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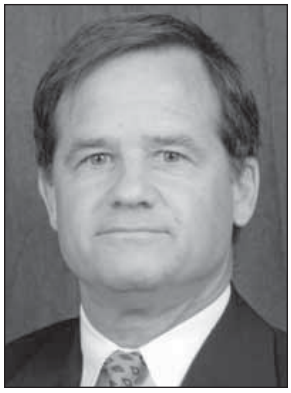
A Message from the Chair



Robert B. Koegel

We had a great turnout for our Section program at the State Bar Association Annual Meeting in New York on January 29. I don't know if it was the venue—we often have good attendance at our Annual Meetings—or the topics and speakers for our presentation, or something else, but we appreciate the active participation of our Section members at our CLE sessions. We followed our usual format of trying to appeal to both practitioners concentrating in specific areas of practice, such as land use/environmental law or employment law, which reflect the majority of our Section composition, and all practitioners who might be interested in the latest developments affecting municipal law. Hence, we were enlightened by informative presentations on municipal standing to sue in SEQRA cases, a land use law update, and municipal labor law in tough economic times, as well as on the shifting case law of home rule and preemption in New York, the impact of municipal accounting rule GASB 45 on the disclosure of future payments of post-employment health and life insurance benefits of retired public service employees, electronic discovery issues for municipalities, and public sector ethics. I thank our program chairs, Howard Protter and Darrin Derosia, for their work in organizing the program, as well as all of the speakers who provided their outlines and oral presentations. Remember, we welcome, we encourage, any suggestions for speakers or topics, so please, don't be shy.

We also conducted a significant piece of business at our Annual Meeting. As a Section, we voted to amend our bylaws to double the size of our Executive Committee (from 9 to up to 18 members) and to restrict the right to vote of past chairs of the Executive Committee to the immediate past chair. The idea is twofold: to encourage more people with presumably new ideas and perspectives to become actively involved with the business of running our Section while, at the same time, to retain the collective wisdom of our past chairs to counsel, but not dictate, the future direction of our Section. To carry out these goals, we have already begun to solicit and speak with Section members who are willing to get the most out of their membership by becoming committee members, committee chairs, or Executive Committee members. If you think you would like to get more involved, please contact me (rbk@remgiff.com)

Inside

or our incoming Section chair, Patty Salkin (psalk@albanylaw.edu). The more you get involved, the more you get out of the dues you pay; the more you get involved, the better our Section gets.

Though I've said this many times before, I want to remind you that if you are not using our Section's listserve to reach all members of our Section, you are ignoring a valuable resource that comes with your Section membership. Almost daily, Section members are posting their legal questions and getting thoughtful, useful responses from their colleagues. I am amazed and gratified at the quality and quantity of Internet traffic on this listserve.

It is the use of the Internet at its best and a testament to lawyers cooperating with one other to practice better and more efficiently. If you haven't registered for the listserve yet, simply go to nysba.org, click on our Section, and follow the prompts. It's easy.

It's not too early to mark your calendars for the Fall Meeting, which is the weekend of October 23. We will be joining with the Environmental Law Section to meet at the Inn on the Lake in Canandaigua, New York, just southeast of Rochester. We're anticipating another great meeting with our environmental colleagues, and we hope you can make it. Again, if you have any suggestions for program topics or social activities, or you have any questions, simply contact me or Patty.

See you then.

Robert Koegel

From the Editor

Recently, the final chapter may have been written in the saga of *O'Mara v. Town of Wappinger.*[1] As twice previously chronicled in the *Municipal Lawyer*,[2] the O'Maras acquired two parcels of property in a tax sale that, unbeknownst to them, had been designated as open space parcels on a filed plat map. The O'Maras proceeded to develop the properties and receive building permits and other approvals from the Town, where no one appeared to be aware of the building restrictions placed upon these parcels. Ultimately, the restrictions were brought to the Town's attention, a stop work order was issued and the building inspector refused to issue a certificate of occupancy for the house built by the O'Maras on one of the lots (Parcel E). Then the O'Maras sued the Town in federal court for a judgment declaring their ownership of the parcels free of the open space restriction and for damages under 42 U.S.C. § 1983.

The disposition of the O'Maras' lawsuit turned on the effect to be given to an open space restriction imposed on a subdivision plat approved under Town Law § 276 and filed in the County Clerk's office. The federal district court initially ruled that the open space restriction was not binding on future property owners who did not have actual notice of the restriction, such as the O'Maras, because it was not recorded in the chain of title in the County Clerk's office.[3] On appeal, the Second Circuit Court of Appeals reversed the District Court and certified this issue, which it determined to be an unresolved question of state law, to the New York Court of Appeals.[4]

The Court of Appeals ruled that an open space restriction on a plat map when filed in the County Clerk's office is binding on and enforceable against subsequent purchasers.[5] Under the circumstances of the case, the Court of Appeals opined, a search of the records in the County Clerk's office for the subdivision plat map should have been undertaken to determine the boundaries of the lots conveyed and an examination of that plat map would have revealed the open space restriction placed on the two parcels. The Second Circuit adopted the Court of Appeals interpretation, reversed the District Court judgment on this issue and remanded the case to the District Court for further proceedings consistent with its ruling.[6]

Thereafter, on May 27, 2008, the District Court directed the entry of judgment dismissing the complaint.[7] Following the actual entry of the judgment on November 12, 2008, the Town moved for summary judgment granting its counterclaims to remove the house from Parcel E. The District Court granted the Town's motion and directed entry of a judgment directing removal of the house.[8] Although sympathetic to the O'Maras' plight, the District Court declared that enough was enough:

> I quite understand Plaintiffs' frustration with the situation in which they find themselves. They did nothing wrong (although their Title Insurer certainly did). And the Town did not acquit itself well by issuing a building permit to Plaintiffs after placing a restriction on Parcel E—and then forgetting it had done so. However, this lawsuit has gone on long enough. Plaintiffs need to accept that they have lost, and move on. Further proceedings before this Court in an attempt to delay the inevitable will be viewed as frivolous and subject Plaintiffs—and any attorney who represents them—to the very real possibility of sanctions.[9]

Under the District Court's Order, the O'Maras are required to restore Parcel E to an "open space" condition by removing any and all structures and debris from the premises within 30 days (February 5, 2009).[10] Upon their failure to act, the Order authorizes the Town to enter upon the property, perform the work and to apply to the Court for a judgment against Plaintiffs for the costs incurred.[11] The Court also enjoined the O'Maras from taking any further steps to develop or improve Parcel E.[12]

Inside

In this issue of the *Municipal Lawyer,* Kenneth Bond of Squire, Sanders and Dempsey, LLP, New York City, Chair of the Section's Municipal Finance and Economic Development Committee, writes about the impact of the global credit and financial crises on municipal finance. He also suggests certain economies, strategies and best practices for local governments to follow to successfully navigate the current landscape. Patricia E. Salkin, the Raymond and Ella Smith Distinguished Professor of Law at Albany Law School, overviews the voluntary code of conduct for wind farm development drafted by the New York State Attorney General and

compares its provisions with the existing framework of municipal ethics provisions embodied in Article 18 of the General Municipal Law and other state statutes.

Darrin B. Derosia, Counsel to the New York State Commission on Local Government Efficiency and Competitiveness, summarizes key 2008 enactments by the Legislature affecting local governments. In their quarterly column on land use, Henry M. Hocherman and Noelle V. Crisalli of Hocherman Tortorella and Wekstein examine the issues of standing to sue under the State Environmental Quality Review Act, the imposition of fees in lieu of parkland and whether a fire district is immune from local zoning. Finally, in his "Message from the Chair," Robert Koegel outlines significant amendments to Section bylaws which will double the size of the Executive Committee and foster greater participation and diversity in the Section.

Lester D. Steinman

Endnotes

1. 400 F. Supp. 2d 634 (S.D.N.Y. 2005), *aff'd in part, rev'd in part and question certified by O'Mara v. Town of Wappinger*, 485 F.3d 693 (2d Cir. 2007), *certified question accepted by O'Mara v. Town of Wappinger*, 8 N.Y. 3d 957 (2007), *and certified question answered by O'Mara v. Town of Wappinger*, 9 N.Y.3d 303 (2007), *answer to certified question conformed to O'Mara v. Town of Wappinger*, 518 F. 3d 151 (2d Cir. 2008); *on remand to O'Mara v. Town of Wappinger*, 2008 WL 2741797 (S.D.N.Y. May 27, 2008), and *order and judgment on Cir. Court mandate entered, O'Mara v. Town of Wappinger*, 2009, WL 73116 (S.D.N.Y. January 6, 2009).
2. Vol. 20, No. 2, Spring 2006; Vol. 21, No. 3, Summer 2007.
3. *O'Mara*, 400 F. Supp. 2d 634 (S.D.N.Y. 2005).
4. *O'Mara*, 485 F.3d 693 (2d Cir. 2007).
5. *O'Mara*, 9 N.Y.3d 303 (2007).
6. *O'Mara*, 518 F.3d 151 (2d Cir. 2008).
7. *O'Mara*, 2008 WL 2741797 (S.D.N.Y. May 27, 2008).
8. *O'Mara*, 2009 WL73116 (S.D.N.Y. January 6, 2009).
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*

Scherzo to a Bond Anticipation Note[1]

By Kenneth W. Bond

The scherzo is a musical form within a larger piece of music, like a symphony. In Italian the word means "joke" and in the context of 19th-century European symphonic composition it is employed as a startling and dramatic but short and often loud bridge from one long movement to the next, grabbing the listener's attention but rendering the listener exhausted at its end. My conceit in labeling a talk on conditions in the municipal bond market a "scherzo" is an overt nod to my spiritual mentor, Robert Schumann (1810–56), whose scherzos in his symphonies and trios are among the most memorable. More important, and the reason I find Schumann fascinating, he was trained as a lawyer at the University of Heidelberg, but no doubt discouraged from practice by having to put in 2,400 chargeable hours year after year, chose to write music instead.[2] But his legal training paid off. Schumann viewed music as a form of literature. So 200 years after the master's birth, as one trained in music in my youth but having practiced law for over 30 years, it is fun to work Schumann in reverse: styling indentures and bond resolutions and talks to government leaders as musical forms.

The present global credit and financial crisis is no joke, but for the municipal securities industries it shares characteristics with the scherzo. The crisis came upon us suddenly, it is loud and dramatic, and it is leaving us exhausted, but as concerns states and local governments it may be relatively short. The long-term aspects of the financial crisis affecting local governments will be its economic effects possibly for many years to come, comparable, if you will, to a very long and dreary Bruckner symphony (Anton Bruckner, 1824–96).[3]

You have read all the various accounts of how the commercial banks, investment banks, insurance companies, and mortgage brokerages began to melt down in the summer of 2007 when everyone realized that the mortgage-backed securities and credit derivative swaps written on such securities which banks held as "capital" were, in the infamous reputed words of John Nance Garner,[4] not worth a tub of warm spit. And you've all watched with dropped jaws and diminishing net worth as the Dow has today sunk over 45% from its high in October 2007. Why and how all this happened is now current history. The question for you as city and county managers is what it means to the future of running states and local governments now and in the years to come.

Consider first the current municipal bond market. Municipal bonds and government borrowing are a relatively small part of the overall global credit system, which is like a Hummer with a busted transmission—it ain't moving. After bailing out state agency issuers of "auction rate securities" earlier in 2008, we have plodded along nicely issuing bonds and notes with plenty of investor interest at very even rates of interest until the mid-September Lehman Brothers bankruptcy and the immediate crash in the Dow. Since then, government banking (issuance of short-term notes) has proceeded apace but at substantially higher interest rates with more attention from community and regional banks than the roiling global financial institutions with government banking operations. A test of the market occurred in mid-October when the State of California attempted to issue $7 million in revenue anticipation notes, but found investor interest for only $5 million to stave off massive government employee layoffs.[5] Long-term bonds for New York municipalities are finding investor interest from the same bidders as always but at high interest rates. So what's the problem? None really because, like a well-built SAAB, the transmission on the municipal bond market works just fine for at least three reasons. First, all that money coming out of the stock market and mutual funds over the past few weeks had to go somewhere. As I have heard recently from several friends, they told their brokers to "sell everything" and "put it in municipal bonds." Why? Because munis are viewed as safe and secure, if not a little boring, and most likely to pay off in full. Today's investor, having been burned by the hype of a 20,000 Dow in five years, just wants to preserve capital and maintain liquidity. Second, as the Fed has lowered the discount rate and investors bulked up demand on Treasuries in the flight to safety, yields on Treasuries have declined, often close to or below zero, making munis a better yielding investment, tax exempt or otherwise. Third, as I remind my law students, state and local governments can issue only debt, not equity. They have creditors only. We can be thankful at times like this that state laws prohibit local governments from doing more than issuing tax-supported bonds and notes, keeping us out of the toxic atmosphere of credit derivative swaps and collateralized mortgage obligations, and selling off public assets to raise cash.[6]

So for now, our SAAB is still moving even though we feel like the transmission is slipping. Here's why. First, the evaluation of credit of munis is becoming problematic. The major rating agencies over the years have sliced and diced municipal credits into unmanageable and indecipherable categories mimicking ratings on corporate debt. After being roundly criticized for being sloppy in rating every insured mortgage backed security as AAA, they decided in 2007 to simplify their muni ratings. But the credit crisis has put that project on hold. Investors not being sure of what a rating means will exact a premium in higher interest rates.[7] Second, we have become lazy over the past 15–20 years in selling long-term bonds with bond insurance, guarantying an insured-AAA rating for every investment grade credit and those barely investment grade. That practice ended abruptly this year with the demise of all but two of the major muni insurers, both of which are on "credit watch" for possible downgrades. That means states and local governments will be increasingly selling bonds naked—no insurance—based on their own stand-alone credit in an environment where no one is certain what a rating means, and where the SEC is calling for more disclosure at the time of issuance and throughout the term of the bonds.[8] For issuers like New York local governments, which can issue only tax-supported debt where risk of default is with the taxpayer, not the investor, lack of insurance is not the end of the world. But no insurance means closer scrutiny of the issuer's underlying credit by investors—no more covering up the ugly stuff with bond insurance. Issuers with perennial deficits, declining tax revenues, unchecked rising labor costs, unfunded OPEB, thin fund balances, and nasty State Comptroller audit reports will suffer in the market. And third, the long-term impact of the global credit crisis—regional / national economic decline and recession—will make capital market access at all levels of government challenging and more expensive. The Schumann scherzo may be short but the dreary Bruckner symphony which follows may be really long.

As managers of your community, you need to insure fiscal stability during a period we are finally beginning to acknowledge: the economic decline of the United States relative to the rest of the world. This condition is different from the global credit crisis, but the credit crisis is aiding and abetting the economic condition. We are faced with not only the well-known slump in home sales and housing construction, but also increased global competition for resources of all kinds, basic infrastructure maintenance deferred to pay for foreign wars, pressure on our educational systems to perform better, the loss of domestic employment to anywhere else on the globe, all exacerbated by a worldwide recession.

Here are a few things you can do as stewards of your communities to adjust to and succeed in these changing economic conditions.

Managers usually leave the budget and finance operations of their communities to the chief fiscal officer and finance committee of the legislative body. That is not a good idea going forward. You need to conduct an internal audit of your community's fiscal resources and your fiscal management capabilities.

Let's start with the budget that calendar fiscal year local governments are now in the midst of developing for 2009. Your primary source of revenue is the property tax, reserved exclusively for local governments under New York law. That's a great fiscal strength for local governments. But it's a problem because New York's property tax is the highest in the nation by any measure.[9] That means that the elasticity of the property tax—your ability to increase it without adversely affecting other economic activity—is low. High property tax has already contributed to net out-migration of families, income earners and all levels of business. While "tax revolts" are limited to turning down school budgets, rising property taxes without a perceived reciprocal benefit just infuriate voters. Keeping property taxes at affordable levels requires reducing the expense side of the budget. Given the job loss accelerating next year, future property tax collections may disappoint, and those governments which guaranty collection of another government's tax roll are forced into cash-flow borrowing.

Looking to increase revenues, State aid is problematic and not likely to increase as the State itself is experiencing serious declines in tax revenues, projecting its 2010 budget deficit now at $12.5 billion.[10]

One-shots are a particularly attractive way to increase budget revenues, particularly land and asset sales. These revenues might have been realistic five or ten years ago with strong demand for developable property at attractive prices, but large developer activity has dried up owing to the credit crisis. And selling public sector assets to raise cash is generally illegal.[11]

That leaves fees and assessments as areas where revenues may be enhanced. Parking fees, for example, can generate significant revenues but require disciplined enforcement. Assessments, particularly in villages, can be an effective way of generating non-tax revenues for a specific benefit (i.e., sidewalk assessments) but these revenues require completing administrative proceedings, such as a public hearing, which requires preparing well ahead of the budget year in which assessments can be included in the budget.[12]

On the expense side, aside from reducing personnel, negotiating favorable labor contracts has to be a

major focus. Hard negotiating with the unions will be increasingly important to keep wages and benefit costs under control—something easier said than done. You may want to review things like health benefits provided to existing and retired personnel to require greater employee and beneficiary contributions.[13] Earlier this year, the City of Vallejo, CA, filed for bankruptcy protection under Chapter IX of the federal bankruptcy code to alleviate oppressive labor contracts. Although an egregious procedure, this technique brought the unions back to the table after a federal bankruptcy judge approved the city's petition for bankruptcy.[14] New York has never used the bankruptcy statute (title 6A, Local Finance Law) which would permit a federal bankruptcy filing if and when economic conditions reach the point where structural deficits are unavoidable. And section 10.10 of the Local Finance Law now authorizes a streamlined process for obtaining special legislation for financing a structural deficit under State Comptroller supervision.

To guard against cash-flow and deficit financing, you should consider establishing and funding reserves through budget appropriations. Section 6 of the General Municipal Law authorizes reserves for several purposes which may help smooth out budgets in lean years. There is also short-term (up to five year) borrowing available for routine equipment and hardware machinery which can relieve the expense side of the budget. Tax anticipation notes and revenue anticipation notes are often misused to provide cash if revenues decline during a budget year; and budget notes can do the same but should only be used if unanticipated expenses arise, not when revenues decline.[15]

You should also review your collateral agreement with your community's depositary banks.[16] While these banks are the primary supporter of your government financing operations (i.e., purchaser of short-term notes), they are also required by law to fully collateralize your deposits in case they fail—and as Treasury Secretary Paulson said recently, "There will be more bank failures." You need to conduct due diligence on your bank before opening or maintaining a deposit account, as well as review your community's investment policy and the collateral list your banks maintain. Although eligible collateral has been expanded in New York recently to include mutual funds of eligible securities, it would not come as a surprise that some banks have substituted illiquid securities or under-collateralized municipal deposits without notice. Given the global credit crisis, you may find that your local and regional banks are in a stronger position to collateralize deposits than the international household names whose capital has been diminished from write-downs in the value of those toxic securities over the past year. If you've been told that the FDIC will insure deposits more than $100,000 or that some of the $700 billion bailout from Congress will be available to fund government operations, get independent advice from legal counsel before taking the word of banks and financial advisors.

In addition to sharpening your budget and monitoring your bank deposits, there a few other best practices you need to consider. Make sure you are employing the best professionals. Being political entities, municipalities are not immune from engaging political friends for all types of services. But today we are seeing a flight to quality for all types of financing and legal services and advice. Your bond counsel should have resources and expertise in the law of financial services, bankruptcy, litigation and access to getting something done in Albany. As in past recessions, when the private sector lays off finance and accounting personnel, this is your opportunity to hire finance professionals you couldn't afford in flush times. Some of the best municipal and school finance professionals I have worked with over the years came out of the private sector.

Beware of deals which look too good to be true. Wall Street layoffs often spawn adventurers into municipal finance who offer higher rates of return, gleaming project development concepts, and off-the-books financing schemes. If you can't clearly understand what they are talking about, it's not because they are smarter than you. It's because they see an opportunity to get paid for something from your taxpayers. Those of us who have worked in public finance for many years should not forget the lessons of Lyon Capital in the early 1980s when a fly-by-night outfit secured State Comptroller endorsements and then invested public funds for high returns only to lose most of it for lack of collateral when Lyon Capital failed.

You should focus on municipal cooperation and sharing of services—the discipline John has discussed this morning.[17] New York is blessed and burdened with thousands of units of government—many whose viability may be questionable in tough economic times. In the economic period we are entering, sharing services and consolidating local governments to reduce cost and increase efficiency needs to happen even though the process will be politically painful. As you know, in the private sector, consolidation and spin-offs of businesses and corporations to attain profitability are things we take for granted. Yet such realignments in local government are fiercely opposed politically even if cost savings to taxpayers are clearly demonstrated.

Promoting economic development in your community and region can only help simulate job creation growth. Every county and many local governments have industrial development agencies which offer a wide array of tax and economic incentives. While these programs are currently under review for abuse and

lack of effectiveness, when employed in coordination with the underlying local government, they do work.

Get involved in organizations like NYS C/CMA and NYS GFOA.[18] Learn about and speak out on issues which foster economic growth, but also unduly complicate municipal finance. For example, legislation to allow tax-exempt financing of health-care and higher educational facilities has been held hostage by the unions in the Legislature for over a year, making it more expensive to finance new facilities.[19] The Legislature has also failed to enact enabling legislation to provide a mechanism for OPEB funding, leaving local governments with inadequate tools to comply with GAAP standards.[20] Finally, the Senate passed but the Assembly did not, comprehensive amendments to the redevelopment law (art. 18-C, General Municipal Law) which would put teeth in tax increment financing, a useful economic development tool used to great benefit in many other states.[21]

Tell your local attorney to get active in the Municipal Law Section of the NYSBA and the State and Local Government Law Section of the ABA. This spring the ABA may consider a recommendation addressed to the new Administration to substantially expand federal general revenue sharing with the states and their political subdivisions for infrastructure development and budgetary stability.

So while the shock and awe of the scherzo may be leading to that long, dreary Brucknerian symphony, you need to establish fiscal balance which, predictably, will be enhanced by some form of federal financial assistance, as the economic landscape moves toward something sounding deeply serious, reverential, perhaps passionate and joyful at times, but hardly lighthearted. That would describe the classic D minor symphony of César Franck (1822–90), the great late-19th-century French organist and composer.[22] As we say of the new post-recession economy, welcome to France.

Endnotes

1. This article is adapted from a presentation at the 2008 annual training event of the New York State City/County Managers Association, October 21, 2008.
2. Daverio, *Robert Schumann, Herald of a "New Poetic Age,"* Oxford University Press, New York (1997), pp. 55-104.
3. *See* Finney, *A History of Music*, Harcourt, Brace and Company, New York (1947), pp. 545-46.
4. Thirty-third U.S. Vice President (1933–41), and former Speaker of the U.S. House of Representatives, from Texas, a/k/a "Cactus Jack."
5. *Los Angeles Times*, October 11, 2008.
6. Articles VII and VIII of the N.Y.S. Constitution, respectively, restrict state and local government financing powers by requiring voter approval and imposing debt limits.
7. *See The Bond Buyer*, October 23, 2008.
8. *See* Speech by SEC Chairman Christopher Cox on July 18, 2007, referred to in U.S. Securities and Exchange Commission Release, No. 2007-148, July 26, 2007.
9. Citizens Budget Commission, *The Palisades Principles: Fixing New York State's Fiscal Practices*, February, 2004, pp. 6-13.
10. *New York Times*, November 12, 2008.
11. Public assets can be sold only if no longer required for public use, sometimes with voter approval (69 Op. St. Comp. 1077); the sale and lease-back of public assets is generally prohibited (82 Op. St. Comp. 176); park land cannot be sold without a special act of the legislature (81 Op. A.G. 98 [Inf.]).
12. Village Law §§ 22-2200 *et seq*.; New York takes the position that "impact fees" are a local tax regime preempted by general state law and therefore unenforceable. *See Albany Area Builders Ass'n v. Town of Guilderland*, 74 N.Y.2d 261 (1989).
13. *See* Bond, *The Perplexing Case of GASB 45*, NYSBA, *Municipal Lawyer*, Summer 2007, Vol. 21, No. 3 for a discussion of GAAP-compliant financial disclosure requirements of accrued health insurance and other benefits for retired pubic employees.
14. *In re City of Vallejo, California, Debtor*, Case No. 08-26813-A-9, United States Bankruptcy Court, Eastern District of California, Sacramento Division, Findings of Fact and Conclusions of Law, filed September 5, 2008.
15. New York law is unhelpful when taxes and state aid are below budget forecasts, as may well be expected in 2009 and beyond during a prolonged recession. Tax anticipation notes and revenue anticipation notes must be repaid with budgeted taxes and revenues, respectively, when collected (Local Finance Law §§ 24.00 and 25.00). Budget notes (Local Finance Law § 29.00) are not intended to replace budgeted but uncollected revenues and usually must be repaid as an expense in the next succeeding budget year.
16. All public funds deposits must be collateralized with "eligible securities" provided by the depository bank or trust company to protect local governments from bank failure (sound familiar?); New York General Municipal Law § 10; *see* Op. St. Comp 95-32.
17. John Clarkson, Executive Director of the New York State Commission on Local Government Efficiency and Competitiveness; *see* www.nyslocalgov.org.
18. New York State County/County Managers Association; New York State Government Finance Officers Association.
19. The state law authority for industrial development agencies to issue tax-exempt bonds for health care and educational facilities expired in January 2008 and has not been revived: *But see* A02557 and A01569.
20. *See* A11411 and S8383 which never came up for a vote in the 2008 Legislative session.
21. *See* www.nysamcommission.org; testimony of Hon. Robin Schimminger, N.Y.S. Assembly, 140th District, on November 20, 2008, for a useful discussion of proposed amendments to strengthen tax increment financing in New York.
22. Note 2, *supra*, pp. 530-31.

Kenneth W. Bond is a partner in the law firm of Squire, Sanders & Dempsey L.L.P. He is an adjunct Professor at Albany Law School and Chair, Public Finance and Economic Development Committee of the Municipal Law Section of NYSBA.

Land Use Law Case Law Update

By Henry M. Hocherman and Noelle V. Crisalli

A. SEQRA Standing

In *Save the Pine Bush, Inc. v. Common Council of the City of Albany*[1] the majority on the one hand and two dissenters on the other debate the proper application of the test for organizational standing articulated in *Society of Plastics Industry, Inc. v. County of Suffolk*.[2] While the majority wins, a close look at the logic (or lack thereof) of the majority's decision as examined by the learned dissent causes one to believe that (as in a number of other recent Third Department cases) the decision will not be adopted by the other Departments.

In September 2003 respondent-developer Tharaldson made an application to the Common Council of the City of Albany (the "Common Council") to rezone a parcel of property from a residential district to a commercial district to enable it to construct a 124-room hotel on the subject property.[3] The property that was the subject of the application was in close proximity to Butterfly Hill, an area of the City in which the Karner Blue Butterfly and other plants and animals indigenous to Albany's Pine Barrens habitat live.[4] The City of Albany has set aside thousands of acres of Pine Barrens for the Pine Bush Preserve (the "Preserve"). The goal of the Preserve is to induce the Karner Blue Butterfly and other rare species to spread from Butterfly Hill (which is outside of the Preserve) to the Preserve (a journey of approximately 1,000 meters). Save the Pine Bush, Inc. ("Save the Pine Bush") and its members have a long history as advocates for the Preserve and the protection of the species inhabiting the Pine Barrens.[5]

The Common Council assumed the status of lead agency in the SEQRA review of Tharaldson's application and determined that it was a Type I action under SEQRA. The Common Council issued a positive declaration indicating that the action had the potential to cause at least one significant environmental impact and prompting the preparation of an environmental impact statement identifying and analyzing the potential environmental impacts of the proposed project. After reviewing Tharaldson's application, which included, among other things, a draft environmental impact statement and a final environmental impact statement, in December 2005 the Common Council issued a statement of Findings under SEQRA and granted the requested rezoning.[6]

Save the Pine Bush and individual members of that organization challenged, among other things, the SEQRA review of Tharaldson's application. Respondents moved to dismiss the petition on the grounds that petitioners lacked standing to maintain the special proceeding.

The Supreme Court found that the petitioners had standing and found that the Common Council, as lead agency under SEQRA, failed to take a hard look at the impact that the action would have on rare plant and animal species other than the Karner Blue Butterfly inhabiting Butterfly Hill and its subsequent impact on the Preserve. Accordingly, the Court annulled the SEQRA Findings and the rezoning.[7] The Third Department, in a 3-2 decision, affirmed.

With regard to petitioners' standing to maintain this Article 78 proceeding, the majority began by setting forth the well-established tests for individual and organizational standing under the seminal case of *Society of Plastics Industry, Inc. v. County of Suffolk*.[8] The Court explained that

> [P]etitioners [as individuals] were required to establish that they have sustained an injury-in-fact that is in some way different from that of the public at large and one that falls within the zone of interest protected by SEQRA. . . . An "[i]njury-in-fact may arise from the existence of a presumption established by the allegations demonstrating close proximity to the subject property or, in the absence of such a presumption, the existence of an actual or specific injury." . . . Moreover, as an organization seeking standing, Save the Pine Bush "*must demonstrate that at least one of its members would have standing to sue individually*, that the interests it asserts are germane to its purpose and that the resolution of the claim does not require the participation of its individual members[.]"[9]

In its application of this standard, the majority found that the individual petitioners and, as a consequence, Save the Pine Bush had standing, reasoning that:

> The individual petitioners have . . . demonstrated the existence of an actual injury different from that of the public at large. Petitioners have presented competent evidence not only that they regularly use the Preserve, but that at least one of them resides in sufficient proximity to the Preserve to facilitate that use and that the proposed development could have a substantial impact upon the migration of the Karner Blue Butterfly from Butterfly Hill to the Preserve. As such, petitioners have identified an injury-in-fact that falls within the zone of interest sought to be protected by SEQRA by presenting proof that "agency action will directly harm association members in their use and enjoyment of the affected natural resources[.]"[10]

In further support of its finding of standing, the majority relied on the individual petitioners' affiliation with Save the Pine Bush and their use and enjoyment of and their history of advocacy on behalf of the Preserve. The majority found that the individual petitioners, through their work with Save the Pine Bush, were harmed by potential harm to the Preserve in a manner different from the public at large. Because at least one of the individual petitioners had standing, the organization had standing.[11]

The dissent, however, found the majority's standing analysis to be circular and a clear departure from the rule in *Society of Plastics Industry, Inc.* that organizational standing flows from individual harm and not the other way around. The dissent argued that

> the majority essentially concludes that the only showing required [to establish standing] is that an organization has members who have acted in furtherance of its organizational purpose; there is really no need to show that the individual members have any distinct injury in fact. This rationale is directly contrary to the statement in *Society of Plastics Indus.* that "standing cannot be achieved merely by multiplying the persons a group purports to represent."[12]

Accordingly, the dissent would have granted the respondents' motion to dismiss the petition based on lack of standing.

The majority's reasoning in effect empowers a group to confer standing upon itself by virtue of perseverance and the passage of time, thus stripping the doctrine of standing of its essential, limiting, purpose. Whether the majority's application of the *Society of Plastics Industry* standard was a faithful application of that standard or an unwarranted departure from it will rest with future courts.

B. Statutes of Limitations: Challenges to the Issuance of a Building Permit

In *Letourneau v. Town of Berne*,[13] the Third Department (getting it right this time) held that a party wishing to challenge the issuance of a building permit after the 30-day statute of limitations on the issuance of the permit has run cannot restart the statute of limitations by making a request to the issuing municipality to revoke a building permit the challenger deems unlawfully issued and then bringing an Article 78 proceeding in the nature of mandamus to compel the municipality to rescind the building permit if his or her request is denied.

In that case, the respondent Town of Berne issued respondent Victor Procopio a building permit in 2001 to construct a new residence on the property that was the subject of controversy in this case. The building permit was subsequently renewed several times after 2001, the last renewal being in April 2007.

In 2004 petitioner purchased an adjoining lot. In December of 2006, after noticing some foundation markings on Mr. Procopio's property, petitioner submitted a request to the Town asking that Mr. Procopio's building permit be revoked on the grounds that, in petitioner's opinion, it was issued in violation of town, county and state law. The Town did not respond to the petitioner's request.

In June of 2007 the petitioner commenced the instant Article 78 proceeding to compel the Town to rescind Mr. Procopio's building permit and to prohibit the reissuance of the permit until certain conditions were met. The Supreme Court denied the petition on the grounds that the action which petitioner was seeking to review, presumably the Town's action (or inaction) on her request, was final in December of 2006 and thus petitioner's claim was barred by the four-month statute of limitations governing Article 78 proceedings in the nature of mandamus to compel municipal action.[14]

The Third Department affirmed the dismissal of the petition, but on different grounds, finding that:

> A CPLR article 78 proceeding must be commenced within four months of the time that the determination to be reviewed becomes final and binding—for a proceeding in the nature of

> certiorari to review—or within four months of the agency's or official's refusal of the party's demand for the performance of a mandatory, ministerial act—for a proceeding in the nature of mandamus. . . . Petitioner asserts that her proceeding is in the nature of mandamus to compel the Town to rescind the building permit. In reality, petitioner is seeking review of the issuance and renewals of the building permit, alleging that it was issued and renewed in violation of Town, County and State laws. Allowing this proceeding to be couched in terms of mandamus would allow any party to begin anew the running of the statute of limitations in a certiorari matter by demanding recision of the original determination the party wishes to challenge. We cannot countenance this attempt to create an end-run around the statute of limitations. A challenge to "the issuance [or renewal] of a building permit accrues when the permit is issued [or renewed] and does not constitute a continuing wrong[.]"[15]

Thus, in the interest of finality, challengers will only have one opportunity to challenge the issuance of a building permit. The case reminds us once again that in the world of land use, the Biblical command to love one's neighbor is generally forgotten.

C. Fee in Lieu of Parkland Dedication

In *Davies Farm, LLC v. Planning Board of the Town of Clarkstown*[16] and *Joy Builders, Inc. v. Town of Clarkstown*,[17] decided together, the Appellate Division, Second Department held that a planning board may impose a fee in lieu of parkland dedication in connection with the approval of an application for subdivision approval at the final approval stage of the subdivision approvals process even if it did not impose such a fee during the preliminary approvals phase of the approvals process.

Petitioners in *Davies Farms, LLC* and *Joy Builders, Inc.* both had applications for residential subdivision approval before the Town of Clarkstown Planning Board. The Clarkstown Planning Board granted petitioners in both cases preliminary plat approval without making any finding of recreational need to support the imposition of a fee in lieu of parkland dedication pursuant to Town Law § 277(4) and without imposing their fee. In both cases, at the final subdivision approval stage of the approvals process the Clarkstown Planning Board required petitioners to make a payment in lieu of parkland dedication as a condition of final approval. Both lower court decisions, neither of which is reported, indicate that the requisite Town Law § 277(4) findings were made by the Planning Board prior to the imposition of the fee, apparently at the time of final approval. Both petitioners brought an Article 78 proceeding challenging the imposition of a fee in lieu of parkland dedication at the final plat approval phase of the subdivision approvals process with no finding of recreational need having been made during the preliminary plat phase. In both cases the Supreme Court, Rockland County dismissed the petition.

The Second Department affirmed the determinations of the Supreme Court in both cases, finding that "[n]othing in either Town Law § 276 or § 277 circumscribed the Planning Board's authority to impose the fee as a condition of final subdivision approval where it had already granted preliminary subdivision approval without a finding of recreational need."[18] The Court further supported its decision in both cases by reasoning that both petitioners were aware that a fee in lieu of parkland dedication could be imposed in connection with their applications. Although the reasoning is somewhat murky, the sole issue in both cases is merely the timing of the imposition of the fee and not the necessity for making individualized findings as a condition of such imposition.

D. Fire Districts are Not Exempt from Local Zoning

In *Volunteer Fire Association of Tappan, Inc. v. Town of Orangetown*,[19] the Second Department held that a fire district is not exempt from a town's local laws and regulations.

In this case plaintiff applied to the Town for a building permit to construct a new firehouse. The building permit was denied on the grounds that plaintiff did not have site plan approval for the proposed firehouse. In response to that determination, plaintiff commenced the instant action seeking a declaration that it is exempt from the Town's local laws and regulations. During the pendency of the action, the Town's Zoning Board of Appeals, after applying the *In re County of Monroe*[20] balancing test, determined that although plaintiff was exempt from the Town's zoning laws, it was required to apply for and obtain site plan approval for its proposed firehouse.[21] The Supreme Court similarly determined that plaintiff was required to obtain site plan approval from the Town, reasoning that "[u]nlike the encroaching governmental unit in *Matter of County of Monroe* . . . , the plaintiff in this case does not have its own land use approval process with public hearings and a comment period, and if the project were not subjected to site plan review by the Planning Board, there would be no equivalent review by any other entity."[22] Upon review, the Appellate Division, Second Department affirmed the Supreme Court's decision and directed the Supreme Court to en-

ter a judgment declaring that plaintiff was not exempt from the Town's local laws and regulations.

E. Helpful Reminders

The Second Department has recently decided several cases which serve as concise and helpful reminders of certain well settled principles of law.

In *Structural Technology, Inc. v. Foley*,[23] petitioner brought an Article 78 proceeding to review the determination of the Town of Brookhaven Town Board not to consider petitioner's application for a rezoning of a parcel of property in the Town. The Supreme Court granted the petition and directed the Town Board to consider the rezoning petition. The Second Department reversed and reminds us that "[a] Town Board is not required to consider and vote on every application for a zoning change[.]"[24]

In *Bassano v. Town of Carmel Zoning Board of Appeals*,[25] the Town of Carmel Zoning Board of Appeals denied an application for a variance required to permit the construction of a single-family home notwithstanding the fact that on three prior, factually similar occasions involving other applicants, the Zoning Board of Appeals granted the variance requested by petitioner. Because the Zoning Board of Appeals' decision was inconsistent with its prior decisions and did not explain the basis for its denial in this case, the Court reversed its decision, citing the well-established rule that "the decision of 'an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious.'"[26]

In *John P. Krupski & Bros., Inc. v. Town Board of the Town of Southold*,[27] petitioner was the owner of a parcel of property in the Town of Southold that was the subject of a rezoning. Petitioner challenged the rezoning of its property arguing, among other things, that the rezoning must be annulled because of alleged deficiencies in the notice of the public hearing on the rezoning. Petitioner made this argument notwithstanding the fact that it apparently received actual notice of the hearing and appeared at the hearing. The Court found in this case that the hearing had been properly noticed; however, it went on to remind us that even if that were not the case "plaintiff's receipt of actual notice of, and its appearance at, the public hearing constitutes a waiver of the requirements that notice be given in strict accordance with the [Town Code]."[28]

Endnotes

1. 865 N.Y.S.2d 365 (3d Dep't 2008).
2. 77 N.Y.2d 761, 570 N.Y.S.2d 778 (1991).
3. *Save The Pine Bush, Inc.*, 865 N.Y.S.2d at 367.
4. Blue butterflies appear to be the bane of developers. *See, e.g., City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999), wherein the Smith's Blue Butterfly played a role.
5. *Save The Pine Bush, Inc.*, 865 N.Y.S.2d at 367-68.
6. *Id.*
7. *Id.* at 368.
8. *Society of Plastics Indus., supra.*
9. *Save The Pine Bush, Inc.*, 865 N.Y.S.2d 365, 369 (3d Dep't 2008) (citations omitted).
10. *Id,* at 369-370 (citations omitted).
11. *Id.* at 370.
12. *Id.* at 376.
13. 866 N.Y.S.2d 462 (3d Dep't 2008).
14. *Id.*
15. *Letourneau*, 866 N.Y.S. 2d at 463 (citations omitted).
16. 54 A.D.3d 757, 864 N.Y.S.2d 84 (2d Dep't 2008).
17. 54 A.D.3d 761 864 N.Y.S. 2d 86 (2d Dep't 2008).
18. *Joy Builders, Inc*, 54 A.D.3d at 762; *Davies Farm*, LLC 54 A.D.3d at 758.
19. 54 A.D. 3d 850, 863 N.Y.S.2d 502 (2d Dep't 2008).
20. 72 N.Y.2d 338, 533 N.Y.S.2d 702 (1988). The Court of Appeals articulated a balancing test to be applied when a conflict exists between two governmental entities with regard to the application of local zoning regulations. Pursuant to that test, a governmental entity is exempt from local zoning regulations if it can show that the public interest served by the proposed project outweighs the public interest protected by local zoning regulations. In order to apply the balancing test, the Court of Appeals cited the following factors: "the nature and scope of the instrumentality seeking immunity, the kind of function or land use involved, the extent of the public interest to be served thereby, the effect local land use regulations would have upon the enterprise concerned and the impact upon legitimate local interest."
21. *Volunteer Fire Association of Tappan, Inc.*, 863 N.Y.S.2d at 503.
22. *Id.*
23. 56 A.D. 3d 677, 868 N.Y.S.2d 228 (2d Dep't 2008).
24. *Structural Technology, Inc.*, 868 N.Y.S.2d at 229.
25. 56 A.D. 3d 665, 868 N.Y.S.2d 677 (2d Dep't 2008).
26. *Bassano*, 868 N.Y.S.2d at 678.
27. 54 A.D.3d 899, 864 N.Y.S.2d 149 (2d Dep't 2008).
28. *Id.*

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New Code of Ethics for Wind Energy Companies Doing Business in New York: A Back-Door Approach to Regulating Municipal Ethics

By Patricia E. Salkin

I. Introduction

The conduct of municipal officials in New York is regulated through a series of state statutes and local laws including Article 18 of the General Municipal Law, which is primarily called into play when the conduct in question involves a contract; the Legislative Law which addresses, in part, local lobbying; and the Penal Law which deals with, among other things, bribery and rewards for official actions. Scattered provisions in at least 11 volumes of McKinney's also provide some guidance on certain ethics and conflicts situations.[1] In addition, municipalities are directed and/or empowered to adopt their own code of ethics to address the conduct of public officers within their own jurisdiction.[2] Despite the appearance of many ethics laws and rules governing the conduct of municipal officials, the fact remains that New York lacks a comprehensive code of ethics for local governments, and that Article 18 of the General Municipal Law is in need of reform.[3]

New York also lacks a state-level office or agency responsible for providing guidance for municipal officials on ethics issues, issuing model local laws, and/or conducting training for municipal officials on ethics-related topics. Rather, numerous state governmental entities play small and distinct roles in providing interpretation, guidance and rulemaking when it comes to municipal ethics. For example, the Office of the State Comptroller may issue informal opinions on General Municipal Law Article 18 questions from municipal attorneys, and the Attorney General's Office may also issue informal opinions on conflicts of interest issues and on questions of compatibility of dual office holding. The Commission on Public Integrity is responsible for training on and enforcement of the Legislative Law, which contains provisions on municipal lobbying, and while the New York State Department of State provides information and training to municipal officials on a wide range of local government topics, there is no mandated comprehensive local ethics training and education or clearinghouse function. The disorganized situation in New York often puts municipal attorneys on the front line of ethics education, but unfortunately, legal counsel is most often sought after the questioned activity has occurred. Calls for focused attention and for reform of municipal ethics in New York date back at least as far as 1987 with the work of the State Commission on Government Integrity, followed in 1991 by the work of the Temporary State Commission on Local Government Ethics. The leadership of the Municipal Law Section of the State Bar, through the work of its Ethics Committee, has been a leading advocate for reform. Despite these pleas, neither the last three Governors nor the State Legislature has made municipal ethics reform a priority topic.

Given the history of a fragmented approach to municipal ethics resulting in gaps in statutory coverage and lack of state-level guidance, it is not surprising that recent actions by the Attorney General aimed at curbing alleged unethical and perhaps illegal conduct on the part of wind energy companies may in fact be an avenue for indirectly regulating the conduct of the municipal officials. Following alleged corruption in Upstate New York between wind energy companies and local government officials[4] that include allegations of conflicts of interest and improper influence surfacing in about a dozen counties,[5] Attorney General Andrew Cuomo commenced an investigation to determine "whether wind companies improperly influenced local officials to get permission to build wind towers, as well as whether different companies colluded to divide up territory and avoid bidding against one another for the same land."[6] In launching the investigation, the Attorney General stated, "The use of wind power, like all renewable energy sources, should be encouraged to help clean our air and end our reliance on fossil fuels. However, public integrity remains a top priority of my office and if dirty tricks are used to facilitate even clean-energy projects, my office will put a stop to it."[7] Recently, an appellate court dismissed a petition calling for removal of a town legislator that alleged that the legislator concealed a conflict of interest when he voted to approve a wind energy facility because the project would include a turbine on his property, finding that the petitioner failed to prove the existence of an actual conflict of interest.[8]

II. Voluntary Code of Conduct for Wind Farm Development

On the heels of an investigation, in October 2008 the Attorney General unveiled a voluntary code of

conduct for wind development companies (referred to hereafter as "Code" or "Wind Code") and announced that two companies that had been under investigation by the Attorney General (Noble and First Wind) had signed on to the Code, which is designed to make sure developers deal with local officials in a fair and transparent manner.[9] The Code prohibits conflicts of interest between municipal officials and wind companies and establishes certain public disclosure requirements. Among other things, the Code bans wind companies from: hiring municipal employees or their relatives, giving gifts of more than $10 during a one-year period, or providing any other form of compensation that is contingent on any action before a municipal agency. In addition, the Code prevents wind companies from soliciting, using, or knowingly receiving confidential information acquired by a municipal officer in the course of his or her official duties; requires wind companies to establish and maintain a public Web site to disclose the names of all municipal officers or their relatives who have a financial stake in wind farm development; requires wind companies to submit in writing to the municipal clerk for public inspection and to publish in the local newspaper the nature and scope of the municipal officer's financial interest; mandates that all wind easements and leases be in writing and filed with the County Clerk; and requires that within thirty days of signing the Wind Industry Ethics Code, companies must conduct a seminar for employees about identifying and preventing conflicts of interest when working with municipal employees.[10] The Code also sets up a Task Force to provide oversight of wind farm development and to monitor compliance with the Code.[11] The wind companies who sign on to the Code are required to provide a proportional share of funding to cover the administrative work of the Task Force for a period of three years.[12]

While on its face, the Code is aimed at the conduct of wind energy companies and their employees (and in fact, only the wind energy companies are signatories to the voluntary Code), the reality is that this Code impacts not only the conduct of corporate employees, but through controlling corporate conduct it also impacts municipal officials in terms of their conduct, required disclosure and similar requirements on their family members. It is likely that the Attorney General recognized gaps in the manner in which municipal ethics are addressed at the state level and saw an opportunity to begin to fill in where the statutes fall short. In some areas covered in the Code, it is possible that the State Legislature has preempted the field of regulation. Further, in some instances there are inconsistencies between the new Code and existing statutes that could lead to confusion. Lastly, provisions in locally adopted codes of ethics enacted pursuant to the General Municipal Law may also address some of the items covered in the new Code.[13] The remainder of this article explores the intersection of the Code of Conduct for Wind Farm Development and existing municipal ethics regulations at the State level.

III. Comparing the Code of Conduct to Existing Municipal Ethics Provisions

Many provisions in the Wind Code are consistent with the General Municipal Law ethics provisions. For example, the prohibition on contingent compensation in General Municipal Law § 805-a(d) appears in the Wind Code in § I. This same section of the Code contains a prohibition on wind companies soliciting or knowingly receiving confidential information acquired by a municipal officer in the course of his or her duties. This prohibition is complementary to General Municipal Law § 805-a(b), which prohibits municipal officers from disclosing confidential information. The remaining sections of this article focus on a number of areas in the Wind Code where provisions may conflict with state or local law, where inconsistencies or ambiguities may arise or where new concepts and controls have been introduced that impact the conduct of municipal officials.

A. Disclosure of Interests

As a general matter, when the State Legislature enacted Article 18 of the General Municipal Law they clearly recognized that there are unique ethics issues that may arise in the local land development process. Specifically, § 809(1) of the General Municipal Law provides,

> Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and nature and extent of the interest of any state officer or any officer or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request . . . to the extent known to the applicant.

Further, the statute provides that a municipal

> officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them . . . is a

> party to an agreement with such applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.[14]

A knowing violation of this section constitutes a misdemeanor.

While consistent with the requirement in the General Municipal Law that the applicant provide the aforementioned disclosure, the second section of the Wind Code contains a number of public disclosure provisions that provide specific instructions as to how disclosure by the wind company about municipal official interests is to be made and to whom. Specifically, the Code requires that the Company provide a chart to the Office of the Attorney General (as well as posted to the Company Web site) that discloses the nature and scope of any financial interest held by a municipal officer or his or her relative for interests held prior to the date of the Code of Conduct. For events transpiring after the Code, the Company is required to "publicly disclose" the name of the municipal official and his/her relative that has a financial interest in any property identified for wind farm development and the nature and scope of the interest by submitting this information to the clerk of the municipality, publishing it in a newspaper of general circulation in the municipality, displaying it on the Company Web site and submitting it in writing to the Task Force and to the Attorney General. In addition, the Code requires that while the Company must file an abstract or memorandum of all wind easements and leases with the County Clerk, those that involve municipal officers or their relatives must also be posted on the Company Web site. Further, for those easements and leases that involve municipal officers or their employees, the Company must indicate in the abstract or memorandum the actual or estimated monetary consideration from monetary ranges provided in the Code.

The financial information required under the Code may go farther than the General Municipal Law requirements of simple disclosure in § 809. Further, §§ 811 and 812 of the General Municipal Law provide a framework for financial disclosure for local elected officials, persons seeking elective office and political party officials and certain officers and employees of counties, cities, towns and villages. Municipalities may adopt the form provided in § 812 or they may adopt their own. The voluntary Wind Code disclosure requirements apply to municipal officers, whether or not elected.

The disclosure requirements are interesting and, raise questions as to whether this area is preempted by the existing disclosure requirements in Article 18 that specifically speak to disclosures in land use proceedings. Should stakeholders agree that increased disclosures and a process therefore could be better articulated in statute, this may be a good topic for a legislative program bill. Admittedly, the Attorney General is dealing only with the wind industry in this instance, but there are many other controversial land use applicants, such as big box retailers and wireless communication companies, where similar disclosures could be required if necessary and desired.

B. Gifts

Under General Municipal Law § 805-a(1), municipal officers are prohibited from soliciting or accepting a gift having a value of $75 or more under circumstances where it can be reasonably inferred that the gift is intended to, or could reasonably be expected to, influence him or her in the performance of official duties, or was intended as a reward for official conduct. The Wind Code prohibits companies from giving municipal officers and their relatives or any third parties on behalf of the municipal officer any gift or gifts totaling more than $10 in the aggregate during any one-year period (*see* § I.2). The Wind Code, however, contains a definition section where the term "gift" is defined as "any thing having more than nominal value whether in the form of money, service, loan, investment, travel, entertainment, hospitality, or in any other form and includes an offer to a charitable organization at the designation of the Municipal Officer or at the designation of his or her relative." By introducing the phrase "nominal value" into the definition section, the Code is seemingly consistent with the 2007 Public Employee Ethics Reform Act, which changed the $75 gift limit in § 73(5) of the Public Officers Law to prohibit all gifts of more than "nominal value." Although state statute fails to define "nominal value," the Commission on Public Integrity issued an Advisory Opinion in 2008 that sought to provide parameters by explaining, for example, that absent an intent to influence, a cup of regular coffee or a soft drink would normally be considered something of nominal value, but a glass of beer or wine, or some other alcoholic beverage would be a gift with greater than nominal value.[15] Of course, a further complication in using this analogy is that the Public Officers Law does not apply to municipal officers, only to state executive and legislative branch employees and to lobbyists.[16]

Although the Wind Code does not provide the Attorney General's Office or the Task Force created under the Code with recourse against a municipal officer who accepts a prohibited gift from an employee of a wind company, exactly what constitutes a prohibited gift to government officials ought to be consistent among the various statutes, regulations and codes. Two possible reforms are appropriate here: the General Municipal

Law should be amended to make it consistent with the Public Officers Law (and it was before the 2007 amendment to the Public Officers Law); or, and perhaps more appropriate, there should be a zero tolerance for gifts whether or not of nominal value.[17]

C. Lobbying

Effective in April 2002, the New York State Legislative Law defines "lobbying" or "lobbying activities" at the local level as

> any attempt to influence the passage or defeat of any local law, ordinance, resolution or regulation by any municipality or subdivision thereof or adoption or rejection of any rule, regulation, or resolution having the force and effect of local law, ordinance, resolution or regulation or any rate making proceeding by any municipality or subdivision thereof.[18]

Municipal lobbying covers

> any jurisdictional subdivision of the State, including but not limited to counties, cities, towns, villages, improvement districts and special districts, with a population of more than fifty thousand; and industrial development agencies in jurisdictional subdivisions with a population of more than fifty thousand; and public authorities, and public corporations, but shall not include school districts.[19]

Individuals who meet the definition of lobbyist are required to register and file reports with the Commission on Public Integrity.[20]

The Wind Code would also apply to situations that fit squarely under the definition of lobbying when wind company employees and paid advocates on their behalf seek to convince municipal officials to legislatively rezone property, and to adopt local laws, ordinances or resolutions allowing for and regulating the siting of wind turbines in the jurisdiction. The "General Standard" set forth in the Wind Code provides in part that wind companies may not directly or indirectly seek to confer benefits that would induce a municipal officer to act or refrain from acting in connection with their government responsibility with respect to wind farm development. Many, but not all, of the types of activities sought to be restrained under this section would also fit under the Legislative Law or lobbying requirements. The conduct in these sections regulates the actions of lobbyists and the private sector, not public sector officials. However, municipal officials need to be made more fully aware of what state law and what the Attorney General would consider to be "improper relationships" between public and private sector interests. Training geared not just towards lobbyists and wind companies, but towards municipal officials would be a welcome "ounce of prevention."

D. Employment Restrictions

State level executive and legislative branch employees are subject generally to post-employment restrictions which prohibit the former government employees from appearing before their former agency on any matter for which they are receiving compensation for a period of two years after leaving government service.[21] A lifetime bar applies to former employees in relation to "any case, proceedings, application or transaction" that they personally participated in while at the agency.[22] In 2006, the State Ethics Commission (now known as the Commission on Public Integrity) issued an opinion declaring that,

> (1) State employees may not solicit a post-government employment opportunity with any entity or individual that has a specific pending matter before the State employee; and only may, 30 days from the time a matter is closed or the employee has no further involvement because of recusal or reassignment, solicit an employment opportunity; (2) State employees who receive an unsolicited employment-related communication from such an entity or individual (a) cannot pursue employment with the entity or individual or (b) must recuse themselves from the matter and any further official contact with the entity or individual and wait 30 days from such recusal before entering into post-government employment communications with the entity or individual; and (3) State employees must promptly notify their supervisors and ethics officers of such employment-related communications whether or not they intend to pursue the employment opportunity.[23]

At the local government level, the restrictions are not quite so clear. For example, a provision in the General Municipal Law prohibits municipal officials from receiving compensation for services in relation to any matter before their own agency or before any agency where he or she has jurisdiction or appointment power,[24] but state statute is silent with respect to post-employment restrictions. It seems as though the Legislature thought this was a matter best left to individual municipalities to decide as local ethics laws

are required by statute to address, among other things, future employment.[25] However, if there is a general belief among stakeholders that post-employment restrictions for municipal officials is something that should be addressed uniformly across the State, this is another provision worthy of debate through the introduction of a legislative proposal to amend the General Municipal Law.

E. Education and Training

One of the major items missing in General Municipal Law Article 18, or any other state law, is the statutory requirement for ongoing training and education for municipal officials on ethics issues. Although the Attorney General has addressed this topic in the Wind Code, training requirements are limited to signatory wind companies and their employees. However, municipal officials are parties to the alleged questionable transactions, indicating that training could be beneficial for these decision makers as well. While clearly it would be inappropriate for the wind companies to provide ethics training to municipal officials, this is an opportunity for the Attorney General (as well as for the Department of State, the State Comptroller, and the municipal associations) to conduct statewide training on municipal ethics. Further, the Attorney General should consider strengthening the existing training requirement for wind companies. For example, in addition to posting and distribution mandates, the Wind Code provides that within 30 days of the announcement of the signing of the Code, the wind company is to conduct a seminar for employees about indentifying and preventing conflicts of interest when working with municipal officers. Employees must sign an acknowledgment certifying that they attended the training and that they have read and agree to abide by the Code (and failure to agree obligates the Company to discontinue their employment). The Code should be amended to provide that wind companies are required to provide at least annual training on these issues and that all new employees, within a certain number of days from initial hire, must complete the training (whether in person, on-line or in some other appropriate format). For a period of three years following agreement to abide by the Code, the Attorney General is requiring wind companies to contribute a proportional share of the reasonable administrative costs of the Task Force set up to provide oversight and monitor compliance. It would be a welcome addition to the Code if an amendment were made to allow for some of that funding to support a training initiative geared towards municipal officials.

F. Notification to Municipal Attorney

A curious provision in the Wind Code requires the wind company to notify the attorney for the municipality when it is discovered that a municipal officer or his or her relative has entered into a lease with the company. In addition, the Wind Code directs the wind company to recommend to that municipal officer that he or she consult with the municipality's attorney concerning their legal obligations, including any obligation to recuse. This puts the municipal attorney in an awkward position. The municipal attorney works for the municipality as a whole, and not for individuals who may be involved in the wind siting decision-making process. For municipalities who need to watch the bottom line with respect to their outside counsel legal bills (since for many municipalities in the State, the municipal attorney is part-time and/or on retainer), the office charged with hiring the municipal attorney typically gets to prescribe the client(s) and subject matter that such attorney is retained to address (and hopefully this is explicitly set forth in a written retainer agreement or in a written job description). Since there may be no attorney-client relationship between the government lawyer and individual board members regarding their individual ethical conduct, municipal officials may be better advised to seek legal counsel outside of the municipally retained attorney. Further, a number of municipalities have boards of ethics established pursuant to the General Municipal Law, and these boards may be the more appropriate place to inquire about these types of actions. Lastly, some municipalities may have a designated ethics officer who would more likely be the point of initial contact. The Attorney General should consider as part of a comprehensive training program publishing a pamphlet for municipal officials that discusses when disclosure and recusal are required pursuant to statute.

IV. Conclusion

It is clear that given the tensions existing in communities between those who support the siting of wind turbines and those who oppose them, all of the participants would be wise to ensure that their conduct is absolutely beyond reproach as they are likely to be watched very closely and challenged where conduct is questionable. Based upon annual surveys of ethics in land use, it is evident that there are a healthy number of cases reported each year where unhappy community members lodge allegations of unethical conduct on the part of municipal officials in an effort to void unfavorable decisions.[26] Although most of these fail because either the complainant did not have sufficient evidence to prove the allegation or because the complained-of action, while perhaps not appropriate, technically did not violate a law,[27] the bottom line is that allegations of unethical conduct in this arena have a negative ripple effect. The Internet and blogs have become a popular and cost-effective method of communication between individuals and community groups across the country opposed, in this case, to the siting of wind turbines. Postings related to ethics allegations in one jurisdic-

tion will trigger closer scrutiny of these issues in other communities where proposals are making their way through the review process.

Full disclosure and transparency in government decision making is critical to ensuring public integrity and trust in government. Officials at all levels of government must disclose and recuse themselves from decision-making roles when personal financial conflicts of interest arise. Many of the alleged activities that have occurred emanating from efforts to site wind turbines are clearly illegal or unethical under existing statutory and regulatory frameworks. Informal opinions issued by previous Attorneys General have even suggested that specific provisions of the General Municipal Law need not be violated in order to find an improper conflict of interest.[28] The fact that there have been numerous alleged instances of abuse in different jurisdictions over a relatively short span of time clearly indicates that this issue requires immediate attention. To that end, the Attorney General's action to shed sunlight on inappropriate conduct and to develop a document to guide future actions is a welcome effort. What is needed now is a more holistic approach involving the full spectrum of stakeholders to both reinforce and to strengthen the direction charted by the Attorney General. This includes a re-examination of state and local lobbying laws and regulations as well as municipal ethics requirements. It is critical that all stakeholders participate and that action is swift so that this issue can be appropriately addressed without slowing the progress on harnessing clean, renewable energy in New York. One concluding thought: This is not just a New York issue; what the Attorney General does in New York has great potential for ripple effects in other states who often replicate models developed in New York.

Endnotes

1. *See, e.g.,* provisions in the Town Law, Village Law, General City Law, County Law, Alternative County Law, Election Law, General Municipal Law, Labor Law, Judiciary Law, the Real Property Tax Law and the Second Class Cities Law as set forth in a chart in, Mark Davies "Non-Article 18 Conflicts of Interest Restrictions Governing Counties, Cities, Towns and Villages Under New York State Law," *Municipal Lawyer*, Vol. 20, No. 1 at 5 (Winter 2006).
2. N.Y. Gen. Mun. L. § 806.
3. *See* Mark Davies, "Ethics Laws for Municipal Officials Outside of New York City," 1 *Government Law & Policy Journal* at 44 (New York State Bar Association, 1999). Davies explains that sadly, there is no single, uniform and comprehensive code of ethics for municipal officials in New York. *See also* Mark Davies, "Enacting a Local Ethics Law—Part I: Code of Ethics," *Municipal Lawyer*, Vol. 21, No. 3 at 4 (Summer 2007); "Enacting a Local Ethics Law—Part II: Disclosure," *Municipal Lawyer*, Vol. 21, No. 4 at 8 (Fall 2007); "Enacting a Local Ethics Law—Part III: Administration," *Municipal Lawyer,* Vol. 22, No. 1 at 11 (Winter 2008); "Local Ethics Laws: Model Administrative Provisions," *Municipal Lawyer,* Vol. 22, No. 3 at 14 (Summer 2008).
4. http://www.nytimes.com/2008/08/18/nyregion/18windmills.html?_r=3&oref=slogin&oref=slogin (site visited January 2009).
5. For example, a town supervisor cast the deciding vote allowing private land to be condemned for purposes of siting a wind farm after acknowledging that he had accepted real estate commissions on at least one land deal involving the farm's developer. In another municipality, according to local residents, a town official took a job with a wind company after involvement with the passage of a zoning law relating to wind turbines. In another town, the supervisor reported that after a meeting during which he proposed a moratorium on wind towers, he had been invited to pick up a gift from the back seat of a wind company representative's car.
6. http://www.nytimes.com/2008/08/18/nyregion/18windmills.html?_r=3&oref=slogin&oref=slogin (site visited January 2009).
7. http://lawoftheland.wordpress.com/2008/07/17/ny-attorney-general-launches-investigation-of-potential-unethical-and-illegal-dealings-between-wind-power-companies-and-municipalities (site visited January 2009).
8. *Hedman v. Town Board of Town of Howard*, 867 N.Y.S.2d 634 (4th Dep't 2008).
9. http://www.newsday.com/news/local/wire/newyork/ny-bc-ny--windpower-turbule1123nov23,0,3062001.story.
10. http://www.oag.state.ny.us/media_center/2008/oct/WindCODE%20FINAL.pdf (site visited January 2009).
11. *Id.*
12. *Id.*
13. For example, General Municipal Law § 806 provides that among other things, locally adopted codes of ethics must address: standards with respect to the disclosure of interest in legislation before the governing body; standards with regard to the holding of investments in conflict with official duties; private employment and conflict with official duties; and future employment.
14. N.Y. Gen. Mun. L. § 809(2)(d).
15. New York State Commission on Public Integrity, Advisory Opinion 08-01, *available at*: http://www.nyintegrity.org/advisory/cpi/2008/Advisory_Opinion_08-01.pdf (site visited January 2009).
16. N.Y. Exec. L. § 94(1).
17. This view is counter to some that believe an absolute prohibition could also produce absurd results in certain situations, and that although there may be an assumption that every gift, no matter how insignificant, has some potential to influence public employees, the challenge "is to distinguish those where the potential is sufficiently significant so as to prohibit them." *See* Richard Rifkin, "Gift Giving in the Public Sector," in ETHICAL STANDARDS IN THE PUBLIC SECTOR, 2nd ed. (P. Salkin, ed.) (American Bar Association, 2008). New York City's rule on lobbyist gifts offers a possible middle ground. New York City prohibits all gifts by lobbyists to New York City public servants (NYC Ad. Code § 3-225; 53 RCNY § 1-16(a)), but then exempts, *inter alia,* "de minimis promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause" (53 RCNY § 1-16(c)(1)). *See* http://www.nyc.gov/html/conflicts/downloads/pdf2/rules_1_07_final.pdf (site visited January 2009).
18. http://www.nyintegrity.org/local/local_lobbying.html (site visited January 2009).
19. *Id.* For a list of covered municipalities *see* http://www.nyintegrity.org/pubs/LocalFacts.PDF (site visited January 2009).

20. The registration and reporting requirements are beyond the scope of this article, but New York Legislative Law Art. 1-A may be accessed at: http://www.nyintegrity.org/law/lob/lobbying2.html; and Guidelines adopted by the Commission on Public Integrity are *available at*: http://www.nyintegrity.org/law/lob/guidelines.html (site visited January 2009).
21. N.Y. Pub. Off. L. § 73(8)(a)(i).
22. N.Y. Pub. Off. L. § 73(8)(a)(ii).
23. N.Y.S. Ethics Commission, Advisory Opinion 06-01 (Jan. 23, 2006). The opinion may be accessed at: http://www.nyintegrity.org/advisory/ethc/06-01.htm (site visited January 2009).
24. N.Y. Gen. Mun. L. § 805-a[1][c].
25. N.Y. Gen. Mun. L. § 806[1][a].
26. *See, generally*, P. Salkin, "Ethics in Land Use," Ch. 38 in AMERICAN LAW OF ZONING, 5th Ed. (Thomson-West 2008).
27. *Id.*
28. *See* Inf. Op. N.Y. Att'y Gen. 97-5; Inf. Op. N.Y. Att'y Gen. 86-54.

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CODE OF CONDUCT FOR WIND FARM DEVELOPMENT

The below-signed Wind Company voluntarily agrees to implement the following Code of Conduct to govern its future conduct in connection with Wind Farm Development in New York State.

I. CONFLICTS OF INTEREST - PROHIBITED

1. **General Standard:** The Wind Company shall not directly or indirectly offer to, or confer on, a Municipal Officer, his or her Relative, or any third party on behalf of such Municipal Officer any benefit under circumstances in which it could reasonably be inferred the benefit would induce such Municipal Officer to commit an official act or to refrain from performing an official duty in connection with Wind Farm Development, unless such Municipal Officer recuses him or herself from any official duties in connection with Wind Farm Development.
2. **No Gifts:** The Wind Company shall not give any Municipal Officer, his or her Relative, or any third party on behalf of such Municipal Officer, any gift or gifts totaling more than ten dollars ($10.00) in the aggregate during any one-year period.
3. **No Compensation for Services:** The Wind Company shall not employ, hire, retain or compensate, or agree to employ, hire, retain or compensate, any Municipal Officer whose official duties involve Wind Farm Development in connection with the Wind Company, or his or her Relative, within two years of the time that such Municipal Officer had such duties, unless such Municipal Officer first recuses him or herself from any official conduct in connection with such Wind Farm Development. Accordingly, any compensation provided by the Wind Company to such Municipal Officer, his or her Relative, or third party on behalf of such Municipal Officer or Relative, shall be contingent on such prior recusal. The Wind Company shall disclose in writing to the Task Force and the Office of the Attorney General any agreement that is contingent on such recusal.
4. **No Contingent Compensation:** The Wind Company shall not provide or agree to provide compensation to any Municipal Officer or his or her Relative that is contingent upon such Municipal Officer's action before or as a member of any Municipal agency.
5. **No Honorarium:** The Wind Company shall not confer on any Municipal Officer or his or her Relative any honorarium during the Municipal Officer's public service, or for a period of two years after termination of such Municipal Officer's service.
6. **Restrictions on Easements/Leases with Municipal Officers:** The Wind Company shall not enter into any agreement with any Municipal Officer that requires the Municipal Officer to support or cooperate with Wind Farm Development in any manner that relates to the Municipal Officer's official duties.
7. **Confidential Information:** The Wind Company shall not solicit, use, or knowingly receive confidential information acquired by a Municipal Officer in the course of his or her official duties.
8. **Restrictions on Legal Representation:** The Wind Company shall not agree to pay legal fees for any Municipal Officer or Municipality in connection with any investigation by any law enforcement agency.

II. PUBLIC DISCLOSURE

For events transpiring after the date that this Code of Conduct is signed, the Wind Company shall make the disclosures as set forth in this section. For any financial interest held by a Municipal Officer or his or her Relative in any property Identified for Wind Farm Development prior to the date of this Code of Conduct, the Wind Company shall make the disclosure of the Municipal Officer and the nature and scope of the financial interest by a chart submitted to the Office of the Attorney General and displayed on a website hosted by the Wind Company. The format of the chart shall be subject to the approval of the Office of the Attorney General.

1. The Wind Company shall publicly disclose the full names of any Municipal Officer or his or her Relative who has a financial interest in any property Identified for Wind Farm Development, and the nature and scope of the financial interest in the following manner:
    a. Submit the information in writing for public inspection to the Clerk of such Municipality.
    b. Publish the information in a newspaper having a general circulation in such Municipality.
    c. Display the information on a website hosted by the Wind Company.
    d. Submit the information in writing to the Task Force and the Office of the Attorney General.
2. All Wind easements and leases shall be in writing. The Wind Company shall promptly file, duly record, and index an abstract or memorandum of such agreements in the Office of the County Clerk for the county in which the subject property is located; if property owner is a Municipal Officer or his or her Relative, then the Wind Company also shall post an abstract or memorandum of any such agreement on a website hosted by the Wind Company.
3. The abstract or memorandum of such agreements shall, at a minimum, include:
    a. the full names and addresses of the parties;
    b. a full description of the property subject to the agreement;
    c. the essential terms of the agreement, including the rights conveyed by the property owner and, if the property owner is a Municipal Officer or his or her Relative, which of the following ranges encompasses the actual monetary consideration offered by the Wind Company or, if the actual monetary consideration is not fixed, the Wind Company's estimate of the monetary consideration:
        i. Under $5,000
        ii. $5,000 to under $20,000
        iii. $20,000 to under $60,000
        iv. $60,000 to under $100,000
        v. $100,000 to under $250,000
        vi. $250,000 to under $500,000
        vii. $500,000 to under $1,000,000
        viii. $1,000,000 or higher.

III. EDUCATION AND TRAINING

1. The Wind Company shall promptly provide a copy of this Code of Conduct and a written statement of its intention to comply with this Code of Conduct to the government of any Municipality in which it engages in Wind Farm Development.
2. Within one week of the announcement of this Code of Conduct, the Wind Company shall publish this Code of Conduct on a website hosted by the Company and on any internal computer network (intranet) site that can be accessed only by its officers or employees, distribute copies of this Code of Conduct among its officers and employees, and post copies in its main office and at any local Wind Farm Development office.

3. Within thirty days of the announcement of this Code of Conduct, the Wind Company shall conduct a seminar for all officers and employees, except those who perform solely administrative/clerical, accounting, or building maintenance functions, about identifying and preventing conflicts of interest when working with Municipal Officers.

4. Within thirty days of the seminar, the Wind Company shall obtain acknowledgement forms from each of its employees, certifying that they have: (i) attended the seminar required by paragraph 3 of this section, unless they fall into the exception therein, and (ii) have read and agree to comply with this Code of Conduct. If, due to exceptional circumstances, an officer or employee is unable to attend the seminar required in paragraph 3 of this section, alternative arrangements should be made as soon as is practical for such officer or employee to receive the training described in paragraph 3 and sign the acknowledgement form. The Wind Company shall discontinue employment of anyone who fails to attend the seminar, or its equivalent, or sign the acknowledgment form.

5. The Wind Company shall distribute to all its employees and post prominently in all its work locations as well as on its website or intranet system the NYS Attorney General's Public Integrity Hotline with instructions that any misconduct, violation of the law, or corruption of any sort in connection with Wind Farm Development; or any violation of this Code of Conduct shall be promptly reported to the New York State Attorney General.

6. Upon discovery by the Wind Company that a Municipal Officer or his or her Relative has entered into a lease or easement with the Wind Company, the Wind Company shall (i) notify the attorney for the Municipality and (ii) recommend to such Municipal Officer that he or she consult with the Municipality's attorney concerning his or her legal obligations, including any obligation to recuse him or herself.

IV. ENFORCEMENT AND COMPLIANCE

1. The Office of the New York State Attorney General shall establish the above-referenced Task Force to provide oversight of Wind Farm Development and monitor compliance with this Code. The Task Force shall include, among others, local elected officials, including District Attorneys, and others designated by the Office of the Attorney General. The Task Force shall report only to the Office of the New York State Attorney General. The Office of the New York State Attorney General shall establish responsibilities and guidelines for the Task Force.

2. For three years following the Wind Company's agreement to this Code of Conduct or until the Wind Company ceases operations in New York State, whichever is earlier, the Wind Company shall contribute a proportional share of the reasonable administrative costs of the Task Force, in an amount to be determined by the Task Force. So long as the Wind Company operates in New York State, it shall fully cooperate with the Task Force.

3. Should the Wind Company discover any conduct in violation of the provisions of this Code, the Wind Company shall promptly disclose such information to the Office of the New York State Attorney General. The Wind Company shall fully cooperate with the Office of the New York State Attorney General in any investigation arising out of such violation.

4. The Task Force shall give notice of any complaints relating to the Wind Company to the Office of the New York State Attorney General. The Task Force may decide not to refer such a complaint, if it determines that it involves a matter relating to this Code of Conduct that can be resolved by the Task Force. The Task Force may refer such complaints to the Office of the New York State Attorney General. With respect to any complaint referred to the Office of the New York State Attorney General by the Task Force, the Office of the New York State Attorney General shall advise the Wind Company of the complaint and give the Wind Company a reasonable opportunity to obtain and submit to the Office of the New York State Attorney General information relevant to the complaint. After providing such opportunity, the Office of the New York State Attorney General shall determine, in its reasonable discretion, and based on a reasonably comprehensive factual investigation including any information provided by the Wind Company, whether a preponderance of the evidence establishes that the Wind Company has violated this Code of Conduct in any material respect. In the event that a violation of any provision set forth in this Code is found, the Wind Company shall pay a civil penalty of up to $50,000 for the first violation, and up to $100,000 for any subsequent violation. In setting any penalty amount, the Office of the New York State Attorney General shall consider the relative severity of, and the relative harm to public integrity

occasioned by, the violation. Any payment shall be made by certified check made payable to the "State of New York." The Wind Company shall have the right to challenge the Office's finding of a violation and determination of penalty amount before a court of competent jurisdiction, but shall pay any assessed penalty to the State of New York pending the resolution of any such court challenge.

5. The Wind Company and the Office of the New York State Attorney General shall meet to review the terms of this Code both four months and one year from the date on which this Code is signed.

V. DEFINITIONS

Unless otherwise stated or unless the context otherwise requires, when used in this Code:

1. "Gift" means any thing having more than a nominal value whether in the form of money, service, loan, investment, travel, entertainment, hospitality, or in any other form and includes an offer to a charitable organization at the designation of the Municipal Officer or at the designation of his or her Relative.

2. "Honorarium" means any payment made in consideration for any speech given at a public or private conference, convention, meeting, social event, meal or like gathering.

3. "Identified" means that the Wind Company has begun to pursue the purchase or lease of, or an easement on, real property in which the Wind Company knows, or through the exercise of reasonable diligence should have known, that a Municipal Official or his or her Relative has a financial interest in the property.

4. "Municipality" means a county, city, town, village, public authority, school district, or any other special or improvement district, but 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.

5. "Municipal Officer" means any officer or employee of a municipality, whether paid or unpaid, and includes, without limitation, all members of any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau, or committee of the municipality. It also includes any entity that is directly or indirectly controlled by, or is under common control with, such officer or employee.

    a. "Municipal Officer" shall not include:

        i. A judge, justice, officer, or employee of the unified court system;

        ii. A volunteer firefighter or civil defense volunteer, except a fire chief or assistant fire chief; or

        iii. A member of an advisory board of the municipality if, but only if, the advisory board has no authority to implement its recommendations or to act on behalf of the municipality or to restrict the authority of the municipality to act.

6. "Relative" means a spouse, domestic partner, child, step-child, sibling, or parent of the Municipal Officer, or a person claimed as a dependent on the Municipal Officer's latest individual state income tax return.

7. "Wind Farm Development" means any stage of past, present or future development or siting of wind farms, wind turbines, wind power and related facilities or wind power projects; whether considered planned, attempted or completed, including but not limited to permitting, licensing, construction and energy production.

[Note: Part VI containing Forms to be used has been omitted]

2008 New York State Legislative Update

By Darrin B. Derosia

Chapters 7 and 8

Prevailing Wage Enforcement

Strengthens requirements, penalties and enforcement provisions relating to payment of prevailing wages on a public works contract by a contractor or subcontractor; requires municipality to withhold payment if contractor was convicted for a violation within five years. Makes the willful failure to file payrolls a crime and requires contracts to contain a statement that filing payroll is a condition of getting paid; requires municipality to collect and maintain payrolls (see Labor Law §§ 220, 220-b; General Municipal Law § 103).

Chapter 11

Workers' Compensation Rate Determinations

Implements changes to the 2007 workers' compensation reform legislation. Rates will be set using a "loss cost" approach which is used by a majority of states to set compensation insurance rates. The Superintendent of Insurance will post each insurer's "lost cost multiplier" on the Internet, allowing municipalities to compare competitive compensation insurance rates.

Chapter 43

Extension of Prohibition Against School District Retiree Health Insurance Changes

Extends, until May 15, 2009, the prohibition against changing health insurance benefits or cost for school district retirees unless the same changes are implemented for the corresponding group of active employees.

Chapter 47

Extension of Firefighter Safety Rope Law

Extends, until November 1, 2008, the date for municipalities to comply with the firefighter safety ropes law enacted last year. Such law, § 27-a(4)(c) of the Labor Law, requires municipalities outside NYC to provide a very specific type of safety rope and accompanying equipment for their firefighters and provide them with training for their proper use.

Chapters 50 and 56

State Aid to Local Governments

The 2008-09 State Budget provides $50.1 million for the second installment of the four-year, $200 million increase in AIM funding that was committed to in 2007-08. From this amount, eligible cities (outside New York City) and large villages and towns will receive increases ranging from 5% to 9% based upon their level of fiscal distress, which is measured using four fiscal distress indicators: full valuation per capita, population loss, real property tax capacity and poverty rate. If all four indicators are met, the municipality will receive a 9% increase; if three are met, 7%; and if one or two are met, 5%. Villages with populations of fewer than 10,000 and towns with populations of fewer than 15,000 that meet at least one of the distress criteria and have per capita taxable property wealth below the statewide average will receive increases of 5%. Finally, municipalities that do not exhibit signs of fiscal distress will receive a 3% inflationary increase. An additional $5.8 million is available to fund an extra 4.5% increase in aid for those distressed local governments that receive significantly less aid than their peers on a per capita basis. Finally, the Budget includes an additional $11.6 million in funding for 33 cities. New York City will receive $246 million in AIM funding in 2008-09, with a commitment to bring them back to their 2006-07 level of $327 million next year.

Note: Chapter 56 also includes AIM accountability requirements.

Chapters 50 and 56

Local Government Efficiency Grant Program (LGEG)

The former Shared Municipal Services Incentive program (SMSI) is renamed the Local Government Efficiency Grant program (LGEG), and will provide nearly $29.4 million in grants for the planning and implementation of local consolidation and shared service endeavors. Specifically, this money will fund:

- High Priority Planning Grants, which would be awarded in a non-competitive manner to support those initiatives with the greatest potential for cost savings or structural change;
- General Efficiency Planning Grants and Efficiency Implementation Grants both of which would fund the planning and implementation of endeavors similar to those that were eligible under the SMSI program;

- 21st Century Demonstration Projects designed to promote large-scale transformative regional change in municipalities that can be used as living laboratories for municipal innovation;
- New state agency services for local governments where state agencies can submit a plan for approval by the Division of Budget that would assist municipalities in achieving savings through functional consolidation or shared services; and
- Improved technical assistance to local governments that may be provided through regional planning and development boards, not-for-profit organizations that support local government concerns, and academic institutions.

The maximum grant amounts vary by category and there is a 10% local match required.

In addition to the grants, a portion of the LGEG funding is available for consolidation incentives. Under this proposal, municipalities that merge, consolidate or dissolve now have two choices in addition to the 25% increase in AIM funding currently offered. They may opt to receive additional AIM funding equal to 15% percent of the municipalities' combined property tax revenue from the previous year or a flat amount of $250,000 reduced in equal increments over five years. The value of the property tax-based incentive, like that of the AIM-based incentive, is capped at $1 million. The value of the $250,000 incentive is capped at 25% of the municipalities' combined property tax revenue from the previous year.

Another incentive is available to local governments that functionally consolidate highway services countywide (including either all of the towns or municipalities making up at least 90% of local road mileage within a county). Participating municipalities would receive additional general purpose aid as an incentive, calculated at 30% of current highway aid, phasing down over five years.

Chapter 55

Transportation Aid

The 2008-09 State Budget provides an additional $51 million, or a 16% increase, in Consolidated Highway Improvement Program (CHIPS) funding, for a total of $363 million in 2008-09. Marchiselli Aid is funded at last year's level of $39.7 million.

Chapter 57

Wicks Law Reform

The 2008-09 State Budget increases the Wicks Law thresholds from $50,000 to $3 million in New York City; $1.5 million in Nassau, Suffolk and Westchester counties; and $500,000 for the rest of the state. These reforms also allow for the pre-qualification of bidders, provide prompt payment protections for sub-contractors, provide a Wicks exemption for those projects subject to a project labor agreement, and empower the Commissioner of Labor to issue a stop-bid order to enforce compliance with the Wicks Law requirements.

Chapter 67

Electronic Security and Targeting of Online Predators Act

Amends the State's Sex Offender Registration Act, also known as "Megan's Law," to require convicted sex offenders to submit information regarding their Internet identities to the N.Y.S. Division of Criminal Justice Services (DCJS). The legislation also authorizes DCJS to share this information with social networking Web sites and similar online services that request it, enabling those companies to screen for and remove sex offenders from their services. In addition, the legislation allows these Web-based service providers, in conformity with state and federal law, to advise law enforcement agencies and other governmental entities of potential violations of law and potential threats to public safety.

Chapter 76

Police and Firefighter Death Benefit

Increases the salary to be used for computation of accidental death benefit of police and paid firefighters (General Municipal Law § 208-f, Retirement and Social Security Law § 361-a).

Chapter 78

Residential Assessment Ratio in Review Proceedings

Revises the process for calculating the residential assessment ratio (RAR), which was previously based exclusively upon sales of residential properties occurring within a specified one-year period. The RAR will now be based upon the market value survey of residential property conducted by the N.Y.S. Office of Real Property Services and used to establish state equalization rates.

Chapter 87

Town Justice Courts

Amends the Uniform Justice Court Act and Town Law by supplying a procedure for two or more adjacent towns to enter into a joint plan providing for the election of a single town justice to preside over their town courts; requires a study and public hearing on such a plan and passage by the State Legislature enabling said plan.

Chapter 110

Private Activity Bond Allocation Act of 2008

This bill allocates the State's private activity bond volume cap for issuance of tax-exempt bonds established by the federal tax reform act of 1986. The State's volume cap is allocated with 1/3 going to state agencies and authorities, 1/3 to local industrial development agencies and 1/3 reserved in a statewide pool under the authority of Empire State Development for allocation to significant projects. The allocation authority expires in January 2009.

Chapter 122

Bonds for Property Tax Refund Judgments

Extends to June 15, 2013 authority for a separate, variable period of probable usefulness for issuance of bonds to satisfy real property tax refund judgments (see Local Finance Law § 11.00).

Chapter 134

Electronic Bidding Extender

Extends, to June 1, 2013, the provisions of law related to electronic bidding. The extension provides greater flexibility to local governments when conducting public sales of bonds and soliciting bids for purchase contracts by allowing the use of current technology to accept bids submitted in an electronic as well as in paper format.

Chapter 137

Purchase of State Surplus Personal Property

Provides municipalities with the first opportunity to obtain state-owned surplus personal property.

Chapter 161

Expanded Use of Marchiselli Aid

Amends the Highway Law to permit local governments to use Marchiselli Aid for the construction and improvement of bicycle and pedestrian paths. Currently, almost all of this aid is used for roads, bridges and highways.

Chapter 165

Shared Highway Services

Requires that money received by the N.Y.S. Department of Transportation from local governments for the rental of machinery and equipment shall be deposited into the highway and bridge trust fund, ensuring that the Department can use such funds to replace or repair such machinery. Previously this money was deposited in the State's general fund. This bill also gives broader authority to state agencies to contract with local governments, particularly with respect to fuel, supplies and equipment.

Chapter 168

Expanded Use of Urban Initiative Funding

Permits eligible applicants of the Urban Initiatives Program to use up to 10% of the project cost for urban initiative contracts to help cover the expenses of administering the program. The Urban Initiatives Program provides grants and loans to community based not-for-profit organizations for the purpose of revitalizing and improving housing and local commercial and service facilities in certain urban neighborhoods.

Chapter 174

Town Clerks

Authorizes town clerk, upon application, to correct error on marriage certificate, where (1) the error is not intended fraud, deception or avoidance of law and (2) either party to marriage provides proof to satisfaction of town clerk; requires town clerk to send to Commissioner of Health a copy of corrected marriage certificate; entitles town clerk to collect fee, set by the town board, not exceeding $10; provides similar authority to State Commissioner of Health, who is to send corrected certificate to town clerk (see Domestic Relations Law § 4-a; Public Health Law § 206).

Chapter 223

Public Records Access

New requirements and limitations involving furnishing records under FOIL, as follows: (1) prescribes computation of "actual cost," (2) excludes search time or administrative time unless it is at least two hours, (3) requires informing requestor of estimated cost of preparing a copy of record if more than two hours of employee time are needed or engaging outside help, (4) requires furnishing record in medium requested, (5) precludes encrypting records provided in computer format, (6) prohibits entering or renewing a contract to create or maintain records if it will impair public inspection or copying, (7) declares that inspecting or copying property record inventory is not invasion of

privacy, (8) precludes agency from claiming record is voluminous or that it lacks staff if agency may engage outside help and recompense "actual cost," (9) permits an agency, if a list of names and addresses is requested, to require certification that it will not be used for solicitation and fundraising nor FOIL, (10) requires computer records to be retrieved electronically rather than manually, and provides programming time for this purpose is not creation or preparation of record (see Public Officers Law §§ 87 and 89).

Chapter 236

Posting of Conflicts of Interest Law

Eliminates the requirement that municipalities post in each public building a copy of all of the provisions of Article 18 of the General Municipal Law and instead requires that only certain sections of Article 18 be posted.

Chapter 252

Town Highways

Eliminates State DOT approval or requirement for town board decision to install lighting on town and country highways; retains State DOT approval for state highways (see Highway Law §§ 327, 328).

Chapter 258

Property Tax

Adds a new § 495 to the Real Property Tax Law, requiring all taxing jurisdictions to attach an exemption report to their tentative / preliminary budgets beginning this year. The report is required to show how much of the total assessed value on the final assessment roll is exempt from taxation.

Chapter 328

Protection Against Predatory Towing Practices

Amends state law relating to the towing of vehicles from private lots to better protect consumers. Specifically, this legislation allows municipalities to enact local laws with respect to the towing of vehicles that are stricter than state law, and would further allow the attorney general and local government agencies to enjoin violations of the law and seek civil penalties against persons who violate the law.

Chapter 331

Volunteer Firefighters/Ambulance Workers in Municipal Health Plans

Amends § 92-a of the General Municipal Law to permit volunteer firefighters and volunteer ambulance workers to participate in a municipal health insurance plan at the expense of the volunteer. Does not apply to municipalities enrolled in the State's Empire Plan, which does not allow unpaid individuals to participate in the Plan.

Chapter 338

Permanent Agency Shop

Amends several prior chapters of law to remove agency shop expiration dates and make the agency fee for non-members of an employee organization permanent.

Chapter 351

Electronic Accessibility of Public Records

Requires, to the extent practicable and reasonable, that local governments and other public agencies design information retrieval methods to permit segregation of information which may be withheld from public access under FOIL from other information in the same record to which the public is entitled access, in order to allow for electronic access of such records.

Chapter 390

Reform to the Brownfield Cleanup Program

Modifies the Brownfield Cleanup Program to encourage additional cleanups, limits the amount of the tangible property tax credit available for participation in the program and transfers the Brownfield Opportunity Area Program from the Department of Environmental Conservation to the Department of State. It also creates the New York Brownfields Advisory Board. Provides in some cases, more than double the current tax incentives for site cleanup, up to 50% of cleanup costs, limits redevelopment credits for non-manufacturing projects to $35 million or three times the cost of site cleanup, whichever is less, and limits redevelopment credits for manufacturing projects to $45 million or six times the cost of site remediation, whichever is less.

Chapter 397

Fees for Open Meetings Law Violations

Requires a court to award costs and reasonable attorney's fees if a court determines that a vote was taken in violation of the Open Meetings Law or deliberations relating to such vote were held in private prior

to such vote. Costs would not be awarded if there was a reasonable basis for a public body to believe that a closed session could properly have been held.

Chapter 452

Net Energy Metering for Non-residential Solar Electric Generating Systems

Expands the opportunity for net metering of solar technology to all utility customers, including local governments. Net metering allows consumers with qualified renewable energy systems to transfer surplus energy back onto the utility grid, receiving an equal credit against their own use. The increased use of net-metering solar technologies will also help to stabilize and reduce stress on New York's power grid.

Chapter 479

Public Access to Assessment Inventories

Requires that the physical characteristic of real property maintained by assessors and included in an assessment inventory shall constitute a public record and shall be available for public inspection and copying. The disclosing of such data is no longer precluded by the privacy exemption under the Freedom of Information Law.

Chapter 523

Leave of Absence for an Employee Elected to Union Office

Allows a local government to grant a leave of absence to an employee who is elected to an office with the union representing the individual.

Chapter 585

Police and Firefighter Mandatory Retirement Age Increase

Increases the mandatory retirement age for police and firefighters from 62 to 65. In order to remain on the payroll after attaining age 62, an individual must be capable of performing the duties of his or her position.

Chapter 589

Nursing Home and Assisted Living Facilities Disaster Preparedness Planning

Establishes standards and requires the Director of Homeland Security to assist nursing homes and assisted living facilities with disaster preparedness plans. Such plans will include maintaining a reserve supply of food, water and medication, having emergency generators, and establishing an evacuation plan for residents.

Chapter 592

Authorization for Wellness Programs

Permits insurers, Article 43 corporations, health maintenance organizations (HMOs) and municipal cooperative health benefits plans to establish wellness programs in conjunction with group health insurance policies and subscriber contracts. Such program would be able to use rewards and incentives for participation, including, in the experience-rated market, discounted premium rates, rebates and refunds of premium, as long as there is actuarial justification that the wellness program will reasonably result in the group's good health and well-being.

Chapter 606

Alternative Assessor for Board of Assessment Review (BAR) Hearings

Authorizes an assessor who is employed by more than one assessing unit to appoint a representative to act on his or her behalf at hearings before the BAR.

Chapter 619

Public Improvement—Bonds

Amends § 137 of the State Finance Law to require the posting of a payment bond whenever a municipal corporation issues a permit subject to compliance with § 220 of the Labor Law. The law requires a performance bond to be posted by permittee, its contractor and subcontractors whenever a permit is issued subject to compliance with § 220 of the Labor Law.

Chapter 631

Green Residential Building Grant Program

Authorizes the creation of a "green residential building" grant program to encourage the construction of new homes and the renovation of existing homes, consistent with green residential building standards established by the N.Y.S. Energy Research and Development Authority (NYSERDA).

Chapter 640

Retirement System Membership Reforms

Imposes restrictions on attorneys representing a school district or a BOCES and will criminalize attorney conduct of attempting to be treated as an employee for fringe benefit purposes if the worker is an independent contractor. Imposes salary and fringe benefit reporting requirements for attorneys, administrators, and supervisors in school districts and BOCES. Amends § 211 of the Retirement and Social Security Law to add restrictions to the process whereby a public employer can seek to attain a waiver from the earn-

ings limitation which exists when a retiree under age 65 seeks to return to work, including: requirements to prepare a detailed recruitment plan to fill the vacancy on a permanent basis; a certification that there is an urgent need for the retiree's services as a result of an unexpected vacancy leaving insufficient time to recruit a qualified individual; and a certification that extensive recruitment efforts have been made to fill the vacancy and no other individuals are qualified to perform the duties of the position. Also provides that a waiver cannot be granted if a retiree seeks to return to work in the same or similar position within one year of retirement.

Chapter 641

Plastic Bag Reduction, Reuse and Recycling

Requires operators of retail stores over 10,000 square feet, retail stores with five or more branches of 5,000 square feet or more, and retail stores over 50,000 square feet in an enclosed shopping mall, to establish an at-store plastic bag recycling program. Intended to encourage better conservation of resources, such programs would be required to include, among other things: (1) a visible and accessible collection bin; (2) a prohibition on the placement of plastic bags in a solid waste facility; and (3) a requirement that stores make reusable bags available for purchase. Also establishes fines of up to $500 in cases where a person knowingly or intentionally violates the recycling program requirements, the revenues from which would be deposited in the Environmental Protection Fund.

Chapter 642

Collection of Sales Tax on Indian Reservations

Amends the Tax Law to enforce the collection of taxes on the sale of tobacco products to non-Indians at Indian-owned businesses. This would be accomplished by prohibiting tobacco manufacturers from selling unstamped cigarettes to any agent that has not provided a certification, under penalty of perjury, that the cigarettes will not be resold untaxed. Although state law requires the collection of sales and excise taxes on products sold to non-Indians at Indian-owned businesses, this statute is not currently enforced, resulting in an estimated loss of $400 million annually in state and local revenue.

Some Vetoes Worth Noting

Veto No. 89

Availability of Records Subject to FOIL

The Municipal Law Section opposed S.7042 / A.5943, which sought to require various records be made available *in advance* of public meetings by local governments. A memo in opposition was sent to the Governor by the NYSBA legislative director, and the bill was ultimately vetoed. The bill would have diminished the time a public body would have to produce records pursuant to a FOIL request, by mandating their availability, if requested, at least 72 hours (or as soon as practicable) prior to a meeting at which such records are scheduled to be presented or discussed.

Veto No. 5

Police Chief Mandate

Would have required that any municipality with a police department with more than eight part-time police officers have a police chief and that all police chiefs be full-time.

Veto No. 11

Zoning Fee Procedure

Would have amended the Village Law regarding the imposition of fees upon applicants in zoning proceedings. Also would have required the written contract with the consultant, including any bills and work product, to be provided to the applicant before payment of any fee was required.

Veto No. 26

Independent Hearing Officers for § 75 Discipline Cases

Would have required the use of an independent hearing officer, from a list provided by the Public Employment Relations Board, in any Civil Service Law § 75 discipline case involving an individual represented by a union in which the penalty sought is dismissal.

Veto No. 44

Discipline and Disciplinary Procedures as Mandatory Subjects of Negotiation

Would have amended § 201(4) of the Civil Service Law to include within the scope of the phrase "terms and conditions of employment," discipline and disciplinary procedures, including alternatives to statutory provisions. The bill sought to address a decision by the Court of Appeals which held that special statutory provisions addressing the discipline of public employees were not negotiable. Where these special statutes exist, they primarily affect the discipline of police officers.

Veto No. 61

Prohibition of Property Tax Exemptions for Residential Properties in Empire Zones

Would have amended the Real Property Tax Law to provide that a municipal governing board could only grant an Empire Zone real property tax exemption for the purpose of commercial, business or industrial activity. If enacted, this bill would have eliminated the ability of local governments to offer similar real property tax exemptions for residential properties in an effort to revitalize their communities.

Veto No. 113

Prohibition Against Retiree Health Insurance Changes

Would have prohibited any changes in retiree health insurance coverage or cost to a retiree for the period beginning May 1, 2008 through June 1, 2009, unless the same coverage change or premium contribution were imposed upon the corresponding group of active employees. Would have also established a task force, replete with union representation, to study the protection of retiree health insurance.

Veto No. 120

Tax Exemption and Income Tax Credit for Volunteer Firefighters and Ambulance Workers

Would have permitted volunteer firefighters and ambulance workers to receive *both* a locally enacted real property tax exemption as well as a statewide $200 income tax credit. Under current law, such individuals can receive only one or the other.

Veto No. 141

Enhanced Economic Development Assistance to Businesses

Would have amended the Economic Development Law, in relation to authorizing regional offices to not only provide information to small and medium-sized businesses on regional economic development, but also to assist them in complying with any necessary regulations from the State regional economic development office.

Veto No. 144

State Implementation of Smart Growth Principles

Would have defined smart growth principles and directed certain state agencies to consider smart growth principles when implementing state policies and programs. Specifically, this legislation was intended to: refocus state training and technical assistance programs for local officials to incorporate the smart growth principles; enhance local government capacity to adopt and adhere to such principles in community planning and development; encourage community transportation planning; and coordination based on smart growth principles; and within all grants, awards, loans or assistance programs, give due consideration to those applications which are consistent with smart growth principles.

Veto No. 145

Land Banks to Redevelop Vacant and Abandoned Property

Would have provided for the creation of three land banks statewide to acquire, manage, plan and reuse vacant and abandoned property. The land banks would have been subsidiary corporations of the New York State Urban Development Corporation (UDC), created at the request of county legislatures.

Veto No. 147

Prohibition Against Police Mandatory Retirement/ Separation from Service Prior to Age 65

Would have prohibited any employer of a police officer from requiring mandatory retirement or separation from service on the basis of age for a police officer who is less than age 65. This bill contained no requirement that an officer seeking to continue employment after having attained age 62 be able to perform the duties of his or her position.

Veto No. 159

Revisions to the State's Historic Properties Rehabilitation Tax Credit Program

Intended to improve upon New York's current Historic Properties Rehabilitation Tax Credit Program, this bill would have increased the incentive, expanded the areas where the credit could be applied, and enhanced the program's flexibility, which would have made the tax credit a more effective tool in preserving our communities' historic character and revitalizing blighted neighborhoods.

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2008 *Municipal Lawyer* Index of Articles

Title	Author	Issue/Year	Page
Application of the "No Contact Rule" to Municipal Land Use Boards	Adam L. Wekstein	Vol. 22, No. 1 (Winter 2008)	4
Enacting a Local Ethics Law—Part III: Administration	Mark Davies	Vol. 22, No. 1 (Winter 2008)	11
Recusal and Abstention from Voting: Guiding Principles	Lester D. Steinman	Vol. 22, No. 1 (Winter 2008)	17
Navigating Through *Rapanos:* Delineating Where Lands End and Wetlands Begin	Dominic Cordisco	Vol. 22, No. 2 (Spring 2008)	5
Boards of Ethics: Public Disclosure?	Robert J. Freeman	Vol. 22, No. 2 (Spring 2008)	12
Land Use Law Case Law Update	Henry M. Hocherman and Noelle V. Crisalli	Vol. 22, No. 2 (Spring 2008)	16
NYS Commission on Local Government Efficiency and Competiveness: Restructuring Local Government for the 21st Century	Darrin B. Derosia	Vol. 22, No. 3 (Summer 2008)	5
Land Use Law Case Law Update	Henry M. Hocherman and Noelle V. Crisalli	Vol. 22, No. 3 (Summer 2008)	10
Local Ethics Laws: Model Administrative Provisions	Mark Davies	Vol. 22, No. 4 (Summer 2008	14
Municipal Briefs	Lester D. Steinman	Vol. 22, No. 3 (Summer 2008)	20
Green Building	Christina Hawkins	Vol. 22, No. 4 (Fall 2008)	5
Running a Local Municipal Ethics Board: Ten Steps to a Better Board	Steven G. Leventhal	Vol. 22, No. 4 (Fall 2008)	9
Charitable Use Property Tax Exemptions: When "Exclusively" Means "Primarily"	Christina Hawkins	Vol. 22, No. 4 (Fall 2008)	16
Reducing Municipal Legal Costs Through Shared Legal Services	Lester D. Steinman	Vol. 22, No. 4 (Fall 2008)	19

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