

STATE OF NEW YORK
TEMPORARY STATE COMMISSION ON
LOCAL GOVERNMENT ETHICS

FINAL REPORT

January 1993

Henry G. Miller, Chair
Arnold R. Fisher
Stanley Hill
Joseph Jaspan
George Kannar
Samuel J. Semel
Gloria Smith
Anthony F. Veteran
Ann D. Weintraub

Mark Davies, Executive Director
Thomas A. McShane, Chief Counsel
Patricia A. Bennett, Administrative Officer

WHITE PLAINS

Editor's Note: This report originally appeared in Fordham Urban Law Journal, 1993, Vol. 21, No. 1, p. 1. Copyright by the Fordham Urban Law Journal. Used with permission.

TABLE OF CONTENTS

	<i>Page</i>
Introduction.....	4
The Work of the Commission Generally*	
A. Commission Meetings	
B. The Work of the Advisory Board	
C. Staff	
D. Administration: Frugality	
E. Investigations	
F. Presentations and Speeches	
G. Articles by Commissioners and Staff	
H. Press Relations	
I. Litigation	
Enforcement of the Financial Disclosure Provisions of the 1987 Ethics in Government Act*	
A. The Financial Disclosure Provisions of the 1987 Act	
B. The Authority of the Commission to Enforce the Financial Disclosure Provisions of the 1987 Act	
C. The Enforcement Activities of the Commission	
(1) Filing of Disclosure Statements	
(2) Commission Regulations	
(3) Public Advisory Council	
(4) Hearings on Delinquent Filers	
(5) Maintenance of Records	
(6) Commission Reports	
(7) Requests for Inspection of Disclosure Statements	
D. Transfer of the Commission's Powers, Duties, and Records	
Advice and Assistance to Municipalities*	
The Most Important Task: The Proposed Ethics Law	5
A. History of the Proposal	5
B. Summary of the Proposal	7
(1) Underlying Precepts	7
(2) The Tripartite Basis of Ethics Laws: Code of Ethics, Disclosure, Enforcement	8
(3) The Code of Ethics	8
(a) Current Law	8
(b) Proposed Code of Ethics	9

* Editor's note. This section is not included in this publication of the report. The complete report of the Commission is on file with the *Fordham Urban Law Journal*.

1993]	<i>LOCAL GOVERNMENT ETHICS</i>	3
	(4) Disclosure	9
	(5) Enforcement	10
	C. Future of the Proposal	11
Conclusion*		

Appendices

Appendix A	Biographies of the Commissioners
Appendix B	Members of the Local Government Advisory Board
Appendix C	Members of the Public Advisory Council
Appendix D	Members of the Commission Staff
Appendix E**	Presentations by Commissioners and Staff
Appendix F**	Publications by Commissioners and Staff
Appendix G**	Municipalities Subject to Mandatory Annual Financial Disclosure
Appendix H**	Disclosure Statements Filed with the Commission
Appendix I	Summary of the Local Government Ethics Bill (S.6157/A.8637)
Appendix J	Sample Annual Disclosure Form under the Local Government Ethics Bill (S.6157/ A.8637)
Appendix K	Editorials in Support of the Local Government Ethics Bill (S.6157/A.8637)
Appendix L	The Local Government Ethics Bill (S.6157/A.8637)

* Editor's note. This section is not included in this publication of the report.

** Editor's note. This appendix is not included in this publication of the report.

INTRODUCTION*

The Temporary State Commission on Local Government Ethics was established by the 1987 Ethics in Government Act, largely in response to scandals in the New York City. Constituted as a temporary body, the Commission expired, as scheduled, on December 31, 1992.

Of the Commission's nine members, five were appointed by the Governor without prior nomination and four were appointed by him upon the nomination of each of the legislative leaders. On the date of those appointments, November 27, 1989, the Governor also appointed the Commission's twelve-member Local Government Advisory Board, upon nomination of the Association of Counties, Association of Towns, and Conference of Mayors. Biographies of the Commissioners and a list of the Advisory Board members are set out in Appendix A and B, respectively.

The 1987 Act established for the Commission three primary areas of responsibility:

- To enforce the financial disclosure requirements of the 1987 Act for municipal officials;
- (2) To advise and assist the over 2,400 counties, cities, towns, villages, and school districts in New York State in revising their ethics codes and in complying with the 1987 Act; and
- To propose new municipal ethics legislation for the State of New York.

This Final Report briefly summarizes the work of the Commission in each of those three areas.

* This report was written by Mark Davies, former Executive Director of the Commission. Mr. Davies is currently a practicing attorney in Tarrytown, New York, and an Adjunct Professor at Fordham University School of Law and New York Law School.

THE MOST IMPORTANT TASK: THE PROPOSED ETHICS LAW

The 1987 Ethics in Government Act charged the Commission, as its third, final, and by far most important task, with proposing new municipal ethics legislation for the State of New York. To that task, the Commission devoted the greater portion of its time and energies. Together with its Local Government Advisory Board, the Commission, in March 1991, proposed an ethics law to replace completely article 18 of the General Municipal Law.*

A. History of the Proposal

Beginning in 1987, the Commission on Government Integrity, chaired by Dean John D. Feerick of Fordham Law School, undertook a study of ethical problems in municipalities throughout the State. Out of that study arose a proposed municipal ethics bill, drafted by Feerick Commission staff. That proposed bill was circulated to every county, city, town, and village in the State, revised, circulated again, and subjected to public hearings held by that Commission. The testimony at those hearings centered largely upon opposition to annual disclosure. The Feerick Commission then revised the proposed bill again and issued it with a report, "Municipal Ethical Standards: The Need for a New Approach."**

With some relatively minor revisions, the Governor adopted the proposed bill as a program bill, which was introduced in the Legislature in 1989 (A.7953). The Assembly Committee on Local Governments held hearings on the bill. The testimony at those hearings largely paralleled the testimony given to the Feerick Commission. In particular, the New York State Association of Counties, Association of Towns, and Conference of Mayors vigorously opposed the program bill. The bill was never reported out of committee.

Asked to speak at the first meeting of the Temporary State Commission on Local Government Ethics in December 1989, John Feerick called upon the Commission to seek a wholesale change in the State ethics laws for municipal officials. The Commission dis-

* Editor's note. Article 18 governs conflicts of interests of municipal officers and employees. N.Y. GEN. MUN. LAW §§ 800-813 (McKinney 1986 & Supp. 1993).

** Editor's note. The cited report has been published in N.Y. STATE COMM'N ON GOV'T INTEGRITY, *Municipal Ethical Standards: The Need for a New Approach*, in GOVERNMENT ETHICS REFORM FOR THE 1990'S: THE COLLECTED REPORTS OF THE NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY 618 (Bruce A. Green ed., 1991).

cussed at length whether to throw its weight behind the Governor's program bill in the spring of 1990 or to strive to present a new bill after consultation with the Advisory Board. Seeking guidance from the members of the Advisory Board, the Commission concluded that the three municipal associations had in fact raised some significant concerns about certain provisions in the program bill. Coupled with the political reality that a municipal ethics bill drawing strong opposition from the associations was unlikely to pass the Legislature, those concerns led the Commission to opt for the drafting of a new bill.

Based on discussions with the Advisory Board and their attorneys, and on a review of ethics laws collected from municipalities and states around the country, the Commission drafted a Code of Ethics for municipal officials. Accompanying that Code, which was to form the centerpiece of the proposed municipal ethics bill, was a list of disclosure and enforcement provisions to be included in that bill. In a series of meetings and discussions, the Commissioners and the members of the Advisory Board hammered out a final agreement on the Code and the list of provisions, which documents the Commission released in December 1990 as part of its 1990 Annual Report.

To draft the bill itself, the Commission and Advisory Board established a joint drafting committee composed of the Commission's Executive Director and Chief Counsel and an attorney from each of the three associations represented on the Advisory Board: George Mead, Jefferson County Attorney and a Board member; Murray Jaros, special counsel to the Association of Towns; and Linda Kingsley, legislative counsel to the City of Binghamton and a former attorney with the Conference of Mayors. In addition, the Commission obtained the services of Page Bigelow of the Institute of Public Administration, a nationally recognized expert in the ethics laws of the 50 states.

The bill drafted by this committee was presented to the Commission and Advisory Board, revised in light of their comments, and discussed and revised some more. Together with a Commission report detailing the deficiencies in the current State ethics laws for municipal officials, the bill was released at a press conference in Albany on March 20, 1991.

Listening to one another with respect, the Commission and Advisory Board had produced a historic agreement between a State agency and municipal officials: a proposed ethics law that experts

have pronounced among the finest in the nation. It was an unprecedented and unparalleled accomplishment.

B. Summary of the Proposal

A lengthy discussion of the need for, and substance of, the ethics bill jointly proposed by the Commission and the Local Government Advisory Board lies beyond the scope of this report. Those matters are addressed at length in the report accompanying the release of the proposal: "In Search of a Wise Law: Municipal Ethics Reform."* Following is a brief summary of the proposal's provisions.

(1) Underlying Precepts

Underlying the joint proposal are the following precepts, assumptions for which the Commission's own investigations and interviews of individuals throughout the State provide empirical evidence:

- ***The vast majority of municipal officials are honest.*** Corruption is rare. Alleged unethical conduct can be traced in almost all instances to the lack of clear ethical standards and the absence of an agency to provide answers to ethics questions.
- ***Ethics laws must reflect local government's dependence upon volunteers.*** At the highest levels (legislative boards, zoning boards, planning boards, and the like), local government officials are unpaid or minimally paid. An ethics law that drives volunteers out of local government does far more harm than good.
- ***Ethics laws for municipal officials must be enforced locally.*** The principles of home rule, the limits of the State budget, and the greater knowledge of local officials and citizens about their own needs mandate that the State intervene in the enforcement of ethics laws only when local enforcement fails.
- ***Ethics laws must be comprehensive, understandable, sensible, and uniform.*** Piecemeal ethics rules that a lay person cannot understand provide no guidance and serve only as a trap for honest public officials. So, too, ethics rules that violate common sense will be neither obeyed nor enforced. Yet every municipal official in the State should be subject to some mini-

* Editor's note. The report is unpublished and is on file with the *Fordham Urban Law Journal*.

mal ethical standards, with the proviso that a municipality could adopt more, but not less, stringent ethics requirements of its own.

Administration of ethics laws must be inexpensive and flexible. Municipalities do not need another expensive, complicated State mandate. They must be offered the option of establishing local ethics boards, forming joint or regional boards, or casting the entire administrative burden upon the back of the State.

Adopting these precepts as their goals, the Commission and the Advisory Board drafted a proposed bill that met them.

(2) *The Tripartite Basis of Ethics Laws: Code of Ethics, Disclosure, Enforcement*

Every good ethics law for public officials rests upon three pillars: a comprehensive, comprehensible, common sense code of ethics; sensible transactional, applicant, and annual disclosure; and sensible and effective enforcement. If any one of these pillars is removed, the entire structure collapses.

(3) *The Code of Ethics*

(a) *Current Law*

That municipal officials in New York State are deprived of the guidance offered by an understandable and comprehensive statewide code of ethics is a disgrace. Virtually all other professionals have such a code. Municipal officials from Rhode Island to California, from Alabama to Alaska have their codes as well. New York's local government officials have none, unless they serve in one of the handful of municipalities that have adopted an adequate local code. The State Legislature enacted ethical standards for its own members and staff in the 1987 Act but has thus far failed to adopt such standards for local government officials.

What State laws do exist for municipal officials in New York State are inadequate and indecipherable. Current article 18 contains a virtually unintelligible prohibition on an official having an "interest" in a contract with his or her own municipality, if the official has some power over that contract, unless one of fifteen exceptions applies. One must question what kind of law requires fifteen exceptions. Violation is a crime, a misdemeanor. In practice, many small rural communities face the Hobson's choice of either violating this rule, losing an official who is difficult to replace, or paying

substantially more for services from a non-official located many miles away.

Current article 18 also contains a hodgepodge of vague provisions purporting to regulate gifts and appearances. In fact, these provisions provide little guidance to officials and would permit, for example, a town attorney to appear before the town zoning board on behalf of a private client. One trial court even found the gifts restriction unconstitutionally vague. With cynicism, some have argued that these defects make little difference since violations of these provisions carry no penalty except possible disciplinary action. Indeed, with tail wagging dog irony, the failure of a zoning board member to disclose an item on his or her financial disclosure form could produce a \$10,000 fine while acceptance of a \$10,000 gift from a developer with a pending application before the board goes unpunished.

(b) Proposed Code of Ethics

The proposed Code of Ethics contains a general prohibition against officials using public office for private gain—for themselves, their relatives, their employer or business, for their major customers or clients, or for major campaign contributors. In a clear, comprehensive, and sensible way, the Code regulates gifts, representation and appearances before municipal boards, political solicitation of civil service subordinates, and the revolving door of former officials appearing before municipal agencies. To give private citizens a stake in officials' complying with ethics laws, the Code would prohibit private persons and businesses, as well as officials, from inducing an official to violate the ethics laws.

The proposed bill, including the Code of Ethics (§ 800), is set forth in Appendix L to this Report. Appendix I contains a one-page summary of the bill, including the Code.

(4) Disclosure

In the opinion of the Commission, many citizens and State legislators have been sold a bill of goods on disclosure, believing that lengthy annual financial disclosure forms equal ethics. Annual disclosure serves an important, but very limited, purpose in an ethics scheme. Such disclosure does not reveal ethical improprieties in any meaningful way, plays only a minimal role in promoting integrity in government, and, as discussed above, presents significant problems at the municipal level. Many promote financial disclosure in order to avoid grappling with the far more important issues of a

Code of Ethics and meaningful enforcement. Disclosure should not thus be employed as a smokescreen.

Accordingly, the proposal of the Commission and Advisory Board would replace the current onerous annual financial disclosure requirements with a minimum two-page form setting forth (1) the location of the local real estate of the official and his or her immediate family and (2) the sources (not the amounts) of the official's, and his or her spouse's, outside earned income (not bank accounts or stocks). Virtually all of that information would be public knowledge, although it would not otherwise be easily available in one place. Any municipality could require more extensive disclosure, but not less.

Instead of mandating invasive annual disclosure, the proposal focuses on disclosure of a conflict when it actually arises, so-called transactional disclosure. The bill would also require applicants for municipal contracts or benefits to disclose any official who might financially benefit from acting on the request, to the extent the applicant knows.

In contrast to the scattershot approach of extensive annual disclosure, transactional disclosure and annual disclosure pinpoint the potential conflict of interest. Under such a scheme, scaled back annual disclosure takes its rightful place as a check on transactional and applicant disclosure and as a means to highlight for officials and citizens alike where future conflicts of interest might occur. At the municipal level, these purposes may be met by a brief form. Indeed, in the Commission's experience, the overwhelming number of conflicts of interest in local government arise from real estate ownership and outside employment. Stocks, bonds, bank accounts, and the like rarely present a problem. A sample annual disclosure form meeting the proposal's requirements is set out in Appendix J.

(5) Enforcement

Penalties for violating current article 18 are either excessive (a violation of the arcane interest-in-contracts provision is a misdemeanor) or non-existent. Civil fines are possible only in the area of financial disclosure, in the 5% of the counties, cities, towns, and villages subject to those provisions; and even there the maximum fine of \$10,000 is far too high in the municipal context. Shockingly, except in this extremely limited area of financial disclosure, violations of article 18 go virtually unpunished. No effective enforcement mechanism exists.

In sharp contrast, the proposal sets out a broad range of penalties for violations of article 18, including disciplinary action, civil fines (a maximum of \$1,500 is sufficient), damages, and, where the violation is intentional or knowing, civil forfeiture and criminal penalties. The penalty for a private citizen or business inducing an official to violate the ethics laws would include debarment from doing any business with any governmental entity in the State for up to three years.

Consistent with the principles of home rule, the proposal would vest the enforcement of ethics laws in local ethics boards. Only if the municipality neither established such a board nor joined a regional or joint ethics board nor contracted out for an ethics board would a State agency act as the ethics board for that municipality. Otherwise the State's power would be limited to stepping in when a local board failed to act, was accused of wrongdoing, or requested the State's assistance. Furthermore, for the first time, ethics boards would have substantial powers and duties—to investigate possible violations, to offer guidance to officials, to conduct training programs, and, when necessary, to impose civil fines.

C. Future of the Proposal

The joint proposal of the Commission and the Advisory Board was introduced, without change, in the Senate and Assembly in June 1991 (S.6157/A.8637). From August 1991 to December 1991, the Senate committees on Ethics and on Local Government and the Assembly committees on Ethics and Guidance and on Local Governments held five joint hearings across the State on the bill. The testimony at those hearings overwhelmingly supported the bill.

The bill also garnered the support of numerous associations, including the New York State Association of Counties, which made the bill a legislative priority, the Association of Towns of the State of New York, the New York State Conference of Mayors and Other Municipal Officials, the Retail Council of New York State, the New York State Bar Association Municipal Law Section, the Conference of Orange County Villages, the Nassau County Village Officials Association, and the League of Women Voters of New York State.

Numerous municipalities, municipal boards, and municipal officials throughout New York State passed resolutions of support or wrote letters of support, including County Executives Tom Gulotta

and Andrew O'Rourke and the Commission's own Stanley Hill, Executive Director of District Council 37 of AFSCME.*

In over forty editorials, newspapers across the State repeatedly called for passage of the bill. A list of those editorials is attached as Appendix K.

This outpouring of support arose as a result of Commissioners and staff having devoted hundreds of hours to educating—through meetings, speeches, and telephone conversations—reporters and editorial boards, municipal associations, municipal boards, individual municipal officials, business lobbyists, bar groups, unions, civic associations, and other New York State agencies. In almost all instances, education about the bill resulted in acquiescence to the bill and often active support for it. By letter, telephone, and in person, Commissioners and staff also communicated about the bill on dozens of occasions with individual State legislators and their staffs and with the Governor's office.

No significant opposition to the bill ever arose. Yet at a meeting at the end of June 1992, staff counsel for the Senate and the Assembly informed the Chair of the Commission that the bill would not be passed that session. Despite the overwhelming support for the bill from every sector of municipal government and civic organizations, despite the carefully crafted agreement of the Commission and the municipal associations on the exact text of the bill, both houses expressed opposition to the Code of Ethics and one house insisted upon continued lengthy annual financial disclosure.

Two and a half years of careful craftsmanship and the determined effort of hundreds of citizens to address the appalling state of New York's municipal ethics laws had fallen on deaf ears. Once again a State commission had been established in the heat of scandal—and once again its recommendations had been ignored. Once again a cruel charade of rhetoric and inaction had been perpetrated upon the people of the State by those whom they had elected to lead them.

* Editor's note. American Federation of State, County & Municipal Employees.

APPENDIX A

BIOGRAPHIES OF THE COMMISSIONERS

Following are brief biographies of the members of the Temporary State Commission on Local Government Ethics:

Henry G. Miller (Chair), a resident of Scarsdale, has been an attorney since 1959 and has served as an adjunct professor of law at St. John's University School of Law. Among his many professional and civic activities, he has been a Regent of the American College of Trial Lawyers and a past Director of the International Academy of Trial Lawyers. In addition, he served as President of the New York State Bar Association from 1984 to 1985, President of the Westchester County Bar Association from 1975 to 1977, and was a Director of the Westchester County Legal Aid Society from 1975 to 1982. A frequent lecturer on ethics and other legal issues, Mr. Miller is a graduate of St. John's University College and St. John's University School of Law.

Arnold R. Fisher, a resident of Hamilton and the New York State Commissioner of Motor Vehicles from 1973 to 1975, has served as Chairman of Chenango Brokers, Inc. since 1984, Chairman of the Board of Chenango Mutual Insurance Company since 1988, and Justice of the Village of Hamilton since 1990. He previously served for five years as President of the Chenango Mutual Insurance Company. From 1979 to 1986, Mr. Fisher was Associate Director of the Driver Improvement Program for the National Safety Council after having served as a Highway Safety Consultant for the Council for two years. He was Madison County Clerk from 1958 to 1973 and previously served as head of the Madison County Sheriff's Department Civil Division for five years. Mr. Fisher, who attended Cornell University, managed farms in three states from 1943 to 1953 and has been active in agricultural, civic, and professional organizations for more than twenty-five years.

Stanley Hill, a resident of Jamaica, Queens, has been the Executive Director of District Council 37 of the American Federation of State, County and Municipal Employees since 1987 and Vice President of the New York State AFL-CIO since 1985. Between 1972 and 1987, Mr. Hill served with District Council 37 as President of Local 371, Director and Associate Director of its Clerical Administrative Divisions, and Associate Director. He previously worked as a caseworker and supervisor in the New York City Social Services

Department from 1959 to 1972. A graduate of Iona College, Mr. Hill is a past and present member of the New York State Industrial Cooperation Council, the State Hospital Review and Planning Council, the New York State Martin Luther King, Jr., Commission, and the Community Service Society.

Joseph Jaspán, a resident of Woodmere, is an attorney engaged in private law practice since 1983. He was a State Court of Claims Judge from 1974 to 1983 after serving as Nassau County Attorney from 1971 to 1974. He previously served as Chief Counsel to the State Senate Public Health Committee. He earned his Bachelor of Science Degree from St. John's College, his law degree from St. John's School of Law, and his Master of Arts Degree from New York University.

George Kannar, a resident of Buffalo, is Professor of Law at the State University of New York at Buffalo. Prior to that, he was an attorney for the American Civil Liberties Union in New York City for eight years, where he was a Karpatkin Fellow from 1978 to 1979. In addition, Mr. Kannar was a clerk for the United States Court of Appeals for the Second Circuit from 1977 to 1978. A graduate of Yale College and Harvard Law School, Mr. Kannar was an associate editor at *Parade* magazine from 1970 to 1971. He was also a writer-researcher for the Ralph Nader Congress Project in 1972 and a writer-investigator for the President's Commission on Campus Unrest in 1970. Mr. Kannar is the author of several articles on legal issues.

Samuel J. Semel, a resident of Elmira, has been President of Chemung Electronics since 1952 and was a partner in the L&S Development Corporation from 1985 to 1987. From 1970 to 1979, Mr. Semel was the Vice President and Treasurer of Radio Geneva Inc. He previously worked in textiles sales for one year and was an electronics specialist and technician for four years. Mr. Semel has served on the Board of Directors of the American Joint Distribution Committee since 1970. He was a member of the Small Cities Committee of the Council of Jewish Federation from 1972 to 1975 and the State Retail Council's Safety Committee from 1976 to 1978. Mr. Semel left his position as chairperson of Elmira's Cable Commission in order to serve on the Temporary State Commission on Local Government Ethics. Mr. Semel attended Texas A&M University and Pratt Institute.

Gloria A. Smith, a resident of Bay Shore, was the Superintendent of the Wyandanch Union Free School District from 1985 to

1988 after having served as Assistant Superintendent for four years. In addition, Ms. Smith was an adjunct professor at Long Island University's C. W. Post Campus from 1986 to 1987. Ms. Smith's career in education includes four years with the Boston Public Schools as a senior advisor and associate director, and twenty-three years with the New York City Public School system as a district coordinator, assistant principal, and teacher. Ms. Smith is affiliated with several professional organizations, including the American Association of School Administrators and the National Association for the Advancement of Colored People. She is also active in several civic organizations. Ms. Smith earned B.A. and M.S. degrees from the City University of New York's Hunter College.

Anthony Veteran, a resident of Tarrytown, has served as Greenburgh Town Supervisor since 1974 and previously served as Mayor of Tarrytown for fourteen years. In addition, Mr. Veteran worked in the Elmsford Public School System for twenty-six years, including ten years as school principal. He is affiliated with the New York State Officials Association, the State Association of Large Towns, and the Westchester Town Officials Association. Mr. Veteran also served as a volunteer firefighter for the Riverside Hose Company. Mr. Veteran is a graduate of John Carroll University in Ohio (Ph.D.) and Columbia University (M.A.).

Ann D. Weintraub, a resident of Rochester, has worked for the Rochester City School District since 1960 as Assistant Superintendent, Elementary Schools, as Coordinating Director of Careers in Education, as a Supervising Director of Elementary Instruction, as an elementary school principal, as Acting Director of Elementary Education, as vice principal for instruction, and as a teacher. She is affiliated with Phi Beta Kappa and is on the continuing education staff of the Nazareth College of Rochester. She is an active member of the League of Women Voters and is involved in numerous civic organizations. Ms. Weintraub earned B.A. and M.A. degrees at the University of Rochester.

APPENDIX B

MEMBERS OF THE LOCAL GOVERNMENT ADVISORY BOARD

The Commission's Local Government Advisory Board was appointed by the Governor upon the nomination of the New York State Association of Counties, the Association of Towns of the State of New York, and the New York State Conference of Mayors and Other Municipal Officials. The twelve members of the Advisory Board, with their offices at time of appointment, were:

Appointed upon nomination of the Association of Counties

Edwin L. Crawford, Executive Director of the New York State Association of Counties

Hon. David Kaufman, Chair of the Sullivan County Board of Supervisors

Hon. Victor A. Lacatena, Chair of the Broome County Legislature

George E. Mead III, Esq., Jefferson County Attorney

Appointed upon nomination of the Association of Towns

Hon. Thomas F. Doty, Supervisor of the Town of Owego

Hon. Lawrence E. Dwyer, Jr., Supervisor of the Town of Bedford

G. Jeffrey Haber, Executive Secretary of the Association of Towns of the State of New York

Hon. John J. Kelly, Supervisor of the Town of Schroon

Appointed upon nomination of the Conference of Mayors

Hon. James P. Caruso, Mayor of the Village of Altamont

Hon. Juanita Crabb, Mayor of the City of Binghamton

Hon. David N. Dinkins, Mayor of the City of New York

Hon. Michael C. O'Laughlin, Mayor of the City of Niagara Falls

APPENDIX C**MEMBERS OF THE PUBLIC ADVISORY COUNCIL**

The members of the Commission's Public Advisory Council were:

- **Prof. Jay Carlisle III** of Pace University School of Law, Chair;
- **Roger Bennett Adler, Esq.**, a criminal defense attorney in New York City; and
- **Neal D. Haber, Esq.**, a New York City labor lawyer.

APPENDIX D

MEMBERS OF THE COMMISSION STAFF

The following persons served on the staff of the Temporary State Commission on Local Government Ethics:

Mark Davies	<i>Executive Director</i>
Thomas A. McShane	<i>Chief Counsel</i>
Patricia A. Bennett	<i>Administrative Officer</i>
Robert L. Nisely	<i>Special Counsel</i>
Donna Greene	<i>Public Information Officer</i>
Joseph A. Reilly	<i>Staff Investigator</i>
Helen Fitzmaurice	<i>Confidential Secretary</i>
Charlotte Belove	<i>Confidential Secretary</i>

APPENDIX I**SUMMARY OF THE LOCAL GOVERNMENT ETHICS BILL
(S.6157/A.8637)**

GOAL: A comprehensive, understandable, common sense ethics law that will preserve municipal home rule without imposing financial burdens on state or local government.

ASSUMPTIONS: The honesty of the vast majority of public officials. The necessity of treating local governments differently from state government in the ethics area because of local government's limited jurisdiction and volunteer nature.

HISTORIC AGREEMENT: With representatives of the State Association of Towns, Association of Counties, and Conference of Mayors and support of individual municipalities, editorial boards, NYSBA Municipal Law Section, and Retail Council.

APPLICABILITY: All municipalities in the State (e.g., counties, cities, towns, villages, school districts, water districts).

UNIFORMITY: A statewide minimum law, with each municipality retaining the right to pass a more stringent local ethics act.

ENFORCEMENT: Effective enforcement for the first time. At the option of the municipality, by local ethics boards (or regional ethics boards) or, if the municipality does not wish or cannot afford a local board, by a state commission, which would have no appellate jurisdiction over any local board.

SUBSTANTIVE PROVISIONS:

1. Code of Ethics to guide honest officials - the heart and soul of the proposal.
2. Closing gaps in current law:
 - a. No use of public office for private financial gain;
 - b. Reasonable revolving door for specified officials (one year; permanent for particular matter personally worked on);
 - c. No appearances by official before municipality for private customer or client;
 - d. No appearances by official's firm before official's agency;
 - e. No political solicitation of subordinates, except political appointees;
 - f. Clear gifts provision (\$75 per year per donor);

- g. Range of penalties - disciplinary action, civil fines, damages, civil forfeiture, misdemeanors;
 - h. Private vendors who induce official to violate ethics law debarred from doing government business for up to three years.
3. Transactional disclosure and recusal when conflicts arise.
 4. Disclosure by applicants of officials who would financially benefit from grant or denial of application.
 5. Simple annual disclosure form (family's real property in community; official's and spouses's outside sources (not amounts) of earned income).
 6. Authorization for state commission to waive applicability of specified provisions.

APPENDIX J

**SAMPLE ANNUAL DISCLOSURE STATEMENT
UNDER THE LOCAL GOVERNMENT ETHICS
BILL
(S.6157/A.8637)**

ANNUAL DISCLOSURE STATEMENT
[MUNICIPALITY] OF _____
FOR 199_

Last Name	First Name	Initial
Title	Department or Agency	
Work Address	Phone No.	

If the answer to any of the following questions is "none," please so indicate.

1. **REAL ESTATE.** List the address of each piece of property that you, your spouse, or other relative own or have a financial interest in. List only real estate that is in the [municipality] of _____ or within one mile of the boundary of the [municipality] of _____. "Relative" means your spouse, child, step-child, brother, sister, parent, or a person you claimed as a dependent on your latest state income tax return.

	Name of Family Member	Relationship to You	Address of Real Estate	Type of Investment
<i>[E.g.:</i>	<i>John Jones</i>	<i>Father</i>	<i>1 Main St., Teatown</i>	<i>Owns]</i>

2. YOUR OUTSIDE EMPLOYER OR BUSINESS. List the name of any outside employer or business from which you receive compensation for services rendered or goods sold or produced or of which you are a member, officer, or employee. Also include any entity in which you have an ownership interest, except a corporation of which you own less than five percent of the outstanding stock. Identify the type of business, such as a partnership, corporation, self employment, or a sole proprietorship and list your relationship to the employer or business (i.e., owner, partner, officer, director, member, employee, or shareholder).

	Name of Employer or Business	Nature of Business	Type of Business	Your Relationship
<i>[E.g.:</i>	<i>Monument Realty</i>	<i>Real Estate Agency</i>	<i>Partnership</i>	<i>Employee]</i>

3. **YOUR SPOUSE'S EMPLOYER OR BUSINESS.** List the information in question 2. for your spouse.

	Name of Employer or Business	Nature of Business	Type of Business	Spouse's Relationship
<i>[E.g.:</i>	<i>Pottery Ltd.</i>	<i>Pottery Manufacturer</i>	<i>Corporation</i>	<i>Treasurer]</i>

Date:

Signed: _____

APPENDIX K

EDITORIALS IN SUPPORT OF THE LOCAL
GOVERNMENT ETHICS BILL (S.6157/A.8637)

<i>Date</i>	<i>Newspaper</i>
December 27, 1990	Gannett Suburban Newspapers (Westchester)
March 5, 1991	Buffalo News
March 22, 1991	Utica Observer-Dispatch
March 31, 1991	Albany Times Union
April 1, 1991	Gannett Suburban Newspapers (Westchester)
April 1991	Buffalo News
April 1, 1991	Yonkers Herald Statesman
April 5, 1991	Syracuse Post-Standard
May 7, 1991	Binghamton Press & Sun-Bulletin
May 14, 1991	Middletown Times Herald Record
May 15, 1991	Saratoga Springs Saratogian
May 17, 1991	Ithaca Journal
May 17, 1991	Dunkirk Evening Observer
May 19, 1991	Utica Observer-Dispatch
May 20, 1991	Rochester Democrat and Chronicle
May 22, 1991	Gannett Suburban Newspapers (Westchester)
May 25, 1991	Port Jervis Tri-State Gazette
June 4, 1991	Newsday (Long Island)
June 28, 1991	Albany Times-Union
June 29, 1991	The New York Times
June 30, 1991	Schenectady Sunday Gazette
July 18, 1991	Altamont Enterprise
January 2, 1992	Ithaca Journal
February 15, 1992	Albany Times-Union
February 24, 1992	Gannett Suburban Newspapers (Westchester)
March 7, 1992	Rockland Journal-News
March 22, 1992	Gannett Suburban Newspapers (Westchester)
May 8, 1992	Albany Times-Union
May 31, 1992	Buffalo News
June 30, 1992	Troy Record

July 1, 1992	Rochester Democrat & Chronicle
July 2, 1992	Albany Times-Union
July 9, 1992	Ithaca Journal
July 14, 1992	Binghamton Press & Sun-Bulletin
	Gannett Suburban Newspapers
	(Westchester)
July 20, 1992	Rockland Journal News
July 22, 1992	Schenectady Daily Gazette
July 25, 1992	Elmira Star-Gazette
September 2, 1992	Niagara Gazette
September 4, 1992	Rochester Democrat & Chronicle
September 11, 1992	Albany Times-Union
September 19, 1992	Gannett Suburban Newspapers
	(Westchester)
October 4, 1992	Albany Times-Union
December 7, 1992	Daily Freeman (Kingston)
December 8, 1992	Troy Record
December 10, 1992	Rochester Business Journal
January 1, 1993	

APPENDIX L

**THE LOCAL GOVERNMENT ETHICS BILL
(S.6157/A.8637)****Jointly Proposed***by***The Temporary State Commission on Local Government Ethics***and***The Local Government Advisory Board**

consisting of representatives of
The New York State Association of Counties,
The Association of Towns of the State of New York,
and
The New York State Conference of Mayors
and Other Municipal Officials

**NOTE ON PROPOSED CHANGES TO THE BILL
(S.6157/A.8637)**

Primarily in response to the public hearings jointly held on S.6157/A.8637 by the Senate Committee on Local Government, the Senate Committee on Ethics, the Assembly Committee on Local Governments, and the Assembly Committee on Ethics and Guidance, the Commission and the Advisory Board have proposed the following changes in that bill:

1. **Deletion of Felony Provision.** Delete subdivision 6 of section 808 (the felony provision).

It was felt that a felony provision was unnecessary and inappropriate in article 18.

2. **Correction of Typographical Error.** Amend the heading of section 807 from "Voidable contracts" to "Void contracts".

3. **Clarification that Debarment May Be Imposed Only by Court Order.** Insert the following phrase at the end of subdivision 1 of section 809 immediately before the period: "as provided in subdivision 5 of section 827 of this article."

This clarification is meant to address a concern raised by Senate staff counsel that a court might interpret section 809(1) to require automatic debarment upon an ethics board's finding of an intentional or knowing violation of article 18.

4. **Clarification that Respondeat Superior Does Not Apply to Debarment.** Insert a new subdivision 4 in section 809: "4. Under this section, a corporation, partnership, or other entity shall not be held vicariously liable for the actions of an employee. A corporation, partnership, or other entity shall not be debarred because of the actions of an employee unless the employee acted in the execution of company policy or custom. A store, region, division, or other unit of an entity shall not be debarred because of the actions of an employee of that unit unless the employee acted at the direction, or with the actual knowledge or approval, of the manager of the unit."

This clarification is meant to address a concern of the Business Council of New York State that section 809 could otherwise be read as permitting the debarment of an entire corporation for the actions of a lower level employee when those actions may in fact contravene com-

pany policy and directives. The Business Council agreed with this change.

TABLE OF CONTENTS

	<i>Page</i>
<i>Substantive Provisions</i>	
§ 800. Code of ethics for municipal officers and employees	32
§ 801. Exclusions from the code of ethics	34
§ 802. Inducement of violations of the code of ethics	34
§ 803. Definitions	34
§ 804. Appearances by outside employers and businesses of municipal officers and employees	36
§ 805. Annual disclosure	37
§ 806. Applicant disclosure	38
§ 807. Voidable contracts	39
§ 808. Penalties	39
§ 809. Debarment	40
§ 810. Injunctive relief	41
<i>Administrative Provisions</i>	
§ 811. Additional definitions	41
§ 812. Designation of officers and employees required to file annual disclosure statements	43
§ 813. Maintenance of disclosure statements	43
§ 814. Ethics boards: establishment	44
§ 815. Ethics boards: qualifications of members	44
§ 816. Ethics boards: appointment of members; term of office	45
§ 817. Ethics boards: vacancies	46
§ 818. Ethics boards: removal of members	46
§ 819. Ethics boards: meetings	46
§ 820. Ethics boards: inability to discharge duties; referrals to the commission	46
§ 821. Ethics boards: jurisdiction, powers, and duties	47
§ 822. Commission: establishment; members; meetings ..	48
§ 823. Commission: jurisdiction, powers, and duties	49
§ 824. Review of lists and disclosure statements	50
§ 825. Investigations	51
§ 826. Investigations of ethics boards	52
§ 827. Hearings; assessment of penalties	52
§ 828. Waivers	54
§ 829. Advisory opinions	54
§ 830. Judicial review	55
§ 831. Training and education	55

§ 832.	Annual reports; review of ethics laws.....	56
§ 833.	Local ethics acts	56
§ 834.	Local government agencies serving more than one municipality	57
§ 835.	Municipal advisory board	57
§ 836.	Public inspection of records; public access to meetings	58
§ 837.	Miscellaneous provisions.....	59
§ 838.	Distribution and posting of statute	59

AN ACT to amend the general municipal law, in relation to municipal ethics and to amend chapter 813 of the laws of 1987, amending the public officers law, the executive law and the legislative law relating to the ethics in government act, in relation to the expiration of certain provisions of the general municipal law, and to repeal certain provisions of the general municipal law relating thereto.*

S.6157

A.8637

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. 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 interest, 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 annual 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. It is the intent of this act that every governmental entity in the state not subject to the state ethics commission, the legislative ethics committee, or the provisions of subdivision 4 of section 211 of the judiciary law shall be

* For legibility, and to conserve space, the bill has been reformatted, line numbering has been eliminated, and spacing reduced. Underlining of new material has also been deleted in sections 2 and 3 of the bill; all of the provisions in those sections are new.

subject to the state commission on local government ethics, established by this act. It is also the intent of this act not to replace but rather to supplement other, consistent provisions of law regulating ethics in local government, such as section 107 of the civil service law, and to effect no change in the regulation of compatibility of public office.

§ 2. Sections 800, 801, 802, 803, 804, 804-a, 805, 805-a, 805-b, 806, 807, 808, 809, 810, 811, 812, and 813 of the general municipal law are REPEALED and a new section 800 is added to read as follows:

§ 800. Code of ethics for municipal officers and employees.

1. **General prohibition.** A municipal officer or employee shall not use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal financial benefit for any of the following persons:

- (a) the municipal officer or employee;
- (b) his or her outside employer or business;
- (c) a member of his or her household;
- (d) a customer or client;
- (e) a relative; or
- (f) a person from whom the officer or employee has received election campaign contributions of more than \$1000 in the aggregate during the past twelve months.

2. **Recusal.** A municipal officer or employee shall promptly recuse himself or herself from acting on a matter before the municipality when acting on the matter, or failing to act on the matter, may financially benefit any of the persons listed in subdivision 1 of this section.

3. **Gifts.** A municipal officer or employee shall not solicit anything of value from any person who has received or sought a financial benefit from the municipality, nor accept anything of value from any person who the municipal officer or employee knows or has reason to know has received or sought a financial benefit from the municipality within the previous twenty-four months.

4. **Representation.** A municipal officer or employee shall not represent any other person in any matter that person has before the municipality nor represent any other person in any matter against the interests of the municipality.

5. **Appearances.** A municipal officer or employee shall not appear before any agency of the municipality, except on his or her own behalf or on behalf of the municipality.

6. **Confidential information.** Municipal officers and employees and former municipal officers and employees shall not disclose any confidential information or use it to further anyone's personal interests.

7. **Political solicitation.** A municipal officer or employee shall not knowingly request or knowingly authorize anyone else to request any subordinate of the officer or employee to participate in an election campaign or contribute to a political committee.

8. **Revolving door.** A municipal officer or employee shall not appear or practice before the municipality, except on his or her own behalf, or receive compensation for working on any matter before the municipality, for a period of one year after the termination of his or her municipal service or employment; however, the bar shall be permanent as to particular matters on which the municipal officer or employee personally worked while in municipal service.

9. **Avoidance of conflicts.** Municipal officers and employees shall not knowingly acquire, solicit, negotiate for, or accept any interest, employment, or other thing of value which would put them in violation of this code of ethics.

10. **Inducement of others.** A municipal officer or employee shall not induce or aid another officer or employee of the municipality to violate any of the provisions of this code of ethics.

11. **Transactional disclosure.** Whenever a municipal officer or employee is required to recuse himself or herself under this code of ethics, he or she

(i) shall promptly inform his or her superior, if any,

(ii) shall promptly file with the municipal clerk a signed statement disclosing the nature and extent of the prohibited action or, if a member of a board, shall state that information upon the public record of the board, and

(iii) shall immediately refrain from participating further in the matter.

§ 3. The general municipal law is amended by adding thirty-eight new sections 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, and 838 to read as follows:

§ 801. Exclusions from the code of ethics.

The provisions of section 800 of this article shall not prohibit, or require recusal as a result of:

1. An action specifically authorized by statute, rule, or regulation of the state of New York or of the United States.
2. A ministerial act.
3. Gifts
 - (a) received by the municipal officer or employee from his or her parent, spouse, or child; or
 - (b) having an aggregate value of \$75 or less during any twelve-month period; or
 - (c) accepted on behalf of the municipality and transferred to the municipality.
4. Gifts or benefits having a value of \$100 or less that are received by a municipal officer or employee listed in section 11 of the domestic relations law for the solemnization of a marriage by that officer or employee at a place other than his or her normal place of business or at a time other than his or her normal hours of business.
5. Awards from charitable organizations.
6. Receipt of municipal services or benefits, or use of municipal facilities, that are generally available on the same terms and conditions to residents or a class of residents in the municipality.
7. Representation of constituents by elected officials without compensation in matters of public advocacy.
8. Municipal officers or employees appearing or practicing before the municipality or receiving compensation for working on a matter before the municipality after termination of their municipal service or employment where they performed only ministerial acts while working for the municipality.

§ 802. Inducement of violations of the code of ethics.

No person, whether or not a municipal officer or employee, shall induce or attempt to induce a municipal officer or employee to violate any of the provisions of section 800 of this article.

§ 803. Definitions.

Unless otherwise stated or unless the context otherwise requires, when used in this article:

1. "Appear" and "appear before" mean communicating in any form, including, without limitation, personally, through another person, by letter, or by telephone.
2. "Commission" means the state commission on local government ethics established pursuant to section 822 of this article.
3. "Customer or client" means (a) any person to whom a municipal officer or employee has supplied goods or services during the previous twenty-four months having, in the aggregate, a value greater than \$1,000 or (b) any person to whom a municipal officer's or employee's outside employer or business has supplied goods or services during the previous twenty-four months having, in the aggregate, a value greater than \$1,000 but only if the officer or employee knows or has reason to know the outside employer or business supplied the goods or services.
4. "Gift" and "financial benefit" shall include money, services, licenses, permits, contracts, authorizations, loans, travel, entertainment, hospitality, or any promise thereof, or any other gratuity or promise thereof. A financial transaction may be a financial benefit but shall not be a gift unless it is on terms not available to the general public. "Gift" and "financial benefit" do not include campaign contributions authorized by law.
5. "Local agency" shall have the meaning ascribed to that term in subdivision 1 of section 811 of this article.
6. "Local government agency" shall have the meaning ascribed to that term in subdivision 2 of section 811 of this article.
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. "Municipal clerk" shall have the meaning ascribed to that term in subdivision 3 of section 811 of this article.
9. "Municipality" shall have the meaning ascribed to that term in subdivision 4 of section 811 of this article.
10. "Municipal local agency" shall have the meaning ascribed to that term in subdivision 5 of section 811 of this article.
11. "Municipal officer or employee" shall have the meaning ascribed to that term in subdivision 6 of section 811 of this article.
12. "Outside employer or business" means:

(a) any activity, other than service to the municipality, from which the municipal officer or employee receives compensation for services rendered or goods sold or produced;

(b) any entity, other than the municipality, of which the municipal officer or employee is a member, officer, or employee and from which he or she receives compensation for services rendered or goods sold or produced; or

(c) any entity in which the municipal officer or employee has an ownership interest, except a corporation of which the municipal officer or employee owns less than five percent of the outstanding stock.

For purposes of this definition, "compensation" shall not include reimbursement for necessary expenses, including travel expenses.

13. "Person" shall include both individuals and entities.

14. "Relative" means a spouse, child, step-child, brother, sister, or parent of the municipal officer or employee, or a person claimed as a dependent on the municipal officer's or employee's latest individual state income tax return.

15. "State agency" shall have the meaning ascribed to that term in subdivision 7 of section 811 of this article.

16. "Subordinate" of a municipal officer or employee shall mean another municipal officer or employee over whose activities he or she has direction, supervision, or control, except those who serve in positions that are in the exempt classification or the unclassified service under the civil service law.

§ 804. Appearances by outside employers and businesses of municipal officers and employees.

1. Except as provided in subdivision 3 of this section, the outside employer or business of a municipal officer or employee shall not appear before the particular agency in which the municipal officer or employee serves or by which he or she is employed.

2. Except as provided in subdivision 3 of this section, the outside employer or business of a municipal officer or employee shall not appear before any other municipal agency if the municipal officer or employee has the authority to appoint any officer, employee, or member of the agency or to review, approve, audit, or authorize any budget, bill, payment, or claim of the agency.

3. Nothing in this section shall be construed to prohibit the outside employer or business of a municipal officer or employee from

- (a) Appearing on its own behalf, or on behalf of the municipality, before a municipal agency;
- (b) Seeking or obtaining a ministerial act; or
- (c) Receiving a municipal service or benefit, or using a municipal facility, which is generally available to the public.

§ 805. Annual disclosure.

1. Officers and employees required to file. The following classes of officers and employees of a municipality shall be required to file a signed annual disclosure statement:

- (a) Officers and employees who are elected;
- (b) The heads of any agency, department, division, council, board, commission, or bureau of the municipality and their deputies and other persons authorized to act on their behalf;
- (c) Officers and employees who hold policymaking positions, including members of the boards of the municipality;
- (d) Officers and employees whose job descriptions or actual duties involve the negotiation, authorization, or approval of:
 - (i) Contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses;
 - (ii) The purchase, sale, rental, or lease of real property, personal property, or services, or a contract therefor;
 - (iii) The obtaining of grants of money or loans; or
 - (iv) The adoption or repeal of any rule or regulation having the force and effect of law.

2. Time and place for filing. Annual disclosure statements shall be filed with the municipality's ethics board, or with the commission if the municipality has neither established an ethics board nor entered into an agreement pursuant to subdivision 2 of section 814:

- (a) Within 120 days after the effective date of this section;
- (b) Within 30 days after becoming subject to the requirements of subdivision 1 of this section; and

- (c) No later than May 15 of each year thereafter.
3. Changes in disclosed information. Within 30 days after a change in the information contained in his or her most recently filed annual disclosure statement, an officer or employee shall file a signed amendment to the statement indicating the change.
4. Contents of annual disclosure statement. The annual disclosure statement shall disclose:
- (a) The location of any real property within the municipality, or within one mile of the boundary of the municipality, in which the officer or employee, or his or her relative, has a financial interest.
 - (b) With respect to each outside employer or business of the municipal officer or employee:
 - (i) Its name (if any);
 - (ii) The nature of its business;
 - (iii) Whether it is self employment, a sole proprietorship, or an entity and, if an entity, what type of entity;
 - (iv) The municipal officer's or employee's relationship to it, such as owner, partner, officer, director, member, employee, or shareholder.
 - (c) With respect to each outside employer or business of the municipal officer's or employee's spouse, the information required by paragraph (b) of this subdivision.
5. Good faith efforts. Failure to disclose the information required by subdivision 4 of this section with respect to a municipal officer's or employee's spouse or other relative shall not constitute a violation of that subdivision if the officer or employee has made a good faith effort to obtain the information and if he or she also sets forth those efforts in his or her disclosure statement.

§ 806. Applicant disclosure.

1. Where a person requests a municipality or a municipal officer or employee to take or fail to take any action (other than a ministerial act) that may result in a financial benefit both to the requestor and to either any officer or employee of the municipality or one of the other persons listed in subdivision 1 of section 800 of this article, the requestor shall disclose the names of any such persons, to the extent known to the requestor at the time of the request.

2. If the request is made in writing, the disclosure shall accompany the request. If the request is oral and made at a meeting of a public body, the disclosure shall be set forth in the public record of the body. If the request is oral and not made at a meeting of a public body, the disclosure shall be set forth in a writing filed with the clerk of the municipality.

§ 807. Voidable* contracts.

Any contract or agreement entered into by or with a municipality which results in or from a violation of any provision of sections 800 or 804 of this article shall be void unless ratified by the governing body of the municipality. Such ratification shall not affect the imposition of any criminal or civil penalties pursuant to this article or any other provision of law.

§ 808. Penalties.

1. **Disciplinary action.** Any municipal officer or employee who engages in any action that violates any provision of this article 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 article or in any other provision of law.

2. **Civil fine.** Any municipal officer or employee who violates any provision of this article may be subject to a civil fine of up to \$1,500 for each violation. A civil fine may be imposed in addition to any other penalty contained in any other provision of law or in this article, other than a civil forfeiture pursuant to subdivision 4 of this section.

3. **Damages.** Any person, whether or not a municipal officer or employee, who violates any provision of this article 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 article, other than a civil forfeiture pursuant to subdivision 4 of this section.

* Editor's note. The heading should read "Void Contracts." See *supra* p. 27.

4. Civil forfeiture. Any person, whether or not a municipal officer or employee, who intentionally or knowingly violates any provision of this article 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 article, other than a civil fine pursuant to subdivision 2 or damages pursuant to subdivision 3 of this section.

5. Misdemeanor. Any person, whether or not a municipal officer or employee, who intentionally or knowingly violates any provision of this article shall be guilty of a class A misdemeanor and, upon conviction thereof, if a municipal officer or employee, shall forfeit his or her municipal office or employment.

6. Felony.* Any person, whether or not a municipal officer or employee, who intentionally or knowingly violates any provision of this article for the purpose of obtaining a financial benefit in excess of \$1,000 shall be guilty of a class E felony and, upon conviction thereof, if a municipal officer or employee, shall forfeit his or her municipal office or employment.

§ 809. Debarment.**

1. Any person, whether or not a municipal officer or employee, who intentionally or knowingly violates any provision of this article shall be prohibited from entering into any contract with any municipality, local agency, or state agency or with the judiciary or the state legislature for a period not to exceed three years.***

2. No person, whether or not a municipal officer or employee, shall enter into a contract in violation of a bar imposed pursuant to subdivision 1 of this section.

* Editor's note. The Commission has proposed that this subdivision be deleted. See *supra* p. 27.

** Editor's note. The Commission has proposed the addition of a new subdivision 4 to this section. The text of the new subdivision is set forth *supra* at page 27.

*** Editor's note. The Commission has proposed that the following phrase be added to this subdivision: "as provided in subdivision 5 of section 827 of this article." *Supra* p. 27.

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.

§ 810. Injunctive relief.

1. Any resident, officer, or employee of a municipality may bring a special proceeding pursuant to the civil practice law and rules for injunctive relief to enjoin an officer or employee of that municipality from violating this article or to compel an officer or employee of that municipality to comply with the provisions of this article. In lieu of, or in addition to, injunctive relief, the special proceeding may seek a declaratory judgment.

2. No special proceeding shall be prosecuted or maintained pursuant to subdivision 1 of this section, unless (a) the petitioner shall have filed with the municipality's ethics board or the commission a sworn complaint alleging the violation by the officer or employee, (b) it shall appear by and as an allegation in the petition that at least six months have elapsed since the filing of the complaint and that the ethics board or the commission has failed to file a determination in the matter, and (c) the special proceeding shall be commenced within ten months after the alleged violation occurred.

3. The court, in its discretion, may award costs, disbursements, and reasonable attorney's fees to the successful party in a special proceeding brought pursuant to this section.

§ 811. Additional definitions.

The definitions set forth in this section are in addition to those set forth in section 803 of this article. Unless otherwise stated or unless the context otherwise requires, when used in this article:

1. "Local agency" means a school district, public benefit corporation, public commission, public authority, 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 654 of the laws of 1927, fire district, soil or water conservation district, town or county special or 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.

Local agencies do not include state agencies.

Local agencies shall be of two types: local government agencies and municipal local agencies.

2. "Local government agency" means a local agency one or more of the members of the governing body of which is appointed by an officer, board, or agency of a county, city, town, or village. For purposes of this article, a local government agency shall be deemed an agency of each county, city, town, and village the officer, board, or agency of which appoints a member of the governing body of the local government agency.

3. "Municipal clerk" means the clerk of the legislative body of a county, the city clerk of a city, the town clerk of a town, the village clerk of a village, or the clerk or secretary to the governing body of any other municipality.

4. "Municipality" means a county, city, town, village, or municipal local agency.

5. "Municipal local agency" means a local agency none of the members of the governing body of which is appointed by an officer, board, or agency of a county, city, town, or village.

6. "Municipal officer or employee" means any officer or employee of a municipality, whether paid or unpaid, and includes, without limitation, all members of any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau, or committee of the municipality. "Municipal officer or employee" also includes the officers and employees of local government agencies of the municipality. "Municipal officer or employee" shall not include:

- (a) A judge, justice, officer, or employee of the unified court system;
- (b) A volunteer fire fighter or civil defense volunteer, except a fire chief or assistant fire chief; or
- (c) A member of an advisory board of the municipality if, but only if, the advisory board has no authority to implement its recommendations or to act on behalf of the municipality or to restrict the authority of the municipal-

ity to act. No entity established pursuant to this chapter shall be deemed an advisory board for purposes of this paragraph.

7. "State agency" means any state department, or division, board, commission, or bureau of any state department; any public benefit corporation, public authority, or commission at least one of whose members is appointed by the governor; or the state university of New York or the city university of New York, including all their constituent units, except community colleges and the independent institutions operating statutory or contract colleges on behalf of the state.

§ 812. Designation of officers and employees required to file annual disclosure statements.

1. Within 90 days after the effective date of this act, and during the month of March each year thereafter, the chief executive officer of each municipality shall:

(a) Cause to be filed with the municipality's ethics board, or with the commission if the municipality has neither established an ethics board nor entered into an agreement pursuant to subdivision 2 of section 814 of this article, a list of the names and offices or positions of all officers and employees of the municipality required to file annual disclosure statements pursuant to section 805 of this article; and

(b) Notify all such officers and employees of their obligation to file an annual disclosure statement.

2. If the municipality has no chief executive officer, then the chair of the municipality's governing body shall cause the filing and make the notification required by subdivision 1 of this section.

§ 813. Maintenance of disclosure statements.

1. The municipal clerk shall transmit promptly to the municipality's ethics board each transactional and applicant disclosure statement filed with the clerk pursuant to subdivision 11 of section 800 and subdivision 2 of section 806 of this article, except that, if the municipality has neither established an ethics board nor entered into an agreement pursuant to subdivision 2 of section 814 of this article, the clerk shall collect the statements and transmit a copy of them each month to the commission.

2. Each ethics board and the commission shall index and maintain on file for at least seven years all transactional, applicant, and annual disclosure statements filed with the board or the commission. If a municipality has neither established an ethics board nor entered into an agreement pursuant to subdivision 2 of section 814 of this article, the municipal clerk shall index and maintain on file for at least seven years all transactional and applicant disclosure statements filed with the clerk.

§ 814. Ethics boards: establishment.

1. The governing body of a municipality may establish an ethics board, which shall consist of three, five, seven, or nine members. An ethics board established by a county, city, town, or village shall be established by local law; an ethics board established by any other municipality may be established by resolution. The municipality shall cause to be filed with the commission a copy of any such local law or resolution and any amendments thereto.

2. Consistent with the requirements of article 5-G of this chapter, except as otherwise specified in this article, municipalities may enter into, amend, cancel, and terminate agreements for the ethics board of one municipality to act also as the ethics board for another municipality or for the establishment among the municipalities of a joint ethics board, consisting of three, five, seven, or nine members. The power to enter into such agreements shall extend to all municipalities, as defined in this article, and shall not be limited to municipal corporations and districts as defined in article 5-G. Municipalities may enter into such agreements by resolution and shall cause to be filed with the commission a copy of all such agreements and any amendments thereto.

3. If the governing body of a municipality neither establishes an ethics board nor enters into an agreement pursuant to subdivision 2 of this section, then the commission shall act as the ethics board for that municipality.

§ 815. Ethics boards: qualifications of members.

1. No ethics board member shall hold office in a political party or be employed or act as a lobbyist or hold elective office in the municipality or municipalities served by the ethics board. An ethics board member may make campaign contributions but may not participate in any election campaign.

2. No more than one member of an ethics board may be an appointed officer or employee of the municipality or municipalities served by the ethics board. Of the total membership of the board, no more than the majority minus one shall be registered in the same political party.

§ 816. Ethics boards: appointment of members; term of office.

1. Within 60 days after establishing an ethics board, and no later than December 31 each year thereafter, the municipality or municipalities served by the ethics board shall appoint the members of the board.

2. Members of ethics boards shall be appointed as follows:

(a) If the municipality has an elective chief executive officer, as defined in section 2 of the municipal home rule law, that officer shall appoint the ethics board members with the advice and consent of the governing body of the municipality.

(b) If the municipality does not have an elective chief executive officer, the governing body of the municipality shall appoint the ethics board members.

3. The term of office of ethics board members shall be three years and shall run from January 1 through December 31, except that of the members first appointed:

(a) In a three-member ethics board, one member shall serve until December 31 of the year in which the board is established, one shall serve until the second December 31, and one shall serve until the third December 31;

(b) In a five-member ethics board, one member shall serve until December 31 of the year in which the board is established, two shall serve until the second December 31, and two shall serve until the third December 31;

(c) In a seven-member ethics board, two members shall serve until December 31 of the year in which the board is established, two shall serve until the second December 31, and three shall serve until the third December 31; and

(d) In a nine-member ethics board, three members shall serve until December 31 of the year in which the board is established, three shall serve until the second December 31, and three shall serve until the third December 31.

4. An ethics board member shall serve until his or her successor has been appointed. Consecutive service on an ethics board shall not exceed two full terms.

§ 817. Ethics boards: vacancies.

When a vacancy occurs in the membership of an ethics board, the vacancy shall, within 60 days, be filled for the unexpired portion of the term in the same manner as the original appointment. Any person appointed to fill a vacancy on an ethics board shall meet the qualifications set forth in section 815 of this article.

§ 818. Ethics boards: removal of members.

An ethics board member may be removed from office in the same manner in which he or she was appointed, after written notice and opportunity for reply. Grounds for removal shall be failure to meet the qualifications set forth in section 815 of this article, substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office, or violation of this article.

§ 819. Ethics boards: meetings.

At its first meeting each year, an ethics board shall elect a chair from among its members. A majority of the board shall be required for the board to take any action. The chair or a majority of the board may call a meeting of the board.

§ 820. Ethics boards: inability to discharge duties; referrals to the commission.

1. If the majority of the seats on an ethics board remain vacant for a period of 90 days, the commission may assume the duties of the board until such time as the majority of the seats on the board are filled but in no event for less than six months.
2. If for a period of 90 days an ethics board is unable to act on any matter before it because of the board's inability to achieve a majority vote on the matter, the commission may assume the duties of the board with respect to that matter.
3. An ethics board, or the governing body of a municipality, may request the commission to investigate, hear, and determine a matter arising under this article or under the municipality's local ethics act.

1. Ethics boards: jurisdiction, powers, and duties.

1. An ethics board may only act with respect to officers and employees of the municipality or municipalities subject to the board's jurisdiction.

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 the municipality's board with respect to the requirements imposed by this article or by the municipality's local ethics act, if any, on the former officer or employee.

3. A municipal 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 article and to cause to be filed with the commission a copy of those rules and regulations and any amendments thereto;

(b) To appoint an executive director, if necessary, and such other staff as are necessary to carry out its duties under this article, 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 shall meet the qualifications of an ethics board member as specified in section 815 of this article;

(c) To cause to be filed with the 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, index, and maintain on file lists of officers and employees, transactional disclosure statements, and annual disclosure statements filed with the board, pursuant to sections 805, 812, 813, and 824 of this article;

(e) To refer matters to the commission for investigation, hearing, and determination pursuant to subdivision 3 of section 820;

(f) To review, index, maintain on file, and dispose of sworn complaints and to make notifications and conduct investigations pursuant to sections 824 and 825;

- (g) To conduct hearings, recommend disciplinary action, assess penalties, make referrals, and initiate appropriate actions and proceedings pursuant to section 827;
 - (h) To render, index, and maintain on file advisory opinions pursuant to section 829;
 - (i) To provide training, assistance, and education to municipal officers and employees pursuant to section 831;
 - (j) To prepare an annual report and recommend changes to the municipality's local ethics act pursuant to section 832; and
 - (k) To provide for public inspection of certain records pursuant to section 836.
4. The governing body of a municipality may prescribe additional powers and duties for its ethics board, provided that those additional powers and duties do not conflict with this article. Counties, cities, towns, and villages shall prescribe such additional powers and duties by local law; other municipalities may prescribe them by resolution. An ethics board shall not have the power to grant a waiver of any of the provisions of this article or of any local ethics act.

§ 822. Commission: establishment; members; meetings.

1. There is established a state commission on local government ethics, which shall consist of nine members and shall have and exercise the powers and duties set forth in this article.
2. The members of the commission shall be appointed by the governor for a term of four years, provided, however, that one member shall be appointed on the nomination of the temporary president of the senate, one on the nomination of the minority leader of the senate, one on the nomination of the speaker of the assembly, and one on the nomination of the minority leader of the assembly. Of the five members appointed by the governor without prior nomination, no more than three shall belong to the same political party and no more than two shall be public officers or employees or hold any public office, elected or appointed. No member shall hold office in any political party or be employed or act as a lobbyist.
3. The members of the temporary state commission on local government ethics on the effective date of this section shall serve as members of the state commission on local govern-

ment ethics until the date on which their terms as members of the temporary state commission were scheduled to expire.

4. From among the commission's members, the governor shall designate its chair, who shall serve as chair at the pleasure of the governor. The chair or any five members of the commission may call a meeting.

5. When a vacancy occurs in the membership of the commission, the vacancy shall, within 60 days, be filled by the governor for the unexpired portion of the term in the same manner as the original appointment. Any person appointed to fill a vacancy on the commission shall meet the qualifications set forth in subdivision 2 of this section.

6. Five members of the commission shall constitute a quorum, and the commission shall have the power to act by vote of five members.

7. After written notice and opportunity for reply, members of the commission may be removed by the governor for failure to meet the qualifications set forth in subdivision 2 of this section, substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office, or violation of this article.

8. The members of the commission shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

§ 823. Commission: jurisdiction, powers, and duties.

The commission shall:

1. Appoint an executive director, who shall act in accordance with the policies of the commission, and such other staff as are necessary to carry out the commission's duties under this article. The commission may delegate authority to the executive director to act in the name of the commission between meetings of the commission, provided that the delegation is in writing and the specific powers to be delegated are enumerated.

2. Adopt, amend, and rescind rules and regulations to govern procedures of the commission.

3. Review, index, and maintain on file lists of officers and employees, transactional disclosure statements, annual disclosure statements, local laws, resolutions, agreements, forms for disclosure statements, advisory opinions, educational materials, annual reports, and local ethics acts filed with the commission,

pursuant to sections 805, 812, 813, 814, 821, 824, 829, 831, 832, 833, and 834 of this article.

4. Act, pursuant to subdivision 3 of section 814, as the ethics board for any municipality that has not established an ethics board pursuant to subdivision 1 of section 814 or entered into an agreement pursuant to subdivision 2 of section 814.

5. Assume the duties of an ethics board, and accept referrals from municipalities and ethics boards, pursuant to section 820.

6. Review, index, maintain on file, and dispose of sworn complaints, make notifications and referrals, and conduct investigations pursuant to sections 824, 825, and 826.

7. Conduct hearings, recommend disciplinary action, assess penalties, make referrals, and initiate appropriate actions and proceedings pursuant to section 827.

8. Grant waivers pursuant to section 828.

9. Render, index, maintain on file, and publish advisory opinions pursuant to section 829.

10. Provide technical assistance, training, education, model local ethics acts, and model regulations for ethics boards and municipalities pursuant to section 831.

11. Prepare an annual report, periodically review the laws governing the conduct of municipal officers and employees, and recommend changes in those laws, pursuant to section 832.

12. Determine the municipality to whose jurisdiction a local government agency serving more than one municipality shall be subject, pursuant to section 834.

13. Provide for public inspection of certain records pursuant to section 836.

14. Select provisions of this article for reproduction and distribution pursuant to section 838.

§ 824. Review of lists and disclosure statements.

1. Each ethics board, and the commission when acting as an ethics board for a municipality, shall review:

- (a) The lists of officers and employees, prepared pursuant to section 812 of this article, to determine whether the lists are complete and accurate. The board or the commission shall add the name of any other officer or employee who the board or the commission determines should appear on the list.

(b) 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 article or the local ethics act, if any.

(c) All transactional disclosure statements.

2. If the board or the commission determines that an annual disclosure statement or a transactional disclosure statement is deficient or reveals a possible or potential violation of this article or a local ethics act, the board or the commission shall notify the person in writing of the deficiency or possible or potential violation and of the penalties for failure to comply with this article or the local ethics act.

§ 825. Investigations.

1. Upon receipt of a sworn complaint by any person alleging a violation of this article or of a local ethics act, or upon determining on its own initiative that a violation of this article or of a local ethics act may exist, an ethics board shall have the power and duty to conduct any investigation necessary to carry out the provisions of this article or the local ethics act. In conducting any such investigation, the ethics board 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.

2. The commission shall also have the powers and duties specified in subdivision 1 of this section but in the first instance shall refer to the appropriate ethics board, if any, complaints against officers or employees of the municipality, except complaints against any of the members or staff of the ethics board.

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

4. An ethics board or the 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 indexed and maintained on file by the board or the commission.

5. Any person filing a sworn complaint with an ethics board or the commission shall be notified in writing of the disposition of the complaint.

§ 826. Investigations of ethics boards.

1. The commission shall have the authority to investigate possible violations of this article by any ethics board or by any of the members or staff thereof, including the failure of an ethics board promptly to investigate and resolve sworn complaints filed with the board.

2. The commission may commence an investigation under this section either on the commission's own initiative or upon a sworn complaint alleging that an ethics board member or staff member has violated this article or the municipality's local ethics act.

3. In conducting any such investigation, the 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.

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

§ 827. Hearings; assessment of penalties.

1. Disciplinary action. In its discretion, after a hearing providing for due process procedural mechanisms and subject to any applicable provisions of law and collective bargaining agreements, an ethics board or the commission may recommend appropriate disciplinary action pursuant to subdivision 1 of section 808 of this article. In the case of a hearing held by the commission, the due process procedural mechanisms shall be substantially similar to those set forth in article 3 of the state administrative procedure act. The recommendation of the ethics board or the commission shall be made to the appointing authority or person or body authorized by law to impose such sanctions. The board or the commission shall conduct and complete the hearing with reasonable promptness, unless in its discretion the board or the commission refers the matter to the authority or person or body authorized

by law to impose disciplinary action or unless the board or the commission refers the matter to the appropriate prosecutor. If such a referral is made, the board or the commission may adjourn the matter pending determination by the authority, person, body, or prosecutor.

2. **Civil fine.** In its discretion and after a hearing providing for due process procedural mechanisms, an ethics board or the commission, pursuant to subdivision 2 of section 808 of this article, may assess a civil fine, not to exceed \$1,500 for each violation, upon any municipal officer or employee found by the board or the commission to have violated this article or a local ethics act. In the case of a hearing held by the commission, the due process procedural mechanisms shall be substantially similar to those set forth in article 3 of the state administrative procedure act. The board or the commission shall conduct and complete the hearing with reasonable promptness. The civil fine shall be payable to the municipality.

3. **Damages.** A municipality may initiate an action in the supreme court of the state of New York to obtain damages, as provided in subdivision 3 of section 808 of this article.

4. **Civil forfeiture.** A municipality, or an ethics board or the commission on behalf of the municipality, may initiate a special proceeding in the supreme court of the state of New York to obtain civil forfeiture, as provided in subdivision 4 of section 808 of this article.

5. **Debarment.** A municipality, or an ethics board or the commission on behalf of the municipality, may initiate a special proceeding in the supreme court of the state of New York for an order of debarment, as provided in section 809 of this article.

6. **Injunctive relief.** A municipality, or an ethics board or the commission on behalf of the municipality, may sue in the supreme court of the state of New York for injunctive relief to enjoin a violation of this article or of any local ethics act or to compel compliance with this article or with any local ethics act, as provided in section 810 of this article.

7. **Prosecutions.** An ethics board or the commission may refer to the appropriate prosecutor possible criminal violations of this article or of a local ethics act. Nothing contained in this article shall be construed to restrict the authority of any prose-

cutor to prosecute any violation of this article, of any local ethics act, or of any other law.

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

§ 828. Waivers.

1. Upon written application and upon a showing of compelling need by the applicant, the commission may in exceptional circumstances grant the applicant a waiver of any of the provisions of subdivisions 1 through 9 of section 800, paragraph (iii) of subdivision 11 of section 800, section 804, section 805, or section 806 of this article.

2. Waivers shall be in writing and shall state the grounds upon which they are granted. All applications, decisions, and other records and proceedings relating to waivers shall be indexed and maintained on file by the commission.

§ 829. Advisory opinions.

1. Upon the written request of any municipal officer or employee, an ethics board may render a written advisory opinion with respect to the interpretation or application of the municipality's local ethics act. Any other person may similarly request an advisory opinion but only with respect to whether his or her own action might violate a provision of the local ethics act.

2. Upon the written request of any municipal officer or employee, the commission may render a written advisory opinion with respect to the interpretation or application of this article. Any other person may similarly request an advisory opinion but only with respect to whether his or her own action might violate a provision of this article.

3. Advisory opinions and requests for advisory opinions shall be indexed and maintained on file by the ethics board and the commission. The commission shall publish its advisory opinions. The ethics board shall cause a copy of each of its advisory opinions to be filed at least annually with the commission.

§ 830. Judicial review.

1. Any person aggrieved by a decision of an ethics board or the commission may seek judicial review and relief pursuant to article 78 of the civil practice law and rules.
2. Any person who has submitted to an ethics board or the commission a written request for an advisory opinion may bring a special proceeding pursuant to article 78 of the civil practice law and rules for a determination of the question posed in the request, provided that (a) it shall appear by and as an allegation in the petition that at least six months have elapsed since the filing of the request and that the ethics board or the commission has failed to file any determination in the matter and (b) the special proceeding shall be commenced within ten months after the submission of the request for the advisory opinion.

§ 831. Training and education.

1. Every ethics board shall:
 - (a) Assist the municipalities subject to its jurisdiction in conducting training programs on compliance with this article and with the local ethics act, if any; and
 - (b) Make information concerning this article and the local ethics act available to the officers and employees of the municipalities, to the public, and to persons interested in doing business with the municipalities.
2. Ethics boards may develop educational materials and an educational program on the provisions of this article and the local ethics act. The board shall file a copy of all such materials with the commission.
3. The commission shall provide technical assistance, training, and education to ethics boards and municipalities on compliance with the provisions of this article. The commission shall also provide model local ethics acts and model regulations for ethics boards and shall develop and disseminate educational materials on this article for municipal officers and employees and ethics board members and staff. The commission shall use its best efforts to minimize any financial burden that the implementation of this article may impose on any municipality.

§ 832. Annual reports; review of ethics laws.

1. Each ethics board shall prepare and submit an annual report to the municipality's chief executive officer and the governing body, summarizing the activities of the board. The report may also recommend changes to the text or administration of the municipality's local ethics act. The ethics board shall file a copy of its annual report with the commission.
2. The commission shall prepare and submit an annual report to the governor and the legislature summarizing the activities of the commission. The report shall list the names of those municipalities that have established or contracted for boards of ethics and those municipalities that have adopted a local ethics act.
3. The annual report of the commission may also recommend changes in the laws governing the conduct of municipal officers and employees. To that end, the commission shall periodically review New York state laws establishing ethical standards for municipal officers and employees to determine whether those laws promote integrity, public confidence, and participation in municipal government and whether they set forth clear and enforceable, common sense standards of conduct.

§ 833. Local ethics acts.

1. The governing body of every municipality that has established an ethics board, or entered into an agreement pursuant to subdivision 2 of section 814 of this article, may adopt a local ethics act. A county, city, town, or village shall adopt a local ethics act by local law; any other municipality may adopt a local ethics act by resolution.
2. The provisions of any local ethics act adopted pursuant to subdivision 1 of this section shall be at least as stringent in scope and substance as the provisions of this article and shall contain posting and distribution requirements for the local ethics act substantially similar to those contained in section 838 of this article.
3. Any code of ethics adopted pursuant to section 2 of chapter 946 of the laws of 1964, as amended by section 2 of chapter 646 of the laws of 1969, section 3 of chapter 1019 of the laws of 1970, and sections 10 and 11 of chapter 813 of the laws of 1987, shall be deemed repealed upon the one-hundred-eightieth day following the effective date of this section, unless the code of

ethics is reenacted as a local ethics act in compliance with subdivisions 1 and 2 of this section.

4. A municipality shall file a copy of its local ethics act, and all amendments thereto, with the commission.

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

§ 834. Local government agencies serving more than one municipality.

1. Within 60 days after the effective date of this section, any local government agency the members of the governing body of which are appointed by more than one municipality shall, by resolution, designate which one of those municipalities' jurisdiction the local government agency shall be subject for purposes of this article. Within 30 days after adopting that resolution, the local government agency shall file a copy of it with the commission.

2. If the local government agency fails timely to make the designation required by subdivision 1 of this section, the commission shall make it.

3. The governing body of a local government agency may at any time change the designation made under subdivisions 1 or 2 of this section. However, that change shall not be effective until twelve months after the resolution adopting the change.

§ 835. Municipal advisory board.

1. There is established a municipal advisory board to assist the commission in the performance of its duties. The board shall inform the commission of policies and concerns of municipalities with respect to the administration of the provisions of this article and shall disseminate information to municipalities with respect to the operations of the commission.

2. The board shall consist of sixteen members to be appointed by the governor, four upon the nomination of the state conference of mayors, four upon the nomination of the state association of towns, four upon the nomination of the state association of counties, and four upon the nomination of the state school boards association.

3. The members of the local government advisory board on the effective date of this section shall serve as members of the municipal advisory board until the date on which their terms

as members of the local government advisory board were scheduled to expire.

§ 836. Public inspection of records; public access to meetings.

1. Notwithstanding the provisions of article 6 of the public officers law, the only records of an ethics board or the commission which shall be available for public inspection are:

- (a) Transactional, annual, and applicant disclosure statements filed pursuant to subdivision 11 of section 800, section 805, and section 806 of this article;
- (b) Lists filed pursuant to section 812;
- (c) Agreements proposed or adopted pursuant to subdivision 2 of section 814;
- (d) Rules and regulations of the ethics board or the commission adopted pursuant to paragraph (a) of subdivision 3 of section 821 and subdivision 2 of section 823;
- (e) Delegation of powers to the executive director pursuant to paragraph (b) of subdivision 3 of section 821 and subdivision 1 of section 823;
- (f) Forms for disclosure statements filed pursuant to paragraph (c) of subdivision 3 of section 821;
- (g) Final dispositions by an ethics board or the commission that find a municipal officer or employee to have violated any provision of this article or a local ethics act;
- (h) Waivers granted pursuant to section 828;
- (i) Advisory opinions issued pursuant to section 829, provided that information identifying the person requesting the opinion is deleted from the copy made available for public inspection;
- (j) Educational materials, annual reports, and local ethics acts adopted or issued pursuant to sections 831, 832, and 833; and
- (k) Resolutions adopted pursuant to section 834.

2. Notwithstanding the provisions of article 7 of the public officers law,

- (a) no meeting or proceeding of an ethics board or the commission concerning misconduct, non-feasance, or neglect in office by a municipal officer or employee shall be open to the public, except upon the request of the officer or employee; and
- (b) no other meeting or proceeding of an ethics board or the commission shall be open to the public unless ex-

pressly provided otherwise by the ethics board or the commission.

§ 837. Miscellaneous provisions.

1. The provisions of this article shall apply notwithstanding any inconsistent provision of any general, special, or local law, provided, however, that a general, special, or local law shall apply to the extent it is more stringent than this article.
2. No existing right or remedy shall be lost, impaired, or affected by reason of this article.
3. Nothing in this article shall be deemed to bar or prevent a present or former municipal officer or employee from timely filing 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 any lawful benefit authorized or permitted by law.
4. If any provision of this article 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 this article.

§ 838. Distribution and posting of statute.

1. Within 30 days after the effective date of this section, and thereafter as appropriate, the commission shall send to every municipality in the state, in a form suitable for posting, copies of those provisions of this article which the commission deems necessary for posting in the municipality. Within ten days after receipt of that copy, the chief executive officer of the municipality, or, if none, the chair of its governing body, shall cause the copies to be posted conspicuously in every public building under the jurisdiction of the municipality.
2. Within 30 days after the effective date of this section, and thereafter as appropriate, the commission shall send to every municipality in the state, in a form suitable for distribution, a copy of those provisions of this article which the commission deems necessary for distribution to the officers and employees of the municipality. Within 60 days after receipt of that copy, the chief executive officer of the municipality, or, if none, the chair of its governing body, shall cause copies of those provisions to be distributed to every officer and employee of the municipality and make them readily available to the public. Every municipal officer or employee elected or appointed

thereafter shall be furnished a copy of those provisions within ten days after entering upon the duties of his or her position.

3. Failure of the commission or municipality to comply with the provisions of this section or failure of any municipal officer or employee to receive a copy of the provisions of this article shall have no effect on the duty of compliance with this article or on the enforcement of its provisions.

§ 4. Subdivisions (c), (d) and (e) of section 26 of chapter 813 of the laws of 1987, amending the public officers law, the executive law and the legislative law relating to the ethics in government act, as amended by chapter 108 of the laws of 1988, are amended to read as follows:

(c) [the provisions of section eight hundred thirteen of the general municipal law, as added by section sixteen of this act, shall remain in effect until and including December thirty-first, nineteen hundred ninety-two; upon the expiration of such provisions, the powers, duties and functions of the temporary state commission on local government ethics shall be transferred, assigned and devolved upon the respective board of ethics, if there be one, or if not, upon the governing body, of the political subdivisions which are required by the provisions of sections eight hundred eleven and eight hundred twelve of the general municipal law, or which have elected pursuant to such sections, to be subject to the jurisdiction of such temporary state commission;

(d)] the amendments made by sections twenty-two, twenty-three and twenty-four of this act shall apply to reports required to be filed after December [thirty-first, nineteen hundred eighty-seven] 31, 1987; and

[(e)] (d) the provisions of sections twenty-two, twenty-three and twenty-four of this act shall remain in full force and effect for only so long as the lobbying act remains in effect pursuant to section [five] 5 of chapter [one thousand forty] 1040 of the laws of [nineteen hundred eight-one] 1981 as from time to time amended.

§ 5. This act shall take effect January 1, 1992.