CITYLAW

JANUARY/FEBRUARY 2004 CENTER FOR NEW YORK CITY LAW VOLUME 10, NUMBER 1

CONFLICTS OF INTEREST

New Financial Disclosure Law Becomes Effective January First

By Mark Davies

When the City of New York first enacted a financial disclosure requirement in 1975 the disclosure form was relatively short and sensible. But, in 1987, the state changed all that, requiring that New York City have a financial disclosure law "at least as stringent in scope and substance" as the State law. Enacted under enormous political pressure in the wake of the Parking Violations Bureau scandals, that State law, government ethicists generally agree, makes little sense because it is far too invasive, often discouraging people from serving in government, especially on boards and commissions, and bears little relation to the substantive conflicts of interest provisions. Forced to comply with this State mandate, the City in 1990 amended its local financial disclosure law, which is set forth in section 12-110 of the NYC Administrative Code. Those amendments, as mandated by the State, significantly increased the scope of the financial disclosure form. At the same time, the newly created Conflicts of Interest Board assumed control of the financial disclosure system from the City Clerk's office.

Since 1990, section 12-110 has been amended many times. The resulting patchwork created a statute that became increasingly difficult to understand and interpret. Therefore, with the assistance of the City's Law Department, the Conflicts of Interest Board proposed a new financial disclosure law. Thanks in large part to the active support of Councilmember Helen Sears, Chair of the City Council's Committee on Standards *(continued on page 3)*

INSIDE

■ *Financial Disclosure*

(continued from page 1)

and Ethics, that proposal was enacted by the Council and signed into law by Mayor Michael R. Bloomberg this past summer as Local Law 43 of 2003, effective January 1, 2004. Following is a brief description of the highlights of that new law.

Elimination of Non-Essential Filers.

Although the scope of the City's financial disclosure form exceeds State requirements in only minor ways, the City's requirements as to who must file went well beyond State requirements. Yet, only those public servants who have a significant potential for conflicts of interest should file a financial disclosure report. Requiring filing by non-essential filers wastes the time and resources of filers and their agencies and reduces the capacity of the Board to conduct substantive reviews of reports by public servants who do face significant potential conflicts of interest. Many highly paid City employees such as trial attorneys, computer programmers, and engineers, for example, have little contact with the public and little other potential for conflicts of interest. Accordingly, the new law eliminates filing by the lowest three tiers of managers (levels M1 to M3) and also eliminates salary as a criterion for filing, replacing that criterion with policymaking responsibilities. The Board estimates that these changes will reduce the number of annual filers by perhaps 3,000 from the approximately 12,000.

Required Filers of Annual Statements Effective January 1, 2004
Elected officials: mayor, public advocate, city council members, borough presidents, comptroller, and district attorneys
Agency heads, deputy agency heads, assistant agency heads
Compensated members of boards and commissions
Policymakers
Members of the Management Pay Plan at levels M4 and above (except in the city council and district attorneys' offices, where the analogous employees are those employees whose responsibilities involve the independent exercise of managerial or policymaking functions)
Employees whose duties involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, or applications for zoning changes, variances, or special permits
Local political party officials, as defined in the law
Candidates for elective City office

Addition of New Agencies and Filers.

The City's financial disclosure law never expressly included the New York City Industrial Development Agency or the offices of the District Attorneys or Special Narcotics Prosecutor, although state law mandates that these agencies file financial disclosure reports with the Board. Local Law 43 adds these agencies to section 12-110. The new law also fills a gap in the previous law, which required candidates for elective City office to file but failed to include write-in candidates or candidates filling vacancies in a designation or nomination for office; these candidates must also now file. In addition, the State recently added the Housing Development Corporation and City tax assessors to the Board's financial disclosure jurisdiction.

Reduction in Number of Late-Filers and Non-Filers.

Local Law 43 contains three provisions that should significantly reduce the number of late filers and non-filers, as well as the number of late filers who fail to pay their late fines. First, the new law increases the late filing fine from $100 to a minimum of $250 and a maximum of $10,000. Second, the law requires that financial disclosure filers leaving City service must file their financial disclosure reports and pay any late fines before they receive their final paycheck and/or lump sum payment. Third, by amendment to the Campaign Finance Act, the law conditions candidates' receipt of their first matching fund amount upon their filing with the Conflicts of Interest Board the financial disclosure report that all candidates must file on or before the last day for filing their designating petitions. No financial disclosure report, no campaign finance money.

Electronic Filing.

The new law authorizes electronic filing of financial disclosure reports as of January 1, 2004, and mandates such filing as of January 1, 2006. Working with the City's Department of Information Technology and Telecommunications, the Board is developing a computer program for electronic filing called the Electronic Financial Disclosure System or "eFDS." The Board anticipates that 1,000 volunteers will file their 2003 annual financial disclosure report electronically in 2004. In an expanded pilot in 2005, all public servants wishing to do so may electronically file their 2004 annual financial disclosure report. Then, beginning in 2006, all filers must file electronically. Such filing will greatly reduce the administrative burden of financial disclosure on City agencies, on the Board, and particularly on the filer, who, beginning in the second year, need only update the prior year's report. The Board anticipates that an added benefit will be greater security of information over manually filed reports. Electronic reports are filed directly with the Board which eliminates possible viewing of contents by a financial disclosure liaison or other intermediary. All data will be encrypted to industry standard with only the filer and the Board possessing the key to unlock the filer's data. Even at the Board, financial disclosure data will be password protected.

Disclosure to the Public.

Local Law 43 also contains two significant provisions aimed at protecting the safety and security of the filer. First, the law makes explicit that the Board may withhold from public inspection information in

a financial disclosure report based on safety and security issues, a matter of particular concern to law enforcement personnel. Second, the intentional and willful disclosure of confidential information contained in a report will now constitute a misdemeanor unless the disclosure falls within the whistleblower exception.

Categories of Amount.

Filers do not report specific dollar amounts, but rather categories of amount, from Category A ($1,000 to under $5,000) to Category G ($500,000 and above). Under prior law, these categories bore no relation to the City's Conflicts of Interest Law, which, in particular, prohibits a public servant from having an "ownership interest" (defined as the ownership of equity or debt worth $35,000 or more) in a firm doing business with the City. Local Law 43 amended categories B and C to tie them to that $35,000 threshold. Thus, by examining the reports of any filer who reports a business investment of Category C or higher ($35,000 or more), the Board will be able to spot quickly whether the filer has a possible prohibited ownership interest.

Miscellaneous Amendments.

Local Law 43 makes a number of somewhat technical changes important to the administration of the financial disclosure system. First, the new law establishes uniform dates for determining eligibility for filing and a single deadline for notifying public servants of their obligation to file. Public servants must file if they meet one of the filing criteria at any time from January 1 of the preceding calendar year to April 30 of the filing year. The only exception is for public servants who file because of contracting responsibilities; they must file if they exercised such duties during the preceding calendar year. All filers will be notified in the spring of the filing year of their obligation to file. The separate deadline for notification of "contract" filers has been abolished.

For filers leaving City service before the May 1 filing deadline, the new law permits the prior year's report and the current partial year's report to be combined into a single termination report. The new law also addresses the unique structures and pay plans of the City Council and District Attorney offices by requiring that employees in those agencies whose duties involve the independent exercise of managerial or policymaking functions to file reports. In addition, Local Law 43 requires that the Board adopt a rule defining those employees who must file because of contacting responsibilities, thereby creating for the first time a uniform Citywide standard for determining who must file under that criterion.

Finally, in a masterly display of draftsmanship, the Law Department reorganized the hodgepodge of current section 12-110 into a coherent, logical, and readable statute - definitions; persons required to file a financial disclosure report; procedures involving the filing of financial disclosure reports; information to be reported; public inspection of reports and privacy considerations; retention of reports; and penalties - a 6,600 word statute that must be crammed into a single section.

Financial Disclosure Reports
Filed with Conflicts of Interest Board (as of December 1, 2003)

Calendar Year	Reports Required	Reports Filed	Compliance Rate	Number of Fines Paid	Amount of Fines Paid
1996	11,684	11,558	98.90%	370	$37,150
1997	11,468	11,390	99.30%	250	$25,600
1998	12,027	11,901	99.00%	318	$32,250
1999	12,386	12,245	98.90%	308	$30,800
2000	12,814	12,545	97.90%	338	$34,125
2001	12,062	11,907	98.70%	174	$18,525

Since 1989 the Board has achieved an overall compliance rate of almost 99% and collected over $400,000 in financial disclosure fines

Reduction in Scope of Financial Disclosure Form.

As significant as the amendments contained in Local Law 43 are, they do not, and cannot, address perhaps the greatest problem with New York City's financial disclosure system: the scope of the financial disclosure form itself. That form bears little relation to the conflicts of interest law and makes little sense. As the Board has repeatedly stated, the current financial disclosure form is far too long and far too invasive for most public servants. In the context of disclosure, it is often said that sunlight is the best disinfectant. Yet it is equally true that too much sunlight causes cancer. More disclosure is not necessarily better disclosure and does not necessarily produce fewer conflicts of interest. A financial disclosure form that is too long and too invasive just gums up the financial disclosure works and drives good citizens out of public service, particularly as members of boards and commissions. For most public servants a short form, consisting of perhaps six questions and four pages, would suffice. But the scope of the current form is mandated by state law, so state law must be amended before the Board can adopt a shorter financial disclosure form. The Board hopes that with the support of the City Council, the administration, the unions, and the civic groups, the Board may convince the State legislature and the governor to enact legislation authorizing the Board to reduce the scope of the financial disclosure form for most City employees. ❑

Mark Davies is Executive Director of the New York City Conflicts of Interest Board.