

**Albany County Legislature**  
**Memorandum in Support of Local Law No. “B” for 2008 (LL “B”)**

**Sponsors:** Messrs. Horstmyer, Nichols, Higgins, Ms. McKnight, Messrs. Clenahan, Steck, Bullock, Timmins, Mayo, Domalewicz, Reilly, Aylward, Clay, Ms. Maffia-Tobler, and Mr. Gordon.

**Title:** Code of Ethics and Financial Disclosure Law of the County of Albany.

**Purpose:** To establish a clear and comprehensive code of ethics, require sensible disclosure of policymakers' financial interests, and provide for effective administration and fair enforcement of the rules.

**Summary of Provisions:**

**Section 1:** States the title of LL “B”.

**Section 2:** Repeals existing County ethics law (Local Law No. 8 for 1992).

**Section 3:** States purpose of LL “B”.

**Section 4:** Sets forth definitions of the following terms:

- |                                       |                                  |   |
|---------------------------------------|----------------------------------|---|
| 1. Ability to influence               | 11. County officer or employee   | 21. Person                              |
| 2. Allowable gift value growth factor | 12. Customer or client           | 22. Personally identifiable information |
| 3. “Appear” and “appear before”       | 13. Ethics Commission (“EC”)     | 23. Policy Making Official              |
| 4. Business                           | 14. Gift (includes exclusions)   | 24. Professional license                |
| 5. Business dealings with the County  | 15. High-ranking County position | 25. Referred to the firm                |
| 6. Business relationship              | 16. Household                    | 26. Relative                            |
| 7. Candidate                          | 17. Inflation factor             | 27. Spouse                              |
| 8. Confidential Information           | 18. Official action              | 28. Subordinate officer or employee     |
| 9. Corporation                        | 19. Outside employer or business |   |
| 10. County                            | 20. Particular matter            |   |

**Section 5:** Sets forth the Code of Ethics for the County.

**Subdivision 1:** Prohibits the use of a County employee’s official position in a manner the employee knows will financially benefit the County employee personally, or his/her outside employer, clients, debtors, or creditors. Also prohibits official acts for the benefit of relatives and their employers, and nongovernmental group or organization which the County employee, or household members of the County employee, serves as an officer or director.

**Subdivision 2:** Requires recusal from the matters described in subdivision 1.

**Subdivision 3:**

**Paragraph (a):** Prohibits solicitation or acceptance of gifts by County employees from people or businesses whose business dealings such employees has had the ability to influence within the previous two years.

**Paragraph (b):** Prohibits solicitation or acceptance of gifts by County employees from people or businesses that do business with the employee's agency.

**Subdivision 4:** Prohibits County employees from representing other people in matters before or actions against the County.

**Subdivision 5:** Prohibits County employees from appearing before any agency of the County except on behalf of themselves, their agency, or constituents (if any).

**Subdivision 6:** Prohibits the disclosure of confidential information.

**Subdivision 7:** Prohibits use of County property for personal convenience or profit, except when such use is available to citizens generally or is provided as a matter of written policy.

**Subdivision 8:** Prohibits political activities in the County workplace. Also prohibits the coercion of employees, contractors or persons receiving County permits/benefits to engage in political activities.

**Subdivision 9:** Prohibits high-ranking County employees from appearing before the County for one (1) year. Also, prohibits former employees from working on particular matters after separating from County service if the employee personally and substantially worked on such a matter while with the County.

**Subdivision 10:** Prohibits use of County funds for newsletters during election time.

**Subdivision 11:**

**Paragraph (1):** Prohibits Sheriff's Department employees from owning or working for a private investigation, accident reconstruction, fire prevention, or fire inspection business.

**Paragraph (2):** Explicitly permits service in volunteer fire or emergency medical organizations, or employment by security or traffic service companies.

**Subdivision 12:** Prohibits promises of money in exchange for receiving a vote for a job or promotion.

**Subdivision 13:** Allows EC to regulate business relationships as between superior officers and their subordinate employees.

**Subdivision 14:** Prohibits County employees from soliciting/accepting gratuities.

**Subdivision 15:** Prohibits professionally licensed employees from having a significant ownership interest in companies that have contracts with the County.

**Subdivision 16:** Prohibits County officials and employees authorized to conduct inspections and issue permits from having a significant ownership interests in businesses that are subject to such inspections or permit processes.

**Subdivision 17:** Prohibits County employees from acquiring, soliciting, negotiating for, or accepting any interest, employment, or other thing of value which would put them in violation of the code of ethics.

**Section 6:** Requires recusal from conflicts, prompt notification given to superiors, and disclosure of the nature and extent of the conflict.

**Section 7:** Sets forth exclusions from the LL “B” code of ethics and disclosure requirements.

**Section 8:** Prohibits any person from inducing a County employee to violate LL “B”.

**Section 9:**

**Paragraph 1:** Prohibits a County employee from having an interest in a County contract. This provision is found in the General Municipal Law (“GMU”). It is contained in LL “B” so that the EC may have jurisdiction over such conduct.

**Paragraph 2:** Requires disclosure of interests in County contracts in the manner provided for in the GMU.

**Paragraph 3:** A violation of Section 9 is a misdemeanor as required by GMU.

**Section 10:** Prohibits a County employee’s outside employer from appearing before his or her agency except on its own behalf, to receive a ministerial act, or to receive County services/benefits that are generally available to the public. If an outside employer must appear before a County agency, the County employee that works for such other business/entity must recuse himself/herself from the matter.

**Section 11:**

**Subdivisions 1 – 3:** Requires Policy Making Officials to file annual financial disclosure forms once a year on May 15 or within forty-five (45) days of becoming subject to LL “B”. Requests for extending the filing deadline may be granted.

**Subdivision 4:** Sets forth disclosure requirements and directs the EC to draft them in accordance with Section 11(4). The forms are as follows:

- Form A is for Policy Making Officials and candidates;
- Form B is for volunteer Board members;
- Form C is for high-ranking County officials and requires disclosure of the identity of most clients that do business with the County (mirrors client disclosure requirements in the state ethics law proposed by Gov. Cuomo and passed by the legislature); and
- Form D is used to request an extension of the filing deadline.

Forms A & B require disclosure of the:

- identity of the outside employers of filers and their household members;
- location only of real property in or near the County owned by filers or their relatives;
- name of businesses in which a filer or his/her spouse has a significant financial interest;
- names of relatives in County service; and
- names of volunteer directorships/trusteeships (not required of volunteer board members).

**Subdivision 5:** Requires actual knowledge of interests that are to be disclosed. If a filer does not have actual knowledge of the interest, then he or she cannot be penalized for not disclosing it.

**Section 12:**

**Subdivision 1:**

**Paragraphs (a) – (c):** In matters where a request for action is made of a County employee where such action would financially benefit that person and the County employee, or some other Policy Making Official, the person requesting the action must disclose the names of such people in writing. Such disclosure is not required if it was covered by the disclosure requirements of § 809 of the GMU.

**Paragraph (d):** Requires companies that do business with the County to disclose whether owners, directors or executives hold officer positions in County political parties.

**Subdivisions 2 & 3:** Requires disclosure of the nature and extent of interest of County employees in land use matters that come before the County. Pursuant to § 809 of the General Municipal Law, willful failure to comply constitutes a misdemeanor.

**Section 13:**

- Prohibits County from entering into contracts that result from an LL “B” violation, though allows Legislature to ratify them, except when there is a violation of GMU §801.
- Persons who intentionally or knowingly violate LL “B” may not enter into contract with the County for up to a three (3) years. Prohibits LL “B” violators from entering into contracts with the County during the penalty period, except that a person may continue to use services/facilities that are generally available to the public during that period.
- Allows the County to go to court to enforce these provisions.
- Provides that companies shall not be held vicariously liable for employee actions unless the employees acted according to company policy.

**Section 14:** Sets forth the penalties for violations. Penalties include disciplinary action, fine, damages, and civil forfeiture. Only Sections 9 & 12 carry criminal penalties pursuant to GMU.

**Section 15:** Sets forth process for citizens to enforce LL “B” by seeking court injunctions.

**Section 16:** Sets forth duties of the County Clerk regarding LL “B” records management.

**Section 17:** Sets forth the process for identifying County Policy Making Officials and candidates required to file annual disclosure and notifying such persons of their duty to file.

**Section 18:**

**Subdivision 1:** Establishes the EC, sets forth the qualifications of its members, including limits on the number of members of a single political affiliation and a prohibition on holding

a political party position, the terms of office for each member, and the process for designating certain staff members, if necessary.

**Subdivision 2:** Provides for the manner of filling EC vacancies.

**Subdivision 3:** Provides for the manner in which to remove EC members.

**Subdivision 4:** Sets forth certain rules and requirements of EC meetings.

**Subdivision 5:** Sets forth the jurisdiction, powers, and duties of the EC, including the power to enforce LL “B” and to adopt rules and regulations to implement its provisions.

**Subdivision 6:** Sets forth the formula used to adjust the allowable gift value.

**Section 19:** The EC shall review all annual, transactional and applicant disclosure statements. The EC shall review each for potential violations of LL “B”. If errors or omissions are found in annual disclosure statements, the EC shall provide fifteen (15) days for corrections. The EC shall also review the list of persons required to file annual disclosure for completeness.

**Section 20:** Establishes the process of reviewing and responding to sworn complaints; provides EC with power to initiate investigations; provides EC with subpoena power; and prohibits the EC from investigating its own members and staff.

**Section 21:**

**Subdivision 1:** Allows the EC to refer potential criminal violations to a prosecutor.

**Subdivision 2:** Prohibits the EC from acting on alleged violations by EC members or staff.

**Section 22:** Upon a demonstration of “compelling need” in “exceptional circumstances” permits the EC to grant waivers of certain code of ethics and disclosure provisions.

**Section 23:** Sets forth process by which persons or their supervisors may request an advisory opinion, which are binding upon the EC. Also, in instances where the EC has failed to respond in a timely fashion, sets forth the process by which a person requesting an advisory opinion may compel the EC to issue an opinion.

**Section 24:** Recognizes the right to an Article 78 proceeding.

**Section 25:**

**Subdivision 1:** Requires the EC to make available to County employees and contractors information regarding LL “B” and GMU Article 18 provisions.

**Subdivision 2:** Requires the EC to establish an educational program that all Policy Making Officials must participate in on a biennial basis.

**Section 26:**

**Subdivision 1:** Requires EC to file annual report that covers activities & recommendations.

**Subdivision 2:** Requires EC to periodically review LL “B” for effectiveness and sensibility.

**Section 27:**

**Subdivision 1:** Provides that FOIL governs records disclosure.

**Subdivision 2:** Prohibits open meeting of disciplinary proceedings except upon request of the County employee that is the subject of the proceeding, or when required by the OML or some other state or federal law.

**Subdivision 3:** Requires record keeping of all LL “B” violations

**Section 28:** Preserves existing legal rights and provides for severability of a LL “B” provisions found unconstitutional or non-compliant with state law.

**Section 29:**

**Subdivisions 1, 2 & 3:** Requires County Executive to post and distribute suitable copies of LL “B” provided to him/her by the EC. Also requires notice be given by the County Executive to persons required to file financial disclosure, but does not lift duty on filers to know whether they are required to file.

**Subdivisions 4 & 5:** Requires posting on the Internet of various EC public documents.

**Section 30:** States the effective date.

**Justification:** The current County ethics law contains a vague and unenforceable code of ethics, onerous financial disclosure requirements, and inadequate administrative duties and enforcement powers for the Ethics Commission. LL “B” corrects each deficiency by establishing a clear set of ethics and disclosure rules, and a predictable and transparent process.

Examples of serious problems with the current ethics law are with conflicts of interest rules related to securing “unwarranted privileges or exemptions” for relatives or person gain, and taking actions that are in “substantial conflict with official duties.” These key terms are not defined in the law, and the EC has not published any advisory clarifying their meaning. This vagueness results in the rules being unenforceable. LL “B” will clarify the law, which will afford better guidance to policymakers. These changes will enhance citizens’ confidence in their County government while protecting county employees from undue suspicion.

Fiscal considerations also support the reexamination and reform of County practices. Many businesses, governments and other organizations have undertaken such efforts to ensure good faith business dealings by their agents. LL “B” will provide county servants with better guidance that will better protect the integrity of our government.

The law also makes improvements to ethics administration by increasing duties of the EC, such as operating a training program. LL “B” also simplifies financial disclosure for policymakers, easing the undue burden of completing unnecessarily long forms.

**Legislative History:**

**Local Law No. “M” of 2007:** Referred to the Law Committee 10/07 – tabled by sponsor.

**Local Law No. “B” for 2008:** Currently in Law Committee.

**Resolution No. 73-a (08):** First public hearing for LL “B” favorably recommended by Law Committee on 3/28/11, approved by County Legislature on 4/11/11, held on 4/26/11.

**Resolution 315 (11):** Second public hearing resolution that passed on 7/11/11. Hearing scheduled for 7/26/11.

**Fiscal Implications:** None to the County.

**Effective Date:** July 1, 2012.