

ASSEMBLY, No. 1848

STATE OF NEW JERSEY

INTRODUCED MAY 2, 1996

By Assemblyman ARNONE

1 AN ACT concerning penalties for ethics violations by local officials and
2 amending P.L.1991, c.29.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 3 of P.L.1991, c.29 (C.40A:9-22.3) is amended to read
8 as follows:

9

3. As used in this act:

10 a. "Board" means the Local Finance Board in the Division of Local
11 Government Services in the Department of Community Affairs;

12 b. "Business organization" means any corporation, partnership,
13 firm, enterprise, franchise, association, trust, sole proprietorship, union
14 or other legal entity;

15 c. "Governing body" means, in the case of a municipality, the
16 commission, council, board or body, by whatever name it may be
17 known, having charge of the finances of the municipality, and, in the
18 case of a county, the board of chosen freeholders, or, in the case of a
19 county having adopted the provisions of the "Optional County Charter
20 Law," P.L.1972, c.154 (C.40:41A-1 et seq.), as defined in the form of
21 government adopted by the county under that act;

22 d. "Interest" means the ownership or control of more than 10% of
23 the profits, assets or stock of a business organization but shall not
24 include the control of assets in a nonprofit entity or labor union;

25 e. "Local government agency" means any agency, board, governing
26 body, including the chief executive officer, bureau, division, office,
27 commission or other instrumentality within a county or municipality,
28 and any independent local authority, including any entity created by
29 more than one county or municipality, which performs functions other
30 than of a purely advisory nature, but shall not include a school board;

31 f. "Local government employee" means any person, whether
32 compensated or not, whether part-time or full-time, employed by or
33 serving on a local government agency who is not a local government
34 officer, but shall not mean any employee of a school district;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 g. "Local government officer" means any person whether
2 compensated or not, whether part-time or full-time: (1) elected to any
3 office of a local government agency; (2) serving on a local government
4 agency which has the authority to enact ordinances, approve
5 development applications or grant zoning variances; (3) who is a
6 member of an independent municipal, county or regional authority;
7 **[or]** (4) who is a managerial executive or confidential employee of a
8 local government agency, as defined herein and in section 3 of the
9 "New Jersey Employer-Employee Relations Act," P.L.1941, c.100
10 (C.34:13A-3), but shall not mean any employee of a school district or
11 member of a school board; or (5) who voluntarily serves on a
12 continuing basis in the role of a confidential employee of, advisor to,
13 or consultant for a local government officer and who provides direct
14 advice to that local government officer of an economic or policy
15 nature, including any advice impacting decisions on the operation and
16 finances of a local government agency;

17 h. "Local government officer or employee" means a local
18 government officer or a local government employee;

19 i. "Member of immediate family" means the spouse or dependent
20 child of a local government officer or employee residing in the same
21 household;

22 j. "Managerial executive" means a person who formulates
23 management policies and practices, and a person who is charged with
24 the responsibility of directing the effectuation of such management
25 policies and practices;

26 k. "Confidential employee" means a local government employee
27 whose functional responsibility or knowledge in connection with the
28 issues involved in the collective negotiations process would make their
29 membership in any appropriate negotiating unit incompatible with their
30 official duties.

31 (cf: P.L.1991, c.29, s.3)

32

33 2. Section 6 of P.L.1991, c.29 (C.40A:9-22.6) is amended to read
34 as follows:

35 6. a. Local government officers shall annually file a financial
36 disclosure statement. All financial disclosure statements filed pursuant
37 to this act shall include the following information which shall specify,
38 where applicable, the name and address of each source and the local
39 government officer's job title:

40 (1) Each source of income, earned or unearned, exceeding
41 ~~[\$2,000]~~ \$1,000 received by the local government officer or a member
42 of his immediate family during the preceding calendar year. Individual
43 client fees, customer receipts or commissions on transactions received
44 through a business organization need not be separately reported as
45 sources of income. If a publicly traded security is the source of
46 income, the security need not be reported unless the local government

1 officer or member of his immediate family has an interest in the
2 business organization;

3 (2) Each source of fees and honorariums having an aggregate
4 amount exceeding [~~\$250~~] \$100 from any single source for personal
5 appearances, speeches or writings received by the local government
6 officer or a member of his immediate family during the preceding
7 calendar year;

8 (3) Each source of gifts, reimbursements or prepaid expenses
9 having an aggregate value exceeding \$400 from any single source,
10 excluding relatives, received by the local government officer or a
11 member of his immediate family during the preceding calendar year;

12 (4) The name and address of all business organizations in which the
13 local government officer or a member of his immediate family had an
14 interest during the preceding calendar year; [and]

15 (5) The address and brief description of all real property in the
16 State in which the local government officer or a member of his
17 immediate family held an interest during the preceding calendar year;
18 and

19 (6) The name and address of any person who voluntarily serves on
20 a continuing basis in the role of a confidential employee of, advisor to,
21 or consultant for the local government officer and who provides direct
22 advice to the local government officer of an economic nature,
23 including any area impacting decisions on the operations and finances
24 of a local government agency.

25 b. The Local Finance Board shall prescribe a financial disclosure
26 statement form for filing purposes. For counties and municipalities
27 which have not established ethics boards, the board shall transmit
28 sufficient copies of the forms to the municipal clerk in each
29 municipality and the county clerk in each county for filing in
30 accordance with this act. The municipal clerk shall make the forms
31 available to the local government officers serving the municipality.
32 The county clerk shall make the forms available to the local
33 government officers serving the county.

34 For counties and municipalities which have established ethics
35 boards, the Local Finance Board shall transmit sufficient copies of the
36 forms to the ethics boards for filing in accordance with this act. The
37 ethics boards shall make the forms available to the local government
38 officers within their jurisdiction.

39 For local government officers serving the municipality, the original
40 statement shall be filed with the municipal clerk in the municipality in
41 which the local government officer serves. For local government
42 officers serving the county, the original statement shall be filed with
43 the county clerk in the county in which the local government officer
44 serves. A copy of the statement shall be filed with the board. In
45 counties or municipalities which have established ethics boards a copy
46 of the statement shall also be filed with the ethics board having

1 jurisdiction over the local government officer. Local government
2 officers shall file the initial financial disclosure statement within 90
3 days following the effective date of this act. Thereafter, statements
4 shall be filed on or before April 30th each year.

5 After the filing deadline, the municipal clerk, county clerk, or local
6 ethics board, as appropriate, shall file with the Local Finance Board,
7 on a form provided by the Local Finance Board, a roster of those
8 individuals deemed to be local government officers and whether or not
9 the individual has filed the annual financial disclosure statement.

10 c. All financial disclosure statements filed shall be public records.
11 (cf: P.L.1991, c.29, s.6)

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13 3. Section 7 of P.L.1991, c.29 (C.40A:9-22.7) is amended to read
14 as follows:

15 7. 40A:9-22.7. Powers of Local Finance Board

16 With respect to its responsibilities for the implementation of the
17 provisions of this act, the Local Finance Board shall have the
18 following powers:

19 a. To initiate, receive, hear and review complaints and hold
20 hearings with regard to possible violations of this act;

21 b. To issue subpoenas for the production of documents and the
22 attendance of witnesses with respect to its investigation of any
23 complaint or to the holding of a hearing;

24 c. To hear and determine any appeal of a decision made by a
25 county or municipal ethics board;

26 d. To forward to the county prosecutor or the Attorney General or
27 other governmental body any information concerning violations of this
28 act which may become the subject of criminal prosecution or which
29 may warrant the institution of other legal proceedings by the Attorney
30 General;

31 e. To render advisory opinions as to whether a given set of facts
32 and circumstances would constitute a violation of this act;

33 f. To enforce the provisions of this act and to impose penalties for
34 the violation thereof as are authorized by this act; [and]

35 g. To adopt rules and regulations pursuant to the "Administrative
36 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and to do other
37 things as are necessary to implement the purposes of this act; and

38 h. To receive, hear and review requests for waivers of filing of a
39 financial disclosure statement for local government officers serving
40 under paragraph (5) of subsection g. of section 3 of P.L.1991, c.29
41 (C.40A:9-22.3) (now pending before the Legislature as this bill). Each
42 request shall be submitted annually and at least 60 days prior to the
43 deadline for filing annual financial disclosure statements or within 60
44 days following a new appointment of a local government officer
45 serving in the capacity as defined under paragraph (5) of subsection g.
46 of section 3 of P.L.1991, c.29 (C.40A:9-22.3) (now pending before

1 the Legislature as this bill). A waiver request under this subsection
2 shall be submitted to the Local Finance Board for approval irrespective
3 of the existence of a county or municipal ethics board.

4 (cf: P.L.1991, c.29, s.7)

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6 4. Section 9 of P.L.1991, c.29 (C.40A:9-22.9) is amended to read
7 as follows:

8 9. a. The Local Finance Board, upon receipt of a signed written
9 complaint by any person alleging that the conduct of any local
10 government officer or employee, not regulated by a county or
11 municipal code of ethics, is in conflict with the provisions of this act,
12 shall acknowledge receipt of the complaint within 30 days of receipt
13 and initiate an investigation concerning the facts and circumstances set
14 forth in the complaint. The board shall make a determination as to
15 whether the complaint is within its jurisdiction or frivolous or without
16 any reasonable factual basis.

17 b. If the board shall conclude that the complaint is outside its
18 jurisdiction, frivolous or without factual basis, it shall reduce that
19 conclusion to writing and shall transmit a copy thereof to the
20 complainant and to the local government officer or employee against
21 whom the complaint was filed. Otherwise the board shall notify the
22 local government officer or employee against whom the complaint was
23 filed of the nature of the complaint and the facts and circumstances set
24 forth therein.

25 c. The officer or employee shall have the opportunity to present the
26 board with any statement or information concerning the complaint
27 which he wishes and for the board to obtain any further information or
28 statements relevant to the investigation. Thereafter, if the board
29 [determines that a reasonable doubt exists] makes an initial
30 determination as to whether the local government officer or employee
31 is in conflict with the provisions of [this act] P.L.1991, c.29 (C.40A:9-
32 22.1 et seq.), the board shall conduct a hearing in the manner
33 prescribed by section 12 of [this act] of P.L.1991, c.29 (C.40A:9-
34 22.12), concerning the possible violation [and]. The determination
35 concerning the possible violation shall include any other facts and
36 circumstances which may have come to the attention of the board with
37 respect to the conduct of the local government officer or employee.
38 The board shall render a decision as to whether the conduct of the
39 officer or employee is in conflict with the provisions of this act. This
40 decision shall be made by no less than two-thirds of all members of the
41 board.

42 d. If the board determines, based upon the results of the
43 investigation, that no violation of the "Local Government Ethics Law,"
44 P.L.1991, c.29 (C.40A:9-22.1 et seq.), has been committed by the
45 local government employee or officer, the board shall issue a notice of
46 dismissal to the individual and provide a copy to the complainant.

1 e. If the board determines, based upon the results of the
2 investigation, that a violation of the "Local Government Ethics Law,"
3 P.L.1991, c.29 (C.40A:9-22.1 et seq.), has been committed by the
4 local government employee or officer, the board shall issue an order
5 to the individual containing the nature of the violation, assessing a
6 penalty, and advising the individual of his or her opportunity to
7 request an administrative hearing.

8 f. If the board determines that the officer or employee is in conflict
9 with the provisions of this act, it may impose any penalties which it
10 believes appropriate within the limitations of this act. A final decision
11 of the board may be appealed in the same manner as any other final
12 State agency decision.

13 (cf: P.L.1991, c.29, s.9)

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15 5. Section 10 of P.L.1991, c.29 (C.40A:9-22.10) is amended to
16 read as follows:

17 10. a. An appointed local government officer or employee found
18 guilty by the Local Finance Board or a county or municipal ethics
19 board of the violation of any provision of this act or of any code of
20 ethics in effect pursuant to this act, shall be fined not less than \$100.00
21 nor more than ~~[\$500.00]~~ \$1500.00 for each separate offense, which
22 penalty may be collected in a summary proceeding pursuant to "the
23 penalty enforcement law" (N.J.S.2A:58-1 et seq.). The board or a
24 county or municipal ethics board shall report its findings to the office
25 or agency having the power of removal or discipline of the appointed
26 local government officer or employee and may recommend that further
27 disciplinary action be taken.

28 b. An elected local government officer or employee found guilty by
29 the Local Finance Board or a county or municipal ethics board of the
30 violation of any provision of this act or of any code of ethics in effect
31 pursuant to this act, shall be fined not less than \$100.00 nor more than
32 ~~[\$500.00]~~ \$1500.00 for each separate offense, which penalty may be
33 collected in a summary proceeding pursuant to "the penalty
34 enforcement law" (N.J.S.2A:58-1 et seq.).

35 c. (1) Upon receipt by the board of a written complaint that a local
36 government officer has failed to file a financial disclosure form
37 required under section 6 of P.L.1991, c.29 (C.40A:9-22.6) for a given
38 calendar year, the board shall advise the local government officer of
39 the failure to file and require that the financial disclosure form be filed
40 within 30 days or that the board be otherwise provided with
41 information verifying that the individual is not a local government
42 officer. Failure of the local government officer to respond within the
43 allotted time shall result in a fine of \$100. The board shall then again
44 notice the local government officer of the requirement to file, and
45 failure to respond within the time limit established by the board to the
46 second such notice shall result in a fine of \$500, and a fine of \$1,500

1 shall be imposed for any subsequent failures to respond. Fines
2 imposed pursuant to this paragraph may be collected in a summary
3 proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1
4 et seq.).

5 (2) Upon a finding that an appointed local government officer has
6 failed to timely file the financial disclosure form pursuant to the
7 provisions of section 6 of P.L.1991, c.29 (C.40A:9-22.6) on two or
8 more occasions, the board may make a recommendation for the
9 removal of that appointed local officer to the officer or agency having
10 the power of removal. Such recommendation from the board shall be
11 considered sufficient cause for removal pursuant to section 11 of
12 P.L.1991, c.29 (C.40A:9-22.11).

13 (cf: P.L.1991, c.29, s.10)

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15 6. This act shall take effect immediately.

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STATEMENT

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20 The purpose of this bill is to increase the penalties for violations of
21 the "Local Government Ethics Law," P.L.1991, c.29 (C.40A:9-22.1
22 et seq.). The Department of Community Affairs estimates that
23 Statewide, only 85% of local officials comply with the financial
24 disclosure requirements of the ethics law. The Department of
25 Community Affairs believes that enhanced penalties, including
26 automatic fines for failure to timely file the annual financial disclosure
27 form and the power of the Local Finance Board to recommend the
28 removal of an appointed local government officer who fails to timely
29 file the financial disclosure form two or more times, will encourage
30 better compliance with the law on the part of local officials. The bill
31 also expands the definition of "local government officer" to include
32 uncompensated special assistants and advisors who provide direct
33 advice, on a continuing basis, to a local government officer of an
34 economic or policy nature.

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Increases penalties under "Local Government Ethics Law."