CHAPTER 28 OF THE ACTS OF 2009
THE "ETHICS REFORM" ACT

Summary of Key Provisions of the Law

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September 2009

On July 1, 2009, the governor signed Chapter 28 of the Acts of 2009, known as the Ethics Reform Law (hereinafter, "the Act"). The Act makes several amendments to the state's conflict of interest laws, open meeting laws, lobbying laws and campaign finance laws.

Provisions of the Act take effect on the following prescribed dates—those dealing with conflict of interest law on September 29, 2009, the lobbying law and campaign finance law on January 1, 2010, and open meeting law on July 1, 2010.

Key provisions of Chapter 28 of the Acts of 2009 are summarized as follows:

Conflict of Interest Law

Sections 61 through 97 of the Act make several changes to the state's conflict of interest law, G. L. c. 268A, and the State Ethics Commission enabling act, G.L. c. 268B. These provisions are scheduled to take effect on September 29, 2009.

Key amendments to current provisions of the conflict of interest law of importance to local officials follow:

1) Criminal penalties for bribery have been increased to up to a $100,000 fine, or imprisonment in state prison for up to 10 years, or in jail or house of correction for up to 2 ½ years, or both.

2) Civil penalties for bribery increase from $2,000 to $25,000. Civil penalties for all other ethics violations increase from $2,000 per violation to $10,000 per violation.

3) Public employees may not present false or fraudulent claims to their employers for any payment or benefit of substantial value.

4) It will be a violation for any public employee to fraudulently cause another to (a) solicit or receive anything of substantial value for an officer or employee for the officer or employee's official position or (b) use or attempt to use their official position to obtain for another unwarranted privileges or exemptions of substantial

value or (c) present a false or fraudulent claim to their employer for any payment of substantial value.

Note: The State Ethics Commission (hereinafter, "the Commission") shall adopt regulations: (i) defining "substantial value;" provided, however, that "substantial value" *shall not be less than $50*; (ii) establishing exclusions for ceremonial gifts; (iii) establishing exclusions for gifts given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

In addition, several new educational components to the conflict of interest law that all municipal employees must be aware follow:

1) **G.L. c. 268A, §27 (new section),** requires the Commission to publish on its website a summary of the conflict of interest law. Each city and town clerk will be required to provide a copy to all municipal employees "within 30 days of becoming such an employee, and on an annual basis thereafter…" Each current municipal employee must sign a written acknowledgement that they have been provided with such a summary. All acknowledgements must be filed with the city or town clerk. The Commission advises that municipal clerks provide such summaries to all employees on or before December 28, 2009.

2) **G.L. c. 268A, §28 (new section)**, requires the Commission to prepare and publish on its website two online training programs, one which provides an introduction to the requirements of the conflict of interest law, and a second which provides information on the conflict of interest law for former public employees. All municipal employees will be required to complete such on-line training every two (2) years. For new employees such training must be completed within 30 days of hiring. For current employees, the Commission suggests all municipal officials to complete the online training on or before April 1, 2010, using the current program already available on its website (www.mass.gov/ethics). The Commission states that the online training program may be conducted at any computer terminal, including at home, and should take no longer than one hour to complete.

3) **G.L. c. 268A, §29 (new section)**, requires each city and towns to designate a "senior level employee of the municipality" who will serve as its liaison to the Commission. The Commission will be requesting that each municipality designate its liaison on or before January 27, 2010 pursuant to Section 102 of the Act.

Lobbying Laws

Section 1 through 16 of the Act makes several changes to the state's lobbying laws. These provisions are scheduled to take effect on January 1, 2010 (pursuant to a subsequent session law that delayed the effective date of these provisions; *see* Chapter 105 of the Acts of 2009).

Sections 2 and 3 of the Act expand the definition of a lobbyist to include persons who engage in *strategizing, planning and research* related to communications with government employees.

Lobbying activities that are incidental to other professional activities remain exempt; however, the thresholds defining what is considered "incidental" for the purposes of the statute have been lowered significantly. Pursuant to Sections 2 and 3 of the Act, persons who engage in lobbying activity for *not more than 25 hours* and receives *less than $2,500* during any 6-month period are not required to register as a lobbyist.

These same sections of the Act also expand the definition of lobbying activity to include for the first time any act to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with executive or legislative lobbying at the state level.

Finally, the Section 12 of the Act provides the Secretary of State civil enforcement authority over the lobbying laws, including, but not limited to, the authority to subpoena documents and testimony and to impose a civil fine up to $10,000 per violation.

Campaign Finance Law

Section 35 of the Act amends the reporting provisions of the state campaign finance law to require that any mayoral candidate file a contribution and expenditure report pursuant to G.L. c. 55, §18 with the director of the Office of Campaign and Political Finance in the following circumstances:

(a) in a municipality with a total population, as determined by the most recent federal decennial census, of *between 40,000 and 100,000 persons*, OR

(b) if the candidate or the candidate's committee, during the election cycle, can *reasonably expect to raise or spend more than $5,000*, OR

(c) if the candidate's committee is required to file such reports with the director pursuant to G.L. c. 55, §19.

Sections 44 and 45 of the Act would amend G.L. c. 55, §19 to require candidates for city council or alderman in cities *with a population of over 100,000* to designate a financial institution as a depository for campaign funds.

Section 54 and 55 of the Act would amend G.L. c. 55, §26 to require municipal clerks to retain all reports and statements for *6 years following an election* for which they were filed. *Within 30 days after the filing deadline*, all campaign finance reports required to be filed with the clerk must be made available municipality's website, if such municipality has such a website, *only if* the report discloses that a candidate or committee filing a report has received contributions, made expenditures, incurred liabilities, or acquired or disposed of assets *in excess of $1,000* during a reporting period.

These provisions take effect January 1, 2010.

Open Meeting Law

Section 17, 19 and 20 of the Act repeals the statute regulating open meetings for state, county and local governments, respectively. Section 18 of the Act codifies a new open meeting law for all public governments to be codified at G.L. c. 30A, §§18-25. These provisions take effect July 1, 2010.

The Act does not impose any individual fine on persons who are found to have violated any of the open meeting law's provisions. Instead, the Act maintains the current fine language—$1,000 per occurrence fine of the municipal board.

Further, no longer will each District Attorney be responsible for enforcing and interpreting the open's meeting law's provisions. All such authority is vested with state's Attorney General.

A summary of key changes follow in the order to be codified in the General Laws:

G.L. c. 30A, §18—Definitions

(1) The term "Deliberation" has been expanded to include all *written and oral* communications, including electronic mail. The term shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

(2) The term "Meeting" has been amended to specifically not include the following: (a) an on-site inspection of a project or program, (b) attendance by a quorum of a public body at a public or private gathering, (c) attendance by a quorum of a public body at a meeting of another public body—*all so long as the members do not deliberate*; nor does it include (e) attendance by quorum at Town Meeting.

(3) New term "Intentional Violation" is defined as any act or omission by a public body or a member thereof, in knowing by violating the open meeting

law.

(4) New term "Minutes" is defined as the written report of a meeting created by a public body required by subsection (a) of section 23 and section 5A of chapter 66.

(5) New term "Open Meeting Law" is defined as sections 18 through 25 of chapter 30A.

(6) New term "Post Notice" is defined as act of displaying conspicuously the written announcement of a meeting either in hard copy or electronic format.

(7) New term "Preliminary Screening" is defined as the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

(8) The term "Government Body" has been eliminated and replaced with "Public Body" and combines the prior definitions for both state and municipal "Government Bodies" and includes subcommittees that are created to advise or make recommendations to a public body.

(9) The following terms remain preserved in the new law: "Emergency", "Executive Session", and "Quorum."

(10) The term "Made Public" has been eliminated altogether.

G.L. c. 30A, §19—Administration

(1) Establishes a division of open government within the Attorney General's Office to perform the duties imposed upon the Attorney General by the Open Meeting Law. The Attorney General shall designate an assistant attorney general as the Director of said division.

(2) The Attorney General shall provide educational materials and training to Public Bodies on the Open Meeting Law.

(3) Establishes an Open Meeting Law Advisory Commission consisting of the following 5 members: the 2 chairs of the Joint Committee on State Administration and Regulatory Oversight, the Attorney General, the president of the MMA, and the president of the Mass. Newspaper Publishers Assoc. The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

G.L. c. 30A, §20—Meetings: Notice and Participation

(1) Law still requires *48 hours notice* of any meeting, except in emergency situations where notice shall be posted as soon as reasonably possible. However, the law will now *exclude Saturdays,* in addition to Sundays and legal holidays, from the notice period. Further, posted notice must include a listing of topics that the chair of the public body "*reasonably anticipates*" will be discussed.

(2) The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public

(3) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(4) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair.

(5) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body.

(6) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant thereto and a copy of the educational materials prepared by the attorney general explaining the open meeting law.

G.L. c. 30A, §21—Executive Sessions

(1) A local public body still has to first convene in an open session for which notice was given and a vote was taken, in order to meet in executive session.

(2) The public body may meet in executive session for the following purposes, all of which were itemized previously—(a) reputation, character, physical condition, mental health, rather than professional competence, of an individual, (b) discipline, dismissal, complaints against public employee, officer staff member or individual, (c) collective bargaining or litigation, (d) negotiations with nonunion personnel, (e) deployment of security personnel or devices, (f) criminal investigation, (g) purchase, exchange, lease or value of real property, (h) to comply with the provisions of law, (i) preliminary

screening of applicants, and (j) mediation.

(3) In addition, a body may now convene in executive session to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier, municipal aggregator or in the course of activities conducted by a cooperative consisting of governmental entities.

G.L. c. 30A, §22—Minutes

(1) Minutes must include the summary of discussions on each subject, list of exhibits used at the meetings and decisions made, including a record of all votes.

(2) *All* exhibits shall be part of the official record, except materials used in a performance evaluation as to professional competence or in deliberations about employment or appointment.

(3) Minutes of open meeting session must be made available upon request to any person *within 10 days*.

(4) Minutes of executive sessions must be disclosed "when the purpose for which [the]…executive session was held has been served."

(5) At reasonable intervals, or *within 30 days of a request*, a public body shall review the minutes of executive sessions to determine if continued non-disclosure is warranted.

G.L. c. 30A, §§23, 24—Investigation and Enforcement

(1) With reasonable cause, the Attorney General may conduct an investigation by requesting that information be voluntary provided or, if not provided, by taking testimony under oath and requiring that documents be produced.

(2) At least 30 days prior to submission of the Attorney General, but within 30 days of the alleged violation, a complaint must be filed with the public body, providing it an opportunity to remedy the same. The public body shall notify the Attorney General of any remedial action taken within 14 days of receipt of the complaint.

(3) Upon receipt of a complaint, the Attorney General shall determine whether a violation of the open meeting law occurred in a timely manner.

(4) The Attorney General may: (a) compel compliance, (b) compel attendance at training session, (c) nullify action taken at meeting, (d) impose a civil penalty upon the public body of up to $1,000 for each *intentional* violation, (e)

compel materials to be made public, (f) reinstate a dismissed employee, (g) compel materials to be made public, or (h) prescribe other action.

G.L. c. 30A, §25—Regulatory/Ruling Authority

(1) The Attorney General has the authority to promulgate rules and regulations to carry out the enforcement of the open meeting law.

(2) The Attorney General has the authority to interpret the open meeting law and to issue written rulings or advisory opinions.