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NEW YORK STATE BAR ASSOCIATION  
MUNICIPAL LAW SECTION  
NEW GENERAL MUNICIPAL LAW ARTICLE 18

February 10, 2011

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AN ACT to amend the general municipal law, in relation to municipal ethics

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

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Section 1. Title. This act shall be known and may be cited as the “Municipal Ethics in Government Act of 2011.”<sup>1</sup>

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§ 2. Purpose. As its purpose, this law seeks to establish minimum standards of ethical conduct for all officers and employees of municipalities throughout the state to help ensure that they conduct the business of their municipalities free from improper influences and conflicts of interest, whether actual or perceived. At the same time, one must recognize that public service cannot require a complete divesting of all proprietary interests by public servants, nor impose overly burdensome disclosure requirements, if the government is to attract and hold highly competent officers and employees. Although the assurance of ethical, conflict-free conduct will continue to rest primarily on the personal integrity of the officers and employees themselves, on their commitment to the public good, and on the vigilance of their communities, the establishment of, and adherence to, the standards and procedures set forth in this act will serve to provide the highest caliber of public administration and increased confidence in the conduct of public officials. By requiring annual public disclosure of interests that may influence or be perceived to influence the actions of government officials, by mandating ethics training for all government officials, and by assuring the availability of legal advice about the propriety of proposed actions by government officers and employees, this law intends to facilitate the

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<sup>1</sup> This bill seeks to implement the recommendations of the Report of the New York State Bar Association Task Force on Government Ethics (Jan. 28, 2011) (hereafter “Task Force Report”), found at <http://www.nysba.org/AM/TemplateRedirect.cfm?template=/CM/ContentDisplay.cfm&ContentID=46072> (last visited Feb. 7, 2011).

71 consideration of potential problems before they arise, to minimize unwarranted suspicion, and to  
72 enhance the accountability of the government to the people. This act seeks not so much to catch  
73 the corrupt public official as to guide the honest one. Recognizing that the overwhelming  
74 majority of public servants are honest, this law focuses primarily on prevention, not punishment,  
75 and thereby seeks to promote both the reality and the perception of integrity and transparency in  
76 government. It is the intent of this act that every governmental entity in the state that is not  
77 subject to the jurisdiction of the commission on public integrity or the legislative ethics  
78 commission, or subject to the provisions of subdivision 4 of section 211 of the judiciary law,  
79 shall be subject to the provisions of this act. It is also the intent of this act not to replace but  
80 rather to supplement other, consistent provisions of law regulating ethics in local government,  
81 such as section 107 of the civil service law, and to effect no change in the law regulating the  
82 compatibility of public offices.<sup>2</sup>

83 § 3. Sections 800, 801, 802, 803, 804, 804-a, 805, 805-a, 805-b, 806, 807, 808, 809, 810,  
84 811, 812, and 813 of the general municipal law are REPEALED and a new section 800 is added  
85 to read as follows:<sup>3</sup>

86 **§ 800. Definitions.**<sup>4</sup> Unless otherwise stated or unless the context otherwise requires,

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<sup>2</sup> See generally Task Force Report at 57-59.

<sup>3</sup> The pernicious effect of current Gen. Mun. Law §§ 800-804 (prohibited interest in contract provisions) is summarized in Task Force Report at 60,

<sup>4</sup> As noted above, every governmental entity in the State should be subject to an ethics law. For that reason, Article 18 should continue to apply not only to political subdivisions (counties, cities, towns, and villages), school districts, and fire districts but also to all other government entities encompassed within the current definition of “municipality” in Gen. Mun. Law § 800(4). Some municipalities should, however, be considered as part of other municipalities for purposes of the ethics law. Thus, agencies that serve a local government (“local government agencies”) should be considered part of that government and subject to its ethics law and ethics board. Cf. Public Authorities Accountability Act of 2005, 2005 N.Y. Laws ch. 766, discussed below. Government agencies that, while not state agencies, are likewise not part of local government (“municipal local agencies”), e.g., fire districts, should be subject to Article 18 and their own local ethics code and board, if they enact and establish them. Note that the Public Authorities

87 when used in this article:

88 1. "Appear" and "appear before" mean communicating in any form, including, without  
89 limitation, personally, through another person, by letter, by email, by facsimile, or by telephone.

90 2. "Confidential information" means any record or other information (a) that by federal or state  
91 law is privileged or protected from disclosure to the public or (b) that is both exempt from  
92 disclosure under the Freedom of Information Law and Open Meetings Law and prohibited by  
93 local law from disclosure.<sup>5</sup>

94 3. "Financial benefit" shall include money, services, licenses, permits, contracts, authorizations,  
95 loans, travel, entertainment, hospitality, or any promise thereof, or any gratuity or promise  
96 thereof.

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Accountability Act of 2005, 2005 N.Y. Laws ch. 766, as amended by 2009 N.Y. Laws ch. 505 and 506, requires, among other things, (1) that local public authorities adopt a code of ethics applicable to each officer, director, and employee of the local public authority that, at a minimum, includes the standards established in Pub. Off. Law § 74 (Pub. Auth. Law §§ 2800(2)(a)(8), 2824(1)(d)); (2) that board members of local public authorities establish a governance committee to examine ethical and conflicts of interest issues (Pub. Auth. Law § 2824(7)); (3) that local public authorities establish written policies and procedures to protect whistleblowers (Pub. Auth. Law § 2824(1)(e); see also § 2857); and (4) that board members, officers, and employees of local public authorities file, pursuant to Gen. Mun. Law Article 18, annual financial disclosure statements with the county board of ethics for the county in which the local public authority has its primary office (Pub. Auth. Law § 2825(3)). "Local public authorities" is defined in Pub. Auth. Law § 2(2) to include not only public authorities and public benefit corporations whose members do not hold a civil office of the state and are not appointed by the governor but also (1) not-for-profit corporations affiliated with, sponsored by, or created by a county, city, town, or village, (2) local IDA's or other local public benefit corporations; and (3) an affiliate of any such local public authority. Thus the appropriate officials of all of these entities must file an annual disclosure statement with the applicable ethics board. Where a local public authority is also a local government agency of a municipality within the meaning of proposed Gen. Mun. Law § 800(7), that local public authority will be subject to the jurisdiction of the ethics board of that local government (county, city, town, or village).

<sup>5</sup> Defining "confidential information" would appear advisable, to guide officials in knowing what exactly they may and may not disclose to the public. See Steven G. Leventhal, *Running a Municipal Ethics Board: Glossary of Municipal Ethics Terms*, NYSBA/MLRC MUNICIPAL LAWYER, Vol. 20, No. 2, at 20 (Spring 2006). Note that use or disclosure of information that is FOILable but not yet public could be a violation of current section 801(1) (because the official "jumped the queue") even though such use or disclosure would not be a violation of section 801(8).

97 4. “Full-time municipal officer or employee” means any appointed municipal officer or  
98 employee regularly scheduled to work at least twenty hours per week and any elected official,  
99 regardless of the number of hours worked.  
100 5. “Gift” shall have the meaning ascribed to that term in subdivision (j) of section 1-c of the  
101 legislative law.<sup>6</sup>

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<sup>6</sup> The definition of “gift” in Article 18 thus tracks the definition of gift in the lobbyist gift law, thereby helping to ensure that what constitutes a “gift” is the same for both the donor (lobbyist) and donee (municipal official). See Task Force Report at 61. Leg. Law § 1-c(j) defines a “gift” as :

“(j) The term "gift" shall mean anything of more than nominal value given to a public official in any form including, but not limited to money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance, or promise, having a monetary value. The following are excluded from the definition of a gift:

- (i) complimentary attendance, including food and beverage, at bona fide charitable or political events, and food and beverage of a nominal value offered other than as part of a meal;
- (ii) complimentary attendance, food and beverage offered by the sponsor of an event that is widely attended or was in good faith intended to be widely attended, when attendance at the event is related to the attendee's duties or responsibilities as a public official or allows the public official to perform a ceremonial function appropriate to his or her position;
- (iii) awards, plaques, and other ceremonial items which are publicly presented, or intended to be publicly presented, in recognition of public service, provided that the item or items are of the type customarily bestowed at such or similar ceremonies and are otherwise reasonable under the circumstances, and further provided that the functionality of such items shall not determine whether such items are permitted under this paragraph;
- (iv) an honorary degree bestowed upon a public official by a public or private college or university;
- (v) promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;
- (vi) goods and services, or discounts for goods and services, offered to the general public or a segment of the general public defined on a basis other than status as a public official and offered on the same terms and conditions as the goods or services are offered to the general public or segment thereof;
- (vii) gifts from a family member, member of the same household, or person with a personal relationship with the public official, including invitations to attend personal or family social events, when the circumstances establish that it is the family, household, or personal relationship that is the primary motivating factor; in determining motivation, the following factors shall be among those considered: (A) the history and nature of the relationship between the donor and the recipient, including whether or not items have previously been exchanged; (B) whether the item was purchased by the donor; and (C) whether or not the donor at the same time gave similar items to other public officials; the transfer shall not be considered to be motivated by a family,

102 6. "Local agency" means a school district, public benefit corporation, public commission, public  
103 authority, consolidated health district, county vocational education and extension board, public  
104 library, board of cooperative educational services, urban renewal or community development  
105 agency, industrial development agency, joint water works system established pursuant to chapter  
106 six hundred fifty-four of the laws of nineteen hundred twenty-seven, fire district, soil or water  
107 conservation district, town or county special or improvement district, district corporation, or  
108 other district, or a joint service established for the purpose of carrying on, performing, or  
109 financing one or more improvements or services intended to benefit the health, welfare, safety,  
110 or convenience of the inhabitants of a municipality or municipalities, or to benefit the real  
111 property within a municipality or municipalities. Local agencies do not include state agencies.  
112 Local agencies shall be of two types: local government agencies and municipal local agencies.  
113 7. "Local government agency" means a local agency one or more of the members of the  
114 governing body of which is appointed by an officer, board, or agency of a county, city, town, or  
115 village. For purposes of this article, a local government agency shall be deemed an agency of

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household, or personal relationship if the donor seeks to charge or deduct the value of such item as a business expense or seeks reimbursement from a client;  
(viii) contributions reportable under article fourteen of the election law;  
(ix) travel reimbursement or payment for transportation, meals and accommodations for an attendee, panelist or speaker at an informational event when such reimbursement or payment is made by a governmental entity or by an in-state accredited public or private institution of higher education that hosts the event on its campus, provided, however, that the public official may only accept lodging from an institution of higher education: (A) at a location on or within close proximity to the host campus; and (B) for the night preceding and the nights of the days on which the attendee, panelist or speaker actually attends the event;  
(x) provision of local transportation to inspect or tour facilities, operations or property owned or operated by the entity providing such transportation, provided, however, that payment or reimbursement of lodging, meals or travel expenses to and from the locality where such facilities, operations or property are located shall be considered to be gifts unless otherwise permitted under this subdivision; and  
(xi) meals or refreshments when participating in a professional or educational program and the meals or refreshments are provided to all participants.”

116 each county, city, town, and village the officer, board, or agency that appoints a member of the  
117 governing body of the local government agency.

118 8. "Ministerial act" means an action, including, without limitation, the issuance of a license,  
119 permit, or other permission by the municipality, that is carried out in a prescribed manner and  
120 that does not involve substantial personal discretion.

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

124 10. "Municipality" means a county, city, town, village, or municipal local agency, except a city  
125 with a population of one million or more, and includes all of its agencies, offices, departments,  
126 divisions, bureaus, boards, administrations, authorities, corporations, councils, commissions, and  
127 other units but shall not include any court of the unified court system.<sup>7</sup>

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

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

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<sup>7</sup> As noted above, every governmental entity in the State must be subject to an ethics law. For that reason, under this bill Article 18 would continue to apply not only to political subdivisions (counties, cities, towns, and villages), school districts, and fire districts but also to all other government entities encompassed within the current definition of "municipality" in Gen. Mun. Law § 800(4). The City of New York would be excluded, as it is currently under Article 18, except for annual disclosure. See Gen. Mun. Law §§ 800(4), 810(1), 811(1)(a).

136 (a) A judge, justice, officer, or employee of the unified court system;<sup>8</sup>  
137 (b) A volunteer fire fighter or civil defense volunteer, except a fire chief or assistant fire chief  
138 and volunteer members of fire district fire departments<sup>9</sup>; or  
139 (c) A member of an advisory board of the municipality if, but only if, the advisory board has no  
140 authority to implement its recommendations or to act on behalf of the municipality or to restrict  
141 the authority of the municipality to act. No entity established pursuant to this chapter shall be  
142 deemed an advisory board for purposes of this paragraph.

143 14. "Outside employer or business" means:

144 (a) any activity, other than service to the municipality, from which the municipal officer or  
145 employee has received income in the amount of \$1,000 or more during the previous twelve  
146 months for services rendered or goods sold or produced;<sup>10</sup>

147 (b) any entity, other than the municipality, of which the municipal officer or employee is a  
148 member, director, officer, or employee and from which he or she received income in the amount  
149 of \$1,000 or more during the previous twelve months for services rendered or goods sold or  
150 produced; or

151 (c) any entity in which the municipal officer or employee has an ownership interest worth  
152 \$10,000 or more or in which he or she owns five percent or more of the outstanding equity or  
153 debt.

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<sup>8</sup> The question arises if this exception includes a court clerk. A court clerk who is a state employee (e.g., a city court clerk) would fall within the exclusion but a court clerk who is a municipal employee (e.g., a town or village justice court clerk) would not and would thus be subject to Article 18.

<sup>9</sup> 2006 N.Y. Laws ch. 238 amended Gen. Mun. Law § 806(1)(a) to mandate that a fire district adopt a code of ethics (just like counties, cities, towns, villages, and school districts) and to provide expressly that a fire district code of ethics shall apply to the volunteer members of the fire district fire department.

<sup>10</sup> This definition would exclude casual activities in the nature of hobbies or such activities as occasional babysitting or dog walking.

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

156 15. "Part-time municipal officer or employee" means any appointed municipal officer or  
157 employee regularly scheduled to work less than twenty hours per week.

158 16. "Particular matter" means any case, proceeding, application, request for a ruling or benefit,  
159 determination, contract limited to the duration of the contract as specified therein, investigation,  
160 charge, accusation, arrest, or other similar action which involves a specific party or parties,  
161 including actions leading up to the particular matter; provided that a particular matter shall not be  
162 construed to include the proposal, consideration, or enactment of local laws or resolutions by the  
163 governing body of a municipality or any action on the budget or on the text of a zoning  
164 resolution.<sup>11</sup>

165 17. "Person" shall include both an individual and an entity.

166 18. "Recusal" from a matter means not participating in the matter in any way, whether by  
167 voting, discussing, or communicating in any form concerning the matter, attending meetings  
168 concerning the matter, receiving copies of documents or e-mail messages concerning the matter,  
169 or otherwise participating in the matter.

170 19. "Relative" means a spouse or registered domestic partner, child, stepchild, grandchild, parent,  
171 stepparent, sister, brother, or grandparent of the municipal officer or employee; a parent,  
172 stepparent, child, stepchild, sister, or brother of the spouse or registered domestic partner of the  
173 municipal officer or employee; a spouse or registered domestic partner of a parent, stepparent,  
174 child, stepchild, brother, or sister of the municipal officer or employee; a spouse or registered  
175 domestic partner of a parent, stepparent, child, stepchild, brother, or sister of the spouse or  
176 registered domestic partner of the municipal officer or employee; and any person claimed as a

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<sup>11</sup> This definition is derived from New York City's ethics code, NYC Charter § 2601(17).

177 dependent on the municipal officer's or employee's latest individual state income tax return.<sup>12</sup>  
178 20. "State agency" means any state department, or division, board, commission, or bureau of any  
179 state department; any public benefit corporation, public authority, or commission at least one of  
180 whose members is appointed by the governor; or the state university of New York or the city  
181 university of New York, including all their constituent units, except community colleges of the  
182 state university of New York<sup>13</sup> and the independent institutions operating statutory or contract  
183 colleges on behalf of the state.

184 21. A "subordinate" means an officer or employee the work of whom one has the authority to  
185 directly or indirectly supervise, control, or direct, or whose terms and conditions of municipal  
186 employment one has the power to affect, whether or not the two officers or employees stand in a  
187 reporting relationship to one another, but shall not include a municipal officer or employee who  
188 serves in a position that is in the exempt classification under the civil service law.<sup>14</sup>

189 § 3. The general municipal law is amended by adding thirty-eight new sections 801, 802,  
190 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 812 813, 814, 815, 816, 817, 818, 819, 820,  
191 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, and 833 to read as follows:

192 **§ 801. Code of ethics for municipal officers and employees.** 1. General prohibition.<sup>15</sup>  
193 A municipal officer or employee shall not use his or her official position or office, or take or fail  
194 to take any action, in a manner which he or she knows or has reason to know may result in a

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<sup>12</sup> Note that stepsiblings are excluded because of the possible remote nature of the relationship and because benefitting a stepsibling is less likely to benefit an immediate family member than benefitting the other relatives listed in the definition. For the same reason, cousins, nieces, nephew, uncles, and aunts are excluded.

<sup>13</sup> Note that a change to Pub. Off. Law § 73(1)(g) made CUNY community colleges state agencies, and thus subject to the Public Integrity Commission, for purposes of ethics regulation. SUNY community colleges remain subject to Article 18.

<sup>14</sup> The intent is to exempt only political appointees, thus permitting an official to request a political appointee to engage in campaign activity or make a political contribution.

<sup>15</sup> See Task Force Report at 60.

195 personal financial benefit for any of the following persons:

196 (a) the municipal officer or employee;

197 (b) his or her outside employer or business;

198 (c) a relative;

199 (d) a person with whom or with which the municipal officer or employee has a financial

200 relationship or has had a financial relationship within the previous twelve months<sup>16</sup>;

201 (e) an entity for which one serves as an officer, director, or employee, whether paid or unpaid<sup>17</sup>;

202 (f) a individual or entity from whom or from which the municipal officer or employee has received

203 a gift, including, without limitation, any goods or services for less than fair market value, during the

204 previous twelve months; or

205 (g) an individual or entity from whom the officer or employee has received election campaign

206 contributions of more than one thousand dollars in the aggregate during the previous twelve

207 months.

208 2. Misuse of municipal resources. A municipal officer or employee shall not use municipal

209 letterhead, personnel, equipment, supplies, or resources for a non-governmental purpose nor

210 engage in personal or private activities during times when he or she is required to perform work

211 for the municipality.<sup>18</sup>

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<sup>16</sup> Absent this provision, a town planning board member, for example, who is in partnership with a developer in another town, could vote to approve a major project by that developer. Thus, one could not hire one's former law firm as municipal counsel within twelve months of leaving the firm. But see exemption in section 803(1)(i).

<sup>17</sup> This provision would prohibit a municipal official from taking an action as an official to benefit a not-for-profit organization for which the official serves as an officer, director, or employee (except in an official municipal capacity) but would not prohibit an official from taking an action to benefit a not-for-profit organization of which the official is merely a member or serves in a non-employee volunteer capacity, such as a coach.

<sup>18</sup> See Task Force Report at 61-62. Misuse of municipal resources is one of the most common ethics problems and is sometimes undertaken with the best of intentions, such as a town highway department paving a church parking lot for free. While specifically addressed in the State

212 3. Recusal. A municipal officer or employee shall promptly recuse himself or herself from  
213 acting on a matter before the municipality when acting on the matter, or failing to act on the  
214 matter, may financially benefit any of the persons listed in subdivision 1 of this section.<sup>19</sup>

215 4. Gifts and gratuities. A municipal officer or employee shall not solicit a gift from any  
216 person or entity who or which has received or sought a financial benefit from the municipality  
217 within the previous twelve months, nor accept a gift from any person or entity who or which the  
218 municipal officer or employee knows or has reason to know has received or sought a financial  
219 benefit from the municipality within the previous twelve months. A municipal officer or  
220 employee shall not request nor accept anything from any person or entity other than the  
221 municipality for performing his or her municipal job.<sup>20</sup>

222 5. Representation. A full-time municipal officer or employee shall not represent any person  
223 or entity in any matter before the municipality or involving the municipality. A part-time  
224 municipal officer or employee shall not represent any person or entity in any matter before the  
225 officer's or employee's municipal agency or involving the officer's or employee's municipal  
226 agency.<sup>21</sup>

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Constitution (Art. VIII, § 1) and arguably encompassed within subdivision 1 of this section (General Prohibition), it would appear wise to spell out the prohibition,

<sup>19</sup> See Task Force Report at 60. "Recusal" is a defined term (section 800(18)).

<sup>20</sup> See Task Force Report at 61. "Gift" is a defined term (section 800(5)). Note that this section imposes absolute liability for solicitation of gifts – the soliciting official *must* know whether the solicited person has done or sought business with the municipality - but no such absolute liability would attach for receipt of gifts. Notary fees are not gifts but compensation. A municipal notary may not receive a fee for notarizing a municipal document because that would be a gratuity in violation of section 801(4). Where the municipality pays the notary license fee for a municipal officer or employee, then arguably that license is a municipal resource; and any attempt by the official to charge anyone for notarizing a private document would violate section 801(2).

Gratuities (tips) are a common ethics issue and, if viewed as compensation, might not be defined as gifts; they should thus be separately addressed; indeed, the new definition of "gift" (section 800(5)), derived from the lobbyist gift law (Leg. Law §1-c(j)), does not include gratuities.

<sup>21</sup> Prohibiting a part-time official from representing clients before any agency of the municipality appears overly restrictive. "Full-time" and "part-time" are defined terms (sections

227 6. Appearances. A full-time municipal officer or employee shall not appear before any  
228 agency of the municipality, except on his or her own behalf or on behalf of the municipality. A  
229 part-time municipal officer or employee shall not appear before his or her municipal agency,  
230 except on his or her own behalf or on behalf of the municipality.<sup>22</sup>

231 7. Confidential information. A municipal officer or employee shall not disclose confidential  
232 information or use it for any non-municipal purpose, even after leaving municipal service.<sup>23</sup>

233 8. Solicitation of subordinates. A municipal officer or employee shall not knowingly  
234 request nor knowingly authorize anyone else to request any subordinate of the officer or  
235 employee to participate in an election campaign or purchase anything from, or give or contribute  
236 anything to, any person or entity, including, without limitation, any election campaign, political  
237 committee, or not-for-profit organization, except as authorized by the governing body of the  
238 municipality in the case of solicitation for a charitable organization.<sup>24</sup>

239 9. Non-municipal employment. A municipal officer or employee shall not seek or obtain any  
240 non-municipal employment with any person or entity he or she is dealing with in his or her  
241 municipal position.<sup>25</sup>

242 10. Revolving door. For one year after leaving municipal service, a former municipal officer  
243 or employee shall not appear before his or her former municipal agency, except on his or her

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800(4), (15)).

<sup>22</sup> Prohibiting a part-time official from appearing before any agency of the municipality appears overly restrictive.

<sup>23</sup> “Confidential information” is a defined term (section 800(2)).

<sup>24</sup> “Subordinate” is a defined term (section 800(21)) and is broader than someone in a direct reporting relationship. “Requests” to subordinate to engage in political activity or contribute to a political campaign or make a contribution to the favorite charity of the superior or purchase some product are inherently coercive and thus involve misuse of office for private purposes. Note that, while those benefitted by the request is far broader than in section 800(1), the act of misuse (solicitation of subordinates) is far narrower. The proviso would permit a municipality, for example, to permit a municipal campaign for United Way.

<sup>25</sup> This prohibition would apply to both moonlighting and post-municipal service positions.

244 own behalf. A former municipal officer or employee shall never accept anything of value to  
245 work on any particular matter that he or she personally and substantially worked on while in  
246 municipal service.<sup>26</sup>

247 11. Avoidance of conflicts of interest. A municipal officer or employee shall not knowingly  
248 acquire, solicit, negotiate for, or accept any interest, employment, or thing that would result in a  
249 violation of this section.

250 12. Inducement of others. A municipal officer or employee shall not intentionally or  
251 knowingly solicit, request, aid, induce, or cause another officer or employee of the municipality  
252 to engage in conduct or acquire an interest that violates any of the provisions of this section.<sup>27</sup>

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<sup>26</sup> The one-year ban is limited to communications with (appearances before) one's own agency because a municipalwide ban appears too onerous for most municipalities. Note that ministerial communications with one's former agency are excluded pursuant to section 803(1)(c). A personal request of a former colleague (e.g., to buy life insurance), having nothing to do with the municipality, would not constitute a communication with the agency. Behind the scenes work on a matter before one's former agency would be permitted, provided that one does not use or reveal confidential information or violate the particular matter bar. In regard to the particular matter bar, "and substantially" ensures that the official had some significant, not merely minimal, personal involvement with the matter. "Particular matter" is a defined term (section 800(16)). While the particular matter bar applies only to compensated work, the one-year ban also applies to volunteer work; having left the town's ZBA, one should not be permitted to appear, for free, before the ZBA during that one year on behalf of one's house of worship in a zoning variance matter. After the one year, one could appear for free before one's former agency, even if one had worked on the matter as a ZBA member, provided that one does not use or reveal confidential information.

<sup>26</sup> This exclusion seeks to be consistent with the new state gift ban for executive and legislative staff, as well as for lobbyists (both state and local).

<sup>27</sup> A number of potential conflicts of interest that this state code of ethics does not address may be regulated in a local code of ethics, if the municipality so desires. Such provisions might include: prohibited outside positions (such as serving as an officer, director, or employee of a firm doing business with the municipality); prohibited outside ownership interests (such as ownership of stock in a corporation doing business with one's own municipal agency); prohibited interests in municipal contracts (see current Gen. Mun. Law § 801); prohibited interests in real property development or operation (see current Gen. Mun. Law § 804-a); lawyers and experts appearing anywhere against the interests of the municipality (e.g., in court); purchase of one's municipal office or a promotion; political solicitation of vendors, contractors, or licensees; coercive political solicitation, even if the person solicited is not a subordinate or municipal vendor, contractor, or licensee; political party positions; political activity by high-level

253           **§ 802. Transactional disclosure and recusal.** Whenever a municipal officer or  
254 employee is required to recuse himself or herself under this article, he or she:

255 (a) shall promptly inform his or her superior, if any;

256 (b) shall promptly file with the municipal clerk a signed statement disclosing the reason for the  
257 recusal or, if a member of a board, shall state that information upon the public record of the  
258 board; and

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

260           **§ 803. Exclusions from the code of ethics.** 1. The provisions of sections eight hundred  
261 one and eight hundred two of this article shall not prohibit, or require disclosure or recusal as a  
262 result of:

263 (a) An action specifically authorized by statute, rule, or regulation of the state of New York or of  
264 the United States;

265 (b) An action mandated by court order;

266 (c) An authorized action taken by a municipal officer or employee as part of his or her official  
267 duties;<sup>28</sup> or

268 (d) A ministerial act.<sup>29</sup>

269 (d) Gifts:

270 (i) received by the municipal officer or employee from a relative; or

271 (ii) accepted on behalf of the municipality and transferred to the municipality; or

272 (iii) permitted pursuant to subdivision (j) of section 1-c of the legislative law.<sup>30</sup>

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appointed officials; superior-subordinate business or financial relationships; stricter revolving door restrictions on high-level officials (e.g., a municipalwide one-year ban); and improper conduct (appearance of impropriety).

<sup>28</sup> Thus, for example, a municipal employee who, solely as part of his or her official duties, serves on a not-for-profit organization may take an action as an official to obtain a municipal benefit, such as funding, for that organization, as the employee is acting in an official capacity.

<sup>29</sup> “Ministerial act” is a defined term (section 800(8)).

- 273 (e) Gifts or benefits having a value of \$100 or less that are received by a municipal officer or  
274 employee listed in section eleven of the domestic relations law for the solemnization of a  
275 marriage by that officer or employee at a place other than his or her normal place of business or  
276 at a time other than his or her normal hours of business.<sup>31</sup>
- 277 (f) Receipt of municipal services or benefits, or use of municipal facilities, that are generally  
278 available on the same terms and conditions to residents or a class of residents in the municipality.
- 279 (g) Personal, non-business *de minimis* use of municipal resources resulting in virtually no cost to  
280 the municipality.<sup>32</sup>
- 281 (h) Representation of constituents by elected officials without compensation in matters of  
282 public advocacy.
- 283 (i) An action by a municipal officer or employee that may benefit a customer of that municipal  
284 officer or employee's outside employer or business, unless the relationship between the  
285 municipal office or employee and the customer is a fiduciary relationship that generated income  
286 to the municipal officer or employee of ten thousand dollars or more during the previous twelve  
287 months.<sup>33</sup>

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<sup>30</sup> “Gift” and “relative” are defined terms (sections 800(5), (19)). The exclusion in paragraph (c) seeks to be consistent with the state gift ban for executive and legislative staff, as well as for lobbyists (both state and local).

<sup>31</sup> This exemption preserves the exemption in current Gen. Mun. Law § 805-b and addresses marriage ceremonies performed off-site or after hours.

<sup>32</sup> This exception simply recognizes that officials may use the office phone to call a baby sitter or an office copier to photocopy a five-page article or an office computer, during lunch hour, to type up PTA minutes. See, e.g., the New York City Acceptable Use Policy, found at [http://www.nyc.gov/html/conflicts/downloads/pdf2/AUP\\_Final\\_Issued\\_Version.pdf](http://www.nyc.gov/html/conflicts/downloads/pdf2/AUP_Final_Issued_Version.pdf) (last visited Feb. 1, 2011). For private business purposes, however, not even *de minimis* municipal equipment and resources may be used. See, e.g., 53 Rules of the City of New York § 1-13.

<sup>33</sup> The addition of persons with whom a municipal officer or employee has or has had a financial relationship within the previous twelve months to the categories of persons whom the official may not take action (or refrain from taking action) to benefit (section 801(1)(d)) requires an exemption for customers of dry cleaners and the like. Note that a lawyer-official, for example, could take an action that benefits a client of that lawyer's law firm, provided that the

288 (j) Municipal officers or employees appearing or practicing before the municipality or receiving  
289 income for working on a matter before the municipality after termination of their municipal  
290 service or employment where they performed only ministerial acts while working for the  
291 municipality.

292 2. Nothing in this article shall require a member of the governing body of a county, city, town,  
293 or village to recuse himself or herself from voting on a matter before the governing body,  
294 provided that the member otherwise complies with the provisions of this article, including,  
295 without limitation, making any disclosure required by section eight hundred two and taking no  
296 other action in connection with such matter that would violate any provision of this article.<sup>34</sup>

297 3. Nothing in this article shall be deemed to bar or prevent a present or former municipal officer  
298 or employee from timely filing any claim, account, demand, or suit against the municipality on

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lawyer had received less than \$10,000 from that client during the previous twelve months. Where section 802 would require transactional disclosure of the identity of an official’s private patient or client and where such disclosure may significantly infringe the privacy rights of the patient or client, the official may seek a waiver from the transactional disclosure requirement pursuant to section 820; for example, such a waiver may require the official to state simply that “The ethics board has informed me that I must recuse myself from this matter but should say nothing further.”

<sup>34</sup> A member of the governing body of a county, city, town, or village may thus vote on a matter before the governing body even where so voting may benefit one of the persons specified in section 801(1), provided that the member makes the requisite transactional disclosure under section 802 and takes no other action on the matter, such as sponsoring the legislation or lobbying for it. This approach exists, and has worked well, in New York City. See NYC Charter § 2604(b)(1)(a), as interpreted by NYC Conflicts of Interest Board Advisory Opinion No. 2009-2 (holding that a Council member could vote on discretionary spending for a person or firm with which he or she was associated but could not sponsor the legislation). Note that requiring a legislator to recuse from voting prevents the member from filling an essential function of his or her office. In addition, unlike in the executive branch where a subordinate can almost always act in the place of an elected official (or, if not, where the rule of necessity would then apply), in the legislative branch no one can act in the place of a recused legislator. As a result, recusal by a legislator effectively disenfranchises that legislator’s constituents. See also Carrigan v. Commission on Ethics, 236 P.3d 616 (Nev. 2010) (holding that the act of voting by a city council member is protected speech and that, therefore, any restrictions on voting are subject to strict scrutiny, which the ethics provision at issue could not survive, as it was facially overbroad in violation of the First Amendment), cert. granted, \_\_\_ U.S. \_\_\_, \_\_\_ S. Ct. \_\_\_, 2011 WL 48122 (Jan. 7, 2011).

299 behalf of himself or herself or any member of his or her family arising out of personal injury or  
300 property damage or any lawful benefit authorized or permitted by law.

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

302 **employees.** 1. Except as provided in subdivision 3 of this section, the outside employer or  
303 business of a municipal officer or employee shall not appear before the particular agency in  
304 which the municipal officer or employee serves or by which he or she is employed.<sup>35</sup>

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

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

312 (a) Appearing on its own behalf, or on behalf of the municipality, before a municipal agency;

313 (b) Seeking or obtaining a ministerial act; or

314 (c) Receiving a municipal service or benefit, or using a municipal facility, that is generally

315 available to the public and upon the same terms and conditions as those generally available to the

316 public.

317 **§ 805. Inducement of violations of the code of ethics by persons who are not**

318 **municipal officers or employees.** No person, though not an officer or employee of the

319 municipality, shall knowingly solicit, request, aid, induce, or cause a municipal officer or

320 employee to engage in conduct or acquire an interest that violates any of the provisions of this

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<sup>35</sup> See Task Force Report at 62-63. “Appear” and “outside employer or business” are defined terms (sections 800(1), (14)).

321 article.<sup>36</sup>

322           **§ 806. Annual disclosure.**<sup>37</sup> 1. Officers and employees required to file. In any county,  
323 city, town, or village with a population of fifty thousand or more, including only for purposes of  
324 annual disclosure a city with a population of one million or more, the following persons shall be  
325 required to file a signed annual disclosure statement:

326 (a) Elected officials of the municipality;

327 (b) The heads of any agency, department, division, council, board, commission, or bureau of the  
328 municipality and their deputies and other persons authorized to act on their behalf;

329 (c) Officers and employees of the municipality who hold policymaking positions, including,  
330 without limitation, officers and employees who have major responsibilities and exercise  
331 independent judgment in connection with determining important municipal or agency matters  
332 and members of the boards and commissions of the municipality;

333 (d) Officers and employees of the municipality whose job descriptions or actual duties involve  
334 the negotiation, authorization, or approval of:

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<sup>36</sup> See Task Force Report at 62-63. This provision is based on 53 Rules of the City of New York § 1-13(d), which was, in turn, based on Penal Law §§ 20.20 and 105.00. See [http://www.nyc.gov/html/conflicts/downloads/pdf3/Rules%20Amendments%20by%20Rule%20Number/1\\_13.pdf](http://www.nyc.gov/html/conflicts/downloads/pdf3/Rules%20Amendments%20by%20Rule%20Number/1_13.pdf) (last visited Feb. 1, 2011).

<sup>37</sup> See Task Force Report at 63-64. This section makes no change in current law with respect to the size of municipalities for which annual disclosure is mandated or the categories of municipal officers or employees who must file. “Policymaker” is vague and difficult to define. The former Temporary State Commission on Local Government Ethics (hereafter “Temporary State Commission”), the state agency charged with implementing financial disclosure at the municipal level pursuant to 1987 Ethics in Government Act (1987 N.Y. Laws ch. 813, § 16, codified as amended at Gen. Mun. Law § 813), adopted rather complex Guidelines for Determination of Persons in Policymaking Positions. Rather than to attempt to define “policymaker,” the proposed provision includes within “policymaker” officials with significant authority (the provision is modeled on New York City’s rule in 53 RCNY §§ 1-02, 1-14), even though they may not be agency heads or deputy or assistant agency heads (such as a chief of staff or counsel to an elected official), and members of boards and commissions. See current Gen. Mun. Law §§ 810-813; Mark Davies, *The 1987 Ethics in Government Act: Financial Disclosure Provisions for Municipal Officials and Proposals for Change*, 11 PACE LAW REVIEW 243, 273-275 (1991).

- 335 (i) Contracts, leases, franchises, revocable consents, concessions, variances, special permits, or  
336 licenses;
- 337 (ii) The purchase, sale, rental, or lease of real property, personal property, or services, or a  
338 contract therefor;
- 339 (iii) The obtaining of grants of money or loans; or
- 340 (iv) The adoption or repeal of any rule or regulation having the force and effect of law; and
- 341 (e) Candidates for elective office of the municipality.<sup>38</sup>
- 342 2. Time and place for filing by municipal officers and employees.<sup>39</sup> Annual disclosure  
343 statements by municipal officers and employees shall be filed with the municipality's ethics  
344 board:
- 345 (a) Within one hundred twenty days after the effective date of this section;
- 346 (b) Within thirty days after the municipal officer or employee becomes subject to the  
347 requirements of subdivision 1 of this section; and
- 348 (c) No later than May fifteenth of each year thereafter.

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<sup>38</sup> Pursuant to Pub. Auth. Law § 2825(3), board members, officers, and employees of local public authorities must file, pursuant to Gen. Mun. Law Article 18, annual financial disclosure statements with the county board of ethics for the county in which the local public authority has its primary office. Where, however, the local public authority is also a local government agency within the meaning of proposed Gen. Mun. Law § 800(7), the board members, officers, and employees of that local public authority will file their annual disclosure statements with the ethics board of the county, city, town, or village of which the entity is deemed to be an agency pursuant to that section since Pub. Auth. Law § 2825(3) requires filing “pursuant to article eighteen of the general municipal law.” Although Pub. Off. Law § 2825(3) requires filing by “Board members, officers, and employees of a local public authority,” the incorporation of the requirements of Article 18 by reference presumably means that board members, officers, and those employees falling within one of the filing categories of proposed Gen. Mun. Law § 806(1) must file, not all employees of the local public authority.

<sup>39</sup> Officials should not be required to file updates of their annual disclosure statement, unless the information was incorrect at the time the form was completed, in which case they must amend their filing. A requirement to provide mid-year updates if disclosed information changes appears unrealistic, a possible trap for officials, and inconsistent with the concept of *annual* disclosure. Failure to file an annual disclosure statement, or late filing of the statement, would constitute a violation of Article 18, subjecting the filer to the penalties set forth in section 828.

349 3. Time and place for filing by candidates for elective municipal office. Annual disclosure  
350 statements by candidates for elective municipal office shall be filed with the municipality's ethics  
351 board:

352 (a) On or before the last day for filing designating petitions pursuant to the election law;

353 (b) In the case of write-in candidates, on or before the twentieth day prior to the election for  
354 which the person is a write-in candidate;

355 (c) In the case of persons who have been designated to fill a vacancy in a designation or  
356 nomination for office, on or before the earlier of (i) the fifteenth day after a certificate  
357 designating such person to fill the vacancy is filed with the board of elections or (ii) the fifth day  
358 before the election for which the certificate is filed.

359 A candidate for elective municipal office who, as an officer or employee of the municipality, has  
360 filed an annual disclosure statement during the calendar year in which the election is held shall  
361 not be required to file an additional annual disclosure statement as a candidate.

362 4. Contents of annual disclosure statement.<sup>40</sup> The annual disclosure statement shall disclose:

363 (a) The location of any real property within the municipality, or within one mile of the boundary  
364 of the municipality, which the municipal officer or employee owns, leases, or rents.

365 (b) With respect to any outside employer or business of the municipal officer or employee:

366 (i) The name of the outside employer or business;

367 (ii) The nature of its business;

368 (iii) Whether it is self employment, a sole proprietorship, or an entity and, if an entity,

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<sup>40</sup> The requested information is tied directly to the code of ethics, revealing potential conflicts of interest under that code and making irrelevant and unnecessary disclosure of the amount of any interest, for most officials the most objectionable part of annual disclosure. See Task Force Report at 63. Failure to disclose required information or a misstatement of required information would constitute a violation of Article 18, subjecting the filer to the penalties set forth in section 828.

369 what type of entity;

370 (iv) The relationship of the municipal officer or employee to the outside employer or  
371 business, such as owner, partner, officer, director, member, employee, or shareholder;<sup>41</sup>  
372 and

373 (v) The names of clients of the outside employer or business from whom the municipal  
374 officer or employee derived at least ten thousand dollars in income during the previous  
375 twelve months and with whom the municipal officer or employee had a fiduciary  
376 relationship.<sup>42</sup>

377 (c) With respect to the spouse or registered domestic partner, child, stepchild, parent, sister, or  
378 brother of municipal officer or employee, the information required by paragraphs (a) and (b)(i)-  
379 (b)(iv) of this subdivision, except that the ownership interests of relatives, other than of the  
380 municipal officer's or employee's spouse or registered domestic partner or children under the  
381 age of 18, need not be disclosed.<sup>43</sup>

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<sup>41</sup> "Outside employer or business" is defined in section 800(14).

<sup>42</sup> Disclosure of the names of customers and clients with whom the official had no fiduciary relationship or from whom the official derived less than \$10,000 is not required because actions by the official to benefit such customers or clients does not violate section 801(1)(d) pursuant to the exemption in section 803(1)(i). Waivers from disclosure by the ethics board of the county in which the municipality is located are available pursuant to section 820 where disclosure would result in a significant invasion of privacy, such as the disclosure of the names of the patients of an oncologist or the names of the individual clients of a criminal defense attorney pre-indictment or the names of corporations about to declare bankruptcy. Allowing other types of municipalities to grant waivers from annual disclosure based on invasion of privacy has historically resulted in excessive redaction from annual disclosure reports made available to the public.

<sup>43</sup> Thus, disclosure of the real property of all of the public servant's relatives, as defined in proposed section 800(19), is not required, for the simple reason that the public servant reasonably might not know or have easy access to such information beyond immediate family members. Taking an action to benefit the real property of one of those other relatives may, however, still violate section 801(1)(c). So, too, while municipal officers and employees almost certainly know the identity of the outside employer of their immediate family members, the officers and employees may well not know the investments of immediate family members, except of the spouse or registered domestic partner or minor children.

382 (d) Gifts received by the municipal officer or employee or his or her spouse or registered  
383 domestic partner or his or her children under the age of 18 and living with the municipal officer  
384 or employee, other than gifts from a relative, except that a gift need not be disclosed if the donor  
385 has had no contracts with, non-ministerial licenses or permits from, funding from, or litigation  
386 against the municipality during the previous twenty-four months. The donor, recipient, and  
387 nature of the gift shall be disclosed, as well as the relationship of the donor to the recipient.<sup>44</sup>

388 (e) The name of each person and entity that made any financial contribution, in money, goods,  
389 or services, totaling \$1,000 or more to the municipal officer or employee or his or her campaign  
390 committee within the previous twenty-four months.

391 (f) The name of each relative of the municipal officer or employee who is an officer or  
392 employee of the municipality, including the relative's name, relationship to the municipal officer  
393 or employee, title, and department.

394 (g) Each volunteer office or position held by municipal officer or employee, and by his or her  
395 spouse or registered domestic partner, with any not-for-profit organization.

396 (h) With respect to elected municipal officials and compensated policymakers only, the name of  
397 each person or entity to which the municipal officer or employee, or his or her spouse or  
398 registered domestic partner, owes \$10,000 or more at the time of filing and the type of  
399 obligation, except (i) money owed to relatives and (ii) credit card debts or retail credit accounts  
400 that have been owed for less than 60 days at the time of filing.

401 (i) With respect to elected municipal officials and compensated policymakers only, the name of  
402 each person or entity that owes the municipal officer or employee, or his or her spouse or  
403 registered domestic partner, \$10,000 or more at the time of filing and the type of obligation,  
404 except money owed by relatives.

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<sup>44</sup> "Gift" is defined in section 800(5).

405 (j) Whether the municipal officer or employee is a lobbyist registered pursuant to the legislative  
406 law.

407 5. Annexed to the annual disclosure form provided to municipal officers and employees for  
408 completion shall be a copy of the provisions of section 801 of this article. Upon completing the  
409 annual disclosure statement, the officer or employee shall certify that he or she has, not more  
410 than ten days prior to signing the statement, read and understood -those provisions.

411 6. Good faith efforts. Failure to disclose the information required by subdivision 4 of this section  
412 with respect to a municipal officer's or employee's spouse or registered domestic partner or other  
413 relative shall not constitute a violation of that subdivision if the officer or employee has made a  
414 good faith effort to obtain the information and if he or she also sets forth those efforts in his or  
415 her disclosure statement.

416 7. Municipalities not subject to the provisions of subdivision 1 of this section may require those  
417 officers and employees of the municipality specified in such subdivision to file annual disclosure  
418 statement in accordance with the provisions of this section.<sup>45</sup>

419 8. The following information disclosed pursuant to this section shall not be publicly available:

420 (a) The names and existence of relatives, except those names disclosed pursuant to paragraph (f)  
421 of subdivision 4 of this section;<sup>46</sup>

422 (b) Such other information as the ethics board, upon written application at the time the  
423 disclosure statement is filed, shall determine may constitute a risk to the safety or security of any

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<sup>45</sup> Thus, municipalities not subject to mandatory annual disclosure may voluntarily require annual disclosure of their officers and employees; but any municipality thus requiring disclosure must adopt the disclosure requirements to which the larger municipalities are subject, including the scope of the annual disclosure form, thereby maintaining consistency in municipal annual disclosure statewide and enabling interpretations of those requirements to serve as statewide precedent. Since annual disclosure statements must be filed with an ethics board under subdivisions 2 and 3, any municipality voluntarily establishing an annual disclosure program must also establish an ethics board to administer it.

<sup>46</sup> See Task Force Report at 63.

424 person.<sup>47</sup>

425           **§ 807. Applicant disclosure.**<sup>48</sup> 1. Where a person requests a municipality or a  
426 municipal officer or employee to take or refrain from taking any action (other than a ministerial  
427 act) that may result in a financial benefit both to the requesting person and to any officer or  
428 employee of the municipality or to one of the other persons set forth in subdivision 1 of section  
429 eight hundred one of this article, the requesting person shall disclose the names of any such  
430 potentially benefitted persons, to the extent known to the requesting person at the time of the  
431 request.<sup>49</sup>

432 2. If the request is made in writing, the disclosure shall accompany the request; the officer or  
433 employee receiving the request shall promptly forward a copy of the disclosure to the clerk of the  
434 municipality. If the request is oral and made at a meeting of a board, the disclosure shall be set  
435 forth in the public record of the board and promptly forwarded by the clerk of the board to the  
436 clerk of the municipality. If the request is oral and not made at a meeting of a board, the  
437 disclosure shall be set forth in a writing filed with the clerk of the municipality.

438           **§ 808. Designation of officers and employees required to file annual disclosure**  
439 **statements.** 1. Within ninety days after the effective date of this section, and no later than March  
440 31 of each year thereafter, the chief executive officer of each municipality shall:  
441 (a) Cause to be filed with the municipality's ethics board a list of the names and offices or  
442 positions of all officers and employees of the municipality required to file annual disclosure

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<sup>47</sup> The ethics board thus has the power to grant a request for privacy, protecting from public disclosure information reported on an annual disclosure statement, but only where disclosure of the information may pose a security risk. In view of the nature of the information required to be disclosed, the granting of such privacy requests should be rare. See, e.g., NYC Ad. Code § 12-110(e)(1).

<sup>48</sup> See Task Force Report at 62-63.

<sup>49</sup> For example, if the vice-president for sales of an office supply store knows that the trustee of a village to which the VP is pitching the store's products owns 50% of the store, the VP must disclose that fact. Note that this provision requires actual knowledge.

443 statements pursuant to section eight hundred six of this article; and  
444 (b) Notify all such officers and employees of their obligation to file an annual disclosure  
445 statement.  
446 2. If the municipality has no chief executive officer, then the chair of the municipality's  
447 governing body shall cause the filing and make the notification required by subdivision 1 of this  
448 section.

449 **§ 809. Maintenance of disclosure statements.** 1. The clerk of the municipality shall  
450 transmit promptly to the municipality's ethics board each transactional and applicant disclosure  
451 statement filed with the clerk pursuant to sections eight hundred two and eight hundred seven of  
452 this article.

453 2. The ethics board shall index, maintain on file for six years, and make available for public  
454 inspection and copying all transactional, applicant, and annual disclosure statements filed with  
455 the board, to the extent provided by this article.

456 3. If a municipality has neither established an ethics board nor entered into an agreement  
457 pursuant to subdivision 2 of section eight hundred ten of this article, the clerk of the municipality  
458 shall index, maintain on file, and make available for public inspection for six years all  
459 transactional and applicant disclosure statements filed with the clerk.<sup>50</sup>

460 **§ 810. Ethics boards: establishment.**<sup>51</sup> 1. The governing body of every county, city,  
461 town, village, and school district shall, within one hundred days after the effective date of this  
462 act, establish an ethics board, which shall consist of five members. The governing body of any  
463 other municipality may establish an ethics board, which shall consist of five members. An ethics  
464 board established by a county, city, town, or village shall be established by local law; an ethics

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<sup>50</sup> All municipalities mandated to have annual disclosure must have an ethics board. See sections 806(1), 810(1).

<sup>51</sup> See Task Force Report at 64-66.

465 board established by any other municipality shall be established by resolution.

466 2. Consistent with the requirements of article five-G of this chapter, except as otherwise  
467 specified in this article, municipalities may enter into, amend, cancel, and terminate agreements  
468 for the ethics board of one municipality to act also as the ethics board for another municipality or  
469 for the establishment among the municipalities of a joint ethics board. The power to enter into  
470 such agreements shall extend to all municipalities, as defined in this article, and shall not be  
471 limited to municipal corporations and districts as defined in article five-G of this chapter.  
472 Municipalities may enter into such agreements by resolution.

473 **§ 811. Ethics boards: qualifications of members.**<sup>52</sup> 1. Members of the ethics board  
474 shall be chosen for their independence, integrity, civic commitment, and high ethical standards.

475 2. No ethics board member shall hold office in a political party. No more than two members of  
476 the ethics board shall be registered in the same political party. An ethics board member may  
477 make campaign contributions but may not otherwise participate in any election campaign.<sup>53</sup>

478 3. No ethics board member shall be employed or act as a lobbyist, or appear on behalf of another  
479 person, before the municipality or before any other municipality served by the ethics board or  
480 before any municipality of which any municipality served by the ethics board is a part. No ethics  
481 board member shall enter into any contract with the municipality or any other municipality  
482 served by the ethics board, except a contract for the receipt of municipal services or benefits, or  
483 use of municipal facilities, on the same terms and conditions as are generally available to  
484 residents or a class of residents of the municipality.

485 4. No ethics board member shall hold elective office in the municipality or in any other  
486 municipality served by the ethics board or in any municipality of which the municipality is a part

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<sup>52</sup> See Task Force Report at 66.

<sup>53</sup> “Participation” should be reasonably clear: working on behalf of a political candidate. Expressing one’s view by way of a bumper sticker or a pin is not participation.

487 or be an appointed officer or employee of any such municipalities. No member of a county  
488 ethics board may be an elected or appointed officer or employee of any municipality within the  
489 county.

490 **§ 812. Ethics boards: appointment of members; term of office.**<sup>54</sup> 1. Within sixty days  
491 after establishing an ethics board, and no later than December thirty-first each year thereafter, the  
492 municipality or municipalities served by the ethics board shall appoint the members of the board.

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

494 (a) If the municipality has an elective chief executive officer, as defined in section two of the  
495 municipal home rule law, that officer shall appoint the ethics board members with the advice and  
496 consent of the governing body of the municipality. If the governing body fails to act within  
497 forty-five days of receipt of the nomination from the elective chief executive officer, the  
498 nomination shall be deemed to be confirmed.

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

501 3. The term of office of ethics board members shall be five years and shall run from January first  
502 through December thirty-first, except that of the members first appointed one member shall serve  
503 until December thirty-first of the year in which the board is established, one shall serve until the  
504 second December thirty-first, one shall serve until the third December thirty-first, one shall serve  
505 until the fourth December thirty-first, and one shall serve until the fifth December thirty-first.

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

508 5. Ethics board members shall not receive compensation for their service but shall be  
509 reimbursed for reasonable expenses incurred in the performance of their official duties.

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<sup>54</sup> See Task Force Report at 66.

510           **§ 813. Ethics boards: vacancies.**<sup>55</sup> 1. When a vacancy occurs in the membership of an  
511 ethics board, the vacancy shall, within sixty days, be filled for the unexpired portion of the term  
512 in the same manner as the original appointment.<sup>56</sup> Any person appointed to fill a vacancy on an  
513 ethics board shall meet the qualifications set forth in section eight hundred eleven of this article.

514 2. In municipalities where the elective chief executive officer of the municipality appoints  
515 members of the ethics board, if such elective chief executive officer has not submitted to the  
516 governing body a nomination for appointment of a successor at least sixty days prior to the  
517 expiration of the term of the member whose term is expiring, the term of the member in office  
518 shall be extended for an additional year and the term of the successor to such member shall be  
519 shortened by an equal amount of time. If the governing body fails to act within forty-five days  
520 of receipt of the nomination from the elective chief executive officer, the nomination shall be  
521 deemed to be confirmed.

522 3. In municipalities where the governing body appoints ethics board members, if the governing  
523 body has not appointed an ethics board member prior to the expiration of the term of the member  
524 whose term is expiring, the term of the member in office shall be extended for an additional year  
525 and the term of the successor to such member shall be shortened by an equal amount of time.

526           **§ 814. Ethics boards: removal of members.** An ethics board member may be removed  
527 for cause from office in the same manner in which he or she was appointed, after written notice  
528 and opportunity for reply. Grounds for removal shall be failure to meet the qualifications set

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<sup>55</sup> See Task Force Report at 66.

<sup>56</sup> Note that vacancies in village office are generally not handled in this manner. For example, the mayor, subject to trustees approval, appoints ZBA and planning board members but fills vacancies on the ZBA and planning board without trustee approval (Village Law §§ 7-712(2), (8), 7-718(1), (8)). However, attempting to provide different procedures for filling vacancies in each type of municipality would seem cumbersome and difficult. In addition, given the sensitivity of ethics board appointments, it would seem preferable to require the same procedure to fill vacancies as to make appointments upon the expiration of term.

529 forth in section eight hundred eleven of this article, substantial neglect of duty, gross misconduct  
530 in office, inability to discharge the powers or duties of office, or violation of this article.

531       **§ 815. Ethics boards: meetings.**<sup>57</sup> At its first meeting each year, an ethics board shall  
532 elect a chair from among its members. A majority the board shall be required for the board to  
533 take any action. The chair or a majority of the board may call a meeting of the board.

534       **§ 816. Ethics boards: budget; jurisdiction, powers, and duties.**<sup>58</sup> 1. Each municipality  
535 that establishes an ethics board shall annually appropriate such funds for the expenses of the  
536 ethics board as may be necessary to enable the ethics board to meet its duties and responsibilities  
537 pursuant to this article, including, when reasonably deemed as necessary by the ethics board,  
538 appointment by the ethics board of counsel for the board independent of the counsel for the  
539 municipality.<sup>59</sup>

540 2. An ethics board may act only with respect to current, prospective, or former officers and  
541 employees of the municipality or other municipalities subject to the board's jurisdiction and with  
542 respect to other persons subject to this article.

543 3. The termination of a municipal officer's or employee's term of office or employment with the  
544 municipality shall not affect the jurisdiction of the municipality's board with respect to the  
545 requirements imposed by this article or by the municipality's local ethics act, if any, on the  
546 former officer or employee.<sup>60</sup>

547 4. A municipal ethics board shall have the following powers and duties:

548 (a) To prescribe and promulgate rules and regulations governing its own internal organization  
549 and procedures in a manner consistent with this article, including rules of procedure governing

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<sup>57</sup> See Task Force Report at 66.

<sup>58</sup> See Task Force Report at 64-71.

<sup>59</sup> See Task Force Report at 66-67.

<sup>60</sup> Thus an official may not by resigning stymie an ethics board's investigation, prosecution, and imposition of penalties for acts committed while in public service.

550 the investigation of complaints and the conduct of enforcement proceedings and hearings, where  
551 the ethics board has such enforcement authority;

552 (b) To appoint an executive director, such other staff, and hearing officers as may be necessary to  
553 carry out its duties under this article, and to delegate authority to the executive director, if any, to  
554 act in the name of the board between meetings of the board, provided that the delegation is in  
555 writing and the specific powers to be delegated are enumerated and further provided that the  
556 board shall not delegate the power to initiate an investigation, issue any subpoena, determine  
557 violations, recommend disciplinary action, impose any civil fine, refer any matter to a  
558 prosecutor, or render any advisory opinion as the opinion of the board.<sup>61</sup> An executive director  
559 shall meet the qualifications of an ethics board member as specified in section eight hundred  
560 eleven of this article, except as to political party affiliation;

561 (c) To require the assistance of the municipal attorney and the clerk of the municipality in the  
562 performance of the ethics board's duties, provided, however, that any communications between  
563 the ethics board and such municipal attorney or municipal clerk shall be confidential and not  
564 disclosed to anyone other than the ethics board or its designees, except as otherwise required by  
565 state or federal law or by this article;<sup>62</sup>

566 (d) To review, index, and maintain on file, and make available for public inspection and copying,

567 (i) lists of officers and employees, pursuant to section eight hundred eight, required to  
568 file annual disclosure statements, and

569 (ii) transactional disclosure statements, applicant disclosure statements, and annual

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<sup>61</sup> An Executive Director may, therefore, conduct hearings on behalf of the board as a designated hearing officer and may issue informal opinions, such as an attorney staff opinion, which, though not binding on the board, would prevent the board from prosecuting the recipient of the opinion unless the board first reversed the staff opinion and the recipient subsequently acted in contravention of the board's revised advice.

<sup>62</sup> See Task Force Report at 66-67.

570 disclosure statements filed with the board pursuant to sections eight hundred two, eight  
571 hundred six, eight hundred seven, eight hundred nine, and eight hundred seventeen of this  
572 article;

573 (e) To review, index, maintain on file, and dispose of sworn complaints and to make notifications  
574 and conduct investigations pursuant to sections eight hundred seventeen and eight hundred  
575 eighteen of this article;

576 (f) To conduct hearings, recommend disciplinary action, assess penalties, make referrals, and  
577 initiate appropriate actions and proceedings pursuant to section eight hundred nineteen of this  
578 article;

579 (g) To grant waivers pursuant to section eight hundred twenty of this article;

580 (h) To render, index, and maintain on file advisory opinions pursuant to section eight hundred  
581 twenty-one of this article;

582 (i) To provide training and education to municipal officers and employees and any other persons  
583 subject to this article, pursuant to section eight hundred twenty-three of this article;

584 (j) To prepare an annual report and recommend the adoption of, or changes to, the municipality's  
585 local ethics act, if any, pursuant to section eight hundred twenty-four of this article; and

586 (k) To provide for public inspection and copying of certain records pursuant to section eight  
587 hundred twenty-seven of this article.

588 5. The governing body of a municipality may prescribe additional powers and duties for its ethics  
589 board, provided that those additional powers and duties do not conflict with this article.

590 Counties, cities, towns, and villages shall prescribe such additional powers and duties by local  
591 law; other municipalities may prescribe them by resolution. Only a county ethics board shall  
592 have the power to grant a waiver of any of the provisions of this article.

593           **§ 817. Review of lists and disclosure statements.**<sup>63</sup> 1. Each ethics board shall review:  
594 (a) The lists of officers and employees, prepared pursuant to section eight hundred eight of this  
595 article, to determine whether the lists are complete and accurate. The board shall add the name of  
596 any other officer or employee which the board determines should appear on the list and shall  
597 remove the name of any officer or employee which the board determines should not appear on  
598 the list.  
599 (b) All annual disclosure statements to determine whether any person required to file such a  
600 statement has failed to file it, has filed a deficient statement, or has filed a statement that on its  
601 face reveals a possible or potential violation of this article or the local ethics act, if any.<sup>64</sup>  
602 (c) All transactional disclosure statements.  
603 (d) All applicant disclosure statements.

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

609           **§ 818. Investigations.**<sup>65</sup> 1. The provisions of this section and of section eight hundred  
610 nineteen shall apply in: (a) all counties; (b) all cities, towns, and villages with a population of ten  
611 thousand or more; (c) all cities, towns, and villages with a population of less than ten thousand  
612 that have by local law empowered their ethics board to enforce this article and the municipality's

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<sup>63</sup> See Task Force Report at 69.

<sup>64</sup> Few ethics board will possess the resources to compare annual disclosure statements against other lists or databases, such as a list of all municipal contracts, to determine whether a filer might have a conflict of interest. Mandated ethics board review must, therefore, be limited to examining the statements on their face.

<sup>65</sup> See Task Force Report at 69-71.

613 local ethics act, if any; and (d) all other municipalities that have by resolution empowered their  
614 ethics board to enforce this article and the municipality's local ethics act, if any. The  
615 municipalities specified in paragraphs (c) and (d) of this subdivision shall be subject to all of the  
616 provisions of this section and of section eight hundred nineteen.<sup>66</sup>

617 2. Upon receipt of a sworn complaint by any person alleging facts that, if proven, may constitute  
618 a violation of this article or of a local ethics act, or upon determining on its own initiative that a  
619 violation of this article or of a local ethics act may have occurred, an ethics board shall have the  
620 power and duty to conduct any investigation necessary to carry out the provisions of this article  
621 and the local ethics act, if any. In conducting any such investigation, the ethics board may  
622 administer oaths or affirmations, subpoena witnesses, compel their attendance, and require the  
623 production of any books or records which it may deem relevant and material.

624 3. An ethics board shall state in writing the disposition of every sworn complaint it receives and  
625 of every investigation it conducts and shall set forth the reasons for the disposition. All such  
626 statements and all sworn complaints shall be indexed and maintained on file by the board.

627 4. Any person filing a sworn complaint with an ethics board shall be notified in writing of the  
628 disposition of the complaint.

629 5. All documents and hearings relating to the investigation and hearing of any alleged violation  
630 of this article shall be confidential and not available for public inspection or open to the public.

631 All dispositions, including negotiated dispositions, in which the ethics board finds a violation of  
632 this article or a local ethics act shall be available for public inspection and copying.

633 6. Nothing in this section shall be construed to permit any ethics board to conduct an

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<sup>66</sup> Enforcement by the local ethics board is mandatory in all counties and in all cities with a population of 10,000 or more. Other municipalities may, but need not, empower their ethics board to enforce the ethics laws. If, however, such other municipalities do so, then they are subject to all of the enforcement provisions of Article 18; to ensure effective enforcement, municipalities may not pick and choose the enforcement process to which they will be subject.

634 investigation of itself or of any of its members or staff. Any ethics board that receives a  
635 complaint alleging that the board or any of its members or staff has violated any provision of this  
636 article, or any other law, shall promptly transmit a copy of the complaint to the elective chief  
637 executive officer of the municipality, if any, and to the chair of the governing body of the  
638 municipality.

639       **§ 819. Hearings; assessment of penalties.**<sup>67</sup> 1. Disciplinary action. In its discretion, after  
640 a hearing providing for due process procedural mechanisms no less extensive than those  
641 provided in the state administrative procedure act, and subject to any applicable provisions of  
642 law, an ethics board may recommend appropriate disciplinary action pursuant to subdivision 1 of  
643 section eight hundred twenty-eight of this article. The recommendation of the ethics board shall  
644 be made to the appointing authority or person or body authorized by law to impose such  
645 sanctions. The board shall conduct and complete the hearing with reasonable promptness, unless  
646 in its discretion the board refers the matter to the authority or person or body authorized by law  
647 to impose disciplinary action or unless the board refers the matter to a criminal prosecutor. If  
648 such a referral is made, the board may adjourn the matter pending determination by the authority,  
649 persons, body, or prosecutor.

650 2. Civil fine. In its discretion and after a hearing providing for due process procedural  
651 mechanisms, such as those provided in the state administrative procedure act, an ethics board,  
652 pursuant to subdivision 2 of section eight hundred twenty-eight of this article, may assess a civil  
653 fine, not to exceed five thousand dollars, or such higher amount as the municipality by local law

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<sup>67</sup> See Task Force Report at 69-71. Note that the ethics board would have no criminal jurisdiction, no power to impose disciplinary action, and no power to seek damages for a violation of the ethics code. See section 828, Only counties, cities, towns, villages, and school districts are required to have ethics boards (section 810); and only counties and those cities, towns, and villages with a population of 10,000 or more are required to empower their ethics boards to enforce Article 18 and the local ethics law (section 818(1)).

654 (in the case of counties, cities, towns, or villages) or resolution (in the case of all other  
655 municipalities) may establish, for each violation, upon any municipal officer or employee or  
656 other person found by the board to have violated this article or the municipality's local ethics  
657 act, if any. The board shall conduct and complete the hearing with reasonable promptness. The  
658 civil fine shall be payable to the municipality.

659 3. Damages. A municipality may initiate an action in the supreme court of the state of New York  
660 to obtain damages, as provided in subdivision 3 of section eight hundred twenty-eight of this  
661 article.

662 4. Disgorgement. A municipality, or the ethics board on behalf of the municipality, may initiate  
663 an action or special proceeding, as appropriate, in the supreme court of the State of New York to  
664 obtain disgorgement, as provided in subdivision 4 of section hundred twenty-eight ten of this  
665 article.

666 5. Debarment. A municipality, or the ethics board on behalf of the municipality, may initiate an  
667 action or special proceeding, as appropriate, in the supreme court of the State of New York for  
668 an order of debarment, as provided in section eight hundred thirty of this article.

669 6. Injunctive relief. A municipality, or the ethics board on behalf of the municipality, may initiate  
670 an action or special proceeding, as appropriate, in the supreme court of the State of New York  
671 for injunctive relief to enjoin a violation of this article or the municipality's local ethics act, if  
672 any, or to compel compliance with this article or the local ethics act, if any, as provided in  
673 section eight hundred thirty-one of this article.

674 7. Prosecutions; state proceedings. An ethics board may at any time refer to the appropriate  
675 prosecutor possible violations of any criminal law. Nothing contained in this article shall be  
676 construed to restrict the authority of any prosecutor or the attorney general to prosecute any  
677 violation of this article or of any local ethics act or of any other law.

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

681       **§ 820. Waivers.** 1. Upon written application by a municipal officer or employee, or any  
682 other person subject to a local ethics act, and upon written approval by the municipal agency or  
683 agencies involved, and upon a showing that permitting such officer, employee, or other person to  
684 hold an interest or engage in conduct otherwise prohibited by a local ethics act, or excusing an  
685 act otherwise required by a local ethics act, would not conflict with the purposes and interests of  
686 the municipality, the ethics board for that municipality may grant the applicant a waiver of any  
687 of the provisions of such local ethics act, provided that an ethics board may not authorize any  
688 interest or conduct prohibited by this article, or excuse any act required by this article, except as  
689 provided in subdivision 2 of this section. Except as provided in subdivision 2 of this section, an  
690 ethics board may grant waivers pursuant to this subdivision only with respect to provisions of the  
691 local ethics acts of the municipalities served by the ethics board.

692 2. Upon written application by a municipal officer or employee, or any other person subject to  
693 this article, and upon written approval by the municipal agency or agencies involved, and upon a  
694 showing that permitting such officer, employee, or other person to hold an interest or engage in  
695 conduct otherwise prohibited by this article, or excusing an act otherwise required by this article,  
696 would not conflict with the purposes and interests of the municipality, a county ethics board may  
697 grant the applicant a waiver of any of the provisions of sections eight hundred one, eight hundred  
698 two, eight hundred four, -eight hundred six, or eight hundred seven of this article. A county  
699 ethics board may grant waivers pursuant to this subdivision only with respect to the county and

700 municipalities within the county.<sup>68</sup>

701 3. A waiver may be granted only as to prospective conduct. Waivers shall be in writing and

702 shall state the grounds, including the relevant facts, upon which they are granted. An applicant's

703 misstatement of a material fact may nullify the waiver. All waivers granted by an ethics board

704 shall be made publicly available by the board.<sup>69</sup> Within ten days after granting a waiver, the

705 ethics board shall post the waiver on the board's website. All applications, decisions, and other

706 records and proceedings relating to waivers shall be indexed and maintained on file by the ethics

707 board.<sup>70</sup>

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<sup>68</sup> Note that the county ethics board may not waive a potential violation of section 805 (inducement of a violation), nor should the county ethics board be permitted to grant such a waiver. That said, if the board grants a waiver to the person to be induced, then the inducer would not violate section 805. For example, if an employee requests a waiver to permit her to hire her son as an unpaid summer intern, her supervisor would not violate section 805 by approving the hire.

<sup>69</sup> See Task Force Report at 71-72.

<sup>70</sup> The standard for waivers - "would not conflict with the purposes and interests of the municipality" - has worked well in New York City (NYC Charter § 2604(e)) for over 20 years. This proposed section authorizes county ethics boards to grant waivers of Article 18 for county officials and officials of municipalities within the county; other ethics boards may not waive the provisions of Article 18 but only the provisions of their local ethics act, and then only if the waiver would not permit conduct or interests prohibited by Article 18. Waivers may not be used to legitimize a past violation of the ethics code. The extensive experience with waivers in New York City proves instructive. Most waivers in New York City result from the prohibited interest provision found in NYC Charter § 2604(a), although waivers of the post-employment restrictions are also occasionally granted. Since the Bill contains no prohibited interest provision, since only the largest municipalities are likely to often need post-employment waivers (most would probably occur, as in New York City, in the context of social services and education), and since granting local ethics boards the power to waive the provisions of Article 18 can gut the ethics law, waiver power must be limited to county ethics boards, which, however, must be attuned to the need for prompt action on waiver requests. Although section 827 already provides for the public availability of waivers, that public availability should probably be restated here, especially to ensure that the county ethics boards make all waivers on file with them publicly available. Note that, while the waiver is public, the request for the waiver is not; the waiver must specify the facts upon which it is granted. The ethics board assumes the truth of the facts submitted by the applicant, as the ethics board will lack the resources to verify such facts; but a misstatement of facts may nullify the waiver.

708           **§ 821. Advisory opinions.**<sup>71</sup> 1. Upon the written request of any officer or employee of a  
709 municipality or his or her department head or of any other person subject to this article or a local  
710 ethics act, the ethics board for that municipality shall render a written advisory opinion with  
711 respect to the interpretation or application of this article or the municipality’s local ethics act to  
712 the future conduct or interests of such municipal officer or employee or other person. An  
713 advisory opinion may be sought only as to the conduct or interests of the requesting person or, in  
714 the case of a municipal department head, his or her subordinate. For purposes of this section, an  
715 officer or employee of a municipality includes a prospective and former officer or employee; and  
716 department head includes the prospective department head of a prospective officer or employee  
717 and the former department head of a former officer or employee.<sup>72</sup>  
718 2. Advisory opinions and requests for advisory opinions shall be indexed and maintained on file  
719 by the ethics board. The board shall publish, and post on the board’s website, such of its  
720 advisory opinions as it believes will provide guidance to other municipal officers or employees  
721 or other persons, provided, however, that the publicly available copy of such opinions shall  
722 contain such deletions as may be necessary to prevent disclosure of the identity of the involved  
723 officers and employees or other persons.<sup>73</sup>

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<sup>71</sup> See Task Force Report at 68-69.

<sup>72</sup> As with most ethics codes, advice may be sought only as to future conduct; past conduct must be handled as an enforcement matter (or not at all). See, e.g., NYC Charter § 2603(c). An official’s department head may request advice as to the official’s interest or conduct. Otherwise authorizing a municipal official to seek advice as to the interest or conduct of another official opens the advisory function to abuse. Authorizing the elective chief executive officer to request advice as to the conduct of another elected official or that official’s staff would likely inject politics into the advice process.

<sup>73</sup> Note that not all opinions by an ethics board need be published but only “formal” advisory opinions that will guide the conduct of other officials. For example, of the 289 opinions issued by the New York City Conflicts of Interest Board in 2010 (in addition to 234 waivers), only two resulted in formal advisory opinions.

724           **§ 822. Judicial review.** 1. Any person aggrieved by a decision of an ethics board may  
725 seek judicial review and relief pursuant to article seventy-eight of the civil practice law and rules.  
726 2. Any person who has submitted to an ethics board a written request for an advisory opinion  
727 may bring an action or special proceeding, as appropriate, for a determination of the question  
728 posed in the request, provided that:  
729 (a) it shall appear by and as an allegation in the complaint or petition that at least six months  
730 have elapsed since the filing of the request and that the ethics board has failed to file any  
731 determination in the matter; and  
732 (b) the action or special proceeding shall be commenced within ten months after the submission  
733 of the request for the advisory opinion.

734           **§ 823. Training and education.**<sup>74</sup> 1. Every ethics board:  
735 (a) Shall make information concerning this article and the municipality's local ethics act  
736 available to the officers and employees of the municipality, to other persons subject to this article  
737 and such local ethics act, to the public, and to persons interested in doing business with the  
738 municipality;  
739 (b) Shall develop educational materials, including a plain language guide, and an educational  
740 program on the provisions of this article and the municipality's local ethics act for the officers  
741 and employees of the municipality, for other persons subject to this article and such local ethics  
742 act, for the public, and for persons interested in doing business with the municipality.<sup>75</sup>

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<sup>74</sup> See Task Force Report at 67-68.

<sup>75</sup> Such educational materials and programs should include a plain language guide, a video and interactive on-line training program, and live training on the requirements of Article 18 and the local ethics act, if any, and should advise officials of the availability of free, confidential ethics advice from the board of ethics and warn them of the penalties for noncompliance. While this Bill eschews imposing any mandates on the state, in view of the current budget crisis, consideration should be given to requiring the Department of State, which already provides Article 18 training programs and materials, to assist municipal ethics boards by developing a

743 2. The elective chief executive officer of the municipality, if any, or otherwise the chair of its  
744 governing body, shall assist the ethics board in the publication, posting, and distribution of ethics  
745 educational materials and in the development and presentation of ethics educational programs.

746 3. Each municipal officer or employee shall receive ethics training, in such form as determined  
747 by the ethics board after consultation with the appropriate department head, at least once every  
748 two years.

749 4. (a) Each member of an ethics board shall complete, at a minimum, four hours of training each  
750 year designed to enable such members to more effectively carry out their duties. Training  
751 received by a member in excess of four hours in any one year may be carried over by the  
752 member into succeeding years in order to meet the requirements of this subdivision. Such  
753 training shall be approved by the governing body of the municipality and may include, but not be  
754 limited to, training provided by a municipality, state agency, statewide municipal association,  
755 college, bar association, or other similar entity. Training may be provided in a variety of formats,  
756 including, but not limited to, electronic media, video, distance learning, and traditional classroom  
757 training.

758 (b) To be eligible for reappointment to the ethics board, an ethics board member shall have  
759 completed the training required by this subdivision.

760 (c) The training required by this subdivision may be waived or modified by resolution of the  
761 governing body of the municipality when, in the judgment of that body, such a waiver is in the  
762 best interest of the municipality to do so.

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video and interactive web-based training application, as well as a plain language guide to Article 18.

763 (d) No decision of an ethics board shall be voided, declared invalid, or otherwise impaired  
764 because of a failure to comply with this subdivision.<sup>76</sup>  
765 5. The failure of a municipal officer or employee to receive the training required by this section  
766 shall have no effect on the duty of such public servant to comply with this chapter or on the  
767 enforcement of the provisions thereof.<sup>77</sup>

768 **§ 824. Annual reports; review of ethics laws.** 1. Each ethics board shall prepare and  
769 submit an annual report to the municipality's elective chief executive officer, if any, and the  
770 municipality's governing body summarizing the activities of the board. The ethics board shall  
771 post a copy of its annual report on the board's website.  
772 2. The annual report of the ethics board may also recommend changes to the text or  
773 administration of the municipality's local ethics act. To that end, the ethics board shall  
774 periodically review the local ethics act and the board's rules, regulations, and administrative  
775 procedures to determine whether they promote integrity, public confidence, and participation in  
776 municipal government and whether they set forth clear and enforceable, common sense standards

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<sup>76</sup> See Task Force Report at 67. This subdivision reflects similar training requirements for members of planning boards and zoning boards of appeals. See Town Law § 267(7-a), Village Law § 7-712(7-a) (zoning boards) and Town Law § 271(7-a), Village Law § 7-718(7-a) (planning boards). Such training should not be limited to the substantive requirements of Article 18 but should also provide model rules and regulations for ethics boards as well as training on the adoption and implementation of procedures and on running the board, such as how to draft and issue an advisory opinion, conduct training sessions for municipal officials, implement and maintain an annual disclosure program, investigate a possible violation of Article 18, and conduct an enforcement proceeding.

<sup>77</sup> See current Gen. Mun. Law § 807 (“Failure to post any such copy [of Article 18] shall have no effect on the duty of compliance with this article, nor with the enforcement of the provisions thereof”). See also NYC Charter § 2603(b)(2)(c) (“The failure of a public servant to receive the training required by this paragraph, to receive a copy of this chapter, or to sign the statement required by this paragraph, or the failure of the agency to maintain the required statement on file or record of training completed, shall have no effect on the duty of such public servant to comply with this chapter or on the enforcement of the provisions thereof”). Such provisions seek to head off the argument that failure of an official to receive ethics training somehow absolves him or her of the duty to comply with the ethics law, an argument that, while completely fallacious (ignorance of the law is no excuse), can require the squandering of municipal resources to refute.

777 of conduct.

778           **§ 825. Local ethics acts.**<sup>78</sup> 1. The governing body of every municipality that has  
779 established an ethics board, or entered into an agreement pursuant to subdivision 2 of section  
780 eight hundred ten of this article, may adopt a local ethics act. A county, city, town, or village  
781 shall adopt a local ethics act by local law; any other municipality shall adopt a local ethics act by  
782 resolution.

783 2. The provisions of any local ethics act adopted pursuant to subdivision 1 of this section shall be  
784 at least as stringent in scope and substance as the provisions of this article, shall not permit any  
785 conduct or interest prohibited by this article, but may prohibit conduct or interests permitted by  
786 this article, and shall contain posting and distribution requirements for the local ethics act  
787 substantially similar to those contained in section eight hundred thirty-two of this article.

788 3. Any code of ethics adopted pursuant to section two of chapter nine hundred forty-six of the  
789 laws of nineteen hundred sixty-four, as amended, including, without limitation, the provisions of  
790 any such code of ethics governing the jurisdiction, power, and duties of the municipal ethics  
791 board, shall be deemed repealed to the extent that it is less stringent in scope or substance than  
792 this article or permits conduct prohibited by this article.<sup>79</sup>

793 4. Any local ethics act adopted by a municipality shall apply only to the officers and employees  
794 of that municipality.<sup>80</sup>

795           **§ 826. Local government agencies serving more than one municipality.**

796 1. Within sixty days after the effective date of this section, any local government agency the

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<sup>78</sup> See Task Force Report at 65.

<sup>79</sup> Requiring municipalities with strong local ethics acts to reenact them would not only impose a burden upon those municipalities but also would run the substantial risk that the ethics code would be watered down or not reenacted at all.

<sup>80</sup> Note that this provision does not authorize a municipality to adopt local ethics act restrictions on private parties. Such authority, to the extent it exists, must be found elsewhere.

797 members of the governing body of which are appointed by more than one municipality shall, by  
798 resolution, designate to which one of those municipalities' jurisdiction the local government  
799 agency shall be subject for purposes of this article. Within thirty days after adopting that  
800 resolution, the local government agency shall file a copy of it with each of the affected  
801 municipalities.

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

805 **§ 827. Public inspection and copying of records; public access to meetings.**<sup>81</sup> 1.

806 Notwithstanding the provisions of article six of the public officers law, the only records of an  
807 ethics board which shall be available for public inspection and copying are:

808 (a) Transactional, annual, and applicant disclosure statements filed pursuant to section eight  
809 hundred two, section eight hundred six, and section eight hundred seven of this article, to the  
810 extent provided by this article;

811 (b) Lists filed pursuant to section eight hundred eight of this article;

812 (c) Agreements proposed or adopted pursuant to subdivision 2 of section eight hundred ten of  
813 this article;

814 (d) Rules and regulations of the ethics board adopted pursuant to paragraph (a) of subdivision 4  
815 of section eight hundred sixteen of this article;

816 (e) Delegation of powers to the executive director pursuant to paragraph (b) of subdivision 4 of

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<sup>81</sup> See Task Force Report at 63, 67,71-72. The provisions of this section largely parallel the analogous provisions for the Commission on Public Integrity. See Exec. Law § 94(17), as amended by 2007 N.Y. Laws ch. 14, § 2-a. Despite suggestions to the contrary, it would seem that essentially the same confidentiality rules should exist for municipal ethics boards as for the Commission on Public Integrity. Failure to fully protect confidentiality discourages complaints and requests for advice, to the substantial detriment of ethics in government.

817 section eight hundred sixteen of this article;

818 (f) Final dispositions by an ethics board that find a municipal officer or employee to have  
819 violated any provision of this article or a local ethics act;

820 (g) Waivers granted pursuant to section eight hundred twenty of this article;

821 (h) Advisory opinions published pursuant to subdivision 2 of section eight hundred twenty-one  
822 of this article, provided that information identifying the person requesting the opinion is deleted  
823 from the copy made available for public inspection and copying;

824 (i) Educational materials, annual reports, and local ethics acts adopted or issued pursuant to  
825 sections eight hundred twenty-three, eight hundred twenty-four, and eight hundred twenty-five of  
826 this article;

827 (j) Resolutions adopted pursuant to section eight hundred twenty-six of this article.

828 2. Notwithstanding the provisions of article seven of the public officers law, (a) no meeting or  
829 proceeding of an ethics board concerning the conduct or interest of an individual municipal  
830 officer or employee or other person subject to this article or misconduct, nonfeasance, or neglect  
831 by an individual municipal officer or employee or other person subject to this article shall be  
832 open to the public, except upon the request of the officer or employee or other person subject to  
833 this article and with the consent of the board; and

834 (b) all other meetings and proceedings of an ethics board shall be open to the public to the extent  
835 required by article seven of the public officers law.<sup>82</sup>

836 **§ 828. Penalties.**<sup>83</sup> 1. Disciplinary action. Any municipal officer or employee who

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<sup>82</sup> Thus, all enforcement matters and legal advice matters pending before the ethics board would be exempt from the Open Meetings Law. Ethics training and education matters, rulemaking, and the like would have to be held in public session.

<sup>83</sup> See Task Force Report at 69-71. As noted above, the ethics board would have no criminal jurisdiction, no power to impose disciplinary action, and no power to seek damages for a violation of the ethics code. See section 819, Only counties, cities, towns, villages, and school

837 engages in any action that violates any provision of this article may be warned or reprimanded or  
838 suspended or removed from office or employment, or be subject to any other sanction authorized  
839 by law or collective bargaining agreement, by the appointing authority or person or body  
840 authorized by law to impose such sanctions. A warning, reprimand, suspension, removal, or  
841 other authorized sanction may be imposed in addition to any other penalty contained in this  
842 article or in any other provision of law.

843 2. Civil fine. Any person, whether or not a municipal officer or employee, who violates any  
844 provision of this article may be subject to a civil fine of up to five thousand dollars for each  
845 violation. A civil fine may be imposed in addition to any other penalty contained in any other  
846 provision of law or in this article.

847 3. Damages. Any person, whether or not a municipal officer or employee, who violates any  
848 provision of this article shall be liable in damages to the municipality for any losses or increased  
849 costs incurred by the municipality as a result of the violation. Such damages may be imposed in  
850 addition to any other penalty contained in any other provision of law or in this article, other than  
851 disgorgement pursuant to subdivision 4 of this section.

852 4. Disgorgement. Any person, whether or not a municipal officer or employee, who  
853 intentionally or knowingly violates any provision of this article shall be liable for disgorgement  
854 to the municipality of the value of any gain or benefit obtained by the person as a result of the  
855 violation. Disgorgement may be imposed in addition to any other penalty contained in any other  
856 provision of law or in this article, other than damages pursuant to subdivision three of this  
857 section.

858 5. Misdemeanor. Any person, whether or not a municipal officer or employee, who intentionally

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districts are required to have ethics boards (section 810); and only counties and those cities, towns, and villages with a population of 10,000 or more are required to empower their ethics boards to enforce Article 18 and the local ethics law (section 818(1)).

859 or knowingly violates any provision of this article with the intent to obtain a financial benefit  
860 shall be guilty of a class A misdemeanor. Upon conviction thereof, a municipal officer or  
861 employee shall forfeit his or her municipal office or employment.

862 6. Nothing contained in this article shall prevent the municipality from seeking greater or  
863 additional damages, or other remedies, pursuant to any other law, rule, or regulation, including,  
864 without limitation, any local ethics act enacted pursuant to local law.<sup>84</sup>

865 **§ 829. Void contracts.** Any contract or agreement entered into by or with a municipality  
866 which results in or from a violation of any provision of this article shall be void unless ratified by  
867 the governing body of the municipality. Such ratification shall not affect the imposition of any  
868 criminal or civil penalties pursuant to this article or any other provision of law.

869 **§ 830. Debarment.**<sup>85</sup> 1. Any person, whether or not a municipal officer or employee, who  
870 intentionally or knowingly violates any provision of this article may be prohibited from entering  
871 into any contract with any municipality, local agency, or state agency or with the judiciary or the  
872 state legislature for a period not to exceed three years, as provided in subdivision 5 of section  
873 eight hundred nineteen of this article.<sup>86</sup>

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

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

878 4. Under this section, a corporation, partnership, or other entity shall not be held vicariously  
879 liable for the actions of an employee. A corporation, partnership, or other entity shall not be

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<sup>84</sup> Thus, a county, city, town, or village could, by local law, enact a higher civil fine.

<sup>85</sup> See Task Force Report at 62-63.

<sup>86</sup> Thus, section 830(1) does not require automatic debarment upon an ethics board's finding of an intentional or knowing violation of Article 18. A court proceeding is required (section 819(5)).

880 debarred because of the actions of an officer, employee, or other person unless the officer or  
881 employee acted in the execution of company policy or custom or unless the officer, employee, or  
882 other person controlled the entity. A store, region, division, or other unit of an entity shall not be  
883 debarred because of the actions of an employee of that unit unless the employee acted at the  
884 direction, or with the actual knowledge or approval, of the manager of the unit. For purposes of  
885 this section, “control” means the possession, direct or indirect, of the power to direct or cause the  
886 direction of the management and policies of an entity, whether through the ownership of voting  
887 securities, by contract, or otherwise.<sup>87</sup>

888       **§ 831. Injunctive relief.**<sup>88</sup> 1. Any resident, officer, or employee of a municipality may  
889 bring a special proceeding pursuant to the civil practice law and rules for injunctive relief to  
890 enjoin a current or former officer or employee of that municipality, or other person subject to this  
891 article, from violating this article or to compel any current or former officer or employee of that  
892 municipality, or other person subject to this article, to comply with the provisions of this article.  
893 In lieu of, or in addition to, injunctive relief, the special proceeding may seek a declaratory  
894 judgment.  
895 2. No special proceeding shall be prosecuted or maintained pursuant to subdivision 1 of this  
896 section, unless:

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<sup>87</sup> After the introduction of the Temporary State Commission’s Bill in 1991, the Temporary State Commission recommended the addition of this paragraph, which is meant to address a concern of the Business Council of New York State that section 830 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 company policy and directives. The Business Council agreed with that change. This subdivision, however, adds “officer,” “other person,” and the control person test; those additions were never considered by the Business Council. The definition of “control” is derived from SEC and IRS regulations. See, e.g., 17 CFR §§ 210.1-02(g), 230.405, 240.10A-3(e)(4), 240.12b-2, 240.19g2-1(b)(2), 240.19h-1(f)(2), 275.203A-2(c); 26 CFR § 53.4943-3(b)(3)(ii).

<sup>88</sup> The lack of a state oversight body necessitates some mechanism for compelling an ethics board to act on a sworn complaint.

897 (a) the petitioner shall have filed with the municipality's ethics board a sworn complaint alleging  
898 the violation by the officer or employee;

899 (b) it shall appear by and as an allegation in the petition that at least six months have elapsed  
900 since the filing of the complaint and that the ethics board has failed to file a determination in the  
901 matter<sup>89</sup>; and

902 (c) the special proceeding shall be commenced within ten months after the alleged violation  
903 occurred.

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

906       **§ 832. Distribution and posting of statute.** 1. Within thirty days after the effective date  
907 of this article, the elective chief executive officer of the municipality, or, if none, the chair of its  
908 governing body, shall cause a copy of sections eight hundred through eight hundred five and  
909 sections eight hundred twenty-eight through eight hundred thirty-one of this article to be posted  
910 and kept posted conspicuously in every public building under the jurisdiction of the municipality  
911 and shall cause of a copy of the provisions of this article to be posted on the municipality's  
912 website.

913 2. Within thirty days after the effective date of this article, and annually thereafter, the elective  
914 chief executive officer of the municipality, or, if none, the chair of its governing body, shall  
915 cause copies of sections eight hundred through eight hundred five and sections eight hundred  
916 twenty-eight through eight hundred thirty-one of the this article to be distributed to every officer  
917 and employee of the municipality. The elective chief executive officer of the municipality, or, if

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<sup>89</sup> Pursuant to section 827(1)(f) an ethics board's finding that the official did not violate the ethics law remains confidential. However, in response to an allegation that the ethics board has failed to act on a sworn complaint, the ethics board would be able to state that it has in fact acted on the complaint, if necessary producing for the court *in camera* a copy of the disposition dismissing the complaint.

918 none, the chair of its governing body, shall also make copies of this article readily available to all  
919 municipal officers and employees and to the public. Every municipal officer or employee elected  
920 or appointed after the effective date of this article shall be furnished a copy of the provisions of  
921 this article within ten days after entering upon the duties of his or her position.

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

925 **§ 833. Miscellaneous provisions.** 1. The provisions of this article shall apply  
926 notwithstanding any inconsistent provision of any general, special, or local law, provided,  
927 however, that a general, special, or local law shall apply to the extent it is more stringent than  
928 this article or provides greater penalties than those provided by this article.

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

930 3. If any provision of this article is held by a court of competent jurisdiction to be invalid, that  
931 decision shall not affect the validity and effectiveness of the remaining provisions of this  
932 article.<sup>90</sup>

933 § 4. Paragraph f of subdivision 1 of section 403-b of the education law, as amended by  
934 chapter 700 of the laws of 1992, is amended to read as follows:<sup>91</sup>

935 f. The term "lease," as used in this section, shall not include a lease with an option to purchase.

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<sup>90</sup> As a result of *Rosenblum v. NYC Conflicts of Interest Board*, 75 A.D.3d 426, 903 N.Y.S.2d 228 (1<sup>st</sup> Dep't 2010) (holding that NYC's ethics board could not enforce the City's ethics law against a school principal because, as a tenured pedagogue, he could be disciplined only pursuant to Ed. Law § 3020-a and that a fine under the ethics law constituted discipline within the meaning of that section), Article 18 must supersede the Civil Service Law, such as Civil Serv. Law § 75, and the Education Law, such as Ed. Law § 3020-a; otherwise, enforcement of Article 18 becomes a chimera.

<sup>91</sup> After the text of the bill is agreed upon, the consolidated laws must be searched to locate all cross-references to current Article 18 and to change those cross-references to the new and appropriate section.

936 Any lease entered pursuant to this section shall include a provision that the lease shall be void  
937 and unenforceable if entered into in violation of [section eight hundred one] **article eighteen** of  
938 the general municipal law or section four hundred ten of this [chapter] article.

939 § 5. The opening paragraph of paragraph a and paragraph b of section 60.10 of the local  
940 finance law, the opening subparagraph of paragraph a as amended by chapter 341 of the laws of  
941 1981 and paragraph b as amended by chapter 655 of the laws of 1972, are amended to read as  
942 follows:

943 The agency selling notes of a municipality, school district or district corporation may sell such  
944 notes at private sale to a bank or trust company of which an officer or employee of the  
945 municipality, school district or district corporation has an interest which is otherwise prohibited  
946 by the provisions of article eighteen of the general municipal law, without limitation as to rate of  
947 interest, provided that at least two other banks are unwilling or unable to purchase the notes at a  
948 rate of interest equal to or less than that at which the bank in which the officer or employee has  
949 an interest proposes to purchase such notes. Disclosure of any such actual or prospective sale  
950 shall be made as provided in section eight hundred [three] **seven** of the general municipal law.

951 Where any such relationship exists, however, no such sales shall be authorized in the event that:

952 b. The agency selling bonds of a municipality, school district, or district corporation may, subject  
953 to the limitations of section 63.00 of this [chapter] **title**, sell such bonds at private sale to a bank  
954 or trust company of which an officer or employee of the municipality, school district or district  
955 corporation has an interest which is otherwise prohibited by the provisions of article eighteen of  
956 the general municipal law. Disclosure of any such actual or prospective sale shall be made as  
957 provided in section eight hundred [three] **seven** of the general municipal law. Where any such  
958 relationship exists, however, no such sales shall be authorized in the event that the bank or trust  
959 company then is, or by virtue of the sale would become, the holder of bonds of the municipality,

960 school district or district corporation, purchased at private sale from such issuer, the aggregate  
961 principal amount of which is, or would exceed one hundred thousand dollars.

962 § 6. Subparagraph (iii) of paragraph (b) of subdivision 4 of section 425 of the real  
963 property tax law, as amended by section 3 of part E of chapter 83 of the laws of 2002, is  
964 amended to read as follows:

965 (iii) Any information or documentation submitted by the applicant in connection with  
966 applications for or renewal of the exemption authorized under this section to verify income, shall  
967 be deemed confidential, and the assessor, any municipal officer or municipal employees are  
968 prohibited from disclosing any such information, except for any disclosure necessary in the  
969 performance of their official duties, and except as authorized by subparagraph (v) of this  
970 paragraph. Any unauthorized disclosure of such information shall be deemed a violation of  
971 section eight hundred [five-a] **one** of the general municipal law.

972 § 7. Paragraph 10 of subdivision a of section 12-110 of the administrative code of the city  
973 of New York, as added by local law 43 of the city of New York for the year 2003, is amended to  
974 read as follows:

975 10. The terms "state agency" and "local agency" shall be given the same meanings as such terms  
976 are given in section **eight hundred** [ten] of the general municipal law.

977 § 8. This act shall take effect on the first day of January of the year next succeeding the  
978 date on which it shall have become a law, provided that, within one hundred twenty days after  
979 this act shall have become law, the governing body of each municipality shall review its ethics  
980 act, if any, to determine whether it is in compliance with provisions of this act and, if it is not in  
981 compliance, shall make such amendments as may be necessary to bring it into compliance.

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[NYSBA: Ethics Task Force: Bill Draft: Draft Article 18 Bill REV2]