

# State and Local Government in Louisiana: An Overview 2012-2016 Term

## CHAPTER 2 — STATE GOVERNMENT FUNCTIONS

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### Part K. Ethics and Related Matters

**T**he Code of Governmental Ethics was enacted pursuant to constitutional mandate. (Const. Art. III, §9 and Art. X, §21) The code is found in Chapter 15 of Title 42 of the Louisiana Revised Statutes of 1950 and is the primary body of law which regulates conflicts of interest of legislators and other public officials and employees. This Part includes a discussion of the administration, procedure, and enforcement of the ethics code and related provisions. (The ethical standards for public officials and employees are discussed in "Orientation Guide for Louisiana House Members", which is made available to all members of the House of Representatives.) This Part also contains a brief discussion of causes and methods for removal from office.

#### Ethics Administration

##### Ethics Board and Ethics Adjudicatory Board

The constitution provides that the ethics code "shall be administered by one or more boards created by the legislature with qualifications, terms of office, duties, and powers provided by law." (Const. Art. X, §21) The legislature has provided for two boards: the Board of Ethics and the Ethics Adjudicatory Board.

The Board of Ethics administers and enforces the code of ethics; functions as the Supervisory Committee on Campaign Finance Disclosure in enforcing the Campaign Finance Disclosure Act; and administers provisions of law relative to elections integrity and lobbying and certain provisions relative to gaming and the Louisiana Lottery Corporation. (R.S. 42:1132) The Board of Ethics is composed of eleven members who serve staggered five-year terms. The governor appoints seven members; two members are elected by the House of Representatives; and two members are elected by the Senate. Members are selected from lists of nominees submitted by a nominating committee that consists of presidents or designees of certain private colleges and universities in the state. There are restrictions on who can serve on the board. For example: no elected official can serve, and no former elected official can serve within six months of the end of his or her term; no public employee can serve (except a person who is a public employee only by virtue of his service on the Board of Ethics), and no former public employee can serve within six months of the termination of his public employment; and no person who was a registered lobbyist in the previous two years can serve. With respect to the ethics code, the Board of Ethics receives complaints, conducts investigations concerning alleged violations, and issues charges based on such alleged violations. Once charges are issued, the matter is referred to the Ethics Adjudicatory Board.

The Ethics Adjudicatory Board conducts hearings on ethics charges to determine whether a violation has in fact occurred. The adjudicatory board is made up of seven administrative law judges selected at random by the director of the division of administrative law. The law requires

that members of the adjudicatory board have at least two years experience as an administrative law judge or at least ten years experience in the practice of law. The adjudicatory board sits in rotating panels of three, and its members serve three-year terms.

### General Procedures

The Board of Ethics is required to consider any signed sworn complaint from any elector; it may, by a two-thirds vote, consider any matter which it believes may be a violation of the ethics code; and it may consider any matter which it believes may be a violation of any other provision of law under its jurisdiction. (A complainant who, with knowledge of its falsity, makes a false non-sworn complaint is subject to penalties.) The board conducts a confidential investigation to elicit evidence. Based on this evidence, the board decides whether a public hearing should be conducted to determine whether a violation has occurred. If the board determines following an investigation that a hearing should be conducted, it issues charges. If the Board of Ethics fails to issue charges within one year from the date upon which a sworn complaint is received or, if no sworn complaint was received, within one year from voting to consider the matter, the matter must be dismissed.

The hearing on the charges is conducted by the Ethics Adjudicatory Board in accordance with the Administrative Procedure Act and the ethics code. (R.S. 42:1141) If the hearing of the adjudicatory board fails to disclose clear and convincing evidence to support the charges, the Board of Ethics is required to close its file on the charges. If the adjudicatory board determines that a violation has occurred, it must determine what authorized penalties or other sanctions should be imposed. (R.S. 42:1141) A person who is aggrieved by an action taken by the ethics board or the adjudicatory board may appeal to the Court of Appeal, First Circuit. (R.S. 42:1142)

### Opinions

The Board of Ethics is authorized to render advisory opinions with respect to the provisions of law within its jurisdiction. It has adopted rules of procedure for the issuance of such opinions. (R.S. 42:1134) The board may also declare the rights, status, and other legal relations established by provisions of law within its jurisdiction upon application by a person or agency. The purpose of such declaratory opinions is to "settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations established by the provisions of [the ethics code] or by any other law within the board's jurisdiction or under opinions issued by the board, or the construction of said laws and opinions." (R.S. 42:1141.1) Opinions of the board are public.

### Enforcement

The Board of Ethics has authority to impose penalties and to collect them as provided in the ethics code, and the board may recommend to the legislature that the legislature censure any person the board finds guilty of violations and prohibit such person from lobbying for not less than 30 days and not more than one year. (R.S. 42:1153) No action to enforce the law can be taken more than two years after the discovery of the alleged violation or four years after the occurrence of the alleged violation, whichever period is shorter. (R.S. 42:1163)

## Removal From Office

### Impeachment

Article X, Section 24 of the Constitution of Louisiana provides for impeachment of state or district officials. Such an official, whether elected or appointed, is subject to impeachment for commission of or conviction for a felony or for malfeasance or gross misconduct while in office. An impeachment proceeding is instituted in the House of Representatives. The Senate conducts the trial and two-thirds of the elected senators must concur to convict. Such conviction results in immediate removal from office.

### Felony Conviction

The legislature has provided for the removal of public officers by suit in R.S. 42:1411 et seq. Pursuant to R.S. 42:1411, a public officer shall automatically be suspended from office for conviction of a felony without compensation. The public officer shall be removed from office upon that conviction becoming final but shall be reinstated, with back wages, should the conviction be overturned on appeal.

### Recall

The state constitution also provides in Art. X, §26 for the recall by election of any state, district, parochial, ward, or municipal official, except judges of the courts of record. The general statutes relative to recall elections are provided in R.S. 18:1300.1 et seq.

### Election Law Offenses

R.S. 18:1461.8 provides that any candidate who is elected to public office and who is convicted of one or more of certain election law offenses committed while running for the office to which he was elected will forfeit the public office. Upon the conviction becoming final, the public office is declared vacant.

