

Introduced by Legislators Lindsay, Kennedy, Cooper and Nowick

**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 1st 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