S.6495/A.9463
COMMITTEE ON STATE & FEDERAL LEGISLATION
NEW YORK CITY COUNCIL

TESTIMONY BY COMMISSIONER MARTHA K. HIRST
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
OCTOBER 17, 2007

Good morning Chair Baez and Members of the Committee on State & Federal Legislation. I am Martha Hirst, Commissioner of the Department of Citywide Administrative Services (DCAS). Thank you for this opportunity to discuss S.6495/A.9463, a bill before you today for a Home Rule Message which will amend the New York State Civil Service Law in relation to provisional employees.

The purpose of this legislation is to address issues raised by the New York Court of Appeals in its decision in City of Long Beach v. Civil Service Employees Association, 8 NY3d 465 (2007). In this case, the Court concluded that the terms of a collective bargaining agreement that gave tenure rights to provisional employees of the City of Long Beach, Long Island, after one year of service were contrary to New York statute. The terms paralleled closely the terms in the City's Citywide Agreement which provided contractual disciplinary rights to employees serving provisionally for more than two years. The Court also observed that policy considerations warrant strict compliance with the time limitations imposed by Civil Service Law § 65 with respect to filling vacancies, holding examinations and removing provisional employees from positions in titles for which examinations should be held.

In recognition of the Court's ruling, it is critical that New York City be authorized to establish an orderly and expeditious means for complying with the time periods set forth in the Civil Service Law by, for example, filling positions now held by such

provisional employees with employees appointed from appropriate eligible lists or reclassifying positions where appropriate. This legislation would provide for a mechanism for the creation of a binding plan to be submitted for approval to the State Civil Service Commission by the City. Specifically, this legislation would amend the Civil Service Law § 65 to authorize DCAS, the City's "municipal civil service commission", to develop a five-year plan, by the end of which the City would need to be in substantial compliance with the time periods permitted by the Civil Service Law regarding provisional appointments. The means for achieving substantial compliance will include, among other things, scheduling and administering examinations, establishing eligible lists, consolidating titles through appropriate reclassification, and other lawful means of implementation.

During the development, approval and implementation phases of the plan, the provisions of the Civil Service Law containing time limitations in relation to provisional appointments to a particular title would be waived, until such time that an eligible list for that title is established. Moreover, this bill would authorize the City to enter into agreements to provide disciplinary procedures applicable to provisional employees who have served for two years or more in positions covered by such agreements, again, until such time that an eligible list for that title is established.

Provisional employees are performing essential public services, and it will take a reasonable period of time for the City to develop and administer competitive examinations and to make appointments from resulting eligible lists in a manner that ensures the continued quality and effectiveness of governmental operations. In the interim, in order to maintain continuity in the provision of essential public services and to afford some protection to provisional employees who have not had an opportunity to take exams for the titles in which they are serving, it is in the public interest to allow for disciplinary procedures for provisional employees and to waive

the time limitations that would otherwise apply in relation to provisional employment. In the context of the overall plan mechanism required by this bill, these limited authorizations are consistent with the "merit and fitness" policy of the State Constitution.

Finally, we note that this legislative proposal is the product of a collaborative effort among the City, the City's largest municipal employee union, DC37, the Governor's Office, and the State Civil Service Commission, all of which are committed to addressing the substantial number of provisional employees currently maintained by the City in a manner consistent with state statutory and decisional law, yet mindful of the need to ensure the continued quality and effectiveness of governmental operations.

Accordingly, the Mayor urges the City Council to pass this Home Rule Message today in order that the State Legislature can act on the legislation next week. Thank you.

LEGISLATIVE MEMO:

WE SUPPORT

DC37

S.64959/A.9463

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This legislation would provide a mechanism for a plan that complies with the mandates of civil service law to appoint and promote through merit and fitness. Such plan would then be submitted for approval to the state civil service commission. Because it would take a reasonable period of time to develop and administer a plan to reduce the number of provisional employees, in the interim, in order to maintain continuity in the provision of public services and harmonious labor relations, it would be in the public interest to waive certain time restrictions and authorize limited negotiated disciplinary procedures for provisional employees who have served for more than two years.

There are approximately 35,000 provisional employees in the City of New York. Of that number, more than 18,000 have more than 24 months of service in their job. Most are union members, and deserve some measure of collectively bargained due process protections. Due process is the cornerstone of good labor relations. Certainly, provisional employees who have invested at least two years in their jobs should have a procedure by which they can be heard if their employer acts to unfairly discipline or even terminate them for disciplinary reasons. Without due process protections, a provisional employee can be penalized on the basis of any suspicion, any false rumor, any personal bias of a supervisor, or for no reason at all.

However, granting a forum to disciplined provisional employees will not alter their employees' civil service status. Once a new civil service list is established, the provisional employee must be replaced by a permanent appointment. This replacement process is not a disciplinary action, and, therefore, not subject to this legislation.

On behalf of our 121,000 members, District Council 37 urges prompt passage of this legislation.

Wanda Williams, Director
Political Action and Legislation

TESTIMONY OF
ANTHONY CROWELL, COUNSELOR TO THE MAYOR,
BEFORE THE NEW YORK CITY COUNCIL
STATE & FEDERAL LEGISLATION COMMITTEE
ON A RESOLUTION
REQUESTING THE STATE LEGISLATURE TO PASS A-8023-B AND S-6331-A

OCTOBER 17, 2007

Good morning Chair Baez and members of the Committee. I am Anthony Crowell, Counselor to Mayor Michael R. Bloomberg, and I am here on behalf of the Administration in support of a Council home rule message requesting the enactment of Assembly Bill A-8023-B and the companion Senate Bill S-6331-A which seek to amend the General Municipal Law ("GML").

As an initial matter, it goes without saying, that the Administration supports and appreciates the efforts of the Council and the State Legislature to ensure that public bodies maintain the highest levels of accountability and transparency in their activities. Indeed, these fundamental principles have been the cornerstone of Mayor Bloomberg's Administration. At the same time, we believe that it is incumbent on all of us affected by the Public Authorities Accountability Act ("PAAA") to ensure that appropriate changes are made to the law to ensure that it is not overly complex to administer and reduces burdens on individual board members who give voluntarily of their time in pursuit of our shared public policy goals. That means working together to develop a financial disclosure form that gets the job done effectively without being overly burdensome on the filer.

Building on the testimony of my counterparts from the City's Conflicts of Interest Board (COIB), the amendments contained in A-8023-B and S-6331-A are necessary to ensure that the City can recruit and retain the best members for its boards and commissions, while at the same time ensuring that the highest standards for integrity are in place. The Administration is concerned that the lengthy and detailed financial disclosure form that the PAAA requires could severely curtail the City's ability to recruit and retain the best candidates to volunteer their valuable time and attention to advancing the mission of some of these entities. In general, these board members generally take a very limited role in the day-to-day operations and decision-making of these organizations, thereby deferring those actions, for instance on contracts and finances, to professional and executive staff. And, indeed, this is a goal of public authorities reform. Accordingly, their functions as board members largely focus on fundraising for program goals for things like cultural events and anti-poverty measures.

It is understandable why individuals who are undertaking a volunteer activity to serve the public good would be hesitant to subject their personal finances to extensive public scrutiny. While we agree that it is critical for individuals serving on boards or commissions that make significant contracting or financial determinations be subject to a financial disclosure process that is rigorous in scope, we believe that for those members of boards whose job is mainly to fundraise a balanced approach must be taken to ensure that the financial disclosure form only asks questions that bear proportionality to the actual functions these members perform, and are tailored to revealing conflicts of interest that are prohibited by the City Charter. This will allow us to ensure that the best candidates continue to be recruited and serve as fundraisers for important public initiatives, while at the same time being asked only the most necessary questions to ensure that conflicts of interest are avoided and public integrity is safeguarded.

As the Mayor's point person for conducting integrity reviews of candidates he appoints to a wide variety of boards and commissions for nearly six years, I am very familiar with the burdens that financial disclosure requirements can place on potential board members. Indeed, quite often, our efforts to recruit high profile individuals to

serve on boards can be hampered because of extensive backgrounding and/or financial disclosure requirements. In fact, there have been occasions where candidates, regardless of their financial profiles, have decided not to move forward with their proposed appointments because of these requirements. In one case, a candidate who decided to move forward with her position had to pay a private accountant several thousand dollars to fill out her disclosure forms because of the complex structure of her assets. By taking the right approach, we can minimize these burdens.

While I am speaking about my experiences with disclosures in the pre-PAAA context, the circumstances would be no different under PAAA. A-8023-B and S-6331-A would allow the City to have appropriate disclosure for uncompensated members of its boards and commissions, whose activities the Administration always has monitored. Accordingly, the Administration strongly supports passage of A-8023-B and S-6331-A and therefore asks the Council to request the State Legislature to enact those bills. Thank you for the opportunity to testify today and I will be glad to take any questions you may have.

TESTIMONY ON THE LEGISLATIVE RESOLUTION
IN SUPPORT OF A-8023-B and S-6331-A
FINANCIAL DISCLOSURE BY VOLUNTEERS
FOR THE CITY OF NEW YORK

before the

NEW YORK CITY COUNCIL

New York City
October 17, 2007

by

Felicia A. Mennin, Special Counsel & Director of Financial Disclosure
Mark Davies, Executive Director
New York City Conflicts of Interest Board

My name is Felicia Mennin. I am Special Counsel & Director of Financial Disclosure for the New York City Conflicts of Interest Board, the ethics board for the City of New York.

With me is Mark Davies, our Executive Director. He was also the executive director of the former Temporary State Commission on Local Government Ethics, the State agency charged in the 1987 Ethics in Government Act with setting up and administering financial disclosure in municipalities throughout New York State, pursuant to sections 810-813 of the General Municipal Law ("GML").

This bill, Assembly Bill A-8023-B, and its companion Senate Bill S-6331-A, are critical to the preservation of not-for-profit organizations affiliated with the City of New York and certain City boards and commissions.

The link between the filings of not-for-profits and the proposed amendment may not be immediately clear, so let me try to lay it out.

When the 1987 Ethics in Government Act was enacted, it mandated financial disclosure in every county, city, town, and village in New York State that has a population of 50,000 or more. With one exception, municipalities could set the scope of their own financial disclosure form. The exception was New York

City. Alone among all municipalities in the State, for the last 20 years, the City has been required to have a financial disclosure form at least as stringent in scope and substance as the 32-page State form that is set forth in Section 812 of the GML.

In 1990, New York City amended its financial disclosure form to comply with the State mandate and, in effect, to conform to the State form. (By the way, New York City has had financial disclosure requirements since the 1970s, long before the Ethics in Government Act.)

Fast forward to 2006. Early last year, the Public Authorities Accountability Act of 2005 (2005 NY Laws ch. 766) became effective. That law requires that board members, officers, and employees of "local public authorities" file financial disclosure statements with the county ethics board "pursuant to article 18 of the general municipal law." (ch. 766, § 19) For New York City, the ethics board is the New York City Conflicts of Interest Board. "Local public authorities," as defined in the PAAA, includes not just public authorities but also municipal-affiliated not-for-profit organizations, of which there are many. (ch. 766, § 2) As Mr. Crowell will testify, these City not-for-profit organizations are mostly governed by volunteer board members and play a vital role in the life of the City.

Here's the wrinkle: because the PAAA requires financial disclosure by municipal not-for-profits pursuant to Article 18 of the *General Municipal Law* and because the General Municipal Law, solely in the case of New York City, requires that the City adopt the 32-page State financial disclosure form set forth in the GML, the board members and staff of *City*-affiliated not-for-profits must file the 32-page State financial disclosure form. The impact of that requirement on these not-for-profits, such as the Brooklyn Public Library and the Gracie Mansion Conservancy, will be devastating, as Mr. Crowell will explain in greater detail.

In addition, with respect to *City* agencies, the GML makes no distinction between paid and unpaid public servants. Under State law, though not under current City law, unpaid members of boards and commissions must file a financial disclosure report if they are policymakers. The enactment of the PAAA has highlighted this discrepancy between the State mandate and the City's financial disclosure law. Therefore, beginning next year, uncompensated members of boards and commissions, such as members of the Taxi and Limousine Commission and the Landmarks Preservation Commission, must also file financial disclosure reports. Unless the State law is amended, these volunteer public servants will be required to file the current 32-page form. We believe that such a result would have

a devastating impact on the City's ability to recruit and retain members of these boards and commissions.

You may ask why we did not request the State Legislature simply to exempt members of City-affiliated not-for-profits and uncompensated members of City boards and commissions from filing financial disclosure reports altogether. From the very beginning, the Assembly made it clear to us that any such proposed exemption was a non-starter with the State Legislature; they indicated that we could probably get them to change the scope of the form but not who has to file. In fact, it is the position of the Conflicts of Interest Board that board members of all such entities *should* be required to make *appropriate* disclosure, just not the currently mandated extensive disclosure, which, as I will discuss below, in large part does not provide meaningful information with regard to conflicts of interest as they are defined by the City's ethics law. We are simply seeking to address a problem that is peculiar to the City of New York caused by the mandate that *anyone* required to file a disclosure statement with the City, including volunteer board members, must file the 32-page State form.

As I just mentioned, the problem with the imposition of the State mandated form goes beyond the Public Authorities Accountability Act and volunteer members of City boards and commissions. The State-mandated financial disclosure form, generally, is not congruent with the City's conflicts of interest law found in Chapter 68 of the City Charter. The State form does not provide us, or the members of the public, with information that is meaningful to a determination of conflicts of interest.

For example, the State-mandated form requires the listing of every security whose value exceeds $1,000 (see GML § 812(5)(16)). But under the City's conflicts of interest law, ownership of securities becomes relevant only after the interest reaches $10,000 (see N.Y.C. Charter § 2604(b)(1)(c)). If you own $1,000 worth of shares in AT&T, for example, you can still vote to award a contract to AT&T. If you own $10,000, you may not. What securities you own under $10,000 has absolutely no relevance for purposes of the City's ethics law.

So, too, the State-mandated form requires disclosure of all positions that the public servant held as an officer of any political party or political organization, as a member of any political party committee, or as a political party district leader (see GML § 812(5)(7)). But the City's conflicts of interest law prohibits the holding of such positions only by those persons who have been deemed to exercise "substantial policy discretion" as that term has been defined by the Board (see

N.Y.C. Charter § 2604(b)(15); Rules of the Board § 1-02). In practical terms that means only those in the highest levels of City government. This type of invasive disclosure required by the State mandated form is not only irrelevant to the City's ethics law but also has the potential to chill legitimate political relationships and political involvement by City employees. There are many other such examples of the disconnect between the State-mandated form and the City's ethics law.

The purpose of conflicts of interest laws and financial disclosure laws, as our Board has repeatedly stated, is to *prevent* conflicts of interest violations from ever occurring and to *reveal* potential conflicts so that they may be addressed and eliminated; but because of this disconnect between the State-mandated financial disclosure law and the City's conflicts of interest law, the financial disclosure law does not fulfill its potential in detecting and preventing unethical conduct.

For these reasons, the Conflicts of Interest Board, for over 10 years, has been seeking the authority to modify the scope of the City's financial disclosure form to promulgate sensible financial disclosure forms, tailored to the City's ethics law, as set forth in the City Charter, that would reveal (and thus help avoid) potential conflicts of interest under the ethics law.

I should note that the bill, as originally proposed by the COIB, would have permitted the City full discretion to develop whatever form the City believed appropriate, provided that the COIB agreed. However, at my testimony before the State Assembly at a public hearing on May 24, 2007, it became apparent that the Assembly would not agree to give the City such unbridled discretion. Instead, we had to specify what types of information would, at a minimum, have to be disclosed. After some negotiation with the Assembly, we came up with the pending bill.

We must emphasize that the bill does not in any way change *who* must file. It only changes the scope of the form. And it changes that scope in three ways.

First, the bill eliminates the State mandate that the City's financial disclosure form be at least as extensive as the 32-page State form. Second, the bill provides for a minimal disclosure for PAAA filers and for uncompensated members of boards and commissions, like the TLC and Landmarks. Third, and from the perspective of the COIB most important, the bill requires that the City's financial disclosure forms be tied directly to the requirements of Chapter 68. Therefore, for example, we could eliminate the requirement to disclose those irrelevant

stockholdings and political party positions I mentioned earlier, because they are not relevant to Chapter 68.

Finally, I should emphasize the critical timing in this matter. We have been told that the Legislature will be returning to Albany very soon; and we have been assured that, when they do, they will consider these bills. Early in 2008 we must finalize the forms that all filers must file next year. If the bill has not be enacted by that time, we will have to inform the PAAA filers and uncompensated members of boards and commissions that they will be required to file the 32-page financial disclosure form. Therefore, it is critical that the bill be enacted this calendar year.

In conclusion, the Conflicts of Interest Board urges the Council to support this bill.

Thank you. We would be happy to answer any questions that you might have.

Persons Required to File Annual Statements of Financial Disclosure
Under A-8023-B and S-6331-A (Proposed Amendment to General Municipal Law § 811(1))

	Type of Filer	Currently Must File Under State Law	Would File under Amendment
1.	Local elected officials (mayor, public advocate, Council members, borough presidents, comptroller, district attorneys)	Long form	Long form
2.	Candidates for local elected office	Long form	Long form
3.	Local political party officials[1]	None	None
4.	Agency heads, deputy agency heads, assistant agency heads, and policymakers (including policymakers who are compensated members of boards and commissions)[2]	Long form	Long form
5.	Policymakers who are uncompensated members of boards and commissions[3]	Long form	**Short form**
6.	Public servants involved in contracting and the like	Long form	Long form
7.	Board members, officers, and employees of local public authorities (Pub. Auth. Law §§ 2(2), 2825(3))	Long form	**Short form**
8.	Tax assessors	Real Prop. Tax Law § 336 form	Real Prop. Tax Law § 336 form

[1] No local political party official in New York City meets the filing criteria of Gen. Mun. Law § 810(6), reproduced in NYC Ad. Code § 12-110(a)(6).

[2] This group of public servants is included within the definition of "local officer or employee" set forth in Gen. Mun. Law § 810(3). Members of the NYC Housing Development Corporation are deemed to be compensated under Priv. Hous. Fin. Law § 653(2) and NYC Ad. Code § 12-110(b)(3)(a)(1) and would thus file the long form. New York City law also requires City employees in the management pay plan in levels M4 and above, or their equivalents to file, even though current State law does not require them to file unless they fall into one of the above categories. Compare Gen. Mun. Law § 812(1)(a) with NYC Ad. Code § 12-110(b)(3)(a)(3). They would file the long form under the proposed amendment.

[3] Current State law makes no distinction between compensated and uncompensated public servants, while New York City law specifically exempts uncompensated members of boards and commissions from filing. Compare Gen. Mun. Law §§ 810(3) and 812(1)(a) with NYC Ad. Code § 12-110(b)(3)(a)(1). Since community board members do not have substantial policy discretion for purposes of Chapter 68 (COIB Ad. Op. No. 91-12), they are not policymakers for purposes of the financial disclosure law (Board Rules § 1-14) and therefore are not required to file financial disclosure reports.

[FD: PAAA: Filers under Bill]