

**N. J. Local Government Ethics Law
and an Assessment of Its Effectiveness:
Focus on the Financial Disclosure Requirement**

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Summary

The administration of New Jersey ethics codes varies by level of government. In the executive and legislative branches, the codes and their administration have recently been reformed. This study uses a sample of 22 local governments to assess how local ethics administration varies from the other levels of government and how its most visible requirement – filing a financial disclosure form – is managed. The observations point out a lack of connection between the disclosure form filing process and a focus on encouraging ethical conduct. The report concludes with recommendations for improving the current practices and for including local government ethics management in the State Ethics Commission structure.

Background

As part of a complex ethics agenda begun in 2003 and made urgent by ethics violations, indictments and newspaper investigations, the executive and legislative branches initiated a series of reforms related to the administration of ethics rules. Governor Codey and then Governor Corzine used executive orders to address ethics administration in the executive branch, closely following the recommendations of a Special Counsel appointed by Governor Codey (Professor Paula Franzese and Justice Daniel O'Hern).

The Legislature subsequently codified those orders and initiated reforms for members and staff similar to those in the executive branch. The changes included required ethics training, posting of financial disclosure forms on the internet, and an ethics commission with a majority of public members. Municipal and county ethics administration was not addressed, nor was ethics administration for school boards and school administrators.

Since ethics administration in New Jersey is fragmented by branch and level of government and no comprehensive description is available, in the fall of 2007, the New Jersey Project prepared a simple chart to illustrate the decentralized approach. (See Appendix 1A for chart and 1B for brief overview statement.) The chart uses the reforms in the executive branch as the standard by which to review the practices of the Legislature, the Department of Community Affairs responsible for local governments,

including municipalities, counties, authorities and county colleges, and the Department of Education (responsible for school boards and school administrators).

The practice of the Division of Local Government Services (LGS) in the Department of Community Affairs (DCA) is most dissimilar from the other three. The administration of the Local Government Ethics Law is performed by LGS and compliance is the responsibility of the Local Finance Board. The report of the Special Counsel outlined the deficiencies in the manner in which violations of the ethics code are handled, a matter not addressed in this report.

The Study of Local Ethics Administration

The characteristics of local ethics administration are different from the practice and procedures of other branches of government since ethics training is not required, there is no formal process for citizen inquiries, and financial disclosure statement forms are neither filed nor found online. The statute (Title 40A:9-22.1 et seq.) that defines the local ethics program includes a lofty but practical goal:

It is the purpose of this act to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for local government officers and employees shall be clear, consistent, uniform in their application, and enforceable on a Statewide basis, and to provide local officers or employees with advice and information concerning possible conflicts of interest which might arise in the conduct of their public duties.

The statute also includes a Code of Ethics (Title 40A:9-22.5).

To assess how the statute is administered to achieve the goal of “assuring ethical conduct,” the New Jersey Project undertook a study in the summer of 2008 of the law’s mandated financial disclosure process. It did so by visiting a sample of 17 municipalities and five counties of varying sizes in different parts of the state to interview municipal clerks and view files of financial disclosure forms. The sample included five municipalities and two counties that had created their own ethics boards as permitted under the statute.

The procedure for filing the disclosure form that is the focus of the study is outlined in the statute (Title 40A:9-22.6). Briefly, a directive is sent annually by LGS in February to the municipal or county clerk which requires the clerk to distribute two copies of a two-page financial disclosure form to “local government officers,” including those who are elected and appointed, as well as employees and consultants. By April 30, the clerk collects the completed forms, retains one for the municipality and sends one to LGS with a roster showing to whom the disclosure forms were sent and whether or not they were completed. The one set kept by the clerk is available on request as a public record. The statute is unclear whether the roster is also part of the public record.

What Was Learned

The visits to the 22 local governments are described in a chart (Appendix 2). The following is a brief discussion of our findings.

1- The disclosure forms were easy to access in most cases. In 17 of 22 visits to a clerk's office, the forms, either in a notebook or folder, were made available on request. Of the other five visits, three clerks asked the study team member to file an OPRA request. While we could have done so, we believed that the law does not require it, nor is it in the spirit of the law, which implies the forms are designed to be readily available to the public. It should be noted that financial disclosure forms filed in the executive and legislative branches are available online.

Two clerks asked for letters explaining the study, checked with other officials, and finally permitted the forms to be examined. In all cases, when asked either who we were or why we wanted to see the forms, the Eagleton Institute of Politics study was described.

2- The lists of those to whom the disclosure form was sent lacked uniformity in format and completeness. LGS provides instructions for how the form should be organized by category – elected and appointed officials, organized by boards, staff, consultants. Information about who filed and did not file was provided by four local governments and one county government.

The list sent to LGS was not always included with the clerk's file of completed financial disclosure forms. The forms also were not organized in a way that made it easy to find the form of a specific individual. In another case, the county kept the list in an office separate from where the records were kept.

3- The process, while faithfully administered by clerks, is viewed as routine. The sentiment may best be captured by this comment: "Trenton says we have to do this so we will do it. We hound people to get the forms back and we will have a file ready. We do our duty." There appeared to be little connection to the state's purpose of informing officials about the importance of ethical behavior.

4- There is no feedback from LGS. The consequence of a lack of feedback seems to engender a sense that the requirement to send the forms to LGS is simply "make work," and needlessly expensive ("where are those forms stored?"). The routine at its worst breeds cynicism about the importance of the process and its relevance to fostering ethical behavior.

5- A general sense prevails that the forms, contrary to the intent of the law, are not for public review. While the experience at only two of the 22 sites exhibited an explicit resistance to public viewing, and three required OPRA requests, the purpose of disclosure did not appear to be understood to have a connection to building trust in public officials. In two counties that have their own county ethics boards, getting access to a person who could provide information and the disclosure forms was a confusing effort that might be considered as a “run-around.”

6- The disclosure forms are not examined by the public. Informally, when this study was first considered, we heard comments about the fact that no one pays attention to the disclosure forms, so we decided to try to find if that is true. In 15 of the 22 visits, the team members were told they were the first to ask to see the disclosure forms. In two places, staff volunteered that mostly journalists had asked for them, and one did not respond to the question. But, it is highly likely that the public does not know the forms exist. The distribution of the forms is not done in public. Some clerks reported that they are mailed. In other cases, the staff to various board and commissions distributed them. The process of complying is not a matter for public discussion. After we completed the visits, we checked the web sites of the municipalities and counties in our study to see if any provided information about ethics and the availability of the disclosure forms. None did (See Appendix 3). Surprisingly, this was the case for the municipalities and counties that had their own ethics boards.

7- The routine of filing a financial disclosure form does not have a context. From our observations, there does not appear to be a discussion within local government about filing the disclosure form, nor is there a cover memo that explains the reasons for filing other than the requirement in the statute. The exception was one municipality in our study that has a code of conduct that is given to each official when sworn in. That municipality schedules an ethics segment at the annual local re-organization meeting.

8- Ethics training is not required by local governments as it is in the executive and legislative branches and by school boards. We decided to ask about ethics training at the local level. Half of the local government clerks told us simply there is no training. The other half of the clerks commented about training, saying that it is available or required for planning and zoning board members, as well as clerks.

9- The local government statute also covers local authorities and county colleges. While our study focused on municipal and county ethics administration, we decided to check with one local authority and one county college to find out how they handled the disclosure requirement. Their practices are strikingly similar to those of local governments; that is, routine filing of disclosure forms dutifully distributed and collected, unfamiliarity with making them available to public, and no ethics training or ethics code. However, each of our contacts said that there is a discussion by their board members and staffs about ethical issues they might face.

Recommendations

Our recommendations from the study come in two parts. The first focuses on how the current LGS process could be streamlined and made more relevant, possibly even more effective. The second recommendation looks at reorganizing the local government ethics administration to tie it into the State Ethics Commission. The recommendations for revising the current financial disclosure process could obviously be adapted for use in a process that is integrated into the State Ethics Commission.

1- Recommendations for DCA/LGS.

A- Simplify and standardize the use of the roster in the disclosure process. The roster should be organized by type of office – elected officials, appointed officials, staff, consultants – and each category alphabetized so that it is easy to find a name. Each name should be followed by a box checked when the person submits a signed form, along with the date it was received.

B- Post the roster on the local government web site within two weeks after the deadline. The roster should be accompanied by a brief statement of its purpose and with information about where disclosure the forms are available for review. LGS should clarify in its instruction that the disclosure forms may be reviewed by the public without filing an OPRA request, unless a copy is desired.

C- A copy of the roster should be sent to LGS to confirm that the process was completed.

D- Since it appears that LGS does not review the roster or the forms filed with the agency, a procedure for detecting problems with the information filed on the disclosure form and assigning penalties for non-compliance should be developed.

E- Provide a context for filing the financial disclosure form by including a plain language guide based on the Code of Ethics found in the statute with the request to complete a form. Include a place on the disclosure form to indicate that the code has been read by the filer.

F- Clarify the ethics requirements for local authorities and county colleges.

2- Recommendations for integrating local ethics administration into the state system.

A- Adapt ethics components and practices from the executive branch to the local government program. Include a plain-language guide, one-page ethics code, and online ethics training. Revise the process for local government ethics complaints to make it comparable to the State Ethics Commission process. The revisions needed to make them relevant could be done in collaboration with a committee of local government officials.

B- Use the State Ethics Commission toll-free number to provide advice on ethics questions from the public about local governments. Design a local government section of the Commission's website to deal with provisions developed to address the needs of local governments.

C- Review the practices of municipal and county ethics boards to ascertain the consistency of ethics administration. Since municipalities and counties with boards handle the implementation of the Local Ethics Code in varied ways, consider using boards only for educational purposes and the financial disclosure form filing process not for addressing ethics violations. Obviously, the boards can serve a useful purpose in encouraging dialogue about ethics at the local and county level.

D- Look to nearby states that have an integrated ethics administration, such as Pennsylvania and Massachusetts, for examples that could apply to New Jersey. Both states have ethics commissions with responsibilities for all government employees, including appointees and elected officials.

How the Study was Conducted

A standard interview format was developed for the visit to the municipal or county clerk of the local governments in the study. The format included:

- telephoning in advance to set up an appointment to look at the file of completed financial disclosure forms.
- at the office of the clerk, requesting permission to look at the financial disclosure forms.
- checking the file to see if it included the roster of individuals who received the form and whether or not each person had completed a form.
- inquiring if the person who provided the file knows if others request to see the file.
- inquiring if ethics training is provided.
- inquiring if DCA has contacted the clerk for information about any of the disclosure forms after they are sent to DCA.
- thanking the clerk and other staff.

If asked why the information was requested, the visitor responded that the New Jersey Project of the Eagleton Institute of Politics is examining the fragmentation of ethics administration in the state and the implementation of the ethics law by local governments. In several cases, a letter was requested, and it was provided using the same language.

The research team included Ingrid Reed, director of the New Jersey Project, Anna Mitchell, Rutgers political science PhD candidate and former Eagleton Fellow, and Alex Gomez, formerly undergraduate student in public administration, Rutgers-Newark, a graduate student in the Elections and Campaign Management Program at Fordham University.

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	Executive Branch	Legislative Branch	Local/County Government	School Board
Responsible Agency - By Statute, specific entities are established to take responsibility for ethics administration.	State Ethics Commission: Toll-free in New Jersey 1-888-223-1355 Phone (609) 292-1892 Fax (609) 633-9252 Email: ethics@ethics.state.nj.us	Joint Legislative Committee on Ethical Standards Office of Legislative Services: Phone: (609) 292-4840 Toll Free: (800) 792-8630 TDD: (609) 777-2744 Toll Free: (800) 257-7490 Fax: (609) 777-2440	Local Finance Board Department of Community Affairs Phone: (609) 292-6613 Fax: (609) 292-9073. Municipality and county ethics boards are not listed on the website.	School Ethics Commission, NJ Department of Education: Phone: (609) 984-6941
Components				
1. Public Access				
1a. Is the statute available online?	Yes	Yes	Yes	Yes
1b. Is there an 800 number?	Yes	Yes	No	No
1c. Is there a FAQs section?	Yes	No	No	Yes
1d. Is there an annual report filed by the board?	No	No	No	No
1e. Are opinions posted?	Yes	Any member making an inquiry on his own behalf may request that the opinion issued be made public. Otherwise, whether or not the opinion is made public is up to the discretion of the committee.	Not recently	Yes
2. Complaint Process				
2a. Is there a complaint form online?	No	No, instructions on how to file available.	No, online information provided the statute.	Yes
2b. Is the contact information for where a complaint to be sent online?	Yes	No	No	Yes
2c. Is the complaint process available online?	Yes	Yes	Yes, outlined in the statute.	Yes
2d. Is the complaint process explained in a step by step manner?	Yes	Yes	Yes, statute.	Yes
3. Training				
3a. Is training required by the statute?	Yes	Yes. Online every other year and in person annually.	No	Yes, provided by School Board Association.
3b. Is training in person available?	Yes	Yes	No	Yes
3c. Is training online an option?	Yes	Yes, questions and answers follow tutorial instruction.	No	No
3d. Is there a plain language guide?	Yes	No	No	Yes

Components	Executive Branch	Legislative Branch	Local/County Government*	School Board
4. Financial Disclosure				
4a. Is the statute clear as to who must file?	Yes	Yes	No	Yes
4b. Are financial disclosure forms available online for filing?	Yes	Yes	Yes	Yes
4c. Are completed financial disclosure forms available online for viewing?	Yes	Yes	No	No
4d. If not, are viewers directed to where they may be accessed?			No	Yes
5. Financial Disclosure Forms				
5a. Do instructions accompany the form?	Yes	Yes	Yes	Yes
5b. How many pages is the form?	10	4	2	2
5c. How many sections are included related specifically to finance?	13	10	6	6
5d. What is the reporting threshold?	\$1,000	\$10,000	\$2,000	\$2,000
6. Staffing				
6a. Is there a full time staff member?	13 full-time	2 full-time devoting part-time to ethics	part-time state staff/shared with municipal and county clerks	3
6b. Is office contact information online?	Yes	No	No	Yes
7. Board				
7a. Are the board members identified online?	Yes	Yes	Yes (Local Finance Board)	Yes
7b. Are some board members public?	Yes, 4/7 (57%)	Yes, all.	Yes, all.	Yes, 4 or 5 /9 (44 or 55%)
Website	http://nj.gov/ethics/	http://www.njleg.state.nj.us/ethics/ethics.asp	http://www.state.nj.us/dca/lgs/ethics/ethcmenu.shtml	http://www.state.nj.us/njded/ethics/

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Appendix 1B

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Discussion Paper

New Jersey Ethics Administration: Does a Fragmented System Serve the Public Interest?

The reform of ethics policies and administration in the executive branch by Governors Codey and Corzine, which drew on the report of the Special Counsel, raises questions of how other parts of New Jersey government are organized to promote ethical standards and compliance with those standards.

The New Jersey Project of the Eagleton Institute of Politics looked at this question because the citizens of the state of New Jersey have a right to expect that all public officials – government appointees, elected officials and employees – are held to high ethical standards and that those standards are administered in a uniform manner. Citizens should have easy access to ethics codes and information about how officials comply with them. They also should know who to contact and how to raise questions and concerns about ethical conduct of public officials.

In order to explore the issue of uniformity in ethics policy and administration, the statutes and the administrative structure for administering ethics codes and compliance were reviewed in four areas of government – school boards, municipal and county government, the executive branch including state authorities, and the Legislature.

The information is available in a chart, “Ethics Administration in New Jersey.” The components of ethics administration in the vertical column of the chart were drawn mainly from the current practices of the State Ethics Commission in the executive branch. The other four areas of government – executive, local and county government, legislature, and school boards are found in the horizontal line.

The chart reveals that there are significant differences among the four areas. For example, ethics training is required for school board members and those in the executive and legislative branch. It is not required for local and county government officials, but training is offered and included in the mandatory training for planning and zoning board members.

Ethics administration for school board members and selected school administrators is the responsibility of an office devoted to that purpose in the Department of Education. The implementation of the rules is done collaboratively with the School Boards Association.

The State Ethics Commission with its 15-member staff administers required ethics training and compliance for employees and appointees in the executive branch as well as ethics training for private sector entities that do business with state government as required by the Department of Treasury.

The administration of the Local Government Ethics Law, which applies to local and county government officials, is shared by the Division of Local Government in the Department of Community Affairs and municipal and county clerks. The responsibility to distribute financial disclosure forms to the appropriate “local officials” and to collect the completed forms rests with individual clerks. Hearing of ethics complaints and compliance is carried out by the state’s Division of Local Government and the

Local Finance Board. The exception is the 35 municipalities and 7 counties that have established their own ethics code and ethics boards. For employees and elected and appointed officials at the local level, there is no required training, no plain language guide, and limited information for the public about ethics administration and how to file a complaint.

In the Legislature, the Joint Legislative Committee on Ethical Standards is staffed by two members of the Office of Legislative Services who devote part-time to the Committee, oversee the administration of the ethics code and compliance.

The composition of the public bodies responsible for ethics compliance varies in the percentage of public members who serve on them. The State Ethics Commission has a majority of public members as a result of reforms implemented in 2005. The Joint Legislative Committee recently changed to public member board and a public member chair. The Education Ethics Commission has a mix of public and government officials. Local government ethics compliance is the responsibility of the Local Finance Board that also has significant responsibilities for approving municipalities financing proposals.

The information publicly available on web sites also varies among the four areas. The State web site provides a link only to the State Ethics Commission.

None of the offices responsible for ethics administration issues an annual report that could provide data about the amount and type of ethics issues that have come before the body and how they have been addressed. However, the State Ethics Commission serving the executive branch provides Newsletters and Guidelines on its web site that relate to matters brought before the Commission and describe how they have been resolved.

The summary chart prepared by the New Jersey Project does not include a comparison of the content of ethics codes and the penalties for non-compliance, areas that are deserving of further study. It should be noted that this issue was addressed in the special counsel's report to former Governor Codey which described the local government ethics law as "toothless" and having "no clear ban on gifts, no explicit ban on nepotism, insufficient disclosure requirements for business interests, inadequate penalties...."

Alternatives to the New Jersey structure can be found in the practices of Pennsylvania and Ohio where an integrated approach is taken to ethical standards administration under the jurisdiction of a bipartisan State Ethics Commission made up of all public members. In those states, the Commission and its executive director have responsibility for managing all ethics requirements. The executive directors of the Ohio and Pennsylvania Commissions made presentations about their respective state's organization at a program held at the Eagleton Institute of Politics on November 30, 2005.

The Summary of Ethics Administration in New Jersey was prepared by Ingrid W. Reed, director, New Jersey Project, Eagleton Institute of Politics and Anna Mitchell, graduate student in Politics Science and former Eagleton Fellow. They can be contacted at 732-932-9384 x232 and IReed@rci.rutgers.edu.

Code No.	Region/ Level*	Ease of Access	Training	First to Ask	List	Comments
1	NC	None - OPRA	N/A	No, most are journalist inquiries.	This list is maintained in the county records office.	The whole thing is a very bureaucratic process.
19	SC**	Moderately difficult, initial clerk hesitant to assist, new clerk seems more amenable	Training is not mandatory but the county does host trainings episodically and the county counsel keeps a record of those who participate.	Yes	The list is maintained by both the division head of county operations and the county clerk	With the change in personnel at this location, it remains to be seen the level of access and transparency that can be achieved.
20	SM	None - OPRA	Officials notified of upcoming trainings - no record kept	Yes	Told it was not a public record	This clerk was not inclined to make anything available and referenced the code many times as a defense.
16	CM**	Easy	N/A	Yes	Roster in file, no categories	Never heard from DCA
2	NM**	Easy	No	Yes	Maintained list of all who received form and all who filed.	Organized, everything was kept in file cabinet outside clerk's office.
3	NM	Easy	No ethics statement or training.	Yes	Available but not by who filed and who did not.	Organized, everything was kept on assistant clerk's desk.

*Regional N - North
C - Central
S - South
Level C - County
M - Municipality

** Ethics Board

No.	Region/ Level	Ease of Access	Training	First to Ask	List	Comments
21	SM	Easy	Clerk alerts officials of league of municipalities training session - no record	Yes	Maintains on DCA list	Once clerk knew what we were doing, she was happy to help.
22	SM	Easy	No - alerts to training now required for planning and zoning board	Yes	Maintains on DCA list	Happy and willing to do job, wondered about "huge room at DCA"
11	CM	Easy	No	Yes	List is in file with checks for those who have responded and who haven't.	Clerk reported that she never heard anything from DCA. Liked the idea of sending code along with form.
10	CC	Easy	No	Yes	Roster on top of file, not who filed	Clerk worked for Department of Education, was aware of difference in administration that was more engaged.
15	CC**	None - OPRA	No training, no record.	Yes	List maintained by the County Clerk in another office.	The roster and the records are maintained by different officers. Maintained that OPRA was required to keep a record that the request was fulfilled by the office.
17	CM**	Easy	No	No, the rare journalist asks.	No cover letter	Very professional

No.	Region/ Level	Ease of Access	Training	First to Ask	List	Comments
6	NC	Easy	All members of the county board must attend the state course. No record of training.	No	Maintains list of all who received form and all who filed.	Very organized and cooperative.
7	NM	Moderate, took two visits and explanation to receive information	Clerk reported that "they" took a state course. No record of training.	No	Maintained list of all who received form and all who filed.	All communication between clerk and officials was by email.
12	CM	Easy	No, no ethics statement	Yes	Use DCA form	Easy to obtain file.
13	CM	Easy	Code of conflict is given when sworn in	Yes	List of those filing not complete with yes or no	Easy to obtain file.
4	NM	Easy	No	No	List of those filed, were assured they all did	"Just exercise, no importance."
18	CM	Easy	No - said professionals and board have training, code supposed to be on website, ethics code not available online.	N/A	No list in notebook	Easy to obtain file.

No.	Region/ Level	Ease of Access	Training	First to Ask	List	Comments
5	NM**	Easy	Claimed courses taken, no record.	Yes	List	According to the clerk, there is an ethics board that meets once a year. Also, if the paperwork was not filled out, a fine would be imposed.
14	CM	Easy	No	Yes	List has file with check marks for who did and did not respond.	Clerk felt that she did her job and followed up to get officials to comply. She was happy to talk about her job but felt it didn't really go anywhere.
8	NM	Easy	In chapter 4 of town manual being updated. All must read.	No	List of those filed, "most not all."	Very well organized
9	NM**	Easy	No training, no record.	Yes	List of those filed, "most not all."	Interested in results of the study.
Summary	Total 22	17 - Easy 3 - OPRA 2 - Repeat visit required	2 - N/A No training 10 - Some training	10 15 - First to ask 6 - Not first to ask 1 - N/A	5 - Problem with the list 5 - Includes who filed and who did not 14 - List available for viewing	

Local Government Ethics Administration

Location	Mention Ethics on Home Page	Mention Financial Disclosure	Links to Ethics Info?	Mention of Local Board	Notes
1	No	No	No		
19*	No	No	No	No	
20	No	No	No		
16*	No	No	No	No	
2*	No	No	No	No	
3	No	No	No		
21	No	No	No		
22	No	No	No		
11	No	No	No		There are links to all contracts, bids, and RFPs - You can see who has contacts and how much they are for in each instance
10	No	No	No		
15	No	No	No		
17*	No	No	Yes	No	Link to municipal code can be found under City Clerk tab.
6	No	No	Yes		The city code which can be accessed from the site has links to the chapters on ethics training and financial disclosure
7	No	No	No		
12	No	No	No		
13	No	No	No		
4	No	No	No		
18	No	No	No		

Location	Mention Ethics on Home Page	Mention Financial Disclosure	Links to Ethics Information?	Mention of Local Board	Notes
5*	No	No	No	Yes	Advisory Board on Ethics: The Board's purpose is to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for local government officers and employees shall be clear, consistent, uniform in their application, enforceable, and to provide local officers and/or employees with advice and information concerning possible conflicts of interest with might arise in the conduct to their public duties. Full information is available about the duties and authorities of the Board in the Township Code available at on the web.
14	No	No	No		
8	No	No	No		
9	No	No	No	No	
* Indicates an Ethics Board					