



NEW YORK STATE
BAR ASSOCIATION

New York State Bar Association Local and State Government Law Section **Legislative Proposal**

January 2025

**NYS BAR ASSOCIATION
LOCAL AND STATE GOVERNMENT LAW SECTION
LEGISLATIVE PROPOSAL**

TITLE PAGE

This New York State Bar Association Local and State Government Law Section Executive Committee is responsible for this report, and respectfully requests that the title of the report be “Fostering Public Confidence in Local Government Through Ethics Training”.

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LISTING OF MEMBERS PAGE

This proposal was drafted by the Chair of the New York State Bar Association Local and State Government Law Section, Steven G. Leventhal, with assistance from the Section's Executive Committee. The members of the Executive Committee of the Local and State Government Law Section are:

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ACKNOWLEDGEMENTS PAGE

No other individuals, NYSBA Committees/Task Forces/Sections or other organizations assisted with the report.

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Introduction

Public confidence in government has eroded at every level. Voter frustration is evident in the public discourse. Public cynicism undermines the effectiveness of democratic institutions. The solution to this problem should not be left solely to the partisan political machinery of government, nor to the reactive machinery of the criminal justice system. We must promote both the reality and the appearance of integrity in government through ethics training.

A legislative proposal developed by the Local and State Government Law Section would have the dual effect of inspiring public confidence and promoting integrity in government. The proposal was adopted as Association policy by the Executive Committee in 2022, but that status has lapsed. Approval by the House of Delegates would protect the policy against another lapse.

Executive Summary

The proposed bill would amend New York General Municipal Section 808 to provide for the same training requirement for members of local boards of ethics that currently exists for members of land use boards.

Background

New York General Municipal Law Article 18 establishes statewide standards of conduct for the officers and employees of municipalities other than the City of New York. GML Section 808 authorizes municipalities to adopt their own codes of ethics, provided that the local code so adopted may not permit conduct that Article 18 would prohibit. The statute further authorizes municipalities to establish boards of ethics to render advisory opinions to municipal officers and employees with respect to the standards of conduct set forth in GML Art. 18 and in such local codes of ethics as may be adopted by the respective municipalities.

The 1987 Ethics in Government Act, among other things, created a Temporary Commission on Local Government Ethics. The Commission sunsetted, leaving no state-level agency charged with studying or proposing reforms of statutes aimed at municipal ethics and no state agency specifically tasked with providing education, training or technical assistance on ethics issues for local governments. The New York State Bar Association's Local and State Government Law Section, among other groups, has repeatedly called attention to this gap in ethics oversight.

In the absence of a state agency with regulatory authority over local government ethics, the responsibility devolves upon the board of ethics established by each local municipality.

A well designed and well implemented local government ethics program will have two goals: that of inspiring public confidence in government by ensuring not only the reality, but also the appearance of integrity in government; and that of guiding public officials and assisting them in avoiding unintended ethics violations. The availability of ethics advice from local boards of ethics advances the salutary goal of preventing ethics violations before they occur.

Yet, experience indicates that the members of most local boards of ethics themselves have no training in interpreting and applying either the standards of conduct set forth in Article 18 or the common law principles and best practices that have been developed by case law, opinions of the Attorney General and Comptroller, and literature published by bar and municipal associations. As a result, many local boards of ethics rarely meet, if ever, lack independence, do not adequately understand their mission, and too often act in a manner inconsistent with state, local or constitutional law.

In 2020, the Comptroller concluded a statewide audit of the ethics programs of twenty local municipalities having populations in excess of 50,000 (and, therefore subject to the requirement of annual financial disclosure). Among its key findings, the Comptroller found that 95% of the audited municipalities provided no formal training for the members of their ethics boards.

Recognizing the importance of their functions, the Legislature has required that the members of local planning and zoning boards obtain four hours of annual training. According to information posted on the website of the Department of State Division of Local Government Services: “This amendment to state law, enacted in 2007, is important because members of planning boards and zoning boards of appeals make decisions of major importance in their municipalities.”

Town Law Section 267 (Zoning Board of Appeals) 271 (Planning Board, creation, appointment), General City Law Section 81 (Zoning Board of Appeals), Village Law Section 7-712 (Zoning Board of Appeals), and Village Law Section 7-718 (Planning Board, creation, appointment) were all amended to provide for training and attendance requirements for the members of local government land use boards.

Surely, the decisions made by local boards of ethics are no less important to municipalities and the public they serve than the decisions made by zoning and planning boards.

GML Article 18 was adopted with the following statement of legislative purpose:

As government becomes increasingly complex, as our democratic processes draw citizens from every walk of life, there is increasing need for known standards of ethical conduct as a guide for public officers. These standards must rest primarily on personal integrity and on community vigilance: law cannot in itself create moral fiber, nor can law quicken the civic conscience. In support of these basic standards, it is the purpose of this chapter to define areas of conflicts of interest in municipal transactions, leaving to each community the expression of its own code of ethics.

The need for the statute does not spring from widespread malfeasance on the part of municipal officers; rather, the Legislature recognizes their integrity as a group, their culpability in only a few instances. But lest the few brand the many, the discernment of the offending case must be made certain, its elimination sure. Existing law is too complex, too inconsistent, too overgrown with exceptions, for such a clarity of understanding to be possible. Basic concepts must be retained, but something more than recodification is needed.

There is another and equally important objective: a formula of conduct which is not only clear but reasonable, one which will permit governmental employees to share the normal benefits of the democratic society and economy they serve. If government is to attract and hold competent administrators, public service must not require a complete divesting of all proprietary interests. Real conflict must be rooted out, without condemning the inconsequential.

The chapter, then, has a trinity of purposes: to protect the public from municipal contracts influenced by avaricious officers, to protect innocent public officers from unwarranted assaults on their integrity and to encourage each community to adopt an appropriate code of ethics to supplement this chapter. The Legislature declares that each purpose is a matter of State concern and adopts the following chapter accordingly, with the intention that it shall be the generic law in relation to conflicts of interest in municipal transactions, not to be superseded by local law of any municipality subject to its provisions.

1964 N.Y. Laws ch. 946 § 1.

GML Section 808 requires that each county establish a board of ethics, and authorizes other local municipalities to also do so. It sets forth the following minimum functions of a board of ethics:

The board shall render advisory opinions to officers and employees of municipalities wholly or partly within the county 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 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.

Analysis and Presentation of Recommendations

The legislative proposal developed by the State and Local Government Law Section would amend GML Section 808 to add a new subdivision (6), requiring that:

6. (a) Each member of the board of ethics of a political subdivision or municipality shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding

years in order to meet the requirements of this subdivision. Such training shall be approved by the governing body and may include, but not be limited to, training provided by a municipality, county, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.

(b) To be eligible for reappointment to such board, such member shall have completed the training promoted by the respective political subdivision or municipality pursuant to this subdivision.

(c) The training required by this subdivision may be waived or modified by resolution of the governing body when, in the judgment of the governing body, it is in the best interest of the respective political subdivision or municipality to do so.

(d) No decision of a board of ethics shall be voided or declared invalid because of a failure to comply with this subdivision.

(e) Notwithstanding any inconsistent provision, this subdivision shall have no application to a city having a population of one million or more or to a county, school district, or other public agency or facility therein.

Like the existing training requirement for land use boards, which this provision tracks, the proposed training requirement for boards of ethics would provide municipalities with the flexibility to select the source, format and content of the training. Further, because a local municipality may waive or modify the training requirement, it would not represent an unfunded mandate. Like GML Article 18 generally, this proposed training requirement would exclude the City of New York.

Under the proposed legislation, a board member who failed to meet the training requirement would not be eligible for reappointment to the board. No decision of a board of ethics would be voided or declared invalid because of a failure by its members to comply with the training requirements.

The proposal has a realistic prospect of enactment. In 2021, the Executive Committee adopted this proposal. A Memorandum in Support of the proposal, dated February 13, 2022, was submitted to the Local Government Committees of the State Senate and Assembly. Bills were introduced in both houses. The bill was voted out of committee in the Senate. The legislative session ended before action was taken by the Assembly Committee. The approval of the Executive Committee has since expired.

Conclusion

The Local and State Government Law Section respectfully requests that the legislative proposal be adopted as policy by the House of Delegates, so that it may be considered for designation as a “legislative priority” and resubmitted for consideration by the Legislature.