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Municipal Ethical Standards: The Need for a New Approach Report

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Report

Municipal Ethical Standards: The Need For A New Approach†

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I. Introduction

The lives of over 17 million New Yorkers are directly affected by the decisions of town, village, city and county elected officials and public servants. Clear, strong ethics laws are needed to assure the public that these decisions are made to serve the common good and not for private gain. Good ethics laws are as important for public servants in small towns as they are for those in state government.

In 1987, the State Legislature passed the Ethics in Government Act, regulating the behavior of state and legislative branch officials and employees.¹ However, more than 95% of New York's municipalities are completely unaffected by this law.² The five percent covered, those with populations over 50,000, are affected in only one minor way.³ Unfortunately, smaller communities are not immune from corrupt or unethical practices. In fact some would say that ethical hazards have increased over the

1. See *infra* note 5 and accompanying text.

2. See *infra* note 7 and accompanying text.

3. See *infra* note 6 and accompanying text.

years as communities have grown in population and wealth and local governments are called upon to solve increasingly complex and intractable problems. Yet it has been over twenty years since state lawmakers addressed the issue of ethical guidelines at the municipal level. The law is now inadequate and unworkable; its restrictions are too cumbersome and confusing to prevent conflicts of interest and to provide guidance to our many honest, hardworking public officials in local government.

The New York State Commission on Government Integrity investigated numerous situations throughout the state that revealed just how bad the current law is. Our findings and a proposed municipal ethics act that we drafted to correct the law's deficiencies are contained in the following report, "Municipal Ethical Standards: The Need for a New Approach." Our proposed Act would set out the minimum ethical standards that should be observed in every municipality throughout the state. The premise here is that there are certain basic features to good government that make sense for all governments, no matter what their size or location — rural or suburban, upstate or downstate. If the proposed Act became law, localities would be able to enact more stringent regulations if they wanted to, but no local government could have standards that fell below the "floor" put in place by the Act.

The Governor has had a bill introduced in the Legislature that is patterned after the law we proposed. The State Assembly has held public hearings on the bill and it is hopeful that in the 1990 legislative session, New Yorkers will get the strong municipal ethics law they need and deserve.

The New York State Commission on Government Integrity was created by Governor Cuomo, with the approval of the State Legislature, on April 21, 1987. The Governor gave the Commission a broad mandate to investigate "the adequacy of laws, regulations and procedures relating to maintaining ethical practices and standards in government, assuring that public servants are duly accountable for the faithful discharge of the public trust reposed in them, and preventing favoritism, conflicts of interest, undue influence and abuse of official position and to make recommendations for action to strengthen and improve such laws, regulations and procedures."

II. Overview: The Patchwork of Conflict of Interest Legislation

Clear and consistent ethical standards are as important for local public officials as they are for statewide public officials. The New York State Legislature recognized this more than two decades ago, and enacted legislation governing municipal officers and employees. The legislation defined conflicts of interest, and required each county, city, town, village and school district to adopt its own code of ethics. Each municipality was empowered to create its own ethics board, but the legislature did not give the local governments authority to invest their ethics boards with investigatory or enforcement powers. They were only authorized to issue advisory opinions, and could at most recommend sanctions.⁴

Although the purpose of the legislation was laudable, it has been frustrated by a confusing patchwork of contradictory, inadequate and sometimes overly restrictive ethics codes, some of which are unenforceable, and some of which are simply not enforced.

The 1987 Ethics in Government Act made substantial positive changes in the state conflicts of interest law, but had little application to local government.⁵ The 1987 Act's impact on local government is limited to the imposition of financial disclosure requirements on public officials and employees in political subdivisions with populations of 50,000 or more.⁶ However, this still leaves more than 95% of all municipalities in New York State totally unaffected by the provisions of the 1987 Act.⁷

4. See N.Y. GEN. MUN. LAW §§ 800-13 (McKinney 1986 & Supp. 1989).

5. The Ethics in Government Act covers statewide elected officials, state officers and employees, legislators, legislative employees and certain political party chairmen for some purposes. N.Y. GEN. MUN. LAW § 806 (McKinney 1986 & Supp. 1989). Earlier in 1988, the Commission issued a report recommending changes to the Act as it pertained to state government. "Ethics in Government Act Report and Recommendations" (April 6, 1988).

6. Such political subdivisions must either adopt their own disclosure forms by January 1, 1991 or the detailed Ethics Act form will automatically apply. Only New York City's disclosure form need be as stringent as that of the Ethics Act. N.Y. GEN. MUN. LAW § 811(3) (McKinney 1986).

7. This percentage reflects population estimates for governmental units prepared by the New York State Department of Economic Development based on the 1986 figures from the U.S. Bureau of the Census.

III. Commission Mandate to Examine Conflicts of Interest

The April, 1987 Executive Order establishing the Commission directed it to examine weaknesses in laws relating to conflicts of interest in state and local governments. During the summer of 1987, the Commission's Chairman and staff members travelled throughout New York State and talked with citizens and public officials who stressed the confusion and irrelevance of existing ethics laws and asked for help in drafting local ethics codes to guide honest public servants.

In response, the Commission examined the conflicts law of New York State (set forth in Article 18 of the General Municipal Law), as well as the laws of other jurisdictions, and conducted numerous investigations in municipalities of varying sizes within the state. These investigations revealed the inadequacies of current law. The present law is cumbersome and difficult to understand, and with its focus on prohibited contracts and enumerated exceptions, the proscriptions of Article 18 are narrowly defined and rigidly applied. There are significant gaps in the coverage of present law because many non-contractual and indirect relationships give rise to potential or actual conflicts of interest and are not governed by Article 18.

The Commission's investigations also underscored the lack of compliance with Article 18 and the inadequacy of its enforcement mechanisms. Ethics boards lack the power and independence necessary to carry out their important work. Although a knowing and wilful violation of Article 18 constitutes a misdemeanor, criminal prosecution is all but non-existent, and there is an inadequate range of civil sanctions available as an alternative. Thus, there is an urgent need for legislative reform in order to bring legal and ethical standards closer together; to provide critical guidance for the multitude of public servants whose honesty and integrity are above reproach; to reduce the pressure brought to bear on local officials by private interests; and to deter abuse by those who taint the reputations of all by using their public office for private gain.

As a result of its investigation, the Commission's staff developed a proposed Municipal Ethics Act which was distributed in May, 1988 to municipalities, civic organizations, good government groups and experts throughout New York State for comment. Commissioners and staff members also made several

presentations to interested groups. The Commission received comments from many individuals and organizations, and took these into consideration in preparing and releasing to the public, in November, 1988, its revised proposed Municipal Ethics Act.

On November 22, 1988, the Commission held a public hearing in Albany to elicit comment on the revised proposal. After hearing testimony from nine witnesses,⁸ including representatives from various local government associations, municipal officials, experts and good government groups, the Act was further revised and then transmitted to the Governor.⁹

IV. The Commission's Proposed Act

The proposed Act, if adopted, would supersede the current conflict of interest law contained in Article 18, with respect to counties, cities, towns, villages and school districts in New York State, as well as special districts and independent agencies.¹⁰ The Commission recognizes the delicate balance needed to avoid overly burdensome requirements which would cause hardship to smaller municipalities and possibly discourage public service. The Act, therefore, sets uniform *minimum* ethical standards for *all* covered government entities,¹¹ but enables those entities to adopt more stringent legislation where they deem it appropriate.¹²

The proposed Act would simplify, broaden and strengthen current law in several ways. First, the Act would fill large gaps in existing law and regulate a much broader range of direct and indirect conflicts. Second, the Act would cover situations where

8. See *infra* Appendix C for a list of the witnesses.

9. See *infra* Appendix A for the full text of the proposed Municipal Ethics Act ("the Act") and Appendix B for a summary thereof.

10. The Act's coverage would be co-extensive with that of Article 18, including, for example, consolidated health districts, public libraries and urban renewal agencies. N.Y. GEN. MUN. LAW § 800(4) (McKinney 1986). The Commission has deferred decision, pending further investigation, on whether to recommend extending coverage beyond that of current law to include local development corporations, local authorities and certain not-for-profit corporations which serve as instrumentalities of government.

11. The only exception is New York City, which recently passed by public referendum revisions to its conflicts law. These changes are more restrictive than those set forth in the proposed Act.

12. To the extent that the entity's own code of ethics is as stringent as the Act, the entity need only comply with one code—its own.

no municipal contracts are involved, but where officials act to benefit themselves or others related to them. Third, the Act would provide an important safeguard by requiring disclosure by officials of direct and indirect financial interests in matters they act on in their official capacity. Fourth, the Act would also broaden the current gift prohibition, by precluding receipt by the official of financial benefits not available to the general public. Fifth, the Act would also regulate political activity untouched by Article 18, by restricting the solicitation by municipal officers and employees of participation in election campaigns or political contributions, and by requiring disclosure of campaign contributions to municipal officers and employees by those submitting written bids or applications to the municipality. Finally, the Act would establish a more effective enforcement mechanism by creating strong, independent ethics boards with the power to investigate violations and impose civil sanctions.

V. Investigations Reveal that Conflicts Regulated by Article 18 Continue to Proliferate: A New Approach Is Needed

Despite the total prohibition under current law on municipal officers and employees having a direct or indirect "interest"¹³ in a contract with the municipality when they have the power or duty to take some action on it,¹⁴ these conflicts continue to proliferate.

Random municipal audits by the State Comptroller's office in 1987 and 1988 revealed many examples of municipal officials

13. " 'Interest' means a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves . . . [A] municipal officer or employee shall be deemed to have an interest in the contract of (a) his spouse, minor children and dependents, . . . (b) a firm, partnership or association of which such officer or employee is a member or employee, (c) a corporation of which such officer or employee is an officer, director or employee and (d) a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee." N.Y. GEN. MUN. LAW § 800(3) (McKinney 1986). If municipal officers or employees have, will have or later acquire an interest in an actual or potential contract, they must disclose in writing the nature and extent of such interest. N.Y. GEN. MUN. LAW § 803 (McKinney 1986 & Supp. 1989). Any contract entered into in violation of these provisions is void. N.Y. GEN. MUN. LAW § 804 (McKinney 1986).

14. Article 18 exempts certain contracts from this prohibition, including those in which the municipal officer or employee receives no compensation. N.Y. GEN. MUN. LAW §§ 801-02 (McKinney 1986).

directly or indirectly profiting from municipal contracts. Although the Comptroller issued citations for these conflict of interest violations, the audits are advisory only, and the Comptroller is not empowered under current law to take any enforcement action. In general, only those prohibited contracts involving more than \$2,000 are referred by the Comptroller to the appropriate local district attorney, who has the sole discretion to prosecute. Usually, no criminal proceedings are instituted.

The Comptroller's audits revealed that towns and villages continue to make payments to businesses owned by public officials. For example, one village paid more than \$13,000 in premiums to an insurance agency owned by a village trustee, while another made payments to a company owned by one of its trustees, and a third contracted with businesses owned by the spouse of a village trustee and the superintendent of public works.

One town purchased machinery costing \$7,800 from a vendor, but the check, which was made payable to the vendor, was endorsed and cashed by the town supervisor; the following year, this town paid \$6,000 to rent machinery from a corporation owned in large part by this same supervisor. Another town purchased gravel from the town supervisor's spouse, and paid over \$30,000 on another contract for materials and services to a firm with which the town assessor was associated.

Recurring violations like these demonstrate that, but for random audits, these prohibited interests go largely undetected. While earlier detection of such conflicts and more effective enforcement of the rule of law are required, the Commission recognizes that Article 18's absolute ban on prohibited contracts may not always serve the needs of a municipality. For example, it may be less expensive and more convenient for a small municipality to contract with a supervisor's snow removal company to clear the streets or with a planning board chairman's construction company to do renovation work on the town hall. Keeping the work local may be preferable to going to a contractor outside the municipality who might not understand the municipality's needs or be interested in small contracts. In addition, the Commission recognizes the importance of supporting local businesses, a need which can be thwarted by provisions which force small jurisdictions to do their contracting and procurement with outside firms.

The Act balances these interests by mandating three types of disclosure of direct and indirect interests — annual, transactional and applicant disclosure — and by requiring a public official to abstain from considering any matters in which the official has an interest. Under the flexible principles of transactional disclosure and recusal, as long as municipal officers or employees publicly *disclose* the nature and extent of their interests in a contract *and recuse* themselves from taking *any* action on it to obtain a benefit for themselves or related persons,¹⁵ the contract may be executed and their companies may receive payment. By this regulatory approach, the municipality can act in its best interests, the public servant need not suffer undue economic hardship, and the public can be assured that public decisions are not being distorted by hidden conflicts of interest.

The Act also requires annual disclosure of the financial interests of public officials and their spouses. This requirement would reveal, and might prevent, the kind of conflicts cited in the examples above, or others which may have altogether escaped the random audit. In accordance with the growing trend to require such information,¹⁶ the Act mandates limited annual disclosure by elected and paid public officials — those with authority to perform discretionary acts with respect to business dealings.¹⁷ They must disclose their real estate holdings; employers' names; ownership interests in businesses and corporations; self-employment over \$2,000;¹⁸ and for those who are licensed professionals, a description of the principal subject areas of their

15. Municipal officers and employees would be prohibited from taking an action or not taking an action to obtain a financial benefit for themselves, their family, their business, any corporation of which they own more than five percent of the stock, anyone from whom they or their spouses received more than \$2,000 during any one of the past two years, or a person with whom they or their family member has an employment, professional, business or financial relationship. *See infra* Appendix A at § 4(1)(c).

16. According to the Institute of Public Administration in New York, nineteen states now require by state law some form of financial disclosure from local and elected officials and employees.

17. The Act exempts appointed, unpaid volunteers from the annual disclosure requirements. *See infra* Appendix A at § 6(1).

18. The public official must similarly disclose his or her spouse's information, and the real estate holdings of all family members of the household. *See infra* Appendix A at § 6(2). The Act provides relief for public officials who are unable, after reasonable efforts, to obtain information relating to their spouses and household members. *Id.* at § 6(3).

licensed practices, and the nature of their clients' businesses.¹⁹ The Act does not require officials to disclose dollar amounts or client names.²⁰

At the Commission's public hearing, representatives from some of the local government associations objected to *any* annual disclosure requirement, as an unwarranted invasion of privacy rights which would deter individuals, especially those unpaid or nominally paid, from government service. Testimony was also heard, however, showing that municipalities in this state that already require annual disclosure have found no such wide-scale loss of people interested in public service. Indeed, one public official testified at the hearing that only one municipal official out of thirty one left government service after the Town of Wilton adopted a stringent code of ethics, which included a disclosure provision more detailed and demanding than that prescribed in the Act.²¹ Other municipalities with annual disclosure requirements have had similar experiences. The Corporation Counsel of the City of Buffalo confirmed that all of its officials, numbering over 100, have complied with the Buffalo Ethics Code's newly-adopted annual disclosure provision. The Erie County Attorney's office similarly reported no compliance problems with the disclosure provisions of the county's 15-year old ethics code. The small village of Ocean Beach, which adopted an ethics code in 1978 more stringent than the Act, has not suffered any loss either of paid or unpaid officials or employees.²² Other states, including Washington and Alabama,²³ have

19. Compare the detailed disclosure requirements of the 1987 Ethics in Government Act, such as listing the identity and category of dollar value of beneficial interests; the nature and amount of income in excess of \$1,000 from each source for self and spouse; the type and market value of securities held by self or spouse in excess of \$1,000; and the location, size, general nature, acquisition date, market value and percentage of ownership of any real property in which self or spouse holds a vested or contingent interest in excess of \$1,000. N.Y. GEN. MUN. LAW § 812(5) (McKinney Supp. 1989).

20. See *infra* Appendix A at §§ 6(2), 6(4).

21. *Proposed Amendments to the Ethics in Government Act: Hearings before the New York State Commission on Government Integrity*, 93, November 22, 1988 [hereinafter *Hearings*] (testimony of Town Councilman Raymond O'Connor).

22. The present special counsel of the Commission was the mayor and principal draftsman of the 1978 Ocean Beach Act.

23. *Hearings*, *supra* note 21, at 170-72 (testimony of Page Bigelow, Institute of Public Administration, New York). Washington State goes even further than the proposed Act, requiring disclosure of client names. WASH. REV. CODE § 42.17.241(1)(f) and (g)

tough disclosure requirements and no shortage of people willing to serve in local government. Thus, experience shows that there has been no deterrent effect on employees of local government because of the disclosure requirement.

The final disclosure provision in the Act requires disclosure of two items of information by all persons who submit written applications or bids to a municipality.²⁴ Each applicant must disclose campaign contributions of \$250 or more made to any officer or employee of that municipality, and the nature of any officer's or employee's "interest" in either the application or the applicant.²⁵ The applicant disclosure provision would add an additional safeguard to the Act's regulatory scheme, since keeping this information secret would require collusion between the officer or employee and the applicant.

The Act's disclosure and recusal provisions provide a significantly broader framework than Article 18 for the maintenance of ethical government standards. They strike a balance between the privacy rights of the public servant and the public's right to a conflict-free, ethical government. Initially, public officials need only make limited annual disclosure of their significant economic interests. If, in a given situation, an official's interests would be affected by his or her action or inaction, only then is he or she required to make fuller disclosure of the interest and to recuse himself or herself from the matter entirely.

This regulatory scheme should protect public officials from becoming inadvertently involved in a conflict, because the annual, transactional and applicant disclosure provisions would remind them of the problem and should prompt them to remove themselves completely from any matters of self-interest. The

(West Supp. 1989).

24. This provision extends Article 18's requirement for disclosure by applicants for certain land use approvals only. N.Y. GEN. MUN. LAW § 809 (McKinney 1986). Violation of this provision of the proposed Act subjects the applicant to misdemeanor prosecution. See *infra* Appendix A at § 9(5).

25. Municipal officers and employees are defined to have an "interest" when they or their spouse: are the applicant, or a family member of the applicant; own more than five percent of the stock of the applicant; have or intend to enter into an employment, professional, business or financial relationship with the applicant; have received from the applicant, during one year of the previous two, a benefit of more than \$2000; or will receive a benefit if the municipality's disposition is favorable to the applicant. See *infra* Appendix A at § 9(4).

Act would also make certain that the enforcement agency and the public have ready access to the information necessary to detect a potential or actual conflict of interest. This provides an additional incentive for compliance with the law because it would increase the probability of detection of violations. It would enable citizens to be informed about their officials' interests, and to guard against the self-dealing of the occasional corrupt official. The Act, in turn, would lend greater credibility to the many thousands who serve the public with honesty and diligence.

VI. Enhanced Enforcement

Even with increased disclosure and recusal requirements, the Act simply will not be effective without adequate enforcement. The following Commission investigation highlighted the need for municipal ethics boards to function independently of local government, and to be empowered not only to consider, but to resolve conflict of interest issues arising in the community. In one large town, three top planning officials worked as environmental consultants for developers who had applications pending before the very planning board on which the officials sat. The firm of one of these officials even made applications to and appearances before this planning board on behalf of private clients.²⁶ The town's ethics board subsequently determined that a planning board member applying to or making appearances before the planning board, whether directly or through a firm in which he or she has an interest, was guilty of a conflict of interest and an appearance of impropriety, unless he or she disclosed the interest and abstained from such matters. The town board created an independent and impartial panel to review the ethics board's findings and recommend sanctions. The panel declined to make any recommendations, however, because it concluded that the board member's due process rights had been violated. The town attorney recommended that the town board take no further action, because the ordeal of negative publicity was a punishment of sorts, the objectionable practices had ceased and

26. Such appearances before the municipality by municipal officers and employees would be regulated by the Act. See *infra* note 37 and accompanying text.

the individuals involved were in the process of leaving or had already left the town's employ.

The Act would fundamentally change the current enforcement mechanism by creating municipal or regional ethics boards with real enforcement powers lacking under current law. These powers would include the authority to investigate alleged violations, to conduct hearings, to subpoena documents and witnesses if necessary, and to impose sanctions. The boards would also be empowered to grant waivers of conflicts, to review disclosure statements, and, as with current law, to render advisory opinions upon request by public servants. If a municipality does not opt to either establish a municipal ethics board or participate in a regional board, the Act provides that a state ethics commission will serve as the local board.²⁷ The state ethics commission would then be granted all of the powers given to local boards, as well as those of appellate review. The commission would also be given the responsibility of determining whether local ethics codes, if adopted, are as stringent as the Act.²⁸

The Act sets minimum qualifications for board members and establishes procedures to insure the independent functioning of these five-member boards. The Act provides that no board member may hold political party office, participate in an election campaign or be employed as a lobbyist; that no more than two board members may be of the same political party;²⁹ that each member be appointed by the chief executive officer with the advice and consent of the governing body, or if there is no chief executive, by the governing body of the municipality;³⁰ that board members serve no more than two five-year terms, and that all members' terms be staggered.³¹

The Act also provides for a wider range of sanctions for use

27. See *infra* Appendix A at § 13(3).

28. See *infra* Appendix A at § 20(13).

29. See *infra* Appendix A at §§ 14(1)-(2).

30. See *infra* Appendix A at § 15(3). The proposed Act also authorizes the municipality to allow one non-elected municipal officer or employee to be selected by the officers and employees or their collective bargaining units to serve on the board. See *infra* Appendix A at § 15(4).

31. See *infra* Appendix A at § 15(5). The proposed Act allows local governments to establish additional qualifications, such as a requirement that all board members live in the municipality or do business there, or a provision for per diem compensation. See *infra* Appendix A at §§ 14(3)-(4).

in enforcing the ethics law, including warning, reprimand, civil fines (up to \$1,500), civil forfeiture (up to three times the value of any financial benefit received as a result of the conduct), and damages to the municipality for any losses or increased costs incurred. In addition, the municipal officer or employee faces misdemeanor prosecution and, if convicted, automatically forfeits his or her municipal office in the manner provided by law.³²

The Act also enhances compliance by making third parties responsible for their complicity; making it a misdemeanor to induce a municipal officer or employee to violate the Act,³³ and barring vendors and others convicted of a misdemeanor under the Act from entering into contracts with any governmental entity in the state for three years.³⁴

These enhanced enforcement powers and civil and administrative penalties would prove more effective than current law at combating conflicts of interest. The various disclosure provisions will make the risk of detection far greater, and the penalties will make the cost of violation prohibitive.

VII. Actual or Potential Conflicts Unregulated by Article 18

A. *Indirect Conflicts*

The Act would regulate indirect conflicts of interest outside the reach of Article 18, where public servants act to benefit themselves or others related to them, but where no municipal contracts are involved.

The need to fill this statutory void became apparent when the New York State Supreme Court was required to resort to common law principles to resolve the following controversy. The Tuxedo town board approved a two million dollar development upon the decisive vote of a board member who was an officer of the advertising firm which handled the account of the developer's parent corporation.³⁵ Despite the absence of a prohibited

32. See *infra* Appendix A at § 12(1).

33. See *infra* Appendix A at § 10.

34. See *infra* Appendix A at § 11(1).

35. Before he voted, the town board member apparently submitted the question of whether a conflict existed to the local ethics board, but it never responded. *Tuxedo Conservation and Taxpayers Ass'n v. Town Board*, 69 A.D.2d 320, 418 N.Y.S.2d 638 (2d Dept. 1979).

conflict under Article 18, the court inferred that if the application was approved, it was likely that the advertising company would obtain all the advertising contracts, and that this created an appearance of impropriety such that the board member should have disqualified himself from voting on the matter. Accordingly, the court held that the approval could not stand.

Commission investigations revealed other indirect conflicts inadequately dealt with by Article 18. For example, members of a village zoning board of appeals requested variances for their own properties, and then voted in favor of granting the variances.³⁶ They also voted in favor of variances for properties owned by others, and then did the renovation work on the structures for which the variances were granted.

Another Commission investigation disclosed that prior to his election, a town board member had been sued by the town for violations related to the operation of his mobile home park. On a motion to retain outside counsel to represent the town in this matter, this board member was allowed to vote against it, even though his self-interest was known.

In a county of 50,000 inhabitants, a Commission investigation revealed that the board of supervisors hired a consultant to examine waste disposal alternatives.³⁷ Among those voting to approve this consulting contract was a supervisor who failed to disclose his partnership with the consultant in another business. Although rumors to this effect circulated, they were unsubstantiated; one supervisor questioned how he could verify this information, and whether it would even be legal to do so. With the Act's requisite annual disclosure of business associations, such a relationship would become known to all.

In one of the most populated counties in New York State, a county-wide commission approved by majority vote a highly

36. Even if the board members had complied with Article 18 by making the requisite disclosure as applicants seeking land use approvals, they still would have been allowed to vote on the matter under current law, despite the obvious conflict involved. N.Y. GEN. MUN. LAW § 809 (McKinney 1986).

37. This study led to the selection of five suitable landfill sites, one of which was owned by another supervisor. Although this supervisor recused himself from the vote pertaining to his land, he did vote against a town board resolution which would have blocked the use of any landfill. The Act's transactional disclosure and recusal provision would prevent this type of self-interested vote.

controversial construction project. Although one commissioner's spouse had a financial relationship with the developer,³⁸ the official saw no need to disclose this information. Indeed, he moved to vote on the matter, and cast an affirmative vote. The Act would require disclosure of the spouse's business relationship with the applicant-developer.

These above indirect conflicts would have been prevented, or at least brought to light quickly, by the provisions of the Act. In each of these cases, the officials would be compelled by the transactional disclosure and recusal provisions to reveal their relationships and interests, as well as those of their spouses, and would be precluded from voting or taking any other action on the matters at hand. The parallel annual and applicant disclosures would provide an important double-check to assure compliance.

B. Representing Private Clients on Business Matters and Making Appearances Before the Municipality

Article 18 allows public servants to represent private clients on business matters with the municipality and to appear before the municipality on their behalf. Several Commission investigations have demonstrated that such relationships are rife with potential or actual conflicts and should be prohibited.

One upstate city, for example, purchased almost \$40,000 worth of supplies from a company over a three-year period, \$12,000 of which represented purchases by the head of the city's water department. This official never disclosed his relationship with this company, which included acting as its sales representative in surrounding communities, signing documents as the company's vice-president, loaning the company over \$60,000, leasing equipment to the company for almost \$15,000, and serving as an unpaid consultant to the company on projects not involving this city.

The existing conflict of interest laws and implementing bodies could not adequately address this problem. Initially, city council members questioned the head of the water department

38. The official's spouse brokered several other land deals for this developer and earned more than \$5,000 the same year the commission approved the project.

about his involvement with the company, but found no conflict. The city manager and corporation counsel then undertook two investigations which resulted in findings that the department head had not violated Article 18, but had violated the 20-year-old local ethics code by failing to disclose his relationship with the company. However, the board of ethics, newly-formed in the wake of this controversy, chose not to pursue the matter because by this time the individual was no longer working for the city and was a full-time paid employee of the company.

Subsequently, the case was referred to the local district attorney, who conducted his own investigation. He found that although this former department head had been informally involved with the company while a city employee, there was no evidence that he was a paid official or employee of the company. Thus, the district attorney concluded that he could not prove a violation of the state conflicts law, only the local ethics code. Ultimately, the former municipal official pleaded guilty to another provision of state law for falsifying his city time-sheets, claiming he was working full days for the city while he was actually out of town representing the company. The conflict itself went unaddressed.

Under the Act, the department head's conduct would be prescribed by the prohibition on municipal officers and employees acting as consultants or representatives in connection with business dealings with the municipality.³⁹ Even if the conflict was not discovered until after the department head left office — an unlikely result if the annual and applicant disclosure provisions were in place — jurisdiction over him would be retained under the Act.⁴⁰

In another example, the mayor of a small village voted against a proposed ban on the establishment of new discotheques, without disclosing that as a lawyer he represented the owner of real property in connection with the lease for the proposed discotheque. As a further example, another mayor of a small village voted against the withdrawal of building permits issued by him to a property owner whom he represented in connection with the proposed leases for the stores to be constructed

39. See *infra* Appendix A at § 4(1)(a).

40. See *infra* Appendix A at § 19(2).

pursuant to the building permits.

In a larger municipality, a Commission investigation disclosed that the town attorney advised the town's planning board that a proposed moratorium on development of certain land was inappropriate from a legal and planning standpoint. At the same time, however, the town attorney's law firm represented one of the real estate developers before this same planning board. In addition, the planning board attorney's law firm also represented applicants before this planning board on several other occasions, although the attorney personally disqualified himself, as required by the local ethics code.

When citizen groups asked the district attorney to look into the matter, he found no actual conflicts or improprieties and concluded, therefore, that no crimes had been committed. He noted that although it was neither uncommon nor illegal for members of local planning boards to bring applications on their own behalf, he deferred the questions concerning ethics and appearances of impropriety to a more appropriate forum.

The Act would provide such a forum through the creation of local ethics boards to which citizens may refer complaints, and from which public servants may request advisory opinions to protect themselves before any conflict occurs.

Other provisions of the Act would prevent the firms of the town attorney and the planning board attorney from appearing before the planning board on behalf of private clients,⁴¹ and would prohibit the town attorney from advising the planning board on the wisdom of such a proposed moratorium.

Without such legislative reform, an official may continue to represent private clients in connection with their business dealings with the municipality or have his or her firm make appearances before agencies of the municipality on behalf of private clients. This gives rise to conflicts as serious as those involving the official directly.

41. The Act prohibits elected and paid officers and employees, and the firms of elected and paid public officials, from appearing before any municipal agency on behalf of private clients. See *infra* Appendix A at §§ 4(1)(e), 4(3). The Act would also prohibit all municipal officers and employees, and the firms of all public officials, from appearing before their own agencies. See *infra* Appendix A at §§ 4(1)(d), 4(2).

C. *Appearances Against the Interests of the Municipality*

It is axiomatic that public officials and employees must put the interests of the municipality before private considerations in carrying out their public obligations. Yet Article 18 allows public officials to represent private clients in actions against the municipality. For example, a village mayor appeared as counsel before the State Liquor Authority on behalf of a licensed premise within his village when the complaint for a disorderly premise had been referred to the Liquor Authority by the police department of the same village.

The Act would prohibit appearances by municipal officers and employees on behalf of others in actions against the interests of the municipality.⁴²

D. *Use of Confidential Information*

Closely related to the question of appearances against the interests of the municipality is the use of confidential information by a public officer or employee to advance his or her private interests or those of any other person. This has been a recurring problem in government throughout the country. When it occurs, it damages public faith in government integrity and respect for those in public service, because the use of such information for private gain usually means that taxpayers will pay more than they should to procure supplies or services. The Act would prohibit such conduct outright, as is the usual practice in state ethics laws (including Article 18).⁴³

E. *Political Activity*

In the absence of any restrictions on the solicitation of participation in election campaigns or political contributions, municipal employees may find themselves subject to pressures which do not belong in the workplace. The pervasiveness of the problem is troubling, as evidenced by the indictment and conviction of several public officials in New York State in recent

42. See *infra* Appendix A at § 4(1)(f).

43. The proposed Act would also prohibit the disclosure by the public officer or employee of any confidential information acquired in the course of his or her official duties, except where such disclosure is authorized by law. See *infra* Appendix A at § 4(1)(j).

years in Nassau County⁴⁴ and Onondaga County.⁴⁵ These cases illustrate the systematic exertion of pressure on public employees to contribute to political causes. Essentially, as the jury found, the message was: "If you want your job, you'd better contribute." However, the situation can be more subtle and pressure can even be unintentional. If someone involved in hiring or firing decisions, or other career matters, solicits campaign contributions from current employees, the request for support is far from casual. The employees' fear that jobs or promotions may be affected by their failure to contribute makes the practice of elected officials soliciting campaign contributions from public employees unacceptable, whether or not the fear is justified.

The Act would prohibit a municipal officer or employee or his or her campaign committee from soliciting non-elected municipal officers or employees or persons doing business with the municipality to participate in or contribute to election campaigns.⁴⁶ The Act recognizes, however, that politics plays a necessary and appropriate role in municipal government. Therefore, the Act provides that elected officers may solicit participation, (not monetary contributions), in election campaigns from directly subordinate appointees who serve in positions which are in the exempt classification or the unclassified service under the Civil Service Law, *so long as* the employees' participation is not the *quid pro quo* for employment or promotion.

44. See *United States v. Margiotta*, 688 F.2d 108 (2d Cir. 1982), *cert. denied*, 461 U.S. 913 (1983); *Cullen v. Margiotta*, 811 F.2d 698 (2d Cir.), *cert. denied*, 483 U.S. 1021 (1987).

45. John Mulroy, the County Executive of Onondaga County, Ephraim Shapero, the former Chairman of the County Legislature, and several other officials were indicted in 1977. They were charged under the penal and election laws with conspiring to raise political funds for the benefit of the county committee by assessing and collecting from county employees a fixed percentage of their annual salaries, and by soliciting political contributions and assessments from subordinate public employees in government offices during business hours. See *People v. Mulroy*, 108 Misc. 2d 907, 439 N.Y.S.2d 61 (Sup. Ct., Onondaga County, 1979) (denying motion to dismiss) (defendants were convicted following a jury trial of conspiring to violate the election laws and were each fined \$500).

46. See *infra* Appendix A at §§ 4(1)(g)-(i). The prohibitions of the proposed Act do not apply to general solicitations which include municipal officers and employees, or people doing business with the municipality.

F. *Revolving Door*

One of the most serious defects of Article 18 is its failure to impose any restrictions on employment after leaving government service, legislation which has become commonplace at all levels of government.⁴⁷

An example of the kind of behavior allowed by Article 18 was revealed by a Commission investigation involving the chairman of a town planning board. Four days after he left office, having served on that board for 15 years, the former chairman solicited consulting work from developers and others, specifically citing his government experience and contacts as tangible advantages available to those who hired him. As a result, he represented developers before town agencies on the very same projects on which he had acted in his official capacity.

Such behavior can only serve to increase public cynicism about government. It raises questions about the true motivations behind the official acts of the public servant. Were his votes and actions taken while in office prompted by the best interests of the government or by a desire to attract future employment and clients? The Act strikes a balance by allowing former municipal officials to work for anyone they choose after leaving municipal service, but permanently barring the acceptance or solicitation of employment in regard to a "particular matter" upon which he or she took a "discretionary act" while employed with the municipality.⁴⁸

G. *Gifts*

In its expanded gifts provision, the Act would reach another type of indirect, non-contractual relationship outside the ambit of current law—the receipt of financial benefits not available to the general public.

This problem surfaced when a village board voted to rezone property and condemn adjacent land to allow for condominium conversion. Several public officials subsequently bought condo-

47. See, e.g., 18 U.S.C.A. § 207 (West 1969 & Supp. 1989) (Ethics in Government Act of 1978); Ethics in Government Act, N.Y. PUB. OFF. LAW § 73(8) (McKinney 1986).

48. This does not include the proposal, consideration or enactment of local laws, ordinances or regulations of general application. See *infra* Appendix A at §§ 3(11), 3(4), 4(1)(k).

miniums, allegedly receiving preferential treatment, by-passing long lines and beating a five percent price increase. Questions were raised as to whether the situation would be adequately redressed because the ethics commission, allegedly handpicked by the village board of trustees, had never handled a case in its twenty years of existence, and was only empowered to issue advisory opinions.

The ethics board investigated the matter and concluded that only one official had violated the local code by using his official position to obtain a favor; the board also found that the other five officials did not violate the local code because they did not know at the time that they were receiving special treatment. The board noted, however, that the officials' actions violated the spirit of the law and created an appearance of impropriety, but that this was not actionable under current state or local conflicts law. The ethics board suggested substantive changes to the local code to cover this situation in the future,⁴⁹ but made no recommendations for sanctions in this case. This was left to the village board of trustees which, to date, has not taken action.⁵⁰

The Act would prohibit such conduct by prohibiting a municipal officer or employee from participating in a financial transaction on terms not available to the public.⁵¹

VIII. Conclusion

The substantive provisions of the Act, coupled with the creation of strong, independent, multi-partisan enforcement bodies empowered to investigate and punish the violations that do oc-

49. These suggestions included, among others, provisions requiring disclosure of the official's interests in property requiring land use approvals, and withdrawal from taking any part in such review.

50. This demonstrates yet again the need to create powerful, independent ethics boards.

51. The proposed Act provides that "[n]o municipal officer or employee shall directly or indirectly solicit, accept, or agree to accept any gift or financial benefit from any person, other than a family member, who the municipal officer or employee knows is considering, has, or within the previous twelve months has had, any business dealing with the municipality that involves any discretionary act by the municipal officer or employee A gift or financial benefit shall include money, services, loan, travel, entertainment, hospitality, thing, or promise thereof, or any other gratuity or promise thereof, including any financial transaction on terms not available to the general public, but shall not include a campaign contribution." See *infra* Appendix A at § 4(1)(b).

cur, would work to the benefit of all honest public servants and the citizens of our state.

Municipal officers and employees would no longer have to tread in grey areas, subject to pressure to act in ways that are ethically dubious but not prohibited by present law, and vulnerable to arbitrary attacks and unfounded suspicion and rumor. The Act's rules force the public servant to focus at the outset on where his or her own financial interests lie, and to step out of the picture completely when a public matter involves his or her personal interests.

Government both influences and reflects the ethical tenor of our society. As bearers of the public trust, our officials must be held to the highest standards of behavior. When they falter, they not only betray their responsibilities to the citizens of our state, but they encourage us to do the same to each other. Ethics in government legislation is, therefore, doubly important. Not only does it deter abuse, it articulates a moral standard for the entire community.

Although most public officials are dedicated and honest, the faith of many people in the government has been weakened. Our system depends on public confidence in the basic integrity of the government and its elected officials. In a democracy, distrust can be as damaging as corruption itself. The proposed Municipal Ethics Act would strengthen local democracy and help to build the faith of New York's citizens in their representatives.

APPENDIX A

State of New York Commission on Government Integrity: Proposed Municipal Ethics Act for New York State Municipalities

December 28, 1988

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NOTE: This Municipal Ethics Act sets forth minimum conflict of interest and disclosure requirements for municipal officers and employees and encourages each local government to adopt more stringent requirements in a local ethics law. The Act makes no reference to existing Article 18 of the General Municipal Law or the Ethics in Government Act, both of which laws the Act is intended to replace with respect to counties, cities, towns, villages, and school districts. This Act will be administered primarily by local ethics boards, subject to review at the state level. The Act grants certain powers to a state ethics commission but does not state which, if any, of the ethics commissions established by the Ethics in Government Act should exercise those powers.

SECTION 1. *Short Title*

This act shall be known and may be cited as the “Municipal Ethics Act.”

SECTION 2. *Legislative Purpose*

The purpose of this act is to establish minimum standards of ethical conduct for municipal officers and employees to help ensure that the business of government is free from improper influence that may result from opportunities for private gain. At the same time, it is recognized that public service cannot require a complete divesting of all proprietary interests, nor impose overly burdensome disclosure requirements, if local governments are to attract and hold competent administrators. Although the assurance of ethical conduct will continue to rest primarily on the personal integrity of the officers and employees themselves, on the commitment of elected and appointed officials, and on the vigilance of their communities, the establishment of the standards and guidelines set forth in this act is an additional step toward providing the highest caliber of public administration for local governments and increased confidence in public officials. By requiring public disclosure of interests that may influence or be perceived to influence the actions of public officials, this act is intended to facilitate consideration of potential problems before they arise, to minimize unwarranted suspicion, and to enhance the accountability of government to the people.

SECTION 3. *Definitions*

When used in this act and unless otherwise expressly stated:

1. "Agency" means (a) any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau, or committee of the municipality; and (b) shall include, but not be limited to, a consolidated health district, county vocational education and extension board, public library, board of cooperative educational services, urban renewal or community development agency, industrial development agency, joint water works system established pursuant to chapter six hundred fifty-four of the laws of nineteen hundred twenty-seven, or a town or county improvement district, district corporation, or other district, or a joint service established for the purpose of carrying on, performing or financing one or more improvements or services intended to benefit the health, welfare, safety or convenience of the inhabitants of a municipality or municipalities, or to benefit the real property within a municipality or municipalities.

2. "Appear" and "appear before" mean communicating in whatever form, whether personally or through another person.

3. "Business dealing" means (a) having or providing any contract, service, or work with a municipality; (b) buying, selling, renting, leasing, or otherwise acquiring from or dispensing to a municipality any goods, services, or property; or (c) applying for, petitioning, requesting, or obtaining any approval, grant, loan, license, permit, or other privilege from the municipality.

4. "Discretionary act" means any action involving the exercise of judgment or discretion by a municipal officer or employee, either individually or as a member of any agency, and includes, but is not limited to, negotiation, approval, advice, recommendation, authorization or audit.

5. "Family member" means a spouse, child, step-child, brother, sister, parent, or dependent of a municipal officer or employee.

6. "Governing body" means the legislative body of a county, city, town or village, or the school board in the case of a school district.

7. "Ministerial act" means an action performed in a prescribed manner without the exercise of judgment or discretion as to the propriety of the act.

8. "Municipality" means a county, city, other than a city having a population of one million or more, town, village, or school district and includes (a) all agencies thereof, and (b) officers and employees of the county, city, town, village, school district or agency acting on its behalf.

9. "Municipal clerk" means the clerk of a county, city, town, village, or school district.

10. "Municipal officer or employee" means any officer or employee of a municipality, whether paid or unpaid, including public officials and all other members of any agency of a municipality, but does not include a judge, justice, officer, or employee of the unified court system. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.

11. "Paid municipal officer or employee" and "paid public official" means any municipal officer or employee or public official who receives a salary from the municipality or who is compensated by the municipality on a per diem or hourly basis, but does not include a municipal officer or employee or public official who is solely reimbursed by the municipality for expenses incurred in the course of his or her duties.

12. "Particular matter" means any business dealing with the municipality, or any application therefor, or any case, proceeding, determination, investigation, charge, accusation or arrest or any other matter involving a discretionary act of a municipal officer or employee, but does not include the proposal, consideration or enactment of local laws, ordinances or regulations of general application.

13. "Person" means an individual, corporation, partnership, unincorporated association, and all other entities.

14. "Public official" means any official who has the authority, either alone or as a member of an agency, to perform discretionary acts on behalf of a municipality with respect to any business dealing, and shall include but not be limited to: a county executive, county manager, mayor, city manager, town supervisor, village manager, village administrator, school superintendent, or other officer possessing similar powers and duties; a town superintendent of highways; a county, city, town, village, or school district clerk; the treasurer, comptroller, or chief fiscal

officer of a municipality; a receiver, collector, or assessor of taxes; a coroner; a district attorney; a county, town, or village attorney or corporation counsel; a chief of police; a sheriff; and any official designated by a municipality as the head of an agency. Public official shall not include: (a) a judge, justice, officer, or employee of the unified court system, or (b) any municipal employee who performs only ministerial acts.

15. "Spouse" means a husband or wife from whom the municipal officer or employee is not legally separated.

SECTION 4. *Conflicts of Interest of Municipal Officers and Employees*

1. No municipal officer or employee shall:

a. Act as attorney, agent, broker, employee, consultant, or representative for any person in connection with any business dealing that person has with the municipality.

b. Directly or indirectly solicit, accept, or agree to accept any gift or financial benefit from any person, other than a family member, who the municipal officer or employee knows is considering, has, or within the previous twelve months has had, any business dealing with the municipality that involves any discretionary act by the municipal officer or employee. A municipal officer or employee may accept from such person a gift or gifts which are customary on family, social, holiday or civic occasions, provided they do not total more than seventy-five dollars from any person within any twelve month period, and further provided that they were not received under circumstances in which it reasonably might be inferred that such gift or gifts were intended to influence the municipal officer or employee in the performance of his or her official duties or reward him or her for any official action. A gift or financial benefit shall include money, services, loan, travel, entertainment, hospitality, thing, or promise thereof, or any other gratuity or promise thereof, including any financial transaction on terms not available to the general public, but shall not include a campaign contribution.

c. Take or refrain from taking any action, or agree to take or refrain from taking any action, or induce or attempt to induce any other municipal officer or employee to take or refrain from taking any action, on any matter before the municipality in order to obtain a pecuniary or material benefit for:

(1) himself or herself; (2) a family member; (3) any partnership or unincorporated association of which the municipal officer or employee is a member or employee or in which he or she has a proprietary interest; (4) any corporation of which the municipal officer or employee is an officer or director or of which he or she legally or beneficially owns or controls more than five percent of the outstanding stock; (5) any person with whom the municipal officer or employee or his or her family member has an employment, professional, business or financial relationship; or (6) any person from whom the municipal officer or employee, or his or her spouse, has received within any twelve month period during the previous twenty-four months, a pecuniary or material benefit having an aggregate value greater than two thousand dollars.

d. Appear before the agency served by or which employs such municipal officer or employee except on behalf of the municipality or on his or her own behalf.

e. Appear before the municipality except on behalf of the municipality or on his or her own behalf. This paragraph shall only apply to officers and employees who are elected or who are paid by the municipality.

f. Appear as attorney or counsel against the interests of the municipality in any matter in which the municipality is a party or a complainant.

g. Solicit any non-elected officer or employee of the municipality to participate in an election campaign. This paragraph shall not prohibit an elected officer from soliciting such participation from officers and employees who are appointed by, and directly subordinate to, such elected officer and who serve in positions which are in the exempt classification or the unclassified service under the civil service law.

h. Directly or through a person, campaign committee, or other organization authorized to act on his or her behalf, solicit any non-elected officer or employee of the municipality to pay or promise to pay any assessment, subscription, or contribution to a political party, political party organization or election campaign. This paragraph shall not prohibit a general solicitation of a class of persons, other than those expressly prohibited, of which such solicited officer or employee happens to be a member.

i. Directly or through a person, or campaign committee, or

other organization authorized to act on his or her behalf, solicit participation in an election campaign or payment or promise of payment of any assessment, subscription, or contribution to a political party, political party organization, or election campaign from any person who, to the knowledge of the municipal officer or employee has, or within the previous twelve months has had, any business dealing with the municipality. This paragraph shall not prohibit a general solicitation of a class of persons, other than those expressly prohibited, of which such solicited person happens to be a member.

j. Except where such disclosure is authorized by law, disclose any confidential information acquired in the course of his or her official duties, or use any such information to advance the financial or other private interest of himself or herself or any other person.

k. After termination of his or her term of office or employment with the municipality, appear before the municipality, or receive compensation for any services rendered on behalf of any person other than the municipality, in relation to any particular matter upon which he or she took any discretionary act during his or her term of office or employment with the municipality

l. During his or her term of office or employment with the municipality, solicit, negotiate for, or accept any employment from which he or she would be disqualified under paragraph (k) of this subdivision.

2. No partnership or unincorporated association of which a public official is a member or employee or in which he or she has a proprietary interest, nor any corporation of which he or she is an officer or director or legally or beneficially owns or controls more than five percent of the outstanding stock, shall appear before the agency served by or which employs such public official on behalf of any person other than the municipality or itself.

3. No partnership or unincorporated association of which a public official who is elected or paid by the municipality is a member or employee or in which he or she has a proprietary interest, nor any corporation of which he or she is an officer or director or of which he or she legally or beneficially owns or controls more than five percent of the outstanding stock, shall appear before the municipality on behalf of any person other than the municipality or itself.

4. Nothing in this section shall be construed to prohibit a municipal officer or employee or any other person from receiving a municipal service or benefit, or using a municipal facility, which is generally available to residents or a class of residents in the municipality.

5. Nothing in this section shall be construed to prohibit any municipal officer or employee listed in section eleven of the domestic relations law from accepting any gift or benefit having a value of one hundred dollars or less for the solemnization of a marriage by that municipal officer or employee at a place other than the municipal officer's or employee's normal place of business or at a time other than the officer's or employee's normal hours of business.

6. Nothing in this section shall be construed to prohibit a municipal officer or employee from performing any ministerial act.

7. Any contract entered into by or with a municipality which results in or from a violation of any provision of this section shall be null and void and unenforceable, unless the municipality has obtained a waiver of that provision pursuant to section twenty-five of this act.

8. A person who knowingly violates any provision of this section shall be guilty of a class A misdemeanor.

SECTION 5. *Transactional Disclosure and Recusal*

1. Whenever a municipal officer or employee is requested or required to take any action on a matter before the municipality and, to his or her knowledge, either the performance or nonperformance of that action would provide a pecuniary or material benefit to himself or herself or to any related person different from that which would be derived from the action by reason of its general application to a broad class of persons deriving such benefit, the municipal officer or employee shall not participate in that matter. The municipal officer or employee also shall file promptly with his or her immediate superior, if any, and with the municipal clerk, a signed statement disclosing the nature and extent of that interest.

2. For purposes of this section, "related person" means:

- a. a family member;
- b. any corporation of which the municipal officer or em-

ployee is an officer or director or of which he or she legally or beneficially owns or controls more than five percent of the outstanding stock;

c. any person with whom the municipal officer or employee or his or her family member has an employment, professional, business or financial relationship; and

d. any person from whom the municipal officer or employee, or his or her spouse, has received within any twelve month period during the previous twenty-four months, a pecuniary or material benefit having an aggregate value greater than two thousand dollars.

3. Whenever a vote is required from which a municipal officer or employee must recuse himself or herself under paragraph one of this section, such recusal shall not be counted for the purpose of determining whether a majority or other ratio required by statute to pass a measure has been reached, provided, however, that no action may be taken by a body unless a majority of all of the members appointed or elected to such body, or if the board has weighted votes, a majority of the total voting strength, votes on the matter. If a body is reduced below such majority by reason of a recusal required pursuant to this section, any member of such body may apply to the municipal or regional ethics board, or if the municipality has not established its own board and is not participating in a regional board, to the state ethics commission, for a waiver of the recusal requirements of this section. If the body is a municipal or regional ethics board, any member of such board may apply to the state ethics commission for a waiver of the recusal requirements of this section.

4. Nothing in this section shall be construed to prohibit a municipal officer or employee from performing any ministerial act or to require a municipal officer or employee to file a disclosure statement pursuant to paragraph one of this section prior to performing any ministerial act.

5. A person who knowingly violates any provision of this section shall be guilty of a class A misdemeanor.

SECTION 6. *Annual Disclosure*

1. All public officials who are elected or paid shall file with the municipal clerk a signed annual disclosure statement: (a) within one hundred twenty days of the effective date of this act; (b) within thirty days of taking office; and (c) no later than April 30 of each year thereafter. Within thirty days of any change in the information contained in his or her most recently filed statement, the public official shall file a signed amendment to the statement indicating the change.

2. Matters to be disclosed by all public officials who are elected or paid shall include:

a. the location of any real property within the municipality, or within five miles of the municipality, in which he or she, or his or her spouse or other family member of his or her household, has an ownership or other financial interest;

b. the name of any partnership, unincorporated association, or other unincorporated business, of which he or she, or his or her spouse, is a member, officer or employee, or in which he or she, or his or her spouse, has a proprietary interest, and his or her position, and his or her spouse's position, if any, with the partnership, association, or business;

c. the name of any corporation of which he or she, or his or her spouse, is an officer, director, or employee, or of which he or she, or his or her spouse, legally or beneficially owns or controls more than five percent of the outstanding stock, and his or her position, and his or her spouse's position, if any, with the corporation; and

d. self-employment from which he or she, or his or her spouse, has derived, during the previous calendar year, gross income in excess of two thousand dollars.

3. If a public official who is elected or paid is not able, after reasonable efforts, to obtain some or all of the information required by paragraph two of this section which relates to his or her spouse or household member, he or she shall so state, as part of the annual disclosure statement.

4. If a public official who is elected or paid practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the department of education, his or her annual disclosure statement shall include a general description of the principal subject areas of matters un-

dertaken by such public official in his or her licensed practice, including the nature of his or her clients' businesses. If such public official practices with a partnership, unincorporated association or corporation and is a partner or shareholder of the firm or corporation, his or her annual disclosure statement shall include a general description of the principal subject areas of matters undertaken by such firm or corporation, including the nature of the firm's clients' businesses. The disclosure required by this section shall not include the names of individual clients, customers or patients.

5. A person who knowingly violates any provision of this section shall be guilty of a class A misdemeanor.

SECTION 7. *Maintenance of Disclosure Statements*

Transactional disclosure statements filed pursuant to section five of this act and annual disclosure statements filed pursuant to section six of this act shall be public records and shall be indexed and maintained on file in an appropriate manner by the municipal clerk. The clerk promptly shall transmit a copy of all disclosure statements to the appropriate municipal or regional ethics board. If the city, town, village, or school district has not established an ethics board, and is not participating in a regional ethics board, the clerk shall transmit a copy of the disclosure statements to the state ethics commission. The clerk shall retain disclosure statements for not less than seven years from the date of filing.

SECTION 8. *Lists of Public Officials; Notice Requirements; Verification of Filing*

1. Within ninety days of the effective date of this act, and before April 10 of each year thereafter, the chief executive officer of each municipality shall: (a) cause to be filed with its clerk and with its municipal or regional ethics board, or with the state ethics commission, if the municipality has not established its own ethics board and is not participating in a regional ethics board, a list of the names and offices or positions of all public officials of the municipality, and shall designate which public officials are elected and which are paid; and (b) notify all public officials who are elected or paid of the annual disclosure requirements of sec-

tion six of this act. In the case of a municipality that has no chief executive officer, the chair of the municipality's governing body shall cause the list to be filed and make the notification required by this subdivision. In the case of a department headed by an elected officer who is not subordinate to the chief executive officer or governing body of the municipality, such officer shall cause the list to be filed and make the notification required by this subdivision.

2. Within one hundred fifty days of the effective date of this act, and before May 15 of each year thereafter, the chief executive officer, or the chair of the governing body, or the elected officer shall verify that every public official who is elected or paid has filed his or her annual disclosure statement.

3. Failure of the chief executive officer, the chair of a governing body, or the elected officer to comply with this section shall not relieve any public official who is elected or paid from his or her duty to file an annual disclosure statement pursuant to section six of this act.

SECTION 9. *Disclosure by Applicants*

1. For purposes of this section:

a. "submission" means any written application, petition, bid, proposal or other request concerning a business dealing with a municipality, but shall not include an application to be considered for eligibility to apply for or bid on any business dealing; and

b. "applicant" means any person making a submission.

2. For purposes of this section, a campaign contribution shall be considered to have been made to a municipal officer or employee if such contribution is made to any committee soliciting or receiving funds for the purpose of supporting the candidate, except that a contribution to a statewide political party shall not be considered a contribution to a candidate unless it is earmarked for use for a specific candidate. Where contributions are made to committees which support more than one candidate, the contribution shall be considered to have been spent equally on all the candidates and only the amount attributable to a particular candidate shall be considered for disclosure purposes under this section, unless the contribution to the committee was earmarked for use for a particular candidate or candidates, in

which case the entire contribution shall be attributable to that candidate or equally to those candidates, or as specified by the contributor. For purposes of this section, a loan to a candidate or campaign committee shall be considered a campaign contribution.

3. Any person who makes a submission to a municipality shall disclose in writing, as part of the submission:

a. the name of any municipal officer or employee to whom the applicant has made one or more campaign contributions totalling two hundred fifty dollars or more within any twelve month period during the previous sixty months; and

b. the name of any municipal officer or employee who, to the applicant's knowledge: (i) has an interest in the submission or in the applicant, and (ii) is required to take any discretionary act on the submission. The applicant also shall identify in the submission the nature of the interest.

4. For purposes of this section, a municipal officer or employee shall be deemed to have an interest in the submission or in the applicant when the municipal officer or employee or his or her spouse:

a. is the applicant;

b. is a family member of the applicant;

c. is an officer or director of, or legally or beneficially owns or controls more than five percent of the outstanding stock of the applicant;

d. has, or to the applicant's knowledge, intends to enter into, an employment, professional, business or financial relationship with the applicant, or any principal of the applicant;

e. has received from the applicant, within any twelve month period during the previous twenty-four months, a pecuniary or material benefit having an aggregate value greater than two thousand dollars; or

f. will receive, pursuant to an agreement between the applicant and any person, a pecuniary or material benefit if the municipality's disposition of the submission is favorable to the applicant.

5. A person who knowingly violates any provision of this section shall be guilty of a class A misdemeanor.

SECTION 10. *Inducement of Violations*

Any person, whether or not a municipal officer or employee, who intentionally induces any municipal officer or employee to take any action or to refrain from taking any action, which action or inaction violates any provision of this act, and who knows or should have known that such action or inaction violates this act, shall be guilty of a class A misdemeanor.

SECTION 11. *Debarment*

1. Any person convicted of a misdemeanor under this act shall be prohibited, for a period of three years after the date of the conviction, from entering into any contract, other than an employment contract, with any state entity or local entity.

2. For purposes of this section, "state entity or local entity" means the State of New York and any municipality thereof, and any department, board, body, bureau, agency, division, district, commission, committee, public authority, public corporation, council, office, or other governmental entity performing a governmental or proprietary function for the state or for any one or more municipalities thereof, including a city having a population of one million or more, and including the judiciary and the state legislature.

3. Nothing in this section shall be construed to prohibit any person from receiving a service or benefit, or from using a facility, which is generally available to the public.

4. A person who knowingly violates any provision of this section shall be guilty of a class A misdemeanor.

SECTION 12. *Civil and Administrative Penalties*

1. Any municipal officer or employee convicted of a misdemeanor under this act shall forfeit his or her municipal office or employment in the manner provided by law.

2. Any municipal officer or employee who engages in any action that violates any provision of this act, although not convicted of a misdemeanor under this act, may be warned or reprimanded or suspended or removed from office or employment or be subject to any other sanction authorized by law or collective bargaining agreement, by the appointing authority or person or body authorized by law to impose such sanctions. A warning,

reprimand, suspension, removal or other authorized sanction may be imposed in addition to any other penalty contained in this act or in any other provision of law.

3. Any municipal officer or employee who violates any provision of this act may be subject to a civil fine of up to one thousand five hundred dollars for each violation, as may be determined by the appropriate municipal or regional ethics board or by the state ethics commission. A civil fine may be imposed in addition to any other penalty contained in any other provision of law or in this act, other than a civil forfeiture pursuant to subdivision five of this section.

4. Any municipal officer or employee who violates any provision of this act shall be liable in damages to the municipality for any losses or increased costs incurred by the municipality as a result of the violation. Such damages may be imposed in addition to any other penalty contained in any other provision of law or in this act, other than a civil forfeiture pursuant to subdivision five of this section.

5. Any municipal officer or employee who has knowingly and intentionally violated any provision of this act may be subject to a civil forfeiture to the municipality of a sum equal to three times the value of any financial benefit he or she received as a result of the conduct that constituted the violation. A civil forfeiture may be imposed in addition to any other penalty contained in any other provision of law or in this act, other than a civil fine pursuant to subdivision three or damages pursuant to subdivision four of this section.

SECTION 13. *Establishment of Municipal and Regional Ethics Boards*

1. The governing body of each municipality may establish an ethics board consisting of five members, and if it does establish such board, shall appropriate adequate funds for the board's maintenance.

2. The governing bodies of any two or more municipalities may establish a regional ethics board consisting of five members. For purposes of this act, the municipalities which participate in such a regional ethics board shall be known as a "region." If a regional ethics board is established, the expenses of maintaining such a board shall be apportioned among the participating mu-

nicipalities as provided in article 5-G of the General Municipal Law.

3. The officers and employees of any municipality that does not establish its own ethics board and does not participate in a regional ethics board shall be subject to the state ethics commission.

SECTION 14. *Qualifications of Municipal and Regional Ethics Board Members*

1. No ethics board member shall hold office in any political party or be employed as a lobbyist. A board member may make campaign contributions, but may not participate in any election campaign. Except as provided in paragraph four of section fifteen of this act, no municipal officer or employee may serve on an ethics board.

2. No more than two members of any ethics board may be members of the same political party. For purposes of this section, political party shall mean any political party which appears on the ballot for statewide elected office or which exists in the municipality or region served by the ethics board.

3. Ethics board members shall be reimbursed for reasonable and necessary expenses. The governing body of a municipality or, in the case of a regional ethics board, the governing bodies of the participating municipalities, may authorize per diem compensation for ethics board members. A county, city, town, or village may prescribe such per diem compensation only by local law, and a school district, by resolution. If such per diem compensation is prescribed for regional board members, each participating city, town, or village must authorize such per diem compensation by local law, and each participating school district, by resolution.

4. The governing body of a municipality may prescribe additional qualifications for ethics board members, including, but not limited to, a requirement that members reside or do business in the municipality, provided that such additional qualifications do not conflict with this act. Counties, cities, towns, and villages may prescribe such additional qualifications only by local law, and school districts, by resolution. If such additional qualifications are prescribed for regional ethics board members, each participating county, city, town, or village must prescribe

such additional qualifications by local law, and each participating school district, by resolution.

SECTION 15. *Appointment of Municipal and Regional Ethics Board Members*

1. If a municipality or region has established an ethics board, the members of such board shall be appointed within sixty days of the establishment of the board and no later than January 20 of each year thereafter.

2. If a municipality or region has established an ethics board, and an appointment to such board is not made within sixty days of the establishment of such board, or by March 1 of each year thereafter, the state ethics commission shall make the appointment.

3. Except as provided in paragraph four of this section, each member of a municipal or regional ethics board shall be appointed as follows:

a. In the case of a municipality that has no elected chief executive officer, the governing body of the municipality shall appoint the ethics board members.

b. In the case of a municipality that has an elected chief executive officer, such executive shall appoint the ethics board members, with the advice and consent of the governing body of the municipality.

c. In the case of a regional ethics board, each participating city, town, or village shall prescribe the manner of appointment of ethics board members by local law, and each participating school district, by resolution, provided that such regional ethics board member shall meet the qualifications of regional and municipal ethics board members contained in section fourteen of this act.

4. The governing body or bodies of a municipality or region may provide for one non-elected municipal officer or employee to be selected by the officers and employees of the municipality or region, or by the collective bargaining units which represent such officers and employees, to serve on the ethics board. Counties, cities, towns and villages must authorize such provision by local law, and school districts, by resolution. In the case of a regional board, each participating county, city, town or village must authorize such provision by local law, and each school dis-

trict, by resolution. If such provision is made, such municipal officer or employee shall be deemed to be an appointed member of the board.

5. The term of office of municipal and regional ethics board members shall be five years. Each member shall serve until his or her successor has been appointed, except that the five members first appointed shall serve for terms of office which shall expire on December 31 of the year in which the board is established and the first, second, third and fourth years thereafter. No member shall serve for more than two full five year terms.

SECTION 16. *Municipal and Regional Ethics Board Vacancies*

1. When a vacancy occurs in the membership of a municipal or regional ethics board, it shall be filled for the unexpired portion of the term in the same manner as the original appointment no later than thirty days after the vacancy occurs, provided that such ethics board member shall meet the qualifications of regional and municipal ethics board members contained in section fourteen of this act.

2. If an ethics board vacancy is not filled within thirty days after it occurs, the state ethics commission shall fill the vacancy, provided that such ethics board member shall meet the qualifications of regional and municipal ethics board members contained in section fourteen of this act.

SECTION 17. *Removal of Municipal and Regional Ethics Board Members*

1. A municipal ethics board member may be removed by the governing body of the municipality, or, in the case of a municipality which has an elected chief executive officer, by such executive with the advice and consent of the governing body of the municipality.

2. In the case of regional ethics boards, each participating county, city, town, or village must prescribe the method for removal of regional ethics board members by local law, and each participating school district, by resolution.

3. Grounds for removal of municipal and regional ethics board members shall be substantial neglect of duty, gross mis-

conduct in office, inability to discharge the powers or duties of office, or violation of this act, after written notice and opportunity for reply.

SECTION 18. *Municipal and Regional Ethics Board Meetings and Quorum Requirements*

1. At its first meeting each year, each municipal and regional ethics board shall elect a chair from among its membership. Three members of the board shall constitute a quorum. A vote of at least three board members shall be required for the board to take any action. The chair or any three members may call a meeting of the board.

2. The board shall hold a meeting before April 30 of each year, at which the board shall review the list of public officials, pursuant to paragraph two of section twenty-one of this act, and shall hold a meeting before May 30 of each year, at which the board shall review the annual disclosure statements pursuant to paragraph three of section twenty-one of this act. If a municipal or regional ethics board has been established and its members appointed within one hundred twenty days of the effective date of this act, the board shall meet within one hundred fifty days of the effective date of this act to review such lists and within one hundred eighty days to review such statements. The board may hold as many additional meetings per year as it shall deem necessary or as shall be called by the chair or any three members, provided that a meeting of the board shall be held promptly after the filing of a complaint alleging a violation of this act, or of any local ethics act, at which meeting such complaint shall be considered by the board, as well as any other matters before it.

SECTION 19. *Powers and Duties of Municipal and Regional Ethics Boards*

1. A municipal ethics board may act only with respect to officers and employees of the municipality which has established such board. A regional ethics board may act only with respect to officers and employees of municipalities in the region.

2. The termination of a municipal officer's or employee's term of office or employment with the municipality shall not affect the jurisdiction of a municipal or regional ethics board with

respect to the requirements imposed by this act or by the local ethics act, if any, on the former municipal officer or employee.

3. A municipal or regional ethics board shall have the following powers and duties:

a. to prescribe and promulgate rules and regulations governing its own internal organization and procedures in a manner consistent with this act;

b. to appoint an executive director, if necessary, and such staff as are necessary to carry out its duties under this act, and to delegate authority to the executive director, if any, to act in the name of the board between meetings of the board, provided that the delegation is in writing and the specific powers to be delegated are enumerated and further provided that the board shall not delegate the power to conduct hearings, determine violations, recommend disciplinary action, impose any civil fine, refer any matter to a prosecutor, or render any advisory opinion. An executive director or person serving in that role shall meet the qualifications of an ethics board member as specified in section fourteen of this act;

c. to cause to be filed with the state ethics commission a copy of the form for any disclosure statements required to be filed under the municipality's local ethics act, if any;

d. to review lists of public officials and disclosure statements pursuant to section twenty-one of this act;

e. to conduct investigations pursuant to section twenty-two of this act;

f. to conduct hearings, recommend disciplinary action, assess penalties, and initiate appropriate actions and proceedings pursuant to section twenty-four of this act;

g. to grant waivers pursuant to section twenty-five of this act;

h. to render advisory opinions pursuant to section twenty-six of this act;

i. to provide training and education to municipal officers and employees pursuant to section twenty-eight of this act, and to provide training and education to municipal officers and employees on the provisions of the municipality's local ethics act, if any; and

j. to prepare an annual report and recommend changes to the municipality's local ethics act, if any, pursuant to section

twenty-nine of this act.

4. The governing body of a municipality may prescribe additional powers and duties for its municipal ethics board, provided that such additional powers and duties do not conflict with this act. Counties, cities, towns, and villages which have established ethics boards may prescribe such additional powers and duties only by local law, and school districts by resolution. If such additional powers and duties are prescribed for regional ethics boards, each participating county, city, town, or village must prescribe such additional powers and duties by local law, and each participating school district, by resolution.

5. A municipal or regional ethics board may request technical assistance from the state ethics commission.

SECTION 20. *State Ethics Commission*

The state ethics commission, with respect to this act, shall have the following powers and duties:

1. to appoint municipal and regional ethics board members when necessary pursuant to subdivision two of section fifteen of this act;

2. to fill vacancies on municipal and regional ethics boards when necessary pursuant to subdivision two of section sixteen of this act;

3. to maintain on file a copy of forms for disclosure statements pursuant to paragraph (c) of subdivision three of section nineteen of this act;

4. to review lists of public officials and disclosure statements pursuant to section twenty-one of this act;

5. to conduct investigations of alleged violations pursuant to section twenty-two of this act;

6. to investigate municipal and regional ethics boards pursuant to section twenty-three of this act;

7. to conduct hearings, recommend disciplinary action, assess penalties, and initiate appropriate actions and proceedings pursuant to section twenty-four of this act;

8. to grant waivers pursuant to section twenty-five of this act;

9. to render advisory opinions pursuant to section twenty-six of this act;

10. to hear and decide appeals from decisions of municipal

and regional ethics boards pursuant to section twenty-seven of this act;

11. to provide technical assistance to municipal and regional ethics boards and to provide training and education to municipal officers and employees on the provisions of this act;

12. to prepare an annual report and recommend changes to this act pursuant to section twenty-nine of this act;

13. to review local ethics acts of counties, cities, towns, villages, and school districts for compliance with this act pursuant to section thirty of this act;

14. to determine to which ethics boards agencies shall be subject, pursuant to section thirty-one of this act; and

15. to act as a municipal ethics board for any municipality which has not established a municipal ethics board and is not participating in a regional ethics board, pursuant to paragraph three of section thirteen of this act.

SECTION 21. *Review of Lists and Disclosure Statements*

1. This section shall apply to municipal and regional ethics boards, and to the state ethics commission when acting as a municipal ethics board for a municipality which has not established its own ethics board and is not participating in a regional ethics board.

2. Each ethics board and the state commission shall review the lists of public officials, prepared pursuant to section eight of this act, to determine whether the lists are complete and accurate. The board shall add to the appropriate list the name of any other municipal officer or employee whom the board determines to be a public official, and shall designate any elected or paid public official as to whom such designation has not been made.

3. Each ethics board and the state commission shall review all annual disclosure statements to determine whether any person required to file such a statement has failed to file it, has filed a deficient statement, or has filed a statement that reveals a possible or potential violation of this act.

4. Each ethics board and the state commission promptly shall review all transactional disclosure statements. If the board or commission determines that a statement is deficient or reveals a possible or potential violation of this act, it shall notify the person in writing of the deficiency or possible or potential

violation, and of the penalties for failure to comply with the act.

SECTION 22. *Investigations of Alleged Violations*

1. This section shall apply to municipal and regional ethics boards and the state ethics commission.

2. Upon receipt of a sworn complaint by any person alleging any violation of this act, or of any local ethics act, or upon determining on its own initiative that a violation of this act or of any local ethics act may exist, the board or commission shall have the power and duty to conduct any investigation necessary to carry out the provisions of this act. In conducting any such investigation, the board or commission may administer oaths or affirmations, subpoena witnesses, compel their attendance, and require the production of any books or records which it may deem relevant and material.

3. Nothing in this section shall be construed to permit any ethics board to conduct an investigation of itself or any of its members or staff. Any ethics board that receives a sworn complaint alleging that the board or any of its members or staff has violated any provision of this act or any other law, promptly shall transmit a copy of the complaint to the state ethics commission.

4. The state ethics commission shall refer to the appropriate municipal or regional ethics board any complaint against an officer or employee of a municipality, except a complaint against any of the members or staff of an ethics board.

5. An ethics board or the state ethics commission shall state in writing the disposition of every sworn complaint it receives and of every investigation it conducts and shall set forth the reasons for the disposition. All such statements and all sworn complaints shall be public records and shall be indexed and maintained on file by the board or commission.

SECTION 23. *Investigations of Ethics Boards*

1. The state ethics commission shall have the authority to investigate possible violations of this act by any municipal and regional ethics board or by any of the members or staff thereof.

2. The state ethics commission may commence an investigation under this section on its own initiative or upon a sworn

complaint which alleges that a municipal or regional ethics board member or staff has violated this act or the municipality's local ethics act.

3. In conducting an investigation pursuant to this section, the state ethics commission may administer oaths or affirmations, subpoena witnesses, compel their attendance, and require the production of any books or records which the commission may deem relevant and material.

4. The state ethics commission shall state in writing the disposition of every sworn complaint it receives and of every investigation it conducts and shall set forth the reasons for the disposition. All such statements and all sworn complaints shall be public records and shall be indexed and maintained on file by the commission.

SECTION 24. *Recommendation of Disciplinary Action; Assessment of Penalties; Injunctions; Damages*

1. This section shall apply to municipal and regional ethics boards and to the state ethics commission.

2. In its discretion, and after a hearing held in accordance with article three of the state administrative procedure act, and subject to any applicable provisions of state law and collective bargaining agreements, an ethics board or the commission may recommend appropriate disciplinary action pursuant to subdivision two of section twelve of this act, to the appointing authority or person or body authorized by law to impose such sanctions. The board or commission shall conduct and complete the hearing with reasonable promptness, unless in its discretion the board refers the matter to the authority or person or body authorized by law to impose disciplinary sanctions or to the appropriate prosecutor. If such a referral is made, the board or commission may adjourn its hearing pending determination by such authority, person, body or prosecutor.

3. In its discretion and after a hearing in accordance with article three of the state administrative procedure act, the board or commission, pursuant to subdivision three of section twelve of this act, may assess a civil fine not to exceed one thousand five hundred dollars for each violation, upon any municipal officer or employee found by the board or commission to have violated this act. The board or commission shall conduct and complete

the hearing with reasonable promptness. The civil fine shall be payable to the affected municipality.

4. The board or commission, on behalf of any municipality or region subject to its jurisdiction, may sue in the Supreme Court of the State of New York for injunctive relief to enjoin a violation or to compel compliance with the provisions of this act.

5. The board or commission, on behalf of any municipality subject to its jurisdiction, may initiate a proceeding in the Supreme Court of the State of New York to obtain a civil forfeiture pursuant to subdivision five of section twelve of this act. The civil forfeiture shall be payable to the municipality on behalf of which the proceeding was brought.

6. A municipality may initiate an action in the Supreme Court of the State of New York to obtain damages, as provided in subdivision four of section twelve of this act.

7. Nothing in this section shall be construed to permit an ethics board to take any action with respect to any alleged violation of this act, or of any other law, by the board or any member thereof.

8. The board or commission may refer to the appropriate prosecutor possible violations of this act.

9. Nothing in this act shall be construed to restrict the authority of any prosecutor to prosecute any violation of this act or of any other law.

SECTION 25. *Waivers*

1. Waivers may be granted by a municipal or regional ethics board, or, in the case of a municipality which has not established its own ethics board and is not participating in a regional ethics board, by the state ethics commission. The state ethics commission shall have exclusive authority to grant waivers of the recusal requirements of section five of this act to members of municipal or regional ethics boards under the circumstances described in subdivision three of that section.

2. Waivers shall be granted upon written application and upon a showing of compelling need by the applicant. Waivers shall be in writing and shall state the grounds upon which they are granted.

3. Any municipality may apply to its municipal or regional ethics board, or, if it has not established a municipal ethics

board and is not participating in a regional ethics board, to the state ethics commission, for a waiver of any of the provisions of section four of this act to permit the municipality to purchase, sell, rent, or lease goods, services, or property, which purchase, sale, rental, or lease would otherwise result in a violation of section four of this act.

4. A member of any body may apply to its municipal or regional ethics board, or, if the municipality has not established a municipal ethics board and is not participating in a regional ethics board, or if such body is a municipal or regional ethics board, to the state commission, for a waiver of the recusal requirements of section five of this act under the circumstances described in subdivision three of section five of this act. The board or commission may grant such waiver, provided, however, that the disclosure requirement of subdivision one of section five of this act may never be waived.

5. All applications, decisions, and other records and proceedings relating to waivers shall be public records and shall be indexed and maintained on file by the board or commission.

SECTION 26. *Advisory Opinions*

1. Upon written request of any agency, individual municipal officer or employee, or any applicant, as defined in paragraph one of section nine of this act, a municipal or regional ethics board may render written advisory opinions with respect to the interpretation or application of the municipality's local ethics act.

2. Upon written request of any agency, individual municipal officer or employee, or any applicant, as defined in paragraph one of section nine of this act, the state ethics commission may render written advisory opinions with respect to the interpretation or application of any provision of this act.

3. Opinions and requests for opinions shall be public records and shall be indexed and maintained on file in an appropriate manner by the board or commission. Municipal and regional ethics boards, and the commission, shall publish and promulgate their opinions.

SECTION 27. *Appeals*

1. The state ethics commission shall hear and decide appeals from any decision or determination made by a municipal or regional ethics board. An appeal may be taken by any person aggrieved by the decision or determination, within the time prescribed by the commission by general rule.

2. Any person aggrieved by a decision of the state ethics commission pursuant to subdivision one of this section may seek judicial review and relief pursuant to article seventy-eight of the civil practice laws and rules.

SECTION 28. *Training and Education by Municipal and Regional Ethics Boards*

1. Each municipal and regional ethics board may develop educational materials and an educational program on the provisions of this act or of any local ethics act. Each municipal and regional ethics board shall:

(a) assist the municipality or municipalities by which such board was established in conducting training programs on compliance with this act; and

(b) make information concerning this act known and available to all municipal officers and employees within the municipality or municipalities by which such board was established, to the public, and to any person who is interested in doing business with the municipality or municipalities.

2. Every municipal and regional ethics board which develops such educational materials shall file a copy of all such educational materials with the state ethics commission.

SECTION 29. *Annual Reports; Recommendations*

1. In its annual report to the Governor and the Legislature, the state ethics commission may recommend changes to the text or administration of this act.

2. Each municipal and regional ethics board shall prepare and submit an annual report to the chief executive officer or officers and the municipality's or municipalities' governing body or bodies, reflecting the activities of the board. The report may also recommend changes to the text or administration of the municipality's or municipalities' local ethics act or acts.

SECTION 30. *Local Ethics Acts*

1. The governing body of every municipality which has established an ethics board or is participating in a regional ethics board may, by local law, adopt a local ethics act. A school district may, by resolution, adopt a local ethics act.

2. The provisions of any local ethics act adopted pursuant to subdivision one of this section shall be at least as stringent in scope and substance as the provisions of this act.

3. A copy of any local ethics act, and any amendments thereto, adopted by a county, city, town, village, or school district shall be filed with the state ethics commission.

4. The state ethics commission shall review all local ethics acts adopted under subdivision one of this section for compliance with subdivision two of this section.

5. Any local ethics act adopted by a municipality shall apply only to officers and employees of that municipality.

6. This act shall be deemed to be the local ethics act of any municipality that has not adopted its own local ethics act.

SECTION 31. *Multijurisdictional Agencies*

Within sixty days after the effective date of this act, the governing body of any agency enumerated in paragraph (b) of subdivision one of section three of this act which is located within or which jointly serves more than one county, city, town, village or school district, shall irrevocably determine under which of those municipalities' jurisdiction such agency shall fall for purposes of this act. If the agency fails timely to make that determination, the state ethics commission shall make it.

SECTION 32. *Applicability; Other Remedies; Severability*

1. The provisions of this act shall apply notwithstanding any inconsistent provision of any general, special, or local law.

2. No existing right or remedy shall be lost, impaired, or affected by reason of this act.

3. Nothing in this act shall be deemed to bar or prevent the timely filing by a present or former municipal officer or employee of any claim, account, demand, or suit against the municipality on behalf of himself or herself or any member of his or her family arising out of personal injury or property damage or

for any lawful benefit authorized or permitted by law.

4. If any provision of this act is held by a court of competent jurisdiction to be invalid, that decision shall not affect the validity and effectiveness of the remaining provisions of the act.

SECTION 33. *Distribution and Posting*

1. Within sixty days after the effective date of this act, the chief executive officer, or, if none, the chair of the governing body, of every county, city, town, village, and school district within the state shall cause a copy of this act to be distributed to every municipal officer and employee, shall make it readily available to the public, and shall post notice of this act conspicuously in each public building under the jurisdiction of the municipality. Every municipal officer and employee elected or appointed thereafter shall be furnished a copy of this act within ten days after entering upon the duties of his or her position.

2. Every municipal officer or employee shall file with the municipal clerk a signed receipt acknowledging that he or she has received and read the act. Such receipts shall be maintained by the municipal clerk.

3. Failure to distribute a copy, failure of any municipal officer or employee to receive a copy, failure to file a signed receipt, or failure to keep posted a copy of the act shall have no effect on the duty of compliance with this act nor the enforcement provisions hereof.

APPENDIX B

Summary of Major Provisions of Municipal Ethics Act

1. Scope of Coverage

Section 3 (8) defines “municipality” to include counties, cities (other than NYC), towns, villages and school districts.

Section 3(1) defines “agency” to include other municipal entities such as Industrial Development Agencies, districts and urban renewal agencies. Agencies are subject to the ethics code and the ethics board of the municipality to which they are related.

Section 31 provides that if an agency serves more than one municipality, it must elect the municipality to whose ethics code and board it will be subject.

2. Conflicts of Interest

a. *The Basic Prohibition*

Section 4(1)(c) allows municipal officials to receive compensation from a contract with the municipality but prohibits them from taking an action or from not taking an action to obtain a financial benefit for themselves, their family, their business, any corporation of which they are an officer or director or own more than five of the stock, anyone from whom they or their spouses received more than \$2000 during any one of the past two years, or a person with whom they or their family member has an employment, professional, business or financial relationship.

b. *Gifts*

Section 4(1)(b) contains a general prohibition against accepting gifts of any size from anyone doing, considering doing or who has recently done business with the municipality, but allows municipal officers and employees to accept gifts from such persons under limited circumstances: where they do not exceed seventy five dollars in one year, are customary on family, social, holiday or civic occasions, and are not received under circumstances in which it reasonably might be inferred that the gift

stances in which it reasonably might be inferred that the gift was intended to influence or reward the officer or employee for any official action.

c. Appearances Before Municipality

Section 4(1)(a) prohibits municipal officers and employees, including those who are unpaid, from acting as attorney, agent, broker, employee, consultant or representative in connection with a business dealing with the municipality.

Sections 4(1)(d) and 4(2) also prohibit all municipal officers and employees and the firms of all public officials from appearing before the officer's, employee's or official's *own* agency.

Sections 4(1)(e) and 4(3) prohibit elected and paid officers and employees and the firms of elected and paid public officials from appearing before *any* municipal agency on behalf of private clients.

d. Appearances Against Interests of Municipality

Section 4(1)(f) prohibits municipal officers and employees from appearing against the interests of the municipality in any matter in which the municipality is a party or complainant.

e. Political Activity

Sections 4(1)(g),(h) and (i) prohibit a municipal officer or employee, or his or her campaign committee, from soliciting non-elected municipal officers or persons doing business with the municipality to participate in or contribute to election campaigns. A limited exception allows elected officers to solicit *participation* in election campaigns from their appointees who are exempt or unclassified under the Civil Service Law and are directly subordinate to them. Sections 4(1)(h) and (i) contain language designed to assure that these prohibitions will not apply to general solicitations which do not target municipal officers and employees, or people doing business with the municipality.

f. Confidential Information

Section 4(1)(j) prohibits the disclosure or use for private gain of confidential information, but excepts any disclosure which is authorized by law. This clarifies that the Act is not in-

“whistleblower” statute, such as Civil Service Law § 75-b.

g. A Revolving Door

Sections 4(1)(k) and (l) allow former municipal officials to work for anyone they choose after leaving municipal service, but contain a permanent bar on accepting or soliciting employment in regard to a “particular matter” upon which he or she took a “discretionary act” while employed with the municipality.

Sections 3(4) and (12) define “discretionary act” and “particular matter” and do *not* include the proposal, consideration or enactment of local laws, ordinances or regulations of general application.

3. Disclosure

a. Annual Disclosure Provision

Section 6 requires that each year elected and paid “public officials” (all officials with authority to perform “discretionary acts” with respect to “business dealings”) file a short disclosure statement. No dollar amounts are required to be disclosed. Public officials must list: the address of real estate they or family members in their household own or lease in or near the municipality; the name of their own and their spouses’ employers; the name of any business they or their spouses own or are officers in, and their titles; the name of any corporation of which they or their spouses are an officer or director, or own more than 5% of the stock; and any self-employment from which they or their spouses received more than \$2000 the previous year.

Section 6(4) tracks the provisions of the Ethics in Government Act by requiring elected and paid public officials who are licensed professionals to file a description of the principal subject areas of their licensed practices, but not the names of clients, customers or patients. In addition, such officials have to disclose the nature of their clients’ businesses.

b. Transactional Disclosure

Section 5 requires municipal officers and employees to file a statement and disqualify themselves from any action whenever, by taking an action or not taking an action, they will provide a

by taking an action or not taking an action, they will provide a financial benefit to themselves, their family, a corporation of which they are an officer or director or own more than 5% of the stock, persons with whom the municipal officer or employee or his or her family member has an employment, professional, business or financial relationship, or anyone from whom they or their spouses received more than \$2000 during any one of the past two years. However, the section does not apply if the benefit to the municipal officer or employee is no different than that which would be derived from the action by reason of its general application to a broad class of persons.

Section 5(3) addresses the problem of recusals by specifically providing that such recusals will not be counted in determining whether a vote sufficient to pass a measure has been reached, and makes specific provisions for waiver of the recusal requirement if a majority of that body cannot or does not vote.

c. Disclosure by Applicants

Section 9 requires that everyone who submits *any* written application or bid to the municipality disclose: any campaign contributions of \$250 or more which the applicant made to municipal officials during any one of the past five years, and the nature of the interest of any municipal official who is required to act on the application or bid in the application or bid [sic] or in the person making the application or bid.

4. Inducement of Violations

Section 10 makes it a misdemeanor intentionally to induce a municipal officer or employee to violate the Act.

5. Debarment

Section 11 prohibits vendors and others convicted of a misdemeanor under the Act from entering into a contract (other than an employment contract) with any governmental entity in the State for three years.

6. Penalties

Section 12 provides a wide range of sanctions, including warning, reprimand, civil fines (up to \$1500) and civil forfeiture

(up to three times the amount of ill-gotten gains), and allows the municipality to collect damages. Some of the penalties are mutually exclusive. The Act also provides that a municipal officer or employee convicted of a misdemeanor under this Act shall forfeit municipal office.

7. Municipal and Regional Ethics Boards

Sections 13 and 19 permit municipalities to establish municipal or regional ethics boards which have the power to review disclosure statements, investigate violations, give advisory opinions, grant waivers, recommend disciplinary action, assess civil fines, and sue for civil forfeitures. The state ethics commission will serve as the ethics board of any municipality which does not opt to establish its own board or to participate in a regional board.

Section 14 sets minimum qualifications for ethics board members and allows local governments to require that ethics board members live or do business in the municipality and to provide per diem compensation for ethics board members.

Section 15 sets out the mechanism for appointment of ethics board members and authorizes the municipality to allow one non-elected municipal officer or employee to be selected by the municipality's officers and employees to serve on a local ethics board.

Section 30 provides that the Act will be the local ethics act for all municipalities, unless a municipality adopts its own act, which must be at least as stringent.

Section 20 defines the powers of the state ethics commission with respect to the Act. The Commission sits as a municipal ethics board for municipalities which do not establish their own boards and when so doing, performs all the functions of local boards, as well as others, including: conducting investigations and hearings, making appointments and filling vacancies on municipal and regional boards when municipalities fail timely to do so; investigating all allegations of violations of the Act by municipal or regional ethics board members; hearing and deciding appeals from local and regional ethics boards; providing technical assistance and training to municipal and regional ethics boards and municipal officers and employees; and granting waivers under limited circumstances.

APPENDIX C

Witnesses Appearing At Public Commission Hearing On Municipal Ethics Act

Page Bigelow

Institute for Public Administration

Edward Crawford, Executive Director

Association of Counties

Edward Farrell, Executive Director

New York Conference of Mayors & Other Elected Officials

Louis Grumet, Executive Director

New York State School Boards Association

Jeff Haber, Executive Director

Association of Towns

William Kelly, President

New York Conference of Mayors & Other Elected Officials

Bob Newman, Former Chair and Current Member

State Board of Common Cause

Raymond O'Connor, Councilman

Town of Wilton

John Whitney, Mayor

Village of Avon

Joseph Zimmerman, Professor of Political Science at S.U.N.Y. at

Albany