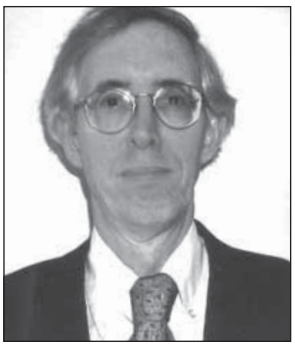
How Not to Draft an Ethics Law

By Mark Davies



In municipal ethics, as in baseball, failure often proves instructive. The recent failed attempt by the Comptroller and legislature to rush through a not-so-well thought out revision to the state ethics law for municipal officials (Article 18 of the General Municipal Law)[1] offers an opportunity to analyze what the process should be for amending Article 18 and to describe some of the shortcomings in this most recent legislative proposal—and thus forestall their recurrence.

At the outset one should highlight certain points. First, the much (and deservedly) maligned Article 18 desperately needs wholesale revision, and has needed it for decades.[2] Second, the Comptroller's goals in proposing the Bill are to be applauded—to address the issues of municipal officials acting in matters in which they have a personal interest, of the failure of ethics codes to regulate nepotism and misuse of municipal resources, of the need to inform municipal officials of the requirements of the relevant ethics laws, and, in particular, of the absence of authoritative interpretation and enforcement of those laws. Third, the comments by some critics of the Bill that no one's life, liberty, or property is safe while the legislature is in session[3] prove not only mean-spirited but also unhelpful, for only the legislature can fix the mess that constitutes Article 18. This article will thus first discuss the problems raised by the Bill—in the hope that they will not be repeated—and then second, and briefly, propose a better approach to revising Article 18.

Analysis of the Bill

Enacted in 1964, Article 18 of the General Municipal Law, the primary state law regulating municipal ethics, has been described by the Temporary State Commission on Local Government Ethics as "disgracefully inadequate." Among its many flaws, this law provides no guidance to municipal officials in the form of a simple and comprehensive code of ethics, establishes no ethics enforcement mechanism, offers no assistance to municipalities struggling with ethics matters, inflicts upon municipalities a criminal prohibited interests provision that is virtually opaque, and contains financial disclosure requirements that are nonsensical and onerous.[4] But as bad as Article 18 is, the Bill would have made it worse in the three substantive areas the Bill addresses: prohibited interests in contracts, codes of ethics, and especially boards of ethics. The Bill also provides no relief from the excessively burdensome financial disclosure requirements of Article 18. Each of these areas is discussed below.

Prohibited Interests in Contracts

Gen. Mun. Law § 801 provides, subject to over a dozen exceptions, that "no municipal officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee" if the official has some power as to that contract. The current law's restrictions on municipal officials' interests in contracts with their municipalities[5] are among the most unclear, confusing, and unfair provisions in the consolidated laws to which municipal officials are subject. Courts have also been reluctant to find violations of these provisions, unless the "contract" at issue is of the most obvious kind,[6] perhaps reflecting aversion to the opacity of the statutory language and the draconian results that such a finding may produce—making the contract void *ab initio* and unratifiable, despite recusal and competitive bids, transforming the official into a criminal (a misdemeanant), and preventing the municipality from entering into the contract, no matter how beneficial it might be for the municipality, during the official's entire tenure.

The Bill only compounds those defects by amending Gen. Mun. Law § 800(3) to add a benefit to one's "spouse" to the definition of "interest."[7] The amendment would mean, for example, that a village trustee would violate section 801 (and thus commit a crime, punishable by a year in prison) if the village public works department purchases material and supplies from the area's only hardware store, 6%-owned by the trustee's wife, even if the trustee fully recuses himself from having anything to do with such purchases and even if his wife forgoes receiving even a dime as a result of the purchases; and the contract is null and void *ab initio*.[8] Such a provision, even when it is understood, can wreak havoc in small, rural municipalities where goods and services are not as readily available as in more populated areas. More importantly, because they are so confusing, these provisions set a trap for honest public servants (dishonest ones will simply ignore the provisions and rely on the courts' reluctance to enforce section 801), a trap made all the worse by the addition of "spouse" to the definition of "interest." The problems that section 801 is intended to redress (self-dealing) can be, and should be, fully addressed by a strong disclosure and recusal provision.

Furthermore, the Bill's amendment to section 801, adding a restriction on municipal lawyers' interests in legal services contracts with their municipality, will impose a significant burden on smaller municipalities that must rely on appointed outside counsel (village attorney or town attorney) and their firms rather than on in-house counsel and that must either pay the cost of going out for bids for, e.g., litigation counsel, including hiring another attorney to evaluate any proposals by the municipality's own municipal counsel, or forgo hiring counsel of their

choice, in particular, their municipal attorney whom they know and trust.[9] Hiring such separate counsel will also likely prove an added expense.

Moreover, this amendment to section 801 completely fails to address the most significant issue that arises with respect to municipal lawyers: appearing before an agency of the municipality on behalf of a private client. Currently, for example, Article 18 does not prohibit an associate town attorney from appearing on behalf of a private client before the town zoning board of appeals where the ZBA has its own counsel. Nor does Article 18 prohibit that separate ZBA attorney from appearing before the town planning board.[10] Article 18 should not countenance such appearances.

Thus, the Bill is wedded to, and even expands, a mischievous provision, section 801, that should instead, as noted, be repealed and replaced with a strong, clear, and comprehensive disclosure and recusal requirement. Indeed, disclosure and recusal when a conflict of interest arises is one of the most important provisions of an ethics law. But the anemic disclosure and recusal provision added by the Bill, a new Gen. Mun. Law § 803-a, proves woefully inadequate because it applies only where the official or his or her spouse has an interest in a municipal contract, or in a land use application falling within the narrow ambit of Gen. Mun. Law § 809.[11] The Bill would still permit a town supervisor to hire his business partner, as long as it was not the supervisor's own firm, or give town business to someone who holds a loan on which the supervisor has personally defaulted. Disclosure and recusal must apply to any action (or failure to act) by an official that may benefit the official, his or her private business or employer, or anyone with whom the official has a business or financial relationship.

Codes of Ethics

Of particular concern, the Bill fails to provide a basic code of ethics for municipal officials and indeed does not even address many of the most fundamental conflicts of interest, such as misuse of office (the Bill would still permit a village mayor to hire her husband as a village employee), misuse of municipal resources, gratuities (the Bill would still permit municipal officials to accept most tips), political solicitation of subordinates and those who do business with the municipality (the Bill would still permit a superior to "ask" a subordinate or developer to buy a ticket to the official's political fundraiser), or post-employment provisions (the Bill would still permit a planning board member to resign today and appear tomorrow before the planning board for a developer on the very same matter the board has long been considering). The Bill also fails to correct the vague gifts provision of Gen. Mun. Law § 805-a(1)(a) that provides virtually no guidance to municipal officials, particularly those without ready access to legal counsel, and indeed makes no attempt to plug the huge gaps in the prohibited conduct provisions of section 805-a.

Instead, the Bill continues down the long-discredited path of imposing an onerous, state-mandated prohibition on interests in municipal contracts (section 801) while cutting municipalities adrift on fundamental ethics provisions.[12] In mandating certain additional provisions in local ethics codes ("use of public resources for personal or private purposes, nepotism, circumstances requiring recusal and abstention"), while not even mentioning such critical provisions as misuse of public office and post-employment restrictions,[13] the Bill continues to thrust upon the municipality itself the responsibility for adopting an effective code of ethics to plug the enormous holes in Article 18, with virtually no assistance from the state, such as a clear and comprehensive state code of ethics for all municipal officials in the state.

This approach reflects, on a more fundamental level, the failure to appreciate the nature and structure of local government or to apprehend the distinction between state government and municipal government, which depends heavily on volunteers, may be geographically isolated, and not infrequently lacks ready access to sophisticated legal counsel. In particular, the Bill assumes that municipalities will adopt their own ethics code that addresses the broad array of conflicts of interest and establish their own local ethics board, with full enforcement power, to avoid control by the county (discussed below). But practice over the past four decades has proven time and again that the enactment of an effective local ethics law and the voluntary establishment of an effective local ethics board present insurmountable obstacles for most municipalities and that, as a result, few municipalities in New York State, even those mandated to have a code, have either an effective code of ethics or an effective ethics board. Furthermore, no code of ethics exists at all for the thousands of municipalities not mandated by current law or the Bill to adopt one—that is, all municipalities except political subdivisions, school districts, and fire districts.[14] To assume that this Bill would magically change that history appears questionable, at best.

Boards of Ethics

But the most pernicious amendments in the Bill occur in Gen. Mun. Law § 808, which regulates boards of ethics. Currently, although every county, city, town, village, school district, and fire district must have a code of ethics, boards of ethics are optional.[15] Few municipalities have functioning ethics boards, and almost none of those functioning ethics boards have enforcement power meeting the requirements of the Bill. As a result, few municipalities enforce Article 18 or the municipal ethics codes, an unacceptable situation.

The Bill mandates ethics boards for all counties, for all cities, towns, and villages with a population of 50,000 or more, and for all Boards of Cooperative Educational Services (BOCES)[16]—a total of about 127 of the approximately 1,641 counties, cities, towns, villages, and BOCES in the state (excluding New York City and its constituent

units).[17] All other cities, towns, and villages, as well as all school districts must still adopt a local ethics code (and virtually all have done so), as must all fire districts; but they need not establish a local ethics board. Instead, under the Bill the county ethics board acts as the board of ethics for all municipalities within the county, except school districts, that have not created their own ethics board. School districts that have not established an ethics board are subject to the ethics board of the BOCES for the supervisory district within which the school district is located.[18] Since few municipalities have an ethics board that meets the Bill's requirements in regard to investigative authority and the power to impose civil fines, reflecting the difficulty that municipalities face in granting such power to their ethics board, one may expect that the enactment of the Bill will decrease the number of ethics boards and concomitantly increase the number of municipalities subject to the jurisdiction of counties / BOCES ethics boards.

Westchester County, for example, contains about 45 cities, towns, and villages, only five of which have a population exceeding 50,000 (Westchester also has two BOCES), and over 50 fire districts.[19] The Bill potentially mandates, therefore, that the Westchester County Board of Ethics interpret, administer, and enforce *mandated local ethics codes for almost 100 municipalities*, in addition to the County itself—and any other municipalities (such as public libraries or urban renewal agencies)[20] that voluntarily adopt a code of ethics but do not create an ethics board meeting the requirements of the Bill. Likewise, the Westchester County Board of Ethics must interpret and enforce Article 18 *in all municipalities within the county*—well in excess of 100—that have not formed their own ethics board, again assuming, as seems likely, that few municipalities will establish an ethics board meeting the requirements of the Bill. Similarly, the Bill requires that the two BOCES in Westchester interpret, administer, and enforce Article 18 *and the mandated local ethics codes* for about 46 local school districts,[21] except those, presumably few, districts that create an ethics board, complying with the Bill's mandates.

The burden thus placed upon the counties and BOCES can scarcely be conceived. Indeed, this burden is compounded by the requirement that the county / BOCES ethics boards administer financial disclosure for all of the municipalities subject to those ethics boards' jurisdiction, in accordance with each municipality's individual financial disclosure law, which would include interpreting varying local financial disclosure laws and forms, distributing blank financial disclosure forms, receiving completed forms, reviewing them for completeness and possible conflicts of interest, making them available to the public, ruling on privacy requests, and prosecuting non-filers and late filers.[22] Yet the contents and format of the forms, and the requirements of the financial disclosure law, often vary widely from municipality to municipality, just like local ethics codes. Counties are barely able to meet those requirements for their own filers, let alone for untold additional filers in municipalities throughout the county. Only a handful of ethics boards, including county ethics boards, in New York State have any staff. Query if the Bill will as a practical matter require counties to hire staff for their ethics boards.

Apparently, the Bill assumes that all of these municipalities will establish their own local ethics board, or create a cooperative board of ethics, to avoid being subject to the county board or BOCES board, a backhanded recognition that counties and municipalities within the counties are often at odds; but 40 years of history belies that assumption. The voluntary creation of local ethics boards is likely to be all the more difficult because under the Bill all local ethics boards, regardless of the size of the municipality, must have enforcement power, including the power to investigate possible violations and impose fines. An ethics board *should* have those powers, but mandating them in small municipalities will almost certainly prevent such municipalities from establishing an ethics board. As a result, this enormous, unfunded, state-mandated burden will fall squarely upon the counties and BOCES. Currently counties need not establish an ethics board, but if they do, the board *must* render advisory opinions to municipalities within the county; many county ethics boards refuse to do so.[23] Mandating the establishment of county ethics boards and their enforcement of local ethics codes and financial disclosure requirements would not seem likely to improve that record. So, too, municipalities within the county, to avoid being subjected to county ethics authority while avoiding establishing a local ethics board with teeth, may simply create an ethics board in name only, as is already often the case.[24] Although the Bill would permit municipalities to establish cooperative boards of ethics,[25] an excellent idea, few municipalities are likely to do so if, as under the Bill, such cooperative boards must have enforcement power, for municipalities would not wish to bear the expense of enforcement against officials other than their own.

A far better approach would require every county, city, town, village, and school district to establish an ethics board to interpret Article 18 and any local code of ethics, to provide ethics training to the municipality's officers and employees, and to administer financial disclosure, if any, within the municipality. But only counties and larger cities, towns, and villages (those with a population of 10,000 or more) should be required to have ethics boards with enforcement power because enforcement of ethics laws by local ethics boards presents a significant challenge in small municipalities, which often lack the required resources for effective enforcement; and many cities, towns, and villages in New York State are small. For example, 84% of towns, 94% of villages, and 18% of cities have populations under 10,000.[26] Although few enforcement matters arise in small municipalities (and, therefore, the lack of ethics enforcement there would

result in relatively few violations going unpunished), when such matters do arise, they consume substantial time, money, resources, and legal expertise.

While not perfect, this approach would ensure that every political subdivision and school district had an ethics board to interpret and train on the ethics law and that larger political subdivisions enforced that law. Smaller municipalities could, if they found it necessary, grant enforcement power to their existing ethics boards, consistent with state law. Not perfect but, balancing the competing realities, very good. And in ethics one must never let the perfect become the enemy of the good. As an aside, one should note that requiring a state agency to administer, or even just enforce, municipal ethics would not only violate the principles of municipal home rule but would mandate a significant state bureaucracy, with offices throughout the state and a staff sensitive to local issues and the differences among various types, sizes, and locations of municipalities.

With respect to the membership of ethics boards, while the Bill properly eliminates the *requirement* that an officer or employee of the municipality sit on the ethics board, the Bill fails to prohibit such dual positions.[27] Yet, permitting a municipal official to sit on the ethics board—typically these officials are relatively high level, such as the municipal attorney—undermines the independence of the ethics board, both in reality and in perception. The apparent presence of such a "mole" on the ethics board chills municipal officers and employees from seeking advice or filing a complaint, for fear that their action will be reported to their superior.

In addition, while the Bill replaces the at-will service of ethics board members under current Article 18 with a term of office, the Bill fails to specify the minimum term of office; a one-year term is effectively at-will, thereby significantly undercutting the independence of ethics board members. The Bill would permit three-member ethics boards, for which quorums often become difficult; would permit even-numbered ethics boards, which risk tie votes; and would permit ethics boards that are so large that they become unwieldy and prone to leaking confidences. The Bill also fails to require that ethics boards be bi-partisan or multi-partisan, thus risking the politicization of the board. Furthermore, the Bill fails to specify requirements for service on the ethics board, such as restrictions on lobbying, doing business with the municipality on behalf of a non-municipal party, serving in a political party position, or running for party or elective office, all of which activities seriously undermine the perception of the ethics board's impartiality. Finally, the Bill contains no provisions regulating ethics board staff. In particular, since few municipalities will be able to afford clerical or legal staff for their ethics board, thus requiring the board to rely upon such staff of the municipality, provisions must be enacted that ensure that confidential information of the ethics board is not shared with anyone outside the board, lest the independence and integrity of the board be subverted, both in appearance and in fact. The Bill fails to address this critical issue.[28]

With respect to ethics training, the Bill does mandate that the members of every ethics board in the state be trained in Article 18, the local ethics code, financial disclosure laws, and "decisional law"—a worthy goal—but requires that such training be approved by the State Comptroller.[29] Not only does such a requirement grant to the Comptroller the sole gate-keeping function on what is and is not acceptable ethics training, but it also fails to provide any assurance that the Comptroller's Office will promptly review for approval ethics training programs. As a result, ethics board members may go for months or even years without any training. Training of municipal ethics board members should be handled the same as training of zoning board and planning board members—largely by the municipal associations, bar associations, and academic centers, such as the Government Law Center, Municipal Law Resource Center, and Cornell University. At the same time, the Bill fails to require ethics boards to train their municipality's officials, one of the most important functions of an ethics board and one that is critical to the success of the ethics code.

With respect to the provision of advice by the ethics board, another critical function, the Bill fails to clarify to whom advice may be given and what it may address.[30] Advice should be available only to those officials whose conduct, or whose subordinate's conduct, is at issue and may address only future conduct, not past conduct, which is an enforcement matter. Similarly, the Bill contains no protection for the confidentiality of ethics boards' information and records. Yet the absence of such protection may significantly chill municipal officers and employees seeking advice or filing complaints.

Perhaps worst of all, the Bill establishes a maximum penalty of $1,000 for an ethics violation,[31] a sum that is paltry in the state's larger municipalities, some of which have thousands of employees. Since the Comptroller has taken the position that counties, cities, towns, and villages may not use their home rule power to vary the provisions of section 808—and, of course, other kinds of municipalities have no such power—according to the Comptroller, the $1,000 cap may not be increased by local law.[32]

Financial Disclosure

Finally, the Bill fails to give relief, sought by municipalities for almost 20 years, from the financial disclosure requirements of Article 18.[33] In particular, the Bill fails to clarify who must file financial disclosure statements, fails to tie financial disclosure to the conflicts of interest provisions, and fails to address the excessiveness of the disclosure required.

A Better Way and a Process for Reform

History teaches that the opportunity for significant ethics reform comes only once in a generation, when the political forces just happen to align.[34] Enactment of the Bill would not only squander the one chance in this generation for significant revision of Article 18 but would do so with amendments that move municipal ethics in New York State from bad to worse.

Article 18 requires a complete overhaul to address its many defects, revealed in the 46 years since its enactment. For almost 20 years, the Municipal Law Section of the New York State Bar Association has sought such an overhaul of Article 18. For over ten years, such an overhaul has been a legislative priority of the State Bar Association itself.

Sensible proposals for complete reform of Article 18—which the Bill is not—have been made over the decades, most notably in the bill of the Temporary State Commission on Local Government Ethics, introduced in the legislature in 1991 (S. 6157 / A. 8637). That bill met all of the requirements of an effective statewide ethics law for municipalities: it contained a comprehensive code of ethics, sensible disclosure, and effective enforcement, although it would have created a state oversight agency that is no longer feasible, sensible, or financially viable. Not surprisingly, the Commission's bill garnered the support of the state Association of Counties, Association of Towns, and Conference of Mayors, as well as the support of local municipal associations, good government groups, individual municipalities and municipal officials across the state, the State Bar Association's Municipal Law Section, the Retail Council, and over 40 newspaper editorials from Long Island to Buffalo. It died in committee. An amended version of that proposal, with the support of the State Bar Association, was then introduced in the Senate in 1999 (S. 4693). Reflecting perhaps a desperate attempt to garner legislative support by permitting municipalities to opt out of Article 18 by opting into a comprehensive revision set forth in a new Article 18.1—a compromise that proves ill-advisable because it fails to address fundamental problems with Article 18—that bill also foundered in the legislature.

To examine these and a number of other government ethics issues, the President of the New York State Bar Association established a Task Force on Government Ethics, one of the subcommittees of which is focusing on municipal ethics.[35] Out of that task force have come recommendations for a comprehensive, strong, and workable reform of Article 18, recommendations supported by regulators and regulated alike, including representatives of the state Association of Counties, Association of Towns, and Conference of Mayors, as well as by academics and a broad range of municipal attorneys who appear before, on behalf of, and against municipalities statewide. These recommendations, which will be presented to the Association's House of Delegates in January, provide a roadmap for a desperately needed overhaul of Article 18 and deserve the support of the governor and the legislature.

Conclusion

Although the Bill fails to address the manifold problems of Article 18 and displays a lack of appreciation for how municipalities work and the burdens they already face, it has resurrected legislative interest in municipal ethics reform. So, too, the new governor has expressed his commitment to such reform. Since the successful enactment of a sensible and effective state ethics law for municipalities requires a broad-based partnership, with full input, of those who enact the law (the governor and the legislature, on behalf of the state and municipal citizens), those who are regulated by it (the officials themselves, in particular as represented by the state associations), and those who must interpret it (municipal attorneys in both the public and private sectors), the new governor should establish a task force, composed of representatives of these groups, to hammer out a draft bill reflecting the recommendations of the Association's Government Ethics Task Force.

Endnotes

1. S. 7400-A (2010), A. 10682-A (2010) (hereafter "the Bill"). The Bill passed the Senate on June 17, 2010, but, thankfully, died in the Assembly when the session's clock ran out.
2. *See generally* Mark Davies, *1987 Ethics in Government Act: Financial Disclosure Provisions for Municipal Officials and Proposals for Reform*, 11 PACE LAW REV. 243 (1991); Temporary State Commission on Local Government Ethics, *Final Report*, 21 FORDHAM URB. LAW J. 1 (1993); Henry G. Miller, *Why We Need a New State Ethics Law for Municipal Officials*, FOOTNOTES (County Attorneys' Association of the State of New York), Vol. 4, No. 2, Winter 1996, at 5; Steven G. Leventhal, *Needed: A New Statewide Ethics Code for Municipalities*, NYSBA / MLRC MUNICIPAL LAWYER, Vol. 23, No. 4, Fall 2009, at 16.
3. *Final Accounting in Estate of A.B.*, 1 Tucker 247, 249 (N.Y. Surr. 1866) (Tucker, Surr.).
4. *See supra* note 2.
5. Gen. Mun. Law §§ 800-804, 805.
6. *See, e.g., Lexjac, LLC v. Beckerman*, No. 07-CV-4614 (E.D.N.Y., Sept. 30, 2008).
7. S. 7400-A, § 1, amending Gen. Mun. Law § 800(3).
8. Gen. Mun. Law §§ 800(3), 801, 804, 805. None of the exceptions in Gen. Mun. Law § 802 would apply.
9. *See* S. 7400-A, § 2, adding Gen. Mun. Law § 801(3).
10. *Cf.* Gen. Mun. Law § 805-a(1)(c)-(d).
11. S. 7400-A, § 3, adding Gen. Mun. Law § 803-a.
12. *See* 1964 N.Y. Laws ch. 946, § 1 ("it is the purpose of this chapter [enacting Article 18] to define areas of conflicts of interest in municipal transactions [i.e., prohibiting certain interests in municipal contracts], leaving to each community the expression of its own code of ethics").
13. *See* S. 7400-A, § 4, amending Gen. Mun. Law § 806(1)(a).
14. *See* Gen. Mun. Law § 806(1)(a); Gov. Eliot Spitzer, Exec. Order No. 11 stating that New York State includes more than 4,200 taxing jurisdictions. The Attorney General's Office has concluded that New York State includes 10,521 local governments, consisting of 57 counties (excluding the five counties of New York City), 62 cities, 932 towns, 556 villages, 996 school districts / BOCES, 991 authorities, and 6,927 special

districts (http://www.ag.ny.gov/bureaus/legislative/government_consolidation/govs.html (all websites cited in this article were last visited October 14, 2010).

15. Gen. Mun. Law §§ 806(1)(a), 808(1), (3).

16. *See* S. 7400-A, § 8, amending Gen. Mun. Law § 808(1). New York City and its constituent units are excluded from current Article 18, except for the financial disclosure provisions. *See* Gen. Mun. Law §§ 800(4), 810(1). The Bill apparently intended to make no change in that regard. New York City has had an extensive code of ethics for its public servants, and an active ethics board, since 1959. *See* NYC Local Law No. 73, 74, 75 (1959), enacting former NYC Ad. Code §§ 898.1-0, B1-7.0, 897-1.0, respectively; *see also* 1959 NY Laws ch. 532, revising former NYC Charter § 886, available at http://www.nyc.gov/html/conflicts/downloads/pdf2/Old%20NYC%20Ethics%20Laws.pdf. Since 1989, when New York City's ethics board was given enforcement power, it has had an active enforcement program, including the imposition of 98 fines in 2009 totaling over $160,000. *See* 2009 Annual Report of the Conflicts of Interest Board, at 45 (Exhibit 9), available at http://www.nyc.gov/html/conflicts/downloads/pdf2/annual_reports/annual_report_2009_final.pdf. The City's current conflicts of interest and financial disclosure laws are set forth in NYC Charter Chapter 68 and NYC Ad. Code § 12-110, respectively, available at http://www.nyc.gov/html/conflicts/html/law/law.shtml.

17. *See* New York State Department of State, LOCAL GOVERNMENT HANDBOOK, at 5 (Table 1), 40-41 (Table 6), and 54-55 (Table 9), available at http://www.dos.state.ny.us/LG/publications/Local_Government_Handbook.pdf; New York State Dept. of Education website, http://www.p12.nysed.gov/mgtserv/boces/. New York State is comprised of 57 counties, 61 cities, 933 towns, 553 villages, and 37 BOCES, excluding New York City and its constituent units.

18. S. 7400-A, § 8, adding Gen. Mun. Law § 808(1)(d). In city school districts of cities having a population of 125,000 or more (Buffalo, Rochester, Syracuse, and Yonkers), the city's ethics board, rather than the BOCES ethics board, serves as the ethics board for the school district. Proposed Gen. Mun. Law § 808(1)(d)(iii).

19. *See* http://www.nysegov.com/citguide.cfm?context=citguide&content=munibycounty2&swis_county=55; Westchester County Department of Planning Databook, 23, 34, available at http://www.westchestergov.com/planning/research/Databook/Databook.pdf; http://emergencyservices.westchestergov.com/index.php?option=com_content&view=article&id=510&Itemid=1084; http://www.p12.nysed.gov/ds/directory.html; http://nyintegrity.org/local/municipalities.html. Harrison, Mt. Kisco, and Scarsdale are each a town/village.

20. "Municipality" is broadly defined in Gen. Mun. Law § 800(4) and includes some 4,200 taxing jurisdictions in New York State (*see* Gov. Eliot Spitzer, Exec. Order No. 11) and thousands more non-taxing jurisdictions. The Attorney General's Office has calculated that New York State includes 10,521 local governments. *See supra* note 14.

21. *See* http://www.newyorkschools.com/counties/westchester.html. Since the City of Yonkers has a population exceeding 125,000, the Yonkers City School District will be subject to the City of Yonkers ethics board, unless the district creates its own ethics board. The Putnam-Northern Westchester BOCES ethics board would also be serve as the ethics board for the six Putnam County school districts, unless they establish their own boards of ethics. *See* http://www.newyorkschools.com/counties/putnam.html.

22. *See* S. 7400-A, § 8, adding Gen. Mun. Law § 808(1)(e) and amending Gen. Mun. Law § 808(4). *See also* Gen. Mun. Law §§ 810(9), 811(1)(c), (d), 813(9)(f)-(i), (k), (m), 813(10)-(16). Upon the expiration of the Temporary State Commission, its "powers, duties and functions" devolved upon the local boards of ethics. 1987 N.Y. Laws ch. 813, § 26(c).

23. *See* Gen. Mun. Law § 808(2).

24. *See, e.g.*, Chris McKenna, *'Dodge City without Wyatt Earp': Ethics boards either absent or too weak to protect public*, Times-Herald Record, Dec. 14, 2003, available at http://archive.recordonline.com/archive/2003/12/14/wcamethi.htm.

25. S. 7400-A, § 8, adding Gen. Mun. Law § 808(1)(c).

26. *See* New York State Department of State, LOCAL GOVERNMENT HANDBOOK, at 5 (Table 1) and 54-55 (Table 9), available at http://www.dos.state.ny.us/LG/publications/Local_Government_Handbook.pdf.

27. *See* S. 7400-A, § 8, amending Gen. Mun. Law § 808(1).

28. *Id.*

29. S. 7400-A, § 8, amending Gen. Mun. Law § 808(5).

30. *See* S. 7400-A, § 8, amending Gen. Mun. Law § 808(2).

31. S. 7400-A, § 8, adding Gen. Mun. Law § 808(2-a)(e)(ii).

32. *See, e.g.*, 24 Op. State Compt. 125 (1968) (opining that a town board has no authority to delegate its subpoena power to the town board of ethics); *contra*, 1993 Op. Atty. Gen. (Inf.) 1022 (93-14) (opining that a local government by local law may provide for enforcement of violations of local ethics regulations through the imposition of fines and initiation of proceedings for equitable relief) and 1991 Op. Atty. Gen. (Inf.) 1135 (91-68) (opining that a local government by local law may grant its ethics board investigative and enforcement authority). Note, however, that the Bill includes language that arguably may in fact permit a municipality to increase the maximum amount of the fine. *See* S. 7400-A, § 14 (authorizing a code of ethics to be "more stringent than article 18 of the general municipal law"). Indeed, the Comptroller may have chosen that "more stringent" language rather than the more limiting language in current Gen. Mun. Law § 806(1)(a) precisely to permit such increased enforcement and penalties. *See* Gen. Mun. Law § 806(1)(a) (local ethics codes may "regulate or prescribe conduct which is not expressly prohibited by this article but may not authorize conduct otherwise prohibited").

33. *See* Gen. Mun. Law §§ 810-813. *See also supra* note 2. Curiously, the Bill would repeal Gen. Mun. Law § 813, regulating the Temporary State Commission, even though the provisions of that section expired on December 31, 1992, while they remain relevant to local ethics boards upon which the "powers, duties and functions" of the Commission devolved. *See* 1987 N.Y. Laws ch. 813, § 26(c).

34. *See* 1964 N.Y. Laws ch. 946; 1987 N.Y. Laws ch. 813.

35. *See NYSBA News Release: State Bar President Stephen P. Younger Creates Task Force on Government Ethics* (June 30, 2010), available at (http://www.nysba.org/AM/Template.cfm?Section=Home&CONTENTID=39665&TEMPLATE=/CM/Con`tentDisplay.cfm).

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