

[First Reprint]  
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

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ALG committee amendments adopted September 16, 1996.

1 compensated or not, whether part-time or full-time, employed by or  
2 serving on a local government agency who is not a local government  
3 officer, but shall not mean any employee of a school district;

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

20 h. "Local government officer or employee" means a local  
21 government officer or a local government employee;

22 i. "Member of immediate family" means the spouse or dependent  
23 child of a local government officer or employee residing in the same  
24 household;

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

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

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

35

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

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

43 (1) Each source of income, earned or unearned, exceeding  
44 ~~[\$2,000]~~ \$1,000 received by the local government officer or a member  
45 of his immediate family during the preceding calendar year. Individual  
46 client fees, customer receipts or commissions on transactions received

1 through a business organization need not be separately reported as  
2 sources of income. If a publicly traded security is the source of  
3 income, the security need not be reported unless the local government  
4 officer or member of his immediate family has an interest in the  
5 business organization;

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

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

15 (4) The name and address of all business organizations in which the  
16 local government officer or a member of his immediate family had an  
17 interest during the preceding calendar year; [~~and~~] <sup>1</sup>and<sup>1</sup>

18 (5) The address and brief description of all real property in the  
19 State in which the local government officer or a member of his  
20 immediate family held an interest during the preceding calendar year<sup>1</sup>;  
21 and

22 (6) The name and address of any person who voluntarily serves on  
23 a continuing basis in the role of a confidential employee of, advisor to,  
24 or consultant for the local government officer and who provides direct  
25 advice to the local government officer of an economic nature,  
26 including any area impacting decisions on the operations and finances  
27 of a local government agency ]<sup>1</sup>.

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

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

42 For local government officers serving the municipality, the original  
43 statement shall be filed with the municipal clerk in the municipality in  
44 which the local government officer serves. For local government  
45 officers serving the county, the original statement shall be filed with  
46 the county clerk in the county in which the local government officer

1 serves. A copy of the statement shall be filed with the board. In  
2 counties or municipalities which have established ethics boards a copy  
3 of the statement shall also be filed with the ethics board having  
4 jurisdiction over the local government officer. Local government  
5 officers shall file the initial financial disclosure statement within 90  
6 days following the effective date of this act. Thereafter, statements  
7 shall be filed on or before April 30th each year.

8 <sup>1</sup>[After the filing deadline] On or before June 30 of each year<sup>1</sup>, the  
9 municipal clerk, county clerk, or local ethics board, as appropriate,  
10 shall file with the Local Finance Board, on a form provided by the  
11 Local Finance Board, a roster of those individuals deemed to be local  
12 government officers and whether or not the individual has filed the  
13 annual financial disclosure statement.

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

16  
17 <sup>1</sup>[3. Section 7 of P.L.1991, c.29 (C.40A:9-22.7) is amended to  
18 read as follows:

19 7. 40A:9-22.7. Powers of Local Finance Board

20 With respect to its responsibilities for the implementation of the  
21 provisions of this act, the Local Finance Board shall have the  
22 following powers:

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

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

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

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

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

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

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

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

1 deadline for filing annual financial disclosure statements or within 60  
2 days following a new appointment of a local government officer  
3 serving in the capacity as defined under paragraph (5) of subsection g.  
4 of section 3 of P.L.1991, c.29 (C.40A:9-22.3) (now pending before  
5 the Legislature as this bill). A waiver request under this subsection  
6 shall be submitted to the Local Finance Board for approval irrespective  
7 of the existence of a county or municipal ethics board.

8 (cf: P.L.1991, c.29, s.7)]<sup>1</sup>

9  
10 <sup>1</sup>[4] 3.<sup>1</sup> Section 9 of P.L.1991, c.29 (C.40A:9-22.9) is amended to  
11 read as follows:

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

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

29 c. The officer or employee shall have the opportunity to present the  
30 board with any statement or information concerning the complaint  
31 which he wishes and for the board to obtain any further information or  
32 statements relevant to the investigation. Thereafter, <sup>1</sup>[if]<sup>1</sup> the board  
33 <sup>1</sup>shall<sup>1</sup> [determines that a reasonable doubt exists] <sup>1</sup>[makes] make<sup>1</sup> an  
34 initial determination as to whether the local government officer or  
35 employee is in conflict with the provisions of [this act] P.L.1991, c.29  
36 (C.40A:9-22.1 et seq.) <sup>1</sup>[, the board shall conduct a hearing in the  
37 manner prescribed by section 12 of [this act] of P.L.1991, c.29  
38 (C.40A:9-22.12).]<sup>1</sup> concerning the possible violation [and]. The  
39 determination concerning the possible violation shall include any other  
40 facts and circumstances which may have come to the attention of the  
41 board with respect to the conduct of the local government officer or  
42 employee. The board shall render a decision as to whether the  
43 conduct of the officer or employee is in conflict with the provisions of  
44 this act. This decision shall be made by no less than two-thirds of all  
45 members of the board.

46 d. If the board determines, based upon the results of the

1 investigation, that no violation of the "Local Government Ethics Law,"  
2 P.L.1991, c.29 (C.40A:9-22.1 et seq.), has been committed by the  
3 local government employee or officer, the board shall issue a notice of  
4 dismissal to the individual and provide a copy to the complainant.

5 e. If the board determines, based upon the results of the  
6 investigation, that a violation of the "Local Government Ethics Law,"  
7 P.L.1991, c.29 (C.40A:9-22.1 et seq.), has been committed by the  
8 local government employee or officer, the board shall issue <sup>1</sup>[an order]  
9 a notice of violation<sup>1</sup> to the individual containing the nature of the  
10 violation, assessing a penalty, and advising the individual of his or her  
11 opportunity to request an administrative hearing. <sup>1</sup>If the matter  
12 constitutes a contested case and the individual requests a hearing, such  
13 hearing shall be conducted in the manner prescribed by section 12 of  
14 P.L.1991, c.29 (C.40A:9-22.1 et seq.)<sup>1</sup>

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

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

21

22 <sup>1</sup>[5.] 4.<sup>1</sup> Section 10 of P.L.1991, c.29 (C.40A:9-22.10) is amended  
23 to read as follows:

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

35 b. An elected local government officer or employee found guilty by  
36 the Local Finance Board or a county or municipal ethics board of the  
37 violation of any provision of this act or of any code of ethics in effect  
38 pursuant to this act, shall be fined not less than \$100.00 nor more than  
39 ~~[\$500.00]~~ \$1500.00 for each separate offense, which penalty may be  
40 collected in a summary proceeding pursuant to "the penalty  
41 enforcement law" (N.J.S.2A:58-1 et seq.).

42 c. (1) Upon receipt by the board of a written complaint that a local  
43 government officer has failed to file a financial disclosure form  
44 required under section 6 of P.L.1991, c.29 (C.40A:9-22.6) for a given  
45 calendar year, the board shall advise the local government officer of  
46 the failure to file and require that the financial disclosure form be filed

1 within 30 days or that the board be otherwise provided with  
2 information verifying that the individual is not a local government  
3 officer. Failure of the local government officer to respond within the  
4 allotted time shall result in a fine of \$100. The board shall then again  
5 notice the local government officer of the requirement to file, and  
6 failure to respond within the time limit established by the board to the  
7 second such notice shall result in a fine of \$500, and a fine of \$1,500  
8 shall be imposed for any subsequent failures to respond. Fines  
9 imposed pursuant to this paragraph may be collected in a summary  
10 proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1  
11 et seq.).

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

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

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22 <sup>1</sup>[6.] 5.<sup>1</sup> This act shall take effect immediately.

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27 Increases penalties under "Local Government Ethics Law."