S T A T E O F N E W Y O R K

10682--A

I N A S S E M B L Y

April 14, 2010

Introduced by M. of A. DESTITO, HOYT -- (at request of the State Comptroller) -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to conflicts of interest of municipal officers and employees, codes of ethics and boards of ethics; to amend chapter 946 of the laws of 1964 amending the general municipal law and other laws relating to conflicts of interest of municipal officers and employees, in relation to permitting local codes of ethics to prohibit activities expressly permitted by article 18 of the general municipal law; and to repeal paragraphs (d) and (e) of subdivision 3 of section 806 and section 813 of the general municipal law relating to the temporary state commission on local government ethics

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 3 of section 800 of the general municipal law, as amended by chapter 1043 of the laws of 1965, is amended to read as follows:

3. "Interest" means a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee, OR HIS OR HER SPOUSE, as the result of a contract with the municipality which such officer or employee serves. For the purposes of this article a municipal officer or employee OR HIS OR HER SPOUSE shall be deemed to have an interest in the contract of (a) his OR HER spouse, minor children and dependents, except a contract of employment with the municipality which such officer or employee serves, (b) a firm, partnership or association of which such officer or employee, OR HIS OR HER SPOUSE, is a member or employee, (c) a corporation of which such officer or employee, OR HIS OR HER SPOUSE, is an officer, director or employee and (d) a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee, OR HIS OR HER SPOUSE.

S 2. Section 801 of the general municipal law, as amended by chapter 1043 of the laws of 1965, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 801. Conflicts of interest prohibited. Except as provided in section eight hundred two of this chapter, (1) no municipal officer or employee shall have an interest in any contract with the municipality of which he OR SHE is an officer or employee, when such officer or employee, individually or as a member of a board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder, (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth above [and]; (2) no chief fiscal officer, treasurer, or his OR HER deputy or employee, shall have an interest in a bank or trust company designated as a depository, paying agent, registration agent or for investment of funds of the municipality of which he OR SHE is an officer or employee; AND (3) NO MUNICIPAL OFFICER OR EMPLOYEE WHOSE SERVICE TO A MUNICIPALITY INCLUDES RENDITION OF PROFESSIONAL SERVICES REQUIRING ADMISSION TO THE PRACTICE OF LAW SHALL (A) HAVE AN INTEREST IN ANY CONTRACT FOR RENDITION OF LEGAL SERVICES TO THE MUNICIPALITY, UNLESS (I) THE CONTRACT IS AWARDED ON THE BASIS OF A COMPETITIVE PROCESS UNDERTAKEN IN ACCORDANCE WITH THE MUNICIPALITY'S PROCUREMENT POLICIES AND PROCEDURES ADOPTED PURSUANT TO SECTION ONE HUNDRED FOUR-B OF THIS CHAPTER, AND (II) THE MUNICIPALITY HAS THE ADVICE OF INDEPENDENT COUNSEL WITH RESPECT TO THE ADVISABILITY OF THE PROVISIONS OF THE CONTRACT, OR (B) COMPENSATE ANY PERSON OR ORGANIZATION FROM HIS OR HER PERSONAL RESOURCES TO RENDER LEGAL SERVICES TO THE MUNICIPALITY. The provisions of this section shall in no event be construed to preclude the payment of lawful compensation and necessary expenses of any municipal officer or employee in one or more positions of public employment, the holding of which is not prohibited by law.

S 3. The general municipal law is amended by adding a new section 803-a to read as follows:

S 803-A. RECUSAL AND ABSTENTION. 1. EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, NO MUNICIPAL OFFICER OR EMPLOYEE SHALL PARTICIPATE IN ANY OFFICIAL DECISION OR TAKE ANY OFFICIAL ACTION WITH RESPECT TO ANY MATTER, INCLUDING DISCUSSING THE MATTER OR VOTING ON IT, WHEN THE MATTER RELATES TO:

A. A CONTRACT IN WHICH THE MUNICIPAL OFFICER OR EMPLOYEE OR HIS OR HER SPOUSE HAS AN INTEREST; OR

B. AN APPLICATION, PETITION OR REQUEST BY AN APPLICANT IN WHICH THE MUNICIPAL OFFICER OR EMPLOYEE HAS AN INTEREST THAT MUST BE DISCLOSED PURSUANT TO SECTION EIGHT HUNDRED NINE OF THIS ARTICLE.

2. THIS SECTION SHALL NOT BE CONSTRUED AS PROHIBITING:

A. A MINISTERIAL ACT, WHICH FOR THE PURPOSES OF THIS SECTION SHALL MEAN AN ADMINISTRATIVE ACT CARRIED OUT IN A PRESCRIBED MANNER NOT ALLOWING FOR SUBSTANTIAL PERSONAL DISCRETION;

B. PARTICIPATION IN ANY OFFICIAL DECISION OR OFFICIAL ACTION TAKEN BY A BOARD OR SIMILAR BODY WHEN A MAJORITY OF THE MEMBERS OF THE BOARD OR BODY WOULD OTHERWISE BE PROHIBITED FROM ACTING BY SUBDIVISION ONE OF THIS SECTION; OR

C. PARTICIPATION IN ANY OFFICIAL DECISION OR OFFICIAL ACTION TAKEN BY A MUNICIPAL OFFICER OR EMPLOYEE, INDIVIDUALLY, WHEN THE MATTER CANNOT BE LAWFULLY DELEGATED OR ASSIGNED TO ANOTHER PERSON.

3. COMPLIANCE WITH THIS SECTION SHALL NOT CONSTITUTE AN EXCEPTION TO SECTION EIGHT HUNDRED ONE OF THIS ARTICLE, NOR BE CONSTRUED AS CURING A VIOLATION OF THAT SECTION.

S 4. Paragraph (a) of subdivision 1 of section 806 of the general municipal law, as amended by chapter 238 of the laws of 2006, is amended to read as follows:

(a) The governing body of each county, city, town, village, school district and fire district shall, and the governing body of any other municipality may, by local law, ordinance or resolution, adopt a code of ethics setting forth for the guidance of its officers and employees the standards of conduct reasonably expected of them. Notwithstanding any other provision of this article to the contrary, a fire district code of ethics shall also apply to the volunteer members of the fire district fire department. Codes of ethics shall provide standards for officers and employees with respect to disclosure of interest in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment, USE OF PUBLIC RESOURCES FOR PERSONAL OR PRIVATE PURPOSES, NEPOTISM, CIRCUMSTANCES REQUIRING RECUSAL AND ABSTENTION, and such other standards relating to the conduct of officers and employees as may be deemed advisable. Such codes may: (I) regulate or prescribe conduct which is not expressly prohibited by this article but may not authorize conduct otherwise prohibited[. Such codes may provide for the prohibition of]; (II) PROHIBIT CONTRACTS OR conduct [or] THAT IS EITHER EXPRESSLY OR BY IMPLICATION PERMITTED BY SECTION EIGHT HUNDRED TWO OR SECTION EIGHT HUNDRED FIVE-A OF THIS ARTICLE; AND (III) PROVIDE FOR THE disclosure of information and the classification of employees or officers. THE GOVERNING BODY OF EACH MUNICIPALITY THAT ADOPTS A CODE OF ETHICS SHALL BIENNIALLY REVIEW AND, IF NECESSARY, UPDATE ITS CODE OF ETHICS.

S 5. Subdivision 2 of section 806 of the general municipal law, as amended by chapter 238 of the laws of 2006, is amended to read as follows:

2. [The] UPON THE ADOPTION OR AMENDMENT OF A CODE OF ETHICS BY A MUNICIPALITY, THE chief executive officer of [a] THE municipality [adopting a code of ethics] shall cause a copy [thereof] OF SUCH CODE OR AMENDMENT to be distributed PROMPTLY to every officer and employee of his OR HER municipality AND TO THE BOARD OF ETHICS FOR THE MUNICIPALITY. [The] IN ADDITION, SUCH CHIEF EXECUTIVE OFFICER SHALL CAUSE A COMPLETE AND CURRENT COPY OF THE MUNICIPALITY'S CODE OF ETHICS TO BE DISTRIBUTED (A) TO EVERY PERSON WHO IS ELECTED OR APPOINTED TO SERVE AS AN OFFICER OR EMPLOYEE OF THE MUNICIPALITY PROMPTLY FOLLOWING SUCH PERSON'S ELECTION OR APPOINTMENT, AND (B) TO ALL THE OFFICERS AND EMPLOYEES OF THE MUNICIPALITY AT LEAST ONCE EVERY FIVE YEARS. EVERY MUNICIPAL OFFICER AND EMPLOYEE RECEIVING A COPY OF A CODE OF ETHICS OR AMENDMENT THERETO SHALL ACKNOWLEDGE PROMPTLY IN WRITING THAT HE OR SHE HAS RECEIVED AND READ THE CODE OF ETHICS OR AMENDMENT. THE BOARD OF fire [district] commissioners OF A FIRE DISTRICT shall ALSO cause a copy of the fire district's code of ethics, INCLUDING ANY AMENDMENTS THERETO, to be posted publicly and conspicuously in each building under such district's control. Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code, nor the enforcement of provisions thereof.

S 6. The opening paragraph and paragraphs (a) and (b) of subdivision 3 of section 806 of the general municipal law, as amended by chapter 813 of the laws of 1987, are amended to read as follows:

[Until January first, nineteen hundred ninety-one, the] THE clerk of each municipality [shall file in the office of the state comptroller and on or after January first, nineteen hundred ninety-one, the clerk of each municipality and of each political subdivision, as defined in section eight hundred ten of this article, shall file with the temporary state commission on local government ethics established by section eight

hundred thirteen of this article, if such temporary state commission be in existence, and in all events] AND OF EACH POLITICAL SUBDIVISION, AS DEFINED IN SECTION EIGHT HUNDRED TEN OF THIS ARTICLE, shall maintain as a record subject to public inspection:

(a) a copy of [any] THE MUNICIPALITY'S OR POLITICAL SUBDIVISION'S code of ethics or any amendments to any code of ethics [adopted within thirty days after the adoption of such code or such amendment],

(b) a statement that such municipality or political subdivision has established a board of ethics, in accordance with section eight hundred eight OF THIS ARTICLE and/or pursuant to other law, charter, code, local law, ordinance or resolution, and the composition of such board, [within thirty days after the establishment of such board.] AND

S 7. Paragraphs (d) and (e) of subdivision 3 of section 806 of the general municipal law are REPEALED.

S 8. Section 808 of the general municipal law, as amended by chapter 1019 of the laws of 1970 and subdivision 5 as added by chapter 813 of the laws of 1987, is amended to read as follows:

S 808. Boards of ethics. 1. [The governing body of any county may establish a county board of ethics and appropriate moneys for maintenance and personal services in connection therewith. The members of such board of ethics shall be appointed by such governing body except in the case of a county operating under an optional or alternative form of county government or county charter, in which case the members shall be appointed by the county executive or county manager, as the case may be, subject to confirmation by such governing body. Such board of ethics shall consist of at least three members, a majority of whom shall not be officers or employees of such county or municipalities wholly or partially located in such county and at least one of whom shall be an elected or appointed officer or employee of the county or a municipality located within such county. The members of such board shall receive no salary or compensation for their services as members of such board and shall serve at the pleasure of the appointing authority.] (A) THE GOVERNING BODY OF EVERY COUNTY SHALL ESTABLISH A BOARD OF ETHICS, THE GOVERNING BODY OF EVERY CITY, TOWN AND VILLAGE HAVING A POPULATION OF FIFTY THOUSAND OR MORE SHALL ESTABLISH A BOARD OF ETHICS, AND THE GOVERNING BODY OF EVERY BOARD OF COOPERATIVE EDUCATIONAL SERVICES (BOCES) SHALL ESTABLISH A BOARD OF ETHICS. THEREAFTER, THE GOVERNING BODY SHALL APPROPRIATE ANNUALLY SUCH MONEYS AS MAY BE NECESSARY FOR THE BOARD'S CONTRACTUAL AND PERSONAL SERVICE EXPENDITURES. EXCEPT AS PROVIDED IN PARAGRAPH (D) OF THIS SUBDIVISION, SUCH BOARD SHALL HAVE JURISDICTION TO ACT ONLY IN RELATION TO THE OFFICERS AND EMPLOYEES OF THE COUNTY, CITY, TOWN, VILLAGE OR BOCES THAT ESTABLISHED THE BOARD.

(B) THE GOVERNING BODY OF EVERY MUNICIPALITY NOT DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION IS AUTHORIZED, BUT NOT REQUIRED, TO ESTABLISH A BOARD OF ETHICS. IF SUCH GOVERNING BODY ESTABLISHES A BOARD OF ETHICS, THE GOVERNING BODY SHALL APPROPRIATE ANNUALLY SUCH MONEYS AS MAY BE NECESSARY FOR THE BOARD'S CONTRACTUAL AND PERSONAL SERVICE EXPENDITURES. SUCH BOARD SHALL HAVE JURISDICTION TO ACT ONLY IN RELATION TO THE OFFICERS AND EMPLOYEES OF THE MUNICIPALITY THAT ESTABLISHED THE BOARD.

(C) TWO OR MORE MUNICIPALITIES NOT DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION MAY ENTER INTO, AMEND, CANCEL, AND TERMINATE AGREEMENTS FOR THE ESTABLISHMENT OF A COOPERATIVE BOARD OF ETHICS. SUCH AGREEMENTS SHALL BE CONSISTENT WITH THE REQUIREMENTS OF ARTICLE FIVE-G OF THIS CHAPTER, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION INCLUDING THAT (I) THE POWER TO ENTER INTO SUCH AGREEMENTS SHALL EXTEND TO ALL MUNICI-

PALITIES AS DEFINED IN THIS ARTICLE, AND SHALL NOT BE LIMITED TO MUNICIPAL CORPORATIONS AND DISTRICTS AS DEFINED IN ARTICLE FIVE-G OF THIS CHAPTER, AND (II) THE DURATION OF SUCH AGREEMENTS SHALL NOT BE LIMITED TO A MAXIMUM TERM OF FIVE YEARS. FOLLOWING THE ESTABLISHMENT OF A COOPERATIVE BOARD OF ETHICS, THE GOVERNING BODIES OF THE MUNICIPALITIES THAT ARE PARTIES TO THE AGREEMENT ESTABLISHING THE BOARD SHALL APPROPRIATE ANNUALLY SUCH MONEYS AS MAY BE NECESSARY FOR THE BOARD'S CONTRACTUAL AND PERSONAL SERVICE EXPENDITURES, IN SUCH AMOUNTS OR PROPORTION AS MAY BE PROVIDED IN THE AGREEMENT. A COOPERATIVE BOARD OF ETHICS SHALL BE THE BOARD OF ETHICS OF EACH MUNICIPALITY THAT IS A PARTY TO THE AGREEMENT ESTABLISHING THE BOARD, AND SHALL HAVE JURISDICTION TO ACT ONLY IN RELATION TO THE OFFICERS OR EMPLOYEES OF SUCH MUNICIPALITIES.

(D) IN THE EVENT THAT A MUNICIPALITY DESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION DOES NOT ESTABLISH A BOARD OF ETHICS AND IS NOT A PARTY TO AN AGREEMENT ESTABLISHING A COOPERATIVE BOARD OF ETHICS:

(I) IN THE CASE OF A MUNICIPALITY OTHER THAN A SCHOOL DISTRICT, THE BOARD OF ETHICS OF THE COUNTY IN WHICH THE MUNICIPALITY IS LOCATED SHALL SERVE AS THE BOARD OF ETHICS OF SUCH MUNICIPALITY AND HAVE JURISDICTION TO ACT IN RELATION TO THE OFFICERS AND EMPLOYEES OF THAT MUNICIPALITY, PROVIDED, THAT IF SUCH A MUNICIPALITY IS LOCATED IN MORE THAN ONE COUNTY, THE GOVERNING BOARD OF THE MUNICIPALITY BY RESOLUTION SHALL DESIGNATE THE BOARD OF ETHICS OF ONE OF THE COUNTIES TO SERVE AS THE BOARD OF ETHICS OF THE MUNICIPALITY;

(II) IN THE CASE OF A SCHOOL DISTRICT, OTHER THAN THE CITY SCHOOL DISTRICT OF A CITY HAVING A POPULATION OF ONE HUNDRED TWENTY-FIVE THOUSAND OR MORE, THE BOARD OF ETHICS ESTABLISHED BY THE BOCES OF THE SUPERVISORY DISTRICT IN WHICH THE SCHOOL DISTRICT IS LOCATED SHALL SERVE AS THE BOARD OF ETHICS OF SUCH SCHOOL DISTRICT AND HAVE JURISDICTION TO ACT IN RELATION TO THE OFFICERS AND EMPLOYEES OF SUCH SCHOOL DISTRICT; AND

(III) IN THE CASE OF A CITY SCHOOL DISTRICT OF A CITY HAVING A POPULATION OF ONE HUNDRED TWENTY-FIVE THOUSAND OR MORE, THE BOARD OF ETHICS ESTABLISHED BY THE CITY IN WHICH THE SCHOOL DISTRICT IS LOCATED SHALL SERVE AS THE BOARD OF ETHICS OF SUCH SCHOOL DISTRICT AND HAVE JURISDICTION TO ACT IN RELATION TO THE OFFICERS AND EMPLOYEES OF SUCH SCHOOL DISTRICT.

(E) THE CHIEF EXECUTIVE OFFICER OF EVERY MUNICIPALITY THAT HAS NOT ESTABLISHED A BOARD OF ETHICS AND IS NOT A PARTY TO AN AGREEMENT ESTABLISHING A COOPERATIVE BOARD OF ETHICS, ANNUALLY, WITHIN THIRTY DAYS FOLLOWING THE START OF A MUNICIPALITY'S FISCAL YEAR, SHALL NOTIFY THE APPROPRIATE COUNTY, BOCES OR CITY BOARD OF ETHICS THAT SUCH BOARD SHALL SERVE AS THE BOARD OF ETHICS FOR THE MUNICIPALITY. SUCH NOTICE SHALL BE ACCOMPANIED BY A COMPLETE AND CURRENT COPY OF THE MUNICIPALITY'S CODE OF ETHICS. IF OFFICERS AND EMPLOYEES OF THE MUNICIPALITY ARE SUBJECT TO ANNUAL FINANCIAL DISCLOSURE REQUIREMENTS IMPOSED IN ACCORDANCE WITH THIS ARTICLE, SUCH NOTICE SHALL ALSO BE ACCOMPANIED BY A COMPLETE AND CURRENT COPY OF ALL LOCAL LAWS, ORDINANCES, RESOLUTIONS AND REGULATIONS ADOPTED BY THE MUNICIPALITY RELATING TO THE IMPOSITION, ADMINISTRATION AND ENFORCEMENT OF THE FILING REQUIREMENT. AT THE TIME SUCH NOTICE IS GIVEN, THE CHIEF EXECUTIVE SHALL ALSO CAUSE A COPY OF THE NOTICE TO BE POSTED IN EACH PUBLIC BUILDING UNDER THE JURISDICTION OF THE MUNICIPALITY IN A PLACE CONSPICUOUS TO ITS OFFICERS AND EMPLOYEES.

(F) IN THE EVENT THAT A BOARD OF ETHICS ESTABLISHED BY A COUNTY, BOCES OR CITY SERVES AS THE BOARD OF ETHICS FOR ANOTHER MUNICIPALITY, AND SUCH MUNICIPALITY SHALL EITHER ESTABLISH A BOARD OF ETHICS OR BECOME A PARTY TO AN AGREEMENT ESTABLISHING A COOPERATIVE BOARD OF ETHICS, THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY SHALL NOTIFY THE COUNTY, BOCES OR

CITY BOARD OF ETHICS OF THE DATE AS OF WHICH SUCH BOARD SHALL NO LONGER SERVE AS THE BOARD OF ETHICS OF THE MUNICIPALITY. AT THE TIME SUCH NOTICE IS GIVEN, THE CHIEF EXECUTIVE SHALL ALSO CAUSE A COPY OF THE NOTICE TO BE POSTED IN EACH PUBLIC BUILDING UNDER THE JURISDICTION OF THE MUNICIPALITY IN A PLACE CONSPICUOUS TO ITS OFFICERS AND EMPLOYEES. PROMPTLY AFTER THE DATE SPECIFIED IN SUCH NOTICE, THE COUNTY, BOCES OR CITY BOARD OF ETHICS SHALL TRANSFER TO THE MUNICIPAL OR COOPERATIVE BOARD OF ETHICS ALL PENDING MATTERS AND RECORDS RELATING TO THE OFFICERS AND EMPLOYEES OF THE MUNICIPALITY, PROVIDED, HOWEVER, THAT SUCH COUNTY, BOCES, OR CITY BOARD OF ETHICS SHALL HAVE THE DISCRETION TO RETAIN ANY PENDING MATTER AND RECORDS RELATING THERETO UNTIL SUCH TIME AS THE MATTER IS RESOLVED.

(G) EVERY BOARD OF ETHICS SHALL CONSIST OF AT LEAST THREE MEMBERS, A MAJORITY OF WHOM SHALL NOT BE MUNICIPAL OFFICERS OR EMPLOYEES. THE MEMBERS OF EVERY BOARD OF ETHICS SHALL SERVE FOR A FIXED TERM OF OFFICE. THE LENGTH OF SUCH TERM OF OFFICE SHALL BE DETERMINED BY THE MUNICIPAL GOVERNING BODY THAT ESTABLISHES THE BOARD OF ETHICS OR SPECIFIED IN THE AGREEMENT ESTABLISHING A COOPERATIVE BOARD OF ETHICS, PROVIDED, THAT SUCH GOVERNING BODY OR AGREEMENT MAY PROVIDE FOR THE INITIAL APPOINTMENTS TO THE BOARD TO BE MADE FOR STAGGERED TERMS. APPOINTMENTS TO THE BOARD SHALL BE MADE AS FOLLOWS:

(I) THE MEMBERS OF A COUNTY BOARD OF ETHICS SHALL BE APPOINTED BY THE GOVERNING BODY OF THE COUNTY EXCEPT IN THE CASE OF A COUNTY OPERATING UNDER AN OPTIONAL OR ALTERNATIVE FORM OF COUNTY GOVERNMENT OR COUNTY CHARTER, IN WHICH CASE THE MEMBERS SHALL BE APPOINTED BY THE COUNTY EXECUTIVE, COUNTY MANAGER OR COUNTY ADMINISTRATOR, AS THE CASE MAY BE, SUBJECT TO CONFIRMATION BY SUCH GOVERNING BODY.

(II) THE MEMBERS OF A BOARD OF ETHICS ESTABLISHED BY A MUNICIPALITY OTHER THAN A COUNTY SHALL BE APPOINTED BY SUCH PERSON OR BODY AS MAY BE DESIGNATED BY THE GOVERNING BODY OF THE MUNICIPALITY.

(III) THE MEMBERS OF A COOPERATIVE BOARD OF ETHICS SHALL BE APPOINTED IN THE MANNER PROVIDED IN THE AGREEMENT ESTABLISHING THE BOARD.

(H) THE MEMBERS OF EVERY BOARD OF ETHICS SHALL RECEIVE NO SALARY OR COMPENSATION FOR THEIR SERVICES AS MEMBERS OF SUCH BOARD, BUT WITHIN AMOUNTS APPROPRIATED SHALL BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES, PROVIDED, THAT THE PROVISIONS OF SECTION SEVENTY-SEVEN-B OF THIS CHAPTER SHALL APPLY TO THE MEMBERS OF A BOARD OF ETHICS.

2. [The] EVERY board OF ETHICS shall render advisory opinions to THE officers and employees [of municipalities wholly or partly within the county] UNDER THE BOARD'S JURISDICTION with respect to this article and any code of ethics adopted pursuant hereto. Such advisory opinions shall be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board may prescribe [and shall have the advice of counsel employed by the board, or if none, the county attorney]. In addition, [it] THE BOARD may make recommendations with respect to the drafting and adoption of a code of ethics or amendments thereto upon the request of the governing body of any municipality [in the county] FOR WHICH THE BOARD SERVES AS THE MUNICIPALITY'S BOARD OF ETHICS, AND PERFORM SUCH OTHER FUNCTIONS RELATING TO THE ADMINISTRATION OF THIS ARTICLE AS MAY BE AUTHORIZED BY THE GOVERNING BODY OR AGREEMENT ESTABLISHING THE BOARD INCLUDING, BUT NOT LIMITED TO, PROVIDING ETHICS TRAINING TO THE OFFICERS AND EMPLOYEES UNDER THE BOARD'S JURISDICTION.

2-A. (A) NOTWITHSTANDING ANY GENERAL, SPECIAL OR LOCAL LAW, ORDINANCE OR RESOLUTION TO THE CONTRARY, EVERY BOARD OF ETHICS SHALL HAVE THE

POWER TO INVESTIGATE POTENTIAL VIOLATIONS OF THIS ARTICLE AND A CODE OF ETHICS ADOPTED PURSUANT TO THIS ARTICLE INVOLVING THE MUNICIPAL OFFICERS AND EMPLOYEES UNDER THE BOARD'S JURISDICTION, PROVIDED, HOWEVER, THAT THIS SUBDIVISION SHALL NOT APPLY TO A JUDGE OR JUSTICE OF THE UNIFIED COURT SYSTEM. THE BOARD MAY INITIATE SUCH AN INVESTIGATION EITHER UPON ITS OWN MOTION OR UPON RECEIPT OF A SWORN COMPLAINT ALLEGING SUCH A VIOLATION.

(B) UPON INITIATING SUCH AN INVESTIGATION, THE BOARD SHALL PROVIDE TO THE MUNICIPAL OFFICER OR EMPLOYEE WHO IS THE SUBJECT OF THE INVESTIGATION WRITTEN NOTICE DESCRIBING THE POTENTIAL VIOLATION, AND PROVIDE THE PERSON WITH AT LEAST A FIFTEEN DAY PERIOD TO SUBMIT A WRITTEN RESPONSE SETTING FORTH INFORMATION RELATING TO THE ACTIVITIES CITED AS THE POTENTIAL VIOLATION. THE BOARD MAY ALSO OBTAIN ADDITIONAL INFORMATION RELATING TO THE POTENTIAL VIOLATION FROM SUCH OTHER SOURCES AS IT DEEMS APPROPRIATE.

(C) IF AT ANY TIME DURING AN INVESTIGATION, THE BOARD DETERMINES THAT THERE HAS BEEN NO VIOLATION OF THIS ARTICLE OR A CODE OF ETHICS, THE BOARD SHALL PROVIDE WRITTEN NOTIFICATION OF SUCH DETERMINATION TO THE MUNICIPAL OFFICER OR EMPLOYEE WHO WAS THE SUBJECT OF THE INVESTIGATION AND THE COMPLAINANT, IF ANY. IN SUCH CASE, ALL DOCUMENTS AND RECORDS RELATING TO PROCEEDINGS CONDUCTED PURSUANT TO THIS SUBDIVISION SHALL BE CONFIDENTIAL.

(D) AT ANY TIME DURING AN INVESTIGATION, THE BOARD MAY MAKE A PRELIMINARY DETERMINATION THAT THERE HAS BEEN A VIOLATION OF THIS ARTICLE OR A VIOLATION OF A CODE OF ETHICS. IN SUCH CASE, THE BOARD SHALL PROVIDE WRITTEN NOTIFICATION OF THE PRELIMINARY DETERMINATION TO THE MUNICIPAL OFFICER OR EMPLOYEE WHO IS THE SUBJECT OF THE INVESTIGATION AND PROVIDE THAT PERSON WITH AN ADDITIONAL OPPORTUNITY TO BE HEARD. THEREAFTER, IF THE BOARD MAKES A FINAL DETERMINATION THAT THERE HAS BEEN A VIOLATION, THE BOARD SHALL PROVIDE WRITTEN NOTIFICATION OF SUCH FINAL DETERMINATION TO THE MUNICIPAL OFFICER OR EMPLOYEE WHO WAS THE SUBJECT OF THE INVESTIGATION, THE COMPLAINANT, IF ANY, AND THE APPOINTING AUTHORITY FOR SUCH PERSON OR, IF THE PERSON SERVES IN AN ELECTIVE OFFICE, THE GOVERNING BODY OF THE MUNICIPALITY FOR WHICH SUCH PERSON SERVES.

(E) IN CASES WHERE THE BOARD FINDS THAT A MUNICIPAL OFFICER OR EMPLOYEE HAS WILLFULLY AND KNOWINGLY VIOLATED THIS ARTICLE OR A CODE OF ETHICS, THE BOARD MAY: (I) ISSUE A REPRIMAND; (II) ASSESS A CIVIL PENALTY ON BEHALF OF THE MUNICIPALITY IN AN AMOUNT NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH SUCH SPECIFIC VIOLATION; (III) RECOMMEND TO THE APPOINTING AUTHORITY FOR SUCH PERSON, IF ANY, SUSPENSION WITH OR WITHOUT PAY, DEMOTION, TERMINATION OR SUCH OTHER DISCIPLINARY ACTION AS THE BOARD DEEMS APPROPRIATE; AND (IV) IN THE CASE OF A POTENTIAL VIOLATION ENCOMPASSED WITHIN SECTION EIGHT HUNDRED FIVE OF THIS ARTICLE, REFER THE MATTER TO THE APPROPRIATE LAW ENFORCEMENT AGENCY. ASSESSMENT OF A CIVIL PENALTY SHALL BE FINAL UNLESS MODIFIED, SUSPENDED OR VACATED WITHIN THIRTY DAYS OF IMPOSITION, AND UPON BECOMING FINAL SHALL BE SUBJECT TO REVIEW AT THE INSTANCE OF SUCH PERSON IN A PROCEEDING AGAINST THE BOARD BROUGHT PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

(F) EVERY BOARD OF ETHICS SHALL ADOPT RULES TO ENSURE PROCEDURAL DUE PROCESS IN THE CONDUCT OF ADJUDICATORY PROCEEDINGS HELD PURSUANT TO THIS SUBDIVISION.

3. [The governing body of any municipality other than a county may establish a local board of ethics and, where such governing body is so authorized, appropriate moneys for maintenance and personal services in connection therewith. A local board shall have all the powers and duties

of and shall be governed by the same conditions as a county board of ethics, except that it shall act only with respect to officers and employees of the municipality that has established such board or of its agencies. The members of a local board shall be appointed by such person or body as may be designated by the governing body of the municipality to serve at the pleasure of the appointing authority and such board shall consist of at least three members, a majority of whom are not otherwise officers or employees of such municipality. Such board shall include at least one member who is an elected or appointed municipal officer or employee.

4. The county board of ethics shall not act with respect to the officers and employees of any municipality located within such county or agency thereof, where such municipality has established its own board of ethics, except that the local board may at its option refer matters to the county board.

5. A] A BOARD OF ETHICS SHALL HAVE THE ADVICE OF COUNSEL EMPLOYED BY THE BOARD OR, IF NONE, THE ATTORNEY FOR THE MUNICIPALITY THAT ESTABLISHED THE BOARD OR, IN THE CASE OF A COOPERATIVE BOARD OF ETHICS, SUCH MUNICIPAL ATTORNEY AS MAY BE DESIGNATED IN THE AGREEMENT ESTABLISHING THE COOPERATIVE BOARD OF ETHICS.

4. THE board of ethics of a political subdivision (as defined in section eight hundred ten of this article) [and of] AND THE BOARD OF ETHICS OF any other municipality[,] which [is required by local law, ordinance or resolution to be, or which pursuant to legal authority, in practice is, the repository for completed annual statements of financial disclosure shall notify the temporary state commission on local government ethics if such commission be in existence and if not, shall file a statement with the clerk of its municipality, that it is the authorized repository for completed annual statements of financial disclosure and that on account thereof, such completed statements will be filed with it and not with the commission. Should any local law, ordinance or resolution be adopted which provides for the filing of such completed annual statements with the temporary state commission on local government ethics instead of with such board of ethics, such board of ethics shall notify the temporary state commission on local government ethics of that fact] REQUIRES FILING OF ANNUAL STATEMENTS OF FINANCIAL DISCLOSURE PURSUANT TO THIS ARTICLE, SHALL RECEIVE, REVIEW FOR COMPLETENESS, AND SERVE AS REPOSITORY FOR SUCH ANNUAL STATEMENTS AND ENFORCE SUCH FILING REQUIREMENT.

5. EACH MEMBER OF EVERY BOARD OF ETHICS SHALL ATTEND AND SUCCESSFULLY COMPLETE A TRAINING COURSE APPROVED BY THE STATE COMPTROLLER WITHIN TWO HUNDRED SEVENTY DAYS OF HIS OR HER APPOINTMENT OR REAPPOINTMENT TO THE BOARD, PROVIDED, HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO REQUIRE A MEMBER OF A BOARD OF ETHICS TO SUCCESSFULLY COMPLETE SUCH TRAINING COURSE MORE THAN ONCE. THE COURSE SHALL CONTAIN TRAINING RELATED TO THE PROVISIONS OF THIS ARTICLE, CODES OF ETHICS, ANNUAL FINANCIAL DISCLOSURE AND DECISIONAL LAW RELATING TO CONFLICTS OF INTEREST AND ETHICS AND SUCH OTHER TOPICS AS THE COMPTROLLER DEEMS ADVISABLE. WHEN APPROVED IN ADVANCE OF ATTENDANCE BY THE GOVERNING BODY OF THE MUNICIPALITY ESTABLISHING THE BOARD OR IN THE MANNER PROVIDED IN AN AGREEMENT ESTABLISHING A COOPERATIVE BOARD OF ETHICS, THE ACTUAL AND NECESSARY EXPENSES INCURRED BY A BOARD MEMBER IN SUCCESSFULLY COMPLETING THE TRAINING REQUIRED BY THIS SECTION SHALL BE A CHARGE AGAINST THE MUNICIPALITY OR THE MUNICIPALITIES PARTICIPATING IN THE COOPERATIVE BOARD OF ETHICS.

S 9. Subdivision 9 of section 810 of the general municipal law, as added by chapter 813 of the laws of 1987, is amended to read as follows:

9. The term "appropriate body" or "appropriate bodies" shall mean[:

(a) in the case of any political subdivision which has created or hereafter creates a board of ethics which is in existence at the time an annual statement of financial disclosure is due, and which has been designated by local law, ordinance or resolution to be the repository for such completed statements, such board of ethics;

(b) in the case of any political subdivision which has created or hereafter creates a board of ethics which is in existence at the time an annual statement of financial disclosure is due, and which has not been designated by local law, ordinance or resolution to be the repository for such completed statements, the temporary state commission on local government ethics;

(c) in the case of any political subdivision for which no board of ethics is in existence at the time an annual statement of financial disclosure is due, the temporary state commission on local government ethics] THE BOARD OF ETHICS OF ANY POLITICAL SUBDIVISION OR MUNICIPALITY.

S 10. Paragraphs (c) and (d) of subdivision 1 of section 811 of the general municipal law, as added by chapter 813 of the laws of 1987, are amended to read as follows:

(c) The governing body of a political subdivision or any other county, city, town or village which requires any local or municipal officer or employee or any local elected official or any local political party official to complete and file either of such annual statements of financial disclosure shall have, possess, exercise and enjoy all the rights, powers and privileges attendant thereto which are necessary and proper to the enforcement of such requirement, including but not limited to, the promulgation of rules and regulations pursuant to local law, ordinance or resolution, which rules or regulations may provide for the public availability of items of information to be contained on such form of statement of financial disclosure, the determination of penalties for violation of such rules or regulations, and such other powers as [are] WERE conferred upon the temporary state commission on local government ethics pursuant to THE FORMER section eight hundred thirteen of this article, AS ADDED BY CHAPTER EIGHT HUNDRED THIRTEEN OF THE LAWS OF NINETEEN HUNDRED EIGHTY-SEVEN, as such local governing body determines are warranted under the circumstances existing in its county, city, town or village.

(d) The local law, ordinance or resolution, if and when adopted, shall provide for the annual filing of completed statements with [either] the [temporary state commission on local government ethics or with the board of ethics of the political subdivision or other municipality] APPROPRIATE BODY, and shall contain the procedure for filing such statements and the date by which such filing shall be required. [If the board of ethics is designated as the appropriate body, then such] SUCH local law, ordinance or resolution shall confer upon the [board] appropriate BODY authority to enforce such filing requirement, including the authority to promulgate rules and regulations of the same import as those which the FORMER temporary state commission on local government ethics [enjoys under section eight hundred thirteen of this article] COULD HAVE ADOPTED UNDER FORMER SECTION EIGHT HUNDRED THIRTEEN OF THIS ARTICLE, AS ADDED BY CHAPTER EIGHT HUNDRED THIRTEEN OF THE LAWS OF NINETEEN HUNDRED EIGHTY-SEVEN. Any such local law, ordinance or resolution shall authorize exceptions with respect to complying with timely filing of such

disclosure statements due to justifiable cause or undue hardship. The appropriate body shall prescribe rules and regulations related to such exceptions with respect to extensions and additional periods of time within which to file such statement including the imposition of a time limitation upon such extensions.

S 11. Paragraph (a) of subdivision 1 of section 812 of the general municipal law, as added by chapter 813 of the laws of 1987 and the opening paragraph as amended by chapter 85 of the laws of 2004, is amended to read as follows:

(a) Any political subdivision or other county, city, town or village to which all of the provisions of this section are made applicable, whether as the result of the provisions contained in subdivision two of section eight hundred eleven of this article or as a result of an election to be subject to the provisions of this section as permitted by subdivision two of this section, shall require (i) each of its local elected officials and local officers and employees, (ii) each local political party official and (iii) each candidate for local elected official with respect to such political subdivision, to file an annual statement of financial disclosure containing the information and in the form set forth in subdivision five of this section except that disclosure requirements for assessors who are not covered by this article shall be governed by the requirements of section three hundred thirty-six of the real property tax law. Such statement shall be filed on or before the fifteenth day of May with respect to the preceding calendar year, except that:

(i) a person who is subject to the reporting requirements of this subdivision and who timely filed with the internal revenue service an application for automatic extension of time in which to file his or her individual income tax return for the immediately preceding calendar or fiscal year shall be required to file such financial disclosure statement on or before May fifteenth but may, without being subjected to any civil penalty on account of a deficient statement, indicate with respect to any item of the disclosure statement that information with respect thereto is lacking but will be supplied in a supplementary statement of financial disclosure, which shall be filed on or before the seventh day after the expiration of the period of such automatic extension of time within which to file such individual income tax return, provided that failure to file or to timely file such supplementary statement of financial disclosure or the filing of an incomplete or deficient supplementary statement of financial disclosure shall be subject to the notice and penalty provisions of this section respecting annual statements of financial disclosure as if such supplementary statement were an annual statement;

(ii) [a person who is required to file an annual financial disclosure statement with the temporary state commission on local government ethics, and who is granted an additional period of time within which to file such statement due to justifiable cause or undue hardship, in accordance with required rules and regulations on the subject adopted pursuant to paragraph c of subdivision nine of section eight hundred thirteen of this article, shall file such statement within the additional period of time granted;

(iii)] candidates for local elected official who file designating petitions for nomination at a primary election shall file such statement within seven days after the last day allowed by law for the filing of designating petitions naming them as candidates for the next succeeding primary election;

[(iv)] (III) candidates for independent nomination for local elected official who have not been designated by a party to receive a nomination shall file such statement within seven days after the last day allowed by law for the filing of independent nominating petitions naming them as candidates for local elected official in the next succeeding general or special or village election; and

[(v)] (IV) candidates for local elected official who receive the nomination of a party for a special election or who receive the nomination of a party other than at a primary election (whether or not for an uncontested office) shall file such statement within seven days after the date of the meeting of the party committee at which they are nominated.

S 12. Paragraph (a) of subdivision 3 of section 812 of the general municipal law, as added by chapter 813 of the laws of 1987, is amended to read as follows:

(a) Such local law, ordinance or resolution must provide for the promulgation of a form of an annual statement of financial disclosure described in subdivision one of section eight hundred eleven of this article for use with respect to information the governing body requires to be reported for the calendar year next succeeding the year in which such local law, ordinance or resolution is adopted and for use with respect to information required to be reported for subsequent calendar years; and shall provide for the filing of completed statements with [either] the [temporary state commission on local government ethics or with the board of ethics of the political subdivision or other municipality, as specified in subdivision one of section eight hundred eleven of this article] APPROPRIATE BODY.

S 13. Section 813 of the general municipal law is REPEALED.

S 14. Section 13 of chapter 946 of the laws of 1964 amending the general municipal law and other laws relating to conflicts of interest of municipal officers and employees is amended to read as follows:

S 13. Laws superseded. The provisions of article [eighteen] 18 of the general municipal law, as added by this act, shall supersede any local law, charter, ordinance, resolution, rule or regulation of any municipality to the extent that such local law, charter, ordinance, resolution, rule or regulation is inconsistent with the provisions thereof. No local law, ordinance, resolution, rule or regulation shall modify or dispense with any provision of article [eighteen] 18 of the general municipal law, as added by this act; provided, however, that nothing [herein] contained IN THIS SECTION shall prohibit a code of ethics adopted pursuant thereto from supplementing the provisions of this act OR FROM BEING MORE STRINGENT THAN ARTICLE 18 OF THE GENERAL MUNICIPAL LAW.

S 15. Notwithstanding any general, special or local law to the contrary, the governing body of any municipality which has prior to the effective date of this act: (a) established a board of ethics pursuant to section 808 of the general municipal law; and (b) not established a term of office for the members of such board, shall establish a term of office for the members of such board to commence on a date no later than January 1, 2012 and on such date the positions on such board of ethics shall be deemed vacant.

S 16. Notwithstanding any general, special or local law to the contrary, any person serving as a member of a board of ethics established pursuant to section 808 of the general municipal law on the effective date of this act shall successfully complete the training course

required by subdivision 6 of section 808 of such law within one year of the effective date of this act.

S 17. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that the provisions of paragraph (d) of subdivision 1 of section 808 of the general municipal law, as added by section eight of this act, shall take effect January 1, 2012.