law maintains separate guidelines for executive branch lobbying and legislative lobbying. However, neither area of law contains clear guidelines defining who is, and who is not, a lobbyist. SB 499 begins the clarification process, but more importantly provides an incredible opportunity for interested groups to work with the legislature to finally establish a clear, common sense definition. BRAC supports the creation of a bright-line definition that satisfies the need for public transparency while not unduly hindering the public's access to participate in government.

Conclusion

Transforming Louisiana into a national model for governmental ethics laws and enforcement has been, and continues to be, a top priority of BRAC because it is an important factor for economic development. While much progress has been made in the past year, Louisiana legislators and citizens must remain engaged to ensure that Louisiana continues moving in the right direction, and vigilant to ensure that efforts to weaken existing laws are defeated. Ethics will have a lasting effect as an economic development tool if have a sustained commitment to high standards. It is not just about getting to the top; it is about staying there.