

Intro. Res. No. 1724-2011  
Introduced by Legislators Lindsay, Kennedy, Cooper and Nowick

Laid on Table 8/2/2011

**RESOLUTION NO. 828 -2011, ADOPTING LOCAL LAW  
NO. 56 -2011, A CHARTER LAW ESTABLISHING A NEW  
BOARD OF ETHICS**

**WHEREAS**, there was duly presented and introduced to this County Legislature at a meeting held on August 2, 2011, a proposed local law entitled, "**A CHARTER LAW ESTABLISHING A NEW BOARD OF ETHICS**;" now, therefore be it

**RESOLVED**, that said local law be enacted in form as follows:

**LOCAL LAW NO. 56 -2011, SUFFOLK COUNTY, NEW YORK**

**A CHARTER LAW ESTABLISHING A NEW BOARD OF ETHICS**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK**, as follows:

**Section 1. Legislative Intent.**

This Legislature hereby finds and determines that an ethics law cannot succeed without an effective board to oversee and enforce conflict of interest rules and financial disclosure requirements.

This Legislature also finds that in order to be effective an ethics board must at all times maintain, in perception and reality, its independence and impartiality.

This Legislature determines that in the past several years, the Suffolk County Ethics Commission has been embroiled in controversy. Initially, questions were raised in the media and elsewhere about the Commission's application of the County's financial disclosure law. Later, the Commission frustrated the Legislature's oversight function when they failed to provide records the Legislature had requested and then initiated a court proceeding to quash subpoenas issued by a special legislative oversight committee.

This Legislature further finds that legislation has been introduced in the County Legislature that would update the County's ethics and financial disclosure laws.

This Legislature also determines that it would be appropriate and prudent to constitute a new board to implement the revised conflict of interest rules and financial disclosure requirements.

This Legislature recognizes that ethics boards, in general, must necessarily conduct their business in a way that protects confidential information from public disclosure. Nevertheless, the new ethics board created by this law must operate in the most transparent manner possible.

Therefore, the purpose of this law is to abolish the existing Ethics Commission and to establish a new independent Board of Ethics that will be responsible for enforcing the County's revised ethics and disclosure laws.

**Section 2. Repeal.**

The Suffolk County Ethics Commission is hereby abolished and Article 30 of the SUFFOLK COUNTY CHARTER, Article 30 of the SUFFOLK COUNTY ADMINISTRATIVE CODE and Resolution No. 532-2009 are repealed in their entirety.

**Section 3. Amendments.**

- I. A new Article 30 of the SUFFOLK COUNTY CHARTER is hereby enacted as follows:

**ARTICLE XXX, BOARD OF ETHICS**

**§ C30-1. Board of Ethics Established.**

There is hereby established a Board of Ethics.

**§ C30-2. Membership of the Board.**

- A. The Board of Ethics shall consist of five (5) members. Two members will be appointed by the County Executive. The Presiding Officer, Majority Leader and Minority Leader of the Suffolk County Legislature will each appoint one member. The appointment of all members will be subject to approval by the County Legislature. The Board shall elect one of its members to serve as Chairperson.
- B. No more than three (3) members of the Board shall belong to the same political party. No person while serving as a member of the Board shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, have business dealings with the County or any elected official, hold any political party office, appear as a lobbyist before the County or make a contribution to any County elected official or candidate for County office.
- C. The two members appointed to the Board by the County Executive shall be appointed to initial terms of two years; the members appointed by the Majority Leader and the Minority Leader shall be appointed for initial terms of three years; the member appointed by the Presiding Officer shall be appointed for an initial term of four years. Thereafter, all members will be appointed for terms of four years.
- D. Any vacancy occurring on the Board other than by expiration of a term shall be filled by nomination of a successor by the appropriate appointing authority within 60 days of the creation of the vacancy. The County Legislature shall act on such nomination within 60 days of an appointment resolution being laid on the table for consideration.
- E. Three members of the Board shall constitute a quorum and the Board shall have the power to act by a majority vote of the entire membership of the Board except as otherwise provided by this law.
- F. Members shall receive compensation of two hundred dollars (\$200) for each Board meeting they attend; such compensation shall not exceed four hundred dollars (\$400) per month.

- G. Members may be removed by their appointing authority for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of the requirements of paragraph (B) of this Section, after written notice and opportunity to reply. The removal of members appointed by the Presiding Officer, Majority Leader and Minority Leader must be ratified by the adoption of a procedural motion by the County Legislature.

**§ C30-3. Power and responsibilities**

- A. The Board shall have the authority and responsibility to:
- 1) Provide ethics training and education to Suffolk County's public servants;
  - 2) Render advisory opinions to Suffolk County's public servants on ethics and conflict of interest issues;
  - 3) Make financial disclosure statement forms available to persons required to file pursuant to Chapter 61, Article 2 of the Suffolk County Code, and review such statements; and
  - 4) Conduct investigations and hearings to determine if ethics violations have occurred and to impose penalties as authorized by local law.
- B. The Board shall promulgate rules as are necessary to implement the provisions of Chapter 61 of the Suffolk County Code and to govern its procedures. Such rules shall be made publicly available and posted on the County's website.

**§ C30-4. Staffing, Facilities.**

- A. The Board, by a majority vote of the Board's entire membership, shall appoint an executive director and independent counsel and such other staff as may be necessary to exercise its powers and fulfill its obligations. The power to appoint and retain an executive director, independent counsel and other staff shall be subject only to available appropriations provided therefor in the County operating budget and the actual appointment and filling of such positions shall not be subject to approval by the County Executive or the Budget Office. The Board shall be deemed the appointing authority for all such personnel. The executive director, independent counsel and support staff shall not be part of the Suffolk County Department of Law and shall not be supervised by the Department of Law. The Board, its staff and funding shall be treated as a separate agency for purposes of presentation and adoption in the annual County operating budget.
- B. The Board may delegate authority to the executive director and independent counsel and such delegation shall be defined in writing, provided that the executive director and independent counsel shall not be authorized to issue written advisory opinions, promulgate rules, issue subpoenas, issue final determinations of violation or make final recommendations of, or impose, penalties.
- C. The Board's office(s) shall not be sited in a building occupied by either the County Executive or the County Legislature.

- II. A new Article 30 of the SUFFOLK COUNTY ADMINISTRATIVE CODE is hereby enacted as follows:

### **ARTICLE 30, Board of Ethics**

#### **§ A30-1. Definitions.**

“County employee” means all elected officials and public servants who are employed by the County and compensated for their services. This term shall not include members of the County’s occupational licensing boards.

“Elected Official” means a person holding office as County Executive, District Attorney, Clerk, Comptroller, Treasurer, Sheriff or member of the County Legislature.

“Public servant” means all officials, officers and employees of the County, whether paid or unpaid.

#### **§ A30-2. Training and education.**

- A. The Board of Ethics shall have the responsibility of informing public servants and assisting their understanding of the conflicts of interest requirements set forth in Chapter 61, Article I of the Suffolk County Code. In fulfilling this responsibility, the Board shall develop a plain language guide to conflict of interest rules and conduct at least two (2) ethics training seminars in each even numbered year and one (1) training seminar in each odd numbered year. The Board is authorized to update the ethics training program and ethics booklet as appropriate and necessary.
- B. All elected officials shall receive mandatory ethics training at the first available ethics training seminar after the elected official takes office.
- C. All County employees appointed by elected officials, including department heads and division heads, shall receive mandatory ethics training at the first available training seminar conducted after the effective date of their appointment.
- D. All County employees hired or qualified to serve by the County of Suffolk after the effective date of this law shall receive the ethics booklet prepared by the Board at their orientation session and shall sign a statement that they have received the booklet and understand that they must abide by the conflict of interest rules contained therein during their employment with the County. Such statement shall be maintained in the employee’s personnel file.
- E. Public servants who are not County employees shall receive the ethics booklet from their appointing authority within 30 days after they are qualified to serve the County and shall sign a statement that they have received the booklet and understand that they must abide by the conflict of interest rules contained therein during the time of their service with the County. Such statement shall be maintained by the public servant’s appointing or supervising authority.
- F. The failure of a public servant to receive the training, to receive the ethics guide, or to sign the statement required by this section, shall have no effect on the duty of the public servant to comply with the requirements of Chapter 61 of the Suffolk County Code.

**§ A30-3. Advisory opinions.**

- A. The Board will render advisory opinions with respect to all matters covered by Chapter 61, Article I of the Suffolk County Code or any other applicable provision of law governing conflicts of interest, on the request of a public servant or a supervisory official of a public servant. The request shall be in such form as the Board may require and shall be signed by the person making the request. The Board may ask a person who is seeking an advisory opinion to appear before the Board to provide further information pertinent to the requested opinion. The opinion of the Board will be based on such facts as are presented in the request or subsequently submitted in a written, signed document or which are adduced when the person requesting the opinion appears before the Board.
- B. Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The Board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion.
- C. The Board will issue a requested advisory opinion within 45 days after it has completed fact finding. If the Board is unable to issue the advisory opinion within 45 days it shall so advise the person who requested the opinion before the 45 day period has expired. In no event, shall the Board issue an advisory opinion more than 90 days after it has completed its fact finding.
- D. Requests for advisory opinions shall be confidential, but the Commission shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party. The advisory opinions shall be indexed by subject matter and cross-indexed by County Code section and such index shall be maintained on an annual and cumulative basis.

**§ A30-4. Financial disclosure.**

The Board shall make financial disclosure statement forms available to all persons required to file pursuant to the requirements of Chapter 61, Section 2, of Suffolk County. The Board shall review and maintain these statements and otherwise administer and enforce the financial disclosure requirements in accordance with the provisions of Chapter 61.

**§ A30-5. Complaints, Referrals.**

- A. Whenever a written complaint is received by the Board alleging a violation of Chapter 61, Article I of the Suffolk County Code or other applicable provision of law governing conflicts of interest by a public servant or former public servant it shall:
  - 1. Dismiss the complaint if it determines that there is no reasonable cause to believe that a public servant has committed a violation; or
  - 2. Make an initial determination that there is reasonable cause to believe that a public servant has violated a provision of Chapter 61 or other applicable provision of law; or

3. Refer an alleged violation to the head of the agency served by the public servant if related disciplinary charges are pending against the public servant.
- B. A public servant or supervisory official of such public servant may request the Board to review and make a determination regarding a past or ongoing action of such public servant. Such request shall be reviewed and acted upon by the Board in the same manner as a complaint received by the Board under paragraph (A) of this section.
- C. The Board, on its own motion, may review a past or ongoing action of a public servant, in the same manner as a complaint received by the Board under paragraph (A) of this section.

**§ A30-6. Hearings.**

- A. If the Board makes an initial determination, based on a complaint, review of a financial disclosure statement or other information available to the Board, that there is reasonable cause to believe that a public servant or former public servant has violated a provision of Chapter 61, Article I of the Suffolk County Code or other applicable provision of law, the Board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the Board relied for its determination of reasonable cause and a statement of the provisions of the law allegedly violated. The Board shall also inform the public servant of the Board's procedural rules. The public servant shall have a reasonable time to respond and shall have the right to be represented by counsel or any other person.
- B. If after receiving the public servant's response the Board determines that there is no reasonable cause to believe that a violation has occurred, the Board shall dismiss the matter and inform the public servant of its decision in writing. If after considering the public servant's response the Board determines there remains reasonable cause to believe that a violation has occurred, the Board shall direct a hearing to be held or hold a hearing on the record to determine whether a violation has occurred, or shall refer the matter to the appropriate agency if the public servant is subject to the jurisdiction of any state law or collective bargaining agreement which provides for the conduct of disciplinary proceedings.
- C. If the Board determines, after a hearing or the opportunity for a hearing, that a public servant has committed a violation, it shall issue a decision and order setting forth its conclusions and imposing such penalties as it deems appropriate and, when appropriate, may refer the matter to the District Attorney or other appropriate law enforcement agency. If the Board determines, after a hearing or the opportunity for a hearing, that a public servant has not violated provisions of Chapter 61, it shall issue a decision setting forth its conclusion.
- D. The Board shall issue its decisions within 45 days after the completion of a hearing. If the Board is unable to issue their decision within this 45 day period, it shall so advise the public servant prior to the expiration of the 45 day period. In no event, shall the Board issue their decision more than 90 days after the completion of a hearing.
- E. Hearings of the Board shall not be public unless requested by the public servant. The order and the Board's findings and conclusions shall be made public.

- F. Nothing contained in this section shall prohibit the appointing officer of a public servant from terminating or otherwise disciplining such public servant, where such appointing officer is authorized to do so; provided, however that such action shall not preclude the Board from exercising its powers and duties under this Article with respect to the actions of any such public servant.

**§ A30-7. Investigations.**

The Board may conduct any investigation necessary to carry out the provisions of this Article and Chapter 61 of the Suffolk County Code. Pursuant to this power, the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance and require the production of any books or records which it may deem relevant or material to the investigation. Such subpoenas may only be issued by a supermajority vote of the entire membership of the Board.

**§ A30-8. Confidentiality.**

Except as otherwise provided by this law, testimony received or any other information obtained by a member of the Board of staff or the Board in connection with the preparation of an advisory opinion or the investigation of a complaint or referral, or the conduct of a hearing related to a complaint or referral, is confidential and shall not be disclosed by any such individual to any person or entity outside the Board. However, the Board shall provide all documents requested by the Suffolk County Legislature or a duly authorized committee of the Legislature that is exercising oversight of the Board of Ethics. Such a request for records must be approved by a two-thirds (2/3) vote of the Legislature via a procedural motion.

**§ A30-9. Annual report.**

The Board shall prepare and submit a report to the County Executive and the County Legislature no later than March 1<sup>st</sup> each year, summarizing the activities of the Board during the preceding calendar year.

**Section 4. Applicability.**

This law shall apply to actions occurring on or after the effective date of this law.

**Section 5. Severability.**

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**Section 6. SEQRA Determination.**

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

**Section 7. Effective Date.**

This law shall take effect ninety (90) days after its filing in the Office of the Secretary of State.

DATED: October 11, 2011

EFFECTIVE PURSUANT TO SECTION 2-15(D) OF THE SUFFOLK COUNTY CHARTER,  
RETURNED BY THE COUNTY EXECUTIVE UNSIGNED NOVEMBER 14, 2011

After a public hearing duly held on October 25, 2011  
Filed with the Secretary of State on December 28, 2011

SUFFOLK COUNTY  
County Legislature  
RIVERHEAD, NY



*This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on*  
October 11, 2011 *and that the same is a true and correct transcript of said resolution and of the whole thereof.*

*In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.*

*Tim Laube*

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Clerk of the Legislature

Intro. Res.

1734

Res. No.

828

October 11, 2011

**Motion:**

Romaine, Schneiderman, Browning, Muratore, Anker  
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,  
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Co-Sponsors:**

Romaine, Schneiderman, Browning, Muratore, Anker  
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,  
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Second:**

Romaine, Schneiderman, Browning, Muratore, Anker  
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,  
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					
2	Jay H. SCHNEIDERMAN					
3	Kate M. BROWNING					
4	Thomas MURATORE					
6	Sarah S. ANKER					
7	Jack EDDINGTON					
9	Ricardo MONTANO					
10	Thomas CILMI					
11	Thomas F. BARRAGA		/			
12	John M. KENNEDY, JR.					
13	Lynne C. NOWICK					
14	Wayne R. HORSLEY					
15	DuWayne GREGORY					
16	Steven H. STERN					
17	Lou D'AMARO					
18	Jon COOPER					
5	Vivian VILORIA-FISHER, D.P.O.				/	
8	William J. LINDSAY, P.O.	/				
Totals		16	1	-	1	-

MOTION
<input checked="" type="checkbox"/> Approve
Table: _____
<input type="checkbox"/> Send To Committee
<input type="checkbox"/> Table Subject To Call
<input type="checkbox"/> Lay On The Table
<input type="checkbox"/> Discharge
<input type="checkbox"/> Take Out of Order
<input type="checkbox"/> Reconsider
<input type="checkbox"/> Waive Rule _____
<input type="checkbox"/> Override Veto
<input type="checkbox"/> Close
<input type="checkbox"/> Recess
APPROVED <input checked="" type="checkbox"/> FAILED _____
No Motion _____ No Second _____

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
<input type="checkbox"/> NOT ADOPTED

*Tim Laube*

Tim Laube, Clerk of the Legislature

Roll Call \_\_\_\_\_ Voice Vote

Res. 828

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy  
COUNTY EXECUTIVE

November 14, 2011

RECORDED  
2011 NOV 14 P 2:52  
OFFICE OF THE COUNTY EXECUTIVE  
SUFFOLK COUNTY, N.Y.  
HAUPOAUGE

Presiding Officer William J. Lindsay and  
Members of the Suffolk County Legislature  
William H. Rogers Legislative Building  
725 Veterans Memorial Highway  
Smithtown, New York 11787

**RE: RESOLUTION NO. 827-2011, A CHARTER LAW TO UPDATE AND STRENGTHEN ETHICS AND DISCLOSURE RULES, and RESOLUTION NO. 828-2011, A CHARTER LAW ESTABLISHING A NEW BOARD OF ETHICS.**

Dear Presiding Officer Lindsay and Members of the Legislature:

I am returning herein **RESOLUTION NO. 827- 2011** and **RESOLUTION NO. 828-2011**, captioned above, neither signed nor vetoed for the following reasons.

A veto of this measure would give the false impression that there is something wrong with expanding the number of individuals on the ethics board, or in modifying the county charter as to what questions are to be asked on a financial disclosure form.

By the same token, signing this legislation would give credence to its preamble which wrongly mars the reputation of the current board members who have dedicated themselves for several years without pay in service of county employees and the public at large.

A draft of these pieces of legislation emanated from a panel that was convened by the Presiding Officer. The panel sought to look into articles published in a daily Suffolk County newspaper suggesting that the committee was controlled by the Executive Branch and that it had incorrectly opined that the County Executive's filing of a state financial disclosure form was proper. The article was inaccurate on many counts, and said inaccuracies were perpetuated by the legislative panel in spite of information that was provided that clearly proved the article's accusations to be false.

For instance, it was suggested that the County Executive was 'forum shopping' for a form that was less revealing than the county form. What was overlooked was the fact that the County Executive was mandated by state law to file a New York State financial disclosure form given that he is a member of the New York State Pine Barrens Review

Commission. Also overlooked was that -- contrary to the suggestion by the reporter and the numerous comments by legislators sitting on the panel -- the state form was actually far more revealing than was the county form.

Over and over again, the media reported that the county form was more revealing than the state's. This unsubstantiated claim was rebuked strongly by Mark Davies, the preeminent scholar on ethics in the state of New York. Mr. Davies, presently the chair of the New York City Conflicts of Interest Board and a draftsman of the original New York State Ethics Code, noted emphatically and without reservation, that the county form was far less revealing than the state form. In fact, the county form was so less revealing that it violated state law in not asking various questions that are mandated to be asked by localities via the state statute. (Mr. Davies' testimony, which he submitted in writing to the Legislature's special committee, is attached.)

Davies stressed that the county form did not ask questions regarding whether the filer was a political party officer, whether he or she received gifts in the past year, had contracts in place upon leaving office, or had travel expenses reimbursed by third parties. Nor did the County form ask about a filer's dependent children's assets, the nature of a filer's business activities or the transfer of assets for less-than market value. Despite this information having been given to the panel and local reporters, this fact that the state form was more, rather than less comprehensive than the county form, was never acknowledged.

That is, until now. This legislation concedes that fact -- for the first time ever -- by placing within the new county financial disclosure form all of the items that Mr. Davies said were lacking in the past form, which rendered the county form violative of state law.

I therefore commend the legislature in finally conforming the county form to the state form. Let this once and for all debunk the myth that the state form was less revealing than the county form.

Unfortunately, that myth helped perpetuate yet another myth - that the independent members of the Ethics Commission were somehow "doing the County Executive a favor" or "giving him a pass" when it came to his filings. The state law is clear that once the more extensive state filing was filed, the need to file a redundant, less comprehensive county form was no longer required.

Mr. Davies noted how General Municipal Law Section 811 states that where a local official must file a state form, the filing of said form obviates the need for a redundant filing on a local level. The Ethics Commission through its director had given this same opinion to county employees who came to them prior to the County Executive seeking advice on this very issue. The Ethics Commission correctly interpreted state law to mean that the filing of the state form was sufficient.

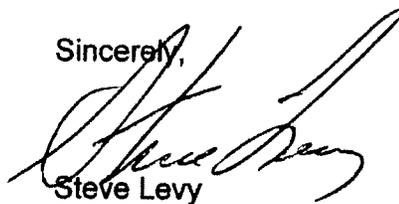
What is more interesting is that Mr. Davies went so far as to say that the Ethics Commission had no discretion whatsoever in this regard and that it is mandated by state law to accept the more comprehensive state form in lieu of the county form for those employees that were required to file the state form in first instance.

This proper interpretation of the law debunks the numerous myths that were perpetrated suggesting that the Ethics Commission was under the control of the County Executive and had given him some type of special dispensation. Unfortunately, it was this misinformation that led to a series of hearings and statements that were outright defamatory regarding the members of the Ethics Commission. It is absurd to suggest that a commission, two-thirds of which is appointed by the legislature or the presiding officer, is somehow an appendage of the Executive branch.

It is also enormously troubling that this legislation would now permit the Legislature, which is in essence a political body, to require the Ethics Commission to disclose to it any documents the Legislature so desires. The entire notion of confidentiality for the employees seeking an opinion is vanquished. We have already seen how these type of panels can be politicized. Such a provision will undoubtedly have a chilling effect on many officials and employees who would otherwise seek ethics opinions from the commission.

Ironically, a bill that is purported to seek to increase ethics will in fact be doing the opposite. Employees will be far less likely to seek preemptive interpretations from the new Board of Ethics for fear of their private matters going public.

Sincerely,



Steve Levy

County Executive of Suffolk County

Attachment: Written Testimony of Mark Davies, Sept. 22, 2010

cc: All Suffolk County Legislators  
Tim Laube, Clerk of the Legislature  
Christine Malafi, Esq., Suffolk County Attorney  
Lynne A. Bizzarro, Esq., Chief Deputy County Attorney  
Edward Dumas, Chief Deputy County Executive  
Eric Naughton, Deputy County Executive for Finance and Management  
Ken Crannell, Deputy County Executive  
Connie Corso, Budget Director  
Eric Kopp, Assistant Deputy County Executive  
Dan Aug, Director of Communications  
Mark L. Smith, Deputy Director of Communications

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**Connie Corso, Budget Director**  
**Eric Kopp, Assistant Deputy County Executive**  
**Dan Aug, Director of Communications**  
**Mark L. Smith, Deputy Director of Communications**

**Testimony of Mark Davies  
Before the  
Suffolk County Legislature  
Sept. 22, 2010**

**My name is Mark Davies. I previously served as the Executive Director of the Temporary State Commission on Local Government Ethics, the only state agency ever authorized to administer the financial disclosure requirements of Article 18 of the General Municipal Law. I am the co-chair of the Government Ethics and Professional Responsibility Committee of the New York State Bar Association's Municipal Law Section and a member of the Section's Executive Committee, Chair of the Municipal Ethics Subcommittee of the New York State Bar Association President's Task Force on Ethics, co-chair of the Ethics Committee of the American Bar Association's Section of State and Local Government Law, and an Adviser to the American Law Institute's Project on Public Integrity. I also serve on the board of directors of Global Integrity, a Washington-based NGO, and as an Adjunct Professor of Law at Fordham Law School. I have lectured extensively on ethics, both nationally and internationally, and have authored numerous publications on the subject.**

**For the record, my views do not necessarily represent those of the New York City Conflicts of Interest Board, where I serve as Executive Director, except as expressly stated.**

**I have been asked to give my views on whether a Suffolk County officer or employee who files a financial disclosure report with the New York State Public Integrity Commission pursuant to New York Public Officers Law § 73-a may file a copy of that report with the Suffolk County Ethics Commission in lieu of filing the Suffolk County financial disclosure form. The answer is yes.**

**Suffolk County has adopted a financial disclosure law and form pursuant to subdivision (1) of New York State General Municipal Law § 811. That same subdivision - § 811, subdivision (1) - expressly provides:**

**a person who is subject to the filing requirements of both subdivision two of section seventy-three-a of the public officers law and of this subdivision may satisfy the requirements of this subdivision by filing a copy of the statement filed pursuant to section seventy-three-a of the public officers law with the appropriate body, as defined in section**

eight hundred ten of this article, on or before the filing deadline provided in such section seventy-three-a, notwithstanding the filing deadline otherwise imposed by this subdivision. (Gen. Mun. Law § 811(1)(b).)

State law therefore *mandates* that the county accept the state form in lieu of the county form.

It has been suggested that this mandate is limited to filings by local political party officials, which is the subject to the opening sentence of the paragraph in which the mandate appears. This argument is wrong for two reasons. First, the mandate applies not to “a local political party official” but to “a person.” Second, the mandate refers not to filing pursuant to “this paragraph” – namely, paragraph (b) of subdivision (1) of section 811 – but rather to “this subdivision,” which includes all officials required to file a financial disclosure report.

Also, the Temporary State Commission took the position that municipalities subject to the state’s financial disclosure law, set forth in sections 810 through 813 of the General Municipal Law, had to comply with those provisions – for example, to meet certain minimum requirements in the municipality’s financial disclosure form and to require certain types of officials to file. The municipality had no authority to vary those provisions by local law. While the Commission did not address the specific issue of filing a state form in lieu of a local form, the New York City Conflicts of Interest Board, the ethics board for the City of New York, has taken the position that the Board has no alternative but to accept the state form in lieu of the City’s form. This is true even though the City’s law requires that officials disclose certain specified information, as reflected in the City’s form. (NYC Ad. Code § 12-110(b).) Indeed, one Deputy Mayor, with the Board’s blessing, files a paper copy of her state form in lieu of the New York City form.

This result is consistent with the purpose of annual financial disclosure, namely, to reveal potential conflicts of interest in order to prevent violations of the ethics code from occurring. The purpose of financial disclosure is not disclosure for disclosure’s sake. For example, in amending General Municipal Law § 811 in 2008, the state legislature recognized that disclosure requirements must be reasonable. (2008 N.Y. Laws ch. 41, New York Senate Introducer’s Memorandum in Support.) The requirement in section 811 that a municipality accept a state financial disclosure form filed pursuant to state law in lieu of the local form reflects this intent.

Indeed, a comparison of the state form and the Suffolk County form reveals that, on the whole, the state form is *more* extensive than the county form. For example, the county form fails to include:

- Uncompensated positions with entities that have no current business or licenses with the county, even if they had immediately past county business or have upcoming county business
- Offices in political parties and political organizations
- With respect to the filer's business: the nature of the business, the subject areas of matters undertaken, and the address
- Any information on the assets and liabilities of the filer's unemancipated children
- The nature of agreements for future employment
- Assignments and transfers of income and interests to others for less than fair market value
- Securities held by a corporation for investment when the filer or his or her spouse owns or controls 50% or more of the corporation
- Above all, gifts and reimbursements, which are among the most important items to disclose on a financial disclosure form.

But perhaps most significantly, the county's financial disclosure form violates state law, as interpreted by the Commission, again the only state agency ever authorized to administer the financial disclosure provisions of state law. In particular, the county's form fails to include, as required by state law, at least six items:

- Uncompensated positions with entities that have no current business or licenses with the county, even if they had immediately past county business or have upcoming county business
- Promises of future employment, even if they do not rise to the level of a contract
- Third-party reimbursements
- Any positions within the past five years as an officer in any political party, political committee, or political organization
- Any information on the assets and liabilities of the filer's dependent children
- Most importantly, gifts received by the filer, spouse, or dependent child in excess of \$250, one of the most significant sources of conflicts of

**interest and one of the most important questions on a financial disclosure form.**

**Since the state form contains almost all of this information, you may wish to consider adopting the state form, at least on an interim basis, until the county form can be brought into compliance with state law.**

**Thank you.**

**[Legal: Suffolk County: Davies Testimony Sept 22 2010]**