

## Memorandum in Support

### LOCAL AND STATE GOVERNMENT LAW SECTION

Local and State Gov #1

October 4, 2019

S. 5548

By: Senator Biaggi

A. 7477

By: M. of A. Thiele

Senate Committee: Local Government

Assembly Committee: Codes

Effective Date: First of January next  
succeeding the date on which  
it shall have become a law

**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.

**LAW AND SECTIONS REFERRED TO:** Section 800 of the general municipal law.

### **THE LOCAL AND STATE GOVERNMENT LAW SECTION SUPPORTS THIS LEGISLATION**

Mark Davies and Steven G. Leventhal, Co-Chairs<sup>1</sup>

#### **Summary**

Past Comptroller's bills revising Article 18 have been horrible.<sup>2</sup> A.7477/S.5548 (2019) is different. Although it does not address many of Article 18's defects, such as the lack of enforcement and state assistance, this bill contains a number of excellent provisions – and one can never let the perfect be the enemy of the good. Overall, subject to the comments and suggestions below, it is a good bill and should be supported.

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<sup>1</sup> The co-chairs wish to thank Chris G. Trapp and Paul Herzfeld for their work on this matter.

<sup>2</sup> See Mark Davies, *How Not to Draft an Ethics Law*, NYSBA/MLRC MUNICIPAL LAWYER, Vol. 24, No. 4 (Fall 2010), at 13.

This memorandum's comments on the bill may be summarized as follows:

- The extension of the definition of "interest" (section 800(3)) to include the interests of the municipal officer's or employee's spouse significantly expands the scope of prohibited interests and should not be enacted without carefully considering the change's impact.
- The changes to the exception from prohibited interests for certain small purchases by rural municipalities (section 802(1)(j)) seems consistent with the purpose of that exception.
- The critical addition of a prohibition on self-dealing by municipal officials (new section 805-a(2)) is decades overdue, although the proposed change requires clarification.
- The important addition of a prohibition on use of municipal property and resources for private purposes (new section 805-a(3)) is also long overdue, but also requires some clarification.
- The addition of town improvement districts to those municipalities mandated to adopt ethics codes, as well as the proposed additions to the mandated and permissible contents of ethics codes (section 806(1)(a)), appear reasonable, although input from the appropriate associations must be considered as to the town improvement district addition.
- The bill sensibly corrects a gap in the current law on the maintenance of ethics board records.
- In regard to the establishment of boards of ethics (section 808(1)), the bill mandates ethics boards, currently optional, in all counties, in all BOCES, and in all cities, towns, and villages with a population of 25,000 or more; requires such boards be given an appropriate budget; authorizes joint ethics boards; and provides that county, BOCES, or city ethics boards shall act the ethics board for any municipality that has not created its own ethics board or made itself subject to a joint ethics board. Thus, every municipality in New York State would be subject to an ethics board, a game-changing provision that alone warrants enactment of the bill, provided that one enormous problem is addressed: in order to adopt its own ethics code, a municipality must also establish its own ethics board or subject itself to a joint board; otherwise the municipality must be subject to the ethics code of the ethics board to which the municipality is subject. Another required amendment to the bill: municipal officials must be prohibited from serving on an ethics board.
- The bill provides for advice of counsel (section 808(3)) but should be amended to prohibit such counsel from revealing confidential ethics board matters to the municipality.
- Financial disclosure statements would henceforth be filed only with an ethics board (section 808(4)) and not with a legislative body, another long overdue change.
- The bill mandates training for all ethics board members (section 808(5)), an important requirement, but the mandate that all such training courses be approved by the Comptroller's Office risks delays and vests too much authority in that state body. The bill should be amended to exempt from Comptroller approval all approved CLE providers.

The Comments set forth below expand on this summary. The Appendix sets forth proposed changes to the bill, reflecting the Comments.

## Comments

### **Section 1: Gen. Mun. Law § 800(3) (Definition of “Interest”)**

The definition of “interest” applies primarily to the prohibited interest provision of section 801. That provision, in effect, outlaws municipal contracts from which an officer or employee of the municipality, or any of the persons or entities listed in 800(3), would financially benefit if the municipal officer or employee possesses certain power (as stated in section 801) in regard to that contract, unless one of the exceptions in section 802 applies. (“Interest” also appears in the new section 805-a(2)(a), discussed below.)

Thus, (1) extending “interest” to include “a direct or indirect pecuniary or material benefit accruing” not just to the municipal officer or employee but also to his or her spouse and deeming a municipal officer or employee to have an interest in a contract (2) of a firm, partnership, or association of which the municipal officer or employee’s *spouse* is a member or employee, (3) of a corporation of which the *spouse* is an officer, director, or employee, and (4) of a corporation of which the *spouse* directly or indirectly owns or controls stock, significantly expands the prohibited interest provision. (Section 800(3) currently deems the municipal officer or employee to have an interest in a contract of his or her spouse, but not in (1) through (4) above.) Therefore, section 801 would now prohibit the municipality from entering into a contract if any of the entities listed in (2) through (4) above would financially benefit, even if neither the municipal officer or employee nor his or her spouse would personally benefit. For example, if the lowest bid to repair the steps to village hall is \$6,000 (the next lowest bid is \$10,000), and the bidder is a corporation in which a village trustee’s wife owns 5% of the stock (she has no position with the corporation), the contract would be prohibited, even if she agrees to forgo any financial benefit as a result of the contact and even if the corporation’s net income exceeds a million dollars a year. This result would seem unnecessarily harsh for the village. One must, therefore, question this expansion of the prohibited interest provision in section 801 by broadening the definition of “interest” in section 800(3), certainly without first considering the comments of the municipal associations.

### **Section 2: Gen. Mun. Law § 801 (Prohibited Interests in Contracts)**

These purely technical changes raise no issues.

### **Section 3: Gen. Mun. Law § 802(1)(b) and (j) (Exceptions to Section 801 for Private Employment and Small Purchases)**

Section 802 sets forth exceptions to the prohibited interest provision of section 801. Section 802(1)(b) permits a contract prohibited solely by reason of the affected municipal officer or employee’s private employment as an officer or employee where he or she neither works on the contract nor receives compensation as a result of the contract. The

bill expands the exception to include the municipal officer or employee's spouse, necessitated by the expansion of the definition of "interest" in section 800(3) to include a spouse.

Section 802(1)(j) permits contracts for certain small purchases by rural municipalities, provided that certain conditions are met. The bill both expands and narrows the current exception. First, the bill would include appointed (as well as elected) governing board/body members, removes the requirement that service on the board/body be pro bono, expands the exception to include public work not just purchases, and raises the purchases/public work cap from \$5,000 to \$15,000 in the aggregate in the fiscal year. Second, however, the bill requires that the purchases cannot be obtained from another supplier within the municipality or within 25 miles of the municipality. These changes seem reasonable in view of the exception's purpose to lessen the burden of section 801 on rural municipalities.

#### **Section 4: Gen. Mun. Law § 802(2)(a) (Exception to Section 801 for Small Stockholdings)**

The difference between subdivision 1 and subdivision 2 of section 802 lies in subdivision 2's exemption from the disclosure requirements of section 803(1). The bill expands the exception to include the municipal officer or employee's spouse, necessitated by the expansion of the definition of "interest" in section 800(3) to include a spouse.

#### **Section 5: Gen. Mun. Law § 805-a (Prohibited Conduct)**

The bill's major changes to the substantive standards of Article 18 occur in section 805-a. Section 801 prohibits certain interests. Section 805-a prohibits certain conduct. The reason for changing the heading of the section from "Certain action prohibited" to "Additional statewide standards of ethical conduct" appears unclear, but innocuous, and perhaps helps emphasize the fact that these standards apply statewide.

**Subdivision 1 (Current Law).** The changes to current paragraphs (a)-(d) of subdivision 1 merely gender-neutralize and do not address the severely deficient and confusing content of the prohibited gifts provision (section 805-a(1)(a)), which serves as a trap for municipal officers and employees.<sup>3</sup> But the Comptroller's Office appears wedded to the current gifts language, as awful as it is.

**Subdivision 2 (Self-Dealing).** The bill adds a new subdivision 2 that, at long last, prohibits a municipal officer or employee from taking an action that benefits him or her or his or her "relative" or a private organization in which he or she has an "interest." Such a prohibition is the single most important provision in a government ethics code. "Interest" is not defined, and the definition in section 800(3) would seem not to apply since it is expressly tied to an interest in a contract and this new provision addresses an interest in an

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<sup>3</sup> See Mark Davies and Steven G. Leventhal, *Article 18: New York's Conflict of Interest Law for Municipal Officials*, in Jeff Tremblay, et al., *MUNICIPAL ETHICS IN NEW YORK: A PRIMER FOR ATTORNEYS AND PUBLIC OFFICIALS* (NYSBA 2016), at 25-26.

organization. The Committee suspects that the bill intends to include those entities listed in section 800(3)(b), (c), and (d), but, if so, section 805-a(2) must be clarified accordingly, e.g., by adding to the end of new section 805-a(2)(a): “, as defined in paragraphs (b), (c), and (d) of subdivision 3 section 800 of this article.”

Paragraph (b) provides three reasonable exceptions: where the act is ministerial (an official can issue a fishing license to her husband); where the rule of necessity would apply; and where the matter cannot be delegated. Only the third exception (805-a(2)(b)(iii)) presents a problem, as it appears to mean that a minor non-delegable act completely takes the official out of the prohibition. The exception should thus include at the end “but only to the extent the decision or action cannot be delegated or assigned.”

Paragraph (c) requires and regulates disclosure of the conflict arising under paragraph (a). Paragraph (d) defines “relative” quite broadly and would include, for example, aunts, uncles, great aunts, great uncles, and cousins, and their spouses, as well as persons living in the official’s household. On the other hand, it would not include, for example, the official’s father-in-law or the official’s spouse’s brother (though it would include the official’s brother’s spouse). The provision also does not address step-relatives, although sometimes the official’s relationship with them is too tenuous to be included within such a prohibition. The definition requires review, particularly its breadth.<sup>4</sup> Paragraph (e) merely emphasizes that recusal does not cure a violation of the prohibited interest provision in section 801.

**Subdivision 3 (Misuse of Municipal Property and Resources).** The bill adds a prohibition on misuse of municipal property and resources. Paragraph (b) includes exceptions that, with one caveat, appear sensible. Clause (iii) recognizes a fact of life: virtually every municipal official makes, and should be able to make, minimal personal use of municipal resources, like calling a babysitter on a municipal phone or sending an email to make a lunch date with a friend. The bill properly permits only “occasional, minimal, non-business and non-partisan use” of municipal resources. Thus, for example, one could use a municipal computer to transfer money in one’s personal bank account but not in the bank account of one’s private business or in the bank account of a campaign committee for which one is the treasurer; one cannot use municipal resources, even minimally, for a private business or employer. However, clause (iii) should be amended in two respects. First, all non-municipal use of letterhead should be prohibited because letterhead always implies some municipal imprimatur, even if the words “personal and unofficial” are added. Second, use of municipal personnel for personal purposes should be prohibited; an official should not request a subordinate to copy the five-page report of the official’s son instead of copying it himself or herself nor ever ask a municipal employee to run personal errands for the official.<sup>5</sup> Clause (iii) should be amended accordingly to address these issues. Finally, the definition of “property or resources” in paragraph (c) should also include personnel.

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<sup>4</sup> Cf. NYC Charter § 2601(5); Mark Davies, *How to Adopt a Municipal Conflicts of Interest Law: Process*, in Jeff Tremblay, et al., *MUNICIPAL ETHICS IN NEW YORK: A PRIMER FOR ATTORNEYS AND PUBLIC OFFICIALS* (NYSBA 2016), at 301.

<sup>5</sup> See NYC Conflicts of Interest Board, *Policy on Limited Personal Use of City Office and Technology Resources*, at <https://www1.nyc.gov/assets/coib/downloads/pdf2/aup-final-issued-version.pdf>.

**Subdivision 4 (Penalty).** Section 805-a has essentially no penalty. Subdivision 4 merely renumbers current subdivision 2. That said, raising enforcement in this bill may well kill it. Enforcement should be saved for another day.

**Section 6: Gen. Mun. Law § 806 (Heading).** The bill changes the heading of the section from “Code of ethics” to “Municipal codes of ethics,” a benign amendment.

**Section 7: Gen. Mun. Law § 806(1)(a) (Adoption and Content of Municipal Ethics Codes).**

The bill adds town improvement districts to the list of municipalities mandated to adopt ethics codes. The Memorandum in Support does not state the reason for this addition, but presumably the appropriate municipal association will weigh in on its suitability. To the mandated contents of municipal ethics codes, the bill adds nepotism, a useful addition. To the permissible contents of ethics codes, the bill provides that a municipality may prohibit contracts permitted by the exceptions in section 802 and conduct permitted by section 805-a. Since many municipalities appear to believe that they cannot go beyond Article 18 in their ethics codes, these additions should prove useful. Finally, the bill adds a requirement that the governing body of each municipality that adopts an ethics code review it for possible updates at least once every five years, another useful provision. As discussed below, a caveat exists as to those municipalities that adopt a code of ethics but do not establish an ethics board.

**Section 8: Gen. Mun. Law § 806(2) (Distribution of the Municipal Ethics Code).**

The bill expands and updates, for the electronic era, the distribution of municipal ethics codes and amendments thereto. The changes are worthwhile.

**Section 9: Gen. Mun. Law § 806(3) (Maintenance of Ethics Records)**

Former subdivision 3 was repealed in 2014 as part of the law repealing references to the former Temporary State Commission on Local Government Ethics, leaving certain gaps in the law, which this section of the bill seeks to address.<sup>6</sup> The bill requires the municipal clerk to maintain as a record for public inspection: (1) the municipal ethics code and amendments thereto; (2) a statement that the municipality has established a board of ethics (if it has) and the names of its members; and (3) the form of municipality’s annual disclosure statement (if any) and the date of its promulgation or a statement that the municipality defaulted into the provisions of section 812 or a statement that the municipality is not a political subdivision within the meaning of section 810(1) and thus not required to have a financial disclosure form.

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<sup>6</sup> See 2014 N.Y.S. Laws, ch. 490, § 3; Mark Davies, *State Legislature Trips Up Local Government (Again) on Ethics*, NYSBA MUNICIPAL LAWYER, Vol. 29, No. 1 (Winter 2015), at 7.

## **Section 10: Gen. Mun. Law § 808 (Board of Ethics).**

**Subdivision 1 (Establishment of Ethics Boards).** Under current law municipal ethics boards are optional for all municipalities. The bill mandates ethics boards (1) in every county, (2) in every city, town, and village having a population of 25,000 or more, and (3) in every BOCES. The bill also mandates the adoption of a budget for the ethics board “as may be necessary for the board’s contractual and personal service expenditures.” Except as provided in subdivision (d), discussed below, the board’s jurisdiction is limited to the municipality. This change, mandating ethics boards in larger political subdivisions and BOCES, constitutes the single biggest, best, and most welcome provision in the bill. It is game changing for municipal ethics in New York State. And the budget mandate is utterly critical.

Paragraph (b) authorizes, but does not require, every other municipality to establish an ethics board. But if a municipality does so, it, too, must provide an appropriate budget, again, a critical provision.

Paragraph (c) authorizes municipalities to create joint ethics boards, another important and welcome provision – and necessary for small municipalities that cannot sustain an ethics board on their own.

Paragraph (d) provides ethics boards for municipalities that do not create their own ethics board or join with another municipality in creating a joint board; those municipalities one might designate as ethics orphans. In other words, for the first time in the history of the state, *every municipality in the State of New York will have an ethics board to which the municipality’s officers and employees are subject.* Yet, at the same time, this mandate promotes home rule by establishing boards at the municipal level. The absence of such boards in the vast majority of municipalities in New York State has presented the single greatest problem with municipal ethics in the state. This provision alone necessitates, beyond any doubt, the enactment of this bill.

Specifically, except for school districts, ethics orphans shall be subject to the county’s ethics board. For school districts (other than city school districts in cities of 125,000 or more), the BOCES ethics board serves as the school district’s ethics board. For those city school districts in large cities, the city’s ethics board serves as the school district’s ethics board.

That said, one very large fly inhabits this enormously important ointment: requiring county (and BOCES?) ethics boards to interpret the ethics codes of perhaps dozens of municipalities would prove impossibly burdensome, especially given ethics boards’ meager resources (even with a mandated budget). A review must be made of the number of municipalities within each county that might be subject to the county ethics board’s jurisdiction. If that number is more than a handful (a half-dozen at most), then the *county* ethics code should be imposed on every ethics orphan within the county; if the ethics orphan wishes to adopt its own ethics code, it must create its own ethics board or join with other municipalities to create a joint board.

Paragraph (e) contains requirements for ethics orphans to provide notification that they are subject to the county, BOCES, or city ethics board, to provide the municipality's ethics code and financial disclosure law (if any), and to appoint a non-voting representative to the county, BOCES, or city ethics board to which the ethics orphan is subject. The municipality should, however, be authorized to vary the manner of appointment of the representative.

Paragraph (f) provides for ethics orphans to create their own ethics board or a joint ethics board and thereby opt out of being subject to the county, BOCES, or city ethics board.

Paragraph (g) mandates that every ethics board have a least three members, a majority of whom shall not be municipal officers or employees. Three is a bit small since that means only two persons are needed to decide an issue. Committee members' personal experience with a three-member ethics board revealed other problems as well, particularly when one member had to recuse, requiring a unanimous decisions on those matters. A cap on the number of members should also be provided, certainly no more than seven members, lest the board become unwieldy; in the personal experience of Committee members, nine members is too large.

The bill also requires that board members serve for fixed terms, not to exceed five years, both good provisions. Also, the appointment process laid out in the bill should work well. The municipality should, however, be authorized to vary the manner of appointment.

Most importantly, as has often been pointed out, including ANY municipal officials on an ethics board is a singularly poor idea, as it risks breaches in confidentiality and discourages complainants and those seeking advice from coming forward because of the fear that the complaint or request will get back to their supervisor – do I want my boss to know I am seeking another job or have filed a complaint against him? – and, in addition, permitting municipal officials on the ethics board undermines, in appearance and in fact, the impartiality of the board.<sup>7</sup> Officers and employees of the municipality should be prohibited from serving on the municipality's ethics board. Thus, “a majority of whom shall not be municipal officers or employees” should be replaced with “none of whom shall be officers or employees of any municipality subject to the board's jurisdiction.” Having a town employee serve on a village ethics board should ordinarily present no problems, though an occasional need for recusal may arise.

**Subdivision 2 (Duties of the Ethics Board).** The bill provides only for advisory opinions but expressly authorizes the governing body setting up the ethics board to give it additional functions, such as ethics training (and enforcement). The addition of an enforcement mechanism should await another day.

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<sup>7</sup> See Mark Davies, *How to Adopt a Municipal Conflicts of Interest Law: Contents*, in Jeff Tremblay, et al., *MUNICIPAL ETHICS IN NEW YORK: A PRIMER FOR ATTORNEYS AND PUBLIC OFFICIALS* (NYSBA 2016), at 253-254.



**Subdivision 3 (Counsel).** The bill requires that the ethics board have advice of counsel, either employed by the board or, if none, the municipal attorney. A provision should be added that the municipal attorney shall not reveal any confidential information regarding the board to anyone outside the board, except with the express written authorization of the board (e.g., to a consultant to the board). Otherwise, the municipal attorney, particularly if appointed by the municipality's chief executive officer, may be seen as that official's mole on the board.

**Subdivision 4 (Financial Disclosure).** The bill requires that financial disclosure statements be filed with the ethics board. No longer can they be filed with the municipal legislative body.

**Subdivision 5 (Training of Ethics Board Members).** The bill requires that every ethics board member complete a training course, an important requirement, but also mandates that such training courses be approved by the State Comptroller. While some assurance of the quality of the courses must exist, establishing the Comptroller's Office as the gatekeeper for such courses risks delays in course approvals, especially if the Comptroller lacks the necessary resources to timely review and approve such courses, and vests too much municipal authority in a state agency. These competing interests of quality assurance, on the one hand, and delays and inappropriate state authority, on the other, may be balanced by exempting from Comptroller approval courses taught by approved CLE providers, although the Comptroller would continue to designate the topics to be covered in such courses. The Comptroller will also presumably grant blanket approvals to other qualified entities.

**Subdivision 6 (New York City).** The bill continues the exemption of New York City from the non-financial disclosure provisions of Article 18, as New York City has an extensive and robust ethics law and administration.

#### **Section 11: Gen. Mun. Law § 810(9) (Definition of "Appropriate Body" for Financial Disclosure)**

The bill makes a technical amendment, including municipalities as well as political subdivisions within the definition of "appropriate body" since municipalities other than political subdivisions will also administer the financial disclosure system.

#### **Section 12: 1964 N.Y. Laws, ch. 946, § 13 (Supersession)**

The bill makes explicit that a municipal code of ethics may be stricter than Article 18.

#### **Section 13: Terms of Office of Ethics Board Members**

The bill requires that members of existing ethics boards be given terms of office if they do not them already, a necessary requirement.

#### **Section 14: Training of Current Ethics Board Members**

The bill requires that members of existing ethics boards receive ethics training, a wise provision.

#### **Section 15: Effective Date**

The bill would become effective on January 1 following its enactment, except the ethics board provisions in section 10 of the bill would become effective on Jan. 1, 2021. Given the magnitude of the changes reflected in that section, that delayed effective date would seem wise.

#### **Conclusion**

One may, of course, quibble with various provision of the bill – and indeed a couple relatively quick, but very important, fixes, as outlined above, must be made. (The text of these will be later set forth in an Appendix to this memorandum.) But overall the bill is the best thing to come along in municipal ethics since the demise of the Temporary State Commission on Local Government Ethics at the end of 1992. The bill, with those important tweaks made, should be enacted promptly.

APPENDIX

**Proposed Revisions to Bill (Bold Caps)**

§ 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.

.....  
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, **AS DEFINED IN PARAGRAPHS (B), (C), AND (D) OF SUBDIVISION 3 SECTION 800 OF THIS ARTICLE.**

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 **BUT ONLY TO THE EXTENT THE DECISION OR ACTION CANNOT BE DELEGATED OR ASSIGNED.**

.....  
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:  
.....  
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, **PROVIDED, HOWEVER, THAT NEITHER MUNICIPAL LETTERHEAD NOR MUNICIPAL PERSONNEL SHALL BE USED FOR NON-MUNICIPAL PURPOSES.**

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

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§ 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, **PROVIDED, HOWEVER, THAT A MUNICIPALITY THAT DOES NOT ESTABLISH A BOARD OF ETHICS AND IS NOT A PARTY TO AN AGREEMENT ESTABLISHING A COOPERATIVE BOARD OF ETHICS SHALL BE SUBJECT TO THE CODE OF ETHICS GOVERNING THE MEMBERS OF THE BOARD OF ETHICS TO WHICH SUCH MUNICIPALITY IS SUBJECT.**

.....  
§ 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.

.....  
(e)

.....  
iii. The governing body of the municipality, **OR SUCH PERSON OR BODY AS MAY BE DESIGNATED BY 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.

.....  
(g) Every board of ethics shall consist of at least **THREE FIVE** members **AND NO MORE THAN SEVEN MEMBERS, A MAJORITY NONE** 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.

.....  
i. The members of a county board of ethics shall be appointed by the governing body of the county **OR AS OTHERWISE PROVIDED BY LAW,** 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, **OR AS OTHERWISE PROVIDED BY LAW.**

.....

3.

.....  
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, **PROVIDED, HOWEVER, THAT SUCH MUNICIPAL ATTORNEY SHALL NOT REVEAL ANY CONFIDENTIAL INFORMATION OF THE BOARD OF ETHICS TO ANY PERSON WHO IS NOT AN OFFICER OR EMPLOYEE OF THE BOARD OF ETHICS, EXCEPT UPON WRITTEN AUTHORIZATION OF THE BOARD OF ETHICS.**

.....  
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. **APPROVAL BY THE STATE COMPTROLLER PURSUANT TO THIS SUBDIVISION SHALL NOT BE REQUIRED WHERE THE TRAINING COURSE IS OFFERED BY A PROVIDER APPROVED PURSUANT TO SUBDIVISION (C) OF SECTION 1500.4 OF TITLE 22 OF THE NEW YORK CODE, RULES AND REGULATIONS, OR ANY SUCH SUCCESSOR PROVISION, OR WHERE THE TRAINING COURSE HAS BEEN ACCREDITED PURSUANT TO SUBDIVISION (A) OF SUCH SECTION OR ANY SUCH SUCCESSOR PROVISION.**