STATE OF NEW YORK

8505

2021-2022 Regular Sessions

IN ASSEMBLY

December 8, 2021

Introduced by M. of A. THIELE -- (at request of the State Comptroller) -- read once and referred to the Committee on Local Governments

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; and 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

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 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**.

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

§ 801. Conflicts of interest prohibited. Except as provided in section eight hundred two of this [~~chapter~~] **article**, (1) no municipal officer or

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

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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. 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.

§ 3. Paragraphs b and j of subdivision 1 of section 802 of the general municipal law, paragraph b as amended by chapter 1043 of the laws of 1965 and paragraph j as added by chapter 364 of the laws of 1996, are amended to read as follows:

b. A contract with a person, firm, corporation or association in which a municipal officer or employee has an interest which is prohibited solely by reason of **his or her** employment**, or his or her spouse's employment,** as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract and the duties of such employment do not directly involve the procurement, preparation or performance of any part of such contract;

j. Purchases or public work by a municipality, other than a county, located wholly or partly within a county with a population of two hundred thousand or less pursuant to a contract in which a member of the governing body or board has a prohibited interest, where:

(1) the member of the governing body or board is elected **or appointed** and serves **with or** without salary **or other compensation**;

(2) the purchases **or public work**, in the aggregate, are less than [~~five~~] **fifteen** thousand dollars in one fiscal year and**:**

(i) the governing body or board has followed its procurement policies and procedures adopted in accordance with the provisions of section one hundred four-b of this chapter and the procurement process indicates that the contract is with the lowest dollar offer[~~:~~]**, or**

(ii) the purchases, in the aggregate, are less than fifteen thousand dollars in one fiscal year, cannot be procured from another supplier located within the municipality, and the next closest supplier is located more than twenty-five miles driving distance from the border of the municipality by way of the most direct route using public highways, roads or streets; and

(3) the contract for the purchases or public work is approved by resolution of the body or board by the affirmative vote of each member of the body or board except the interested member who shall abstain.

§ 4. Paragraph a of subdivision 2 of section 802 of the general municipal law, as amended by chapter 1019 of the laws of 1970, is amended to read as follows:

a. A contract with a corporation in which a municipal officer or employee has an interest by reason of stockholdings when less than five per centum of the outstanding stock of the corporation is owned or controlled directly or indirectly by such officer or employee **or his or her spouse either jointly or severally**;

§ 5. Section 805-a of the general municipal law, as added by chapter 1019 of the laws of 1970 and subdivision 1 as amended by chapter 813 of the laws of 1987, is amended to read as follows:

§ 805-a. [~~Certain action prohibited~~] **Additional statewide standards of ethical conduct**. 1. No municipal officer or employee shall: a. directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence [~~him~~], or could reasonably be expected to influence [~~him, in~~] the performance of [~~his~~] official duties or was intended as a reward for any official action [~~on his part~~];

b. disclose confidential information acquired by him **or her** in the course of his **or her** official duties or use such information to further his **or her** personal interests;

c. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he **or she** is an officer, member or employee or of any municipal agency over which he **or she** has jurisdiction or to which he **or she** has the power to appoint any member, officer or employee; or

d. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his **or her** municipality, whereby his **or her** compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

2. **a. Except as provided in paragraph b of this subdivision, no municipal officer or employee shall participate in any official decision or take any official action with respect to any matter requiring the exercise of discretion, including participating in official discussions and voting on the matter, when he or she knows or has reason to believe that action or inaction on the matter will confer a financial or material benefit on himself or herself, a relative, or any private organization in which the municipal officer or employee is deemed to have an interest.**

b. This subdivision shall not be construed as prohibiting:

i. performance of 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;

ii. participation in any official decision or official action taken by a board or similar body when paragraph a of this subdivision would prohibit one or more members of the board or body from participating and the remaining members of the board or body are insufficient in number or lack sufficient voting strength to make such decision or take such action; or

iii. 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.

c. Whenever paragraph a of this subdivision prohibits a municipal officer or employee from participating in an official decision or taking official action, such municipal officer or employee shall disclose in writing to the governing board the facts and circumstances requiring recusal and such disclosure shall be made a part of and set forth in the

official record of the proceedings of such board. Whenever the prohibition in paragraph a of this subdivision does not apply because of the applicability of subparagraph ii or subparagraph iii of paragraph b of this subdivision, the municipal officer or employee shall disclose in writing to the governing board the facts and circumstances that would otherwise require recusal under paragraph a of this subdivision and such disclosure shall be made a part of and set forth in the official record of the proceedings of such board.

d. For purposes of this subdivision, the term "relative" shall mean any person living in the same household as the municipal officer or employee and any person who is a direct descendant of that individual's grandparents or the spouse of such descendant.

e. Compliance with this subdivision shall not constitute an exception to section eight hundred one of this article, nor be construed as curing a violation of that section.

3. a. Except as provided in paragraph b of this subdivision, no municipal officer or employee shall use or permit the use of municipal property or resources for personal or private purposes.

b. This subdivision shall not be construed as prohibiting:

i. any use of municipal property or resources authorized by law or municipal policy consistent with law;

ii. the use of municipal property or resources for personal or private purposes when provided to a municipal officer or employee as part of his or her compensation; or

iii. the occasional, minimal, non-business and non-partisan use of municipal office equipment and supplies, such as telephones, computers, copiers, paper and pens, for personal matters at no or nominal cost to the municipality.

c. For purposes of this subdivision, "property or resources" shall include, but not be limited to, money, facilities, furnishings, machinery, apparatus, equipment, supplies and letterhead.

4. In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate this section may be fined, suspended or removed from office or employment in the manner provided by law.

§ 6. The section heading of section 806 of the general municipal law, as amended by chapter 1019 of the laws of 1970, is amended to read as follows:

[~~Code~~] Municipal codes of ethics.

§ 7. 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 and improvement district governed by article thirteen of the town law 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, nepotism, 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. Every five years, the governing body of each municipality that adopts a code of ethics shall review and, when deemed necessary, update its code of ethics.

§ 8. 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 paper or electronic 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. In addition, such chief executive officer shall cause a complete and current copy of the municipality's code of ethics to be posted on the municipality's website, if the municipality maintains a website, and 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 and such acknowledgement shall be filed with the clerk or secretary of the municipality. 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.

§ 9. Section 806 of the general municipal law is amended by adding a new subdivision 3 to read as follows:

3. The clerk of each municipality 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 the municipality's or political subdivision's code of ethics and any amendments to any code of ethics;

(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 names of the members of such board; and

(c) a copy of the form of annual statement of financial disclosure described in subdivision one of section eight hundred eleven of this article and either a statement of the date such annual statement form was promulgated by local law, ordinance or resolution of the governing body, if adopted pursuant to subparagraph (i) of paragraph (a) of subdivision one of section eight hundred eleven of this article, or a statement that the governing body has, by local law, ordinance or resolution, resolved to continue the use of an authorized form of annual statement of financial disclosure in use on the date such local law, ordinance or

resolution is adopted, if adopted pursuant to subparagraph (ii) of paragraph (a) of subdivision one of section eight hundred eleven of this article, and if as of January first, nineteen hundred ninety-one, no such form was promulgated and no such resolve was made to continue using an existing annual statement form, a statement that the provisions of section eight hundred twelve of this article apply or that it is a municipality which is not subject to the provisions of section eight hundred twelve of this article because it is not a political subdivision as defined in section eight hundred ten of this article.

§ 10. Section 808 of the general municipal law, as amended by chapter 1019 of the laws of 1970 and subdivision 5 as amended by chapter 490 of the laws of 2014, is amended to read as follows:

§ 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 (i) every county, (ii) every city, town and village having a population of twenty-five thousand or more, and (iii) 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 municipalities 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) In the case of a municipality that has not established a board of ethics and is not a party to an agreement establishing a cooperative board of ethics:

(i) The chief executive officer of the municipality, annually, within thirty days following the start of the 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. At the time such notice is given, the chief executive officer shall also cause a copy of the notice to be posted on the municipality's website, if the municipality maintains a website, and in each public building under the jurisdiction of the municipality in a place conspicuous to its officers and employees.

(ii) 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.

(iii) The governing body of the municipality, annually, within thirty days following the start of the municipality's fiscal year, shall appoint a municipal representative to the appropriate county, BOCES or city board of ethics. The person appointed as municipal representative shall be a resident of the municipality, and shall be knowledgeable with respect to the municipality's code of ethics and the municipality's annual financial disclosure requirements, if any. The municipal representative shall receive notice of, and be entitled to participate, as a non-voting member, in all meetings, proceedings, deliberations and other

activities of the board that pertain to an officer or employee of the municipality. A municipal representative shall receive no salary or compensation for his or her services, but within amounts appropriated shall be reimbursed for actual and necessary expenses incurred in the performance of his or her official duties.

(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. Such notice shall either state that the municipality has established its own board of ethics or identify such cooperative board of ethics. At the time such notice is given, the chief executive officer shall also cause a copy of the notice to be posted on the municipality's website, if the municipality maintains a website, and 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, not to exceed five years. 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 the governing body of the municipality or 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.

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 munici-

pality [~~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.

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 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 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 file a statement with the clerk of its municipality, that it is the authorized repository for completed annual statements of financial disclosure~~] 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 the contents of which shall be 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 as provided in such agreement.

6. The provisions of this section shall not apply to a city having a population of one million or more or to a county, school district, or other public agency or facility therein.

§ 11. Subdivision 9 of section 810 of the general municipal law, as amended by chapter 490 of the laws of 2014, is amended to read as follows:

9. The term "appropriate body" or "appropriate bodies" shall mean the board of ethics [~~for the~~] of any political subdivision or municipality.

§ 12. 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:

§ 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.

§ 13. 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; such governing body shall establish terms of office for the members of such board pursuant to paragraph (g) of subdivision 1 of section 808 of the general municipal law as added by section ten of this act to begin on a date no later than the first day of the municipality's fiscal year commencing in 2021 and on such date the positions on such board of ethics shall be deemed vacant, provided that nothing in this section shall be construed to prohibit the reappointment of an incumbent board member for such term of office.

§ 14. 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 5 of section 808 of such law as added by section ten of this act within one year of the effective date of this act.

§ 15. 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 paragraph (d) of subdivision 1 of section 808 of the general municipal law, as added by section ten of this act, shall take effect January 1, 2023.