



**REPORT OF THE SPECIAL ETHICS COUNSEL TO THE
GOVERNOR OF THE STATE OF NEW JERSEY**

**ETHICS REFORM RECOMMENDATIONS FOR THE EXECUTIVE
BRANCH OF NEW JERSEY GOVERNMENT**

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**This Report is available from the Office of the Governor
and on-line at http://www.nj.gov/Ethics_Report.pdf**

Dedication

This Report is dedicated to all those who labor in the trenches of public service. Our research, interviews, and analysis of the ethics audit responses left us with an indelible impression of firm resolve on the part of State employees to serve the public honestly and faithfully. More than anything, we must reinforce their resolve by demonstrating that every level of government supports their efforts.

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We gratefully acknowledge the meaningful responses that we

received to our Ethics Audit and to our requests for public comment.

During our review, we often asked, "What is the cornerstone of good government?" Hard-working citizens of our State, like Herbert Bashir of Irvington, said, "We need a return to honesty, to concern for the public trust." Don Wisnowski, a former serviceman and resident of Little Falls, said, "At every level of government, many leaders have lost sight of the reason why they're there and of the values that this country was founded on. I'm heartsick about this, because I love our State." Bob Loughrey, proprietor of Uncle Bob's Ice Cream Shop in Cedar Grove, said, "Ethics in government means that our leaders should be doing the right thing for the people, not for themselves. We want them to do the right thing, not necessarily the popular thing."

These acknowledgments are not all-inclusive. Undoubtedly, we have inadvertently omitted the names of some individuals who should be acknowledged. We thank all contributors, and all who care deeply about the task of ethics reform.

Trust is the cornerstone of good government. By restoring public trust, we can, in the words of Acting Governor Codey, "show government as a force for compassion and a beacon of hope." The time is now.

INTRODUCTION

Our faith in government has been shaken. But this moment in history has given us the opportunity to chart a new course. Together, we have begun to restore faith, integrity, and hope to our government. . . . There is nothing more important to our democracy than the trust of the citizens. And when that trust wavers, the question is not whether we should act . . . but how much we can achieve.

- Acting Governor Richard J. Codey,
State of the State Address
(January 11, 2005)

On November 17, 2004, Acting Governor Richard J. Codey appointed us Special Ethics Counsel, charged with the responsibility of recommending ethics reforms for the Executive Branch of New Jersey's Government. We commend Governor Codey for his leadership and courage in giving us so significant a mandate and we thank him for this opportunity to serve the State.

Although our mandate is broad, it is not all-encompassing. Our work is part of a larger mosaic of effort by public and private-sector parties. An effective system of advancing integrity in government requires a tripartite approach. The three major features recognized in most jurisdictions are: (1) the regulation of legislative and executive lobbying; (2) rules of conduct for government officials; and (3) campaign and finances practices. Our mission is limited to the second element, the rules of conduct for members of the Executive Branch of State government and its independent authorities. The other two pillars of integrity must be strengthened as well.

In pursuit of our mission to examine the rules of conduct governing State employees, we thoroughly reviewed the State's existing ethics and conflicts laws. We also conducted an extensive audit of ethics programs in the Executive Branch agencies, departments, and independent State authorities. In addition, we engaged in a comparative review of other state and federal ethics models, conducted numerous interviews, and solicited and reviewed public comment.¹ Our research, interviews, and analysis of the ethics audit responses left us with the indelible impression of firm resolve on the part of State employees to serve the public honestly and faithfully. They deeply resent any outside influences on the performance of their duties. More than anything, we must reinforce their resolve by demonstrating that every level of government supports those in the trenches of public service.

Our Report proceeds on the simple principle that public office is a public trust. Recent scandals have shaken that trust. Yet, as Governor Codey has made clear, this unique moment in New Jersey's history has provided the opportunity to chart a new course that transcends partisanship and recaptures the promise of our great State.

The public wants and deserves assurances that it can rely on the integrity of its elected and appointed leaders. Citizens want

¹ In the course of our investigations, we received several recommendations for ethical reform that were beyond the scope of our mandate. We do not include our comments on such matters in this Report, but will shortly submit a separate report to the Governor on those issues, considered but not recommended to be part of this Report.

and deserve evidence that leaders are making an ethical culture the central hub of governance. They want leaders who will guide managers at all levels to do the right thing when faced with tough decisions. They want to see less partisan politics and more public interest politics.

The Report that we issue today sets forth a series of sweeping recommendations that include the creation of a newly-empowered and independent watchdog, to be known as the State Ethics Commission, significant enforcement and compliance checks, stringent penalties for transgressors, mandatory ethics training for all State officials and employees, routine ethics auditing, more stringent anti-nepotism laws, more effective post-employment restrictions, transparency in the contracting process, a zero-tolerance policy on the acceptance of gifts, and the imposition of the ethics laws upon gubernatorial transition teams. The public interest deserves no less.

Throughout, our recommendations aim to promote transparency and accountability in all aspects of government activity in order to better monitor ethical performance from top to bottom. As Justice Brandeis observed, "Sunlight is said to be the best of disinfectants." Louis Brandeis, Other People's Money 62 (Nat'l Home Library Found. ed. 1933).

Moreover, experience teaches that it is not enough to impose strictures on State employees. Most ethics violations do not occur without the participation and consent of third parties. Hence, we

have prepared a Business Ethics Guide, (Exhibit C), for third parties that do business with the State. We recommend that certification of compliance with its terms be required of all parties that do business, or hope to do business, with the State.

We are not so naive as to believe that our recommendations will change human nature. No regulation will deter a person determined to challenge the public interest and public trust. Still, formal rules that establish clear standards regarding performance and punishment are essential to communicate that transgressions will not be tolerated and that ethics is everyone's business.

Thomas Jefferson warned, "In every government on earth there is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover and wickedness insensibly open, cultivate, and improve. Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories." Thomas Jefferson, Notes on the State of Virginia (Merill D. Peterson, ed., Library of Am., Literary Classics of the United States 1984) (1781-1782). Although our recommendations are significant, without a commitment that survives the current climate of ethics reform all that we will have succeeded in doing is putting more laws on the books. Ultimately, it is human oversight, rooted in leadership from the top and an unrelenting pledge to good government, that serves as the most effective and enduring check.

Implementing the systemic changes that we recommend can help to set the stage for a renewed partnership of government, its employees, and the public. By rebuilding the public's trust, we can, in the words of Governor Codey, "show government as a force for compassion and a beacon of hope." Restoring a sense of nobility and accountability to government service is vital to this enterprise. When public employees come to believe that they and their work are unseen or unimportant, a window of vulnerability opens. We are convinced that the recommendations in this Report and the continuing leadership that this initiative represents have the potential to close, or at least narrow that window, and open a door back to the future, so that New Jersey can reclaim its great promise.

SUMMARY OF PRINCIPAL RECOMMENDATIONS

1. CREATE AN ENTIRELY NEW, INDEPENDENT AND PROACTIVE ENFORCEMENT AGENCY, CALLED THE "STATE ETHICS COMMISSION" (COMMISSION).

A. Make The State Ethics Commission An Independent Watchdog.

The new State Ethics Commission should replace the existing Executive Commission on Ethical Standards (ECES). To ensure maximum independence:

- The State Ethics Commission should be bipartisan and, ultimately, be composed entirely of seven public members.
- Commission members should serve staggered four-year terms.
- The Commission's Chair and Vice-Chair should be elected by its members to two-year terms.

Governor Codey has proposed legislation that would transform the newly-named State Ethics Commission from a nine-member body, with seven members from the Executive Branch and two public members, into a seven-member body, with three members from the Executive Branch and four public members. Not more than two of its public members would be of the same political party, and a Chair would be selected from among its public members. Several of our recommendations are embodied in that Bill. Given the strength of the Governor's commitment to ethics reform, this movement toward change should pave the way for the implementation, over time, of an entirely independent body composed of seven public members, while also assuring a smooth transition toward that end.

B. Vest The State Ethics Commission With Much Greater Enforcement Powers Than Those Possessed By The Existing Executive Commission On Ethical Standards.

Presently, many of the State's ethical strictures are well intended, but toothless. The new State Ethics Commission should be vested with vigorous enforcement mechanisms, as well as with the responsibility for undertaking routine ethics audits and for implementing mandatory ethics training programs. It should have the authority to impose a broad range of significant penalties for non-compliance and ethics violations. The range of penalties should include:

- Removal from office.
- Suspension from office.
- Demotion.
- Public censure.
- Reprimand.
- Restitution of any pecuniary benefits received as a result of an ethics violation.
- Mandatory late filing fees (up to \$50 per day) for failure to file required disclosure and authorization forms in a timely manner.
- Mandatory civil penalties (up to \$10,000 per violation) for violations of post-employment restrictions.

Further, the Commission's jurisdiction should be expanded to include transgressors who leave State service, provided the Commission's investigation begins within two years past the date on which the alleged violation has been committed. That expanded

jurisdiction would prevent State employees from escaping liability for ethical breaches simply by leaving State employ.

Finally, the Commission will have to coordinate its work closely with the Inspector General's Office, the State Auditor's Office, the State Commission of Investigation, and the Office of Government Integrity in the Attorney General's Office.

C. Require The State Ethics Commission To Conduct Mandatory Ethics Training For All State Employees.

The State Ethics Commission should be staffed with a full-time Training Officer with adequate support personnel, charged with the responsibility of creating, coordinating, and refining comprehensive mandatory ethics training programs, both in-person and on-line. Each agency or department's Ethics Liaison Officer (ELO) should be required to coordinate with the Training Officer to facilitate the ethics training programs that the Training Officer develops.

Mandatory ethics training programs should include:

- Annual briefings and routine refresher courses on ethics and standards of conduct for all State employees and officers.²
- Annual financial-integrity training for all State officers, board members of all State entities, and employees vested with procurement-related authority.

D. Enable The State Ethics Commission To Perform Regular And Systematic Ethics

² References throughout this Report to State "officer" or "employee" refer to any person holding office or employment in any State agency, i.e., any principal department, board, commission, authority, State college or university and any other instrumentality, created by or allocated to a principal department.

**Audits And Monitoring For Ethics
Compliance.**

The State Ethics Commission should be staffed with a full-time Ethics Compliance Officer and adequate support personnel to ensure that, in each agency, all required employee disclosures are monitored for compliance and all ethics codes and notices are distributed to and acknowledged by all employees. Duties of the Ethics Compliance Officer should include:

- Tracking compliance on matters including outside employment, business activities, gifts, financial disclosures, contacts by legislators, lobbyists, or governmental-affairs agents, procurements and contracts, and attendance at outside events.

**E. Coordinate The Duties Of The State Ethics
Commission With Those Of Other Agencies
Charged With Fighting Fraud, Waste, And
Ethical Misconduct In Government.**

The Commission should routinely communicate and coordinate its efforts with those of the State Auditor, the Inspector General, the State Commission of Investigations, and the Office of Government Integrity of the Attorney General's Office. Just as there are joint task forces of state and federal agencies to fight crime or pollution, there can and should be a joint task force of the several agencies to fight fraud, waste, and ethical misconduct in government.

**F. Improve Access To Ethics Advice and
Information.**

To improve access to ethics advice and information, we

recommend that:

- A new, toll-free, confidential reporting hotline be made available to all State employees and to the general public, for purposes of voicing concerns, asking questions, and making complaints.
 - All financial disclosure forms be viewable on the Commission's website.
2. **ENACT A UNIFORM ETHICS CODE, APPLICABLE TO ALL STATE EMPLOYEES, TO CONSOLIDATE THE STATE'S SCATTERED ETHICS LAWS INTO A SINGLE ACT.**

Currently, State ethics restrictions are set forth in a multitude of separate codes and in the regulations of a myriad of diverse agencies. Uniform baseline standards of conduct should be enacted and made applicable to all State employees. Our proposed Uniform Ethics Code, appended as Exhibit A, simplifies, clarifies, and modernizes the otherwise disparate governing strictures. Our recommendation requires:

- The State Ethics Commission to promulgate a single Code of Ethics binding upon the Executive Branch, that adopts all applicable provisions of our proposed Uniform Ethics Code, as supplemented by relevant agency-specific strictures.
3. **IMPLEMENT A PLAIN LANGUAGE ETHICS GUIDE THAT CAN BE EASILY UNDERSTOOD BY ALL STATE EMPLOYEES AND THE PUBLIC.**

A Plain Language Ethics Guide should be adopted to explain clearly and plainly to all State employees and to the public the ethical standards and requirements that must be met by every State employee. We have drafted, and append as Exhibit B, a Plain Language Ethics Guide that reflects the current New Jersey Conflicts of Interest Law (Conflicts Law), N.J.S.A. 52:13D-12 to -

28.

We recommend that:

- Every State employee be required to certify that he or she has read the Guide, understands it, and vows to uphold its terms. With that requirement in place, no employee will ever be able to use ignorance of the law as a viable defense to an ethics violation.
- 4. IMPLEMENT A BUSINESS ETHICS GUIDE THAT IS BINDING ON THIRD PARTIES THAT DO BUSINESS WITH THE STATE.**

It is not enough to impose strictures on State employees. Most ethics violations do not occur without the participation and consent of third parties. Hence, we have drafted, and append to this Report as Exhibit C, a plain language Business Ethics Guide for third parties that conduct business with the State. Currently, there are no penalties for businesses that commit ethics violations.

Our recommendations require that:

- All persons who do business with the State certify, in writing, that they understand the rules of the Business Ethics Guide and that they are in compliance with those rules.
 - A certification of compliance with the Business Ethics Guide be a prerequisite for the submission of any bid to do business with the State. Penalties for noncompliance would include disqualification of the bid.
- 5. PROVIDE LEADERSHIP FROM THE TOP.**

The Governor should set the appropriate tone and lead by example and initiative, to avoid even an appearance of impropriety.

Toward that end, we recommend that:

- The Executive Director of the State Ethics Commission meet with every new Cabinet member shortly after

inauguration.

- The Executive Director of the State Ethics Commission appear before the Cabinet at least once each year to remind all members of the ethics strictures.

The Governor's Code of Conduct, promulgated by an independent advisory panel pursuant to Executive Order 77 (McGreevey 2002), contains thorough and significant strictures, consistent with the core premise that leadership and direction must come from the top. The Governor's Code of Conduct is appended to this Report as Exhibit M.

6. CLOSE THE REVOLVING DOOR OF UNDUE INFLUENCE BY ADOPTING RIGOROUS POST-EMPLOYMENT RESTRICTIONS AND EFFECTIVE FOLLOW-UP PROCEDURES.

Presently, a general post-employment restriction prohibits a former State officer or employee, or special State officer or employee, from representing or acting on behalf of a party other than the State in connection with any matter in which the employee was substantially and directly involved during his or her State tenure. That is a lifelong restriction, but the only enforcement mechanism is a disorderly-persons penalty, which has never been invoked.

To construct laws that are stronger, realistic and readily enforceable, we recommend:

- A new explicit lifetime ban on all former State officers' and employees' use of confidential information.
- A general two-year post-employment restriction prohibiting a former State employee from representing an entity on a matter that he or she was substantially and

directly involved in while in State service. That ban would allow highly qualified individuals to enter government service with the expectation that they will be able to continue to earn a living after they leave State employ. Consistent with the experience of other jurisdictions, after two years, former State employees are apt to be sought by a new employer for their expertise, rather than for their ability to influence government officials.

- A new one-year ban on "side-switching," to apply to designated State officers, heads, deputy heads and assistant heads of principal departments, boards, commissions, and authorities. That ban would prohibit such an employee, for one year after leaving State service, from representing anyone on any matter before the agency in which he or she was employed. Our investigation revealed the significant concern about the appearance of impropriety that arises when a former senior official appears before his or her agency shortly after leaving government service.
- Greatly enhanced penalties for violating post-employment restrictions, applicable to former employees and their new employers. Those penalties should include fines of up to \$10,000 per offense.

7. STRENGTHEN ANTI-NEPOTISM LAWS.

The Legislature's 2004 enactment prohibiting certain relatives of State officials from serving in State government positions, N.J.S.A. 52:14-7.1, was a step in the right direction. Currently, however, there are no enforcement mechanisms or penalty provisions in the statute to ensure compliance. Therefore, we recommend the following:

- Make N.J.S.A. 52:14-7.1 part of the Conflicts Law, giving the State Ethics Commission the authority to impose a broad range of penalties for violations.
- Prohibit State officers and employees from participating in decisions to hire, retain, promote, or determine the salary of any member of their immediate family, and any cohabitant or person with whom the officer or employee

has a dating relationship.

- Prohibit every State officer and employee from supervising or exercising authority over immediate family members, cohabitants, or persons with whom the officer or employee has a dating relationship.

Those recommended strictures are delineated in our proposed Uniform Ethics Code (Exhibit A).

8. IMPOSE THE ETHICS LAWS ON ADMINISTRATION TRANSITION TEAMS.

The ethical responsibilities and obligations of a newly-elected State administration begin not on a governor's inaugural day, but on the very first day that a transition team is formed. Policies and operational and personnel decisions are forged during a transition. Consequently, the public trust is involved. Currently, transition teams are not subject to the ethics laws applicable to other Executive Branch employees. To increase public confidence, we recommend that all full-time, paid transition team members:

- Be subject to the constraints of the ethics laws immediately upon appointment, and that their salaries and sources of income be fully disclosed.
- Be notified of the ethics and conflicts laws and receive ethics training immediately upon appointment, and that they be required to certify, in writing, that they are in compliance with those strictures, including all financial disclosure requirements.

We also recommend that the Gubernatorial Transition Act, N.J.S.A. 52:15A-1 to -5, be amended to subject full-time, paid transition team members to the Conflicts Law.

9. ENSURE TRANSPARENCY AND PROMOTE INTEGRITY IN THE CONTRACTING PROCESS.

With certain amendments to expand its scope, we recommend that the Karcher-Scutari Bill, S. 2194, 211th Leg. § 2 (N.J. 2004), be enacted to implement the State Commission of Investigation's (SCI) June 2004 recommendation that, once a matter has entered the procurement process, any contact related to the procurement between State employees and representatives of active or prospective State vendors be memorialized in writing, so that a public record can be maintained to ensure the transparency of such contacts. In order to close the circle of improper influences in the bidding process, we recommend that all intra-government contacts with State procurement officers also be memorialized in writing.

10. ADOPT A ZERO-TOLERANCE POLICY ON GIFTS.

Last year, the Legislature passed a law allowing Executive Branch officials to receive up to \$250 total value in gifts, annually, from governmental affairs agents, thereby conflicting with current ECES guidelines. To eliminate confusion and to render even more rigorous the gift ban, we recommend:

- A new, simple, flat ban, prohibiting all Executive Branch employees from accepting any and all gifts or other things of value from any source other than the State for any matter related to their official duties. That zero-tolerance policy will establish a clear, bright-line standard that is easy to apply and helps to avoid even the appearance of impropriety.

OVERVIEW OF REPORT

This Report consists of three chapters and a comprehensive Appendix. Chapter One provides an overview of our methodology, a history of ethics reform in New Jersey, and a comprehensive discussion of existing Executive Branch ethics programs and strictures. Chapter Two contains a detailed analysis of the results of our Ethics Audit. Chapter Three provides a detailed consideration of each of our recommendations, together with national comparisons.

Our appendices include: (1) our proposed Uniform Ethics Code; (2) our recommended Plain Language Ethics Guide; (3) our proposed Business Ethics Guide; (4) our Ethics Audit survey; (5) ethics training prototypes; and (6) various compilations of State and national data relevant to the task of ethics reform.

**CHAPTER I:
MISSION STATEMENT**

1. Mission and Methodology.

On November 17, 2004, Governor Codey signed Executive Order 3, appointing Special Counsel for Ethics Review and Compliance to "reassess the effectiveness of the ethical standards and training that guide the conduct of State officers and employees within the Executive Branch of government and the independent State authorities." (Exhibit D). Toward that end, the Governor ordered that we: (1) conduct and report the results of a comprehensive Ethics Compliance Audit to identify potential areas for improvement in the State's current ethics laws, regulations, codes, training programs, compliance monitoring, and enforcement; (2) present (a) a comprehensive Ethics Report recommending improvements to the current laws, and (b) a Compliance Plan mandating measures that must be adopted to improve and strengthen compliance with those laws; (3) develop and implement, in conjunction with the Executive Commission on Ethical Standards (ECES), an Ethics Training Program for Executive Branch and independent authorities personnel; and (4) review and recommend any appropriate changes to the requirements of Executive Order 10 (McGreevey 2002), and the Code of Conduct for the Governor.

In order to meet those mandates, we have conducted numerous, extensive inquiries. We examined every New Jersey Executive Branch department and agency, as well as each of the State's independent

authorities (collectively, authorities). We also surveyed all of New Jersey's relevant ethics laws and codes, federal and other states' analogues, and the ethics codes of a cross-section of corporate America.

We reviewed voluminous materials and research supplied by the Executive Director and Deputy Director of ECES and by the Office of Counsel to the Governor, as well as all legislative and regulatory sources with ethical dimensions compiled by the Office of the Attorney General. We interviewed current and former State officials to hear their views on the strengths and weaknesses of the ethical standards and processes currently in place in New Jersey. We met with and solicited the views of the Commissioners of ECES and the Ethics Liaison Officers.

We interviewed leading ethicists from across the nation, as well as officials charged with responsibility for ethics regulations and reform. We examined the statutory and regulatory materials of other states and the federal government and learned about their training and compliance strengths and weaknesses. We interviewed ethics personnel from other states and evaluated their programs, staffing, and budgetary resources. We reviewed model ethics laws and codes prepared by various associations and governmental organizations and assessed their applicability to New Jersey.

We collected and examined model codes and best practices from "think-tanks," major corporations, trade associations, and non-

profit organizations. We interviewed leaders and experts in the private sector with respect to standards, training, and compliance. We also solicited and considered feedback from the public, as well as from public interest groups dedicated to ethics in government.

2. Significance of Our Mission.

More than other citizens, public employees and officials assume responsibility for protecting the rights and interests of all citizens. Public servants act in the name of, and on behalf of the public, in critical areas, such as health care, education, environmental protection, public safety, and defense. It is important for public employees and officials to see that work as a fiduciary trust. As such, public employees and officials must adhere to the highest standards of integrity in performing their official duties.

A commitment to integrity and faithfulness to fiduciary responsibilities need not be a burden for public servants. Rather, faithfulness to responsibilities can be a source of satisfaction, pride, and the very motivation for continued public service. While it is important for public employees and officials to recognize that public service is a responsibility, it is also a noble duty.

More often than not, media coverage of ethics in government focuses on unethical behavior by select individuals and on how to prosecute or "throw the rascals out." We have concluded that examining the underlying standards of ethical behavior and developing strategies for preventing abuses are equally important.

Therefore, our recommendations go beyond laws, rules, and regulations, to consider core values.

The words and ideals of our nation's founders provide guidance and inspiration in contemplating those values. For example, as the thirteen states were deciding whether to ratify the Constitution, James Madison and Alexander Hamilton attempted to allay widespread fears, skepticism, and suspicion of the new government. In their Federalist Papers, they encouraged the colonists to trust that government.

Federalist Paper Number 57 has particular relevance to our review of ethics in government because it addresses not just structural safeguards, but also the requirement that those who serve in government be people of wisdom and virtue who are dedicated to the common good, rather than to pure self-interest. Our Report does not attempt to provide new principles, but instead echoes the ideals that have provided strength to our nation since its founding. As Madison observed:

The aim of every political constitution is, or ought to be, first to obtain for rulers men [and women] who possess the most wisdom to discern, and the most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust.

How successful have we been in meeting Madison's fundamental standards of wisdom, virtue, and effective precautions? In terms of ethics in government, our State and nation have made strides in

writing laws that set high standards. Unfortunately, those laws are sometimes flouted or betrayed.

Some notorious scandals, such as Watergate and Abscam, have had profound consequences for the nation and for our State. The 1972-1973 Watergate scandal resulted in numerous convictions of White House officials, and in the resignation of a President. That scandal created tremendous public interest in government ethics, and helped to spawn an array of reforms in campaign-finance and ethics rules, regulations, and laws in the federal, state, and local governments. Watergate also engendered the media's understandably more aggressive stance and jaundiced-eye toward ethics in government. At the state level, the FBI's 1978-1980 Abscam sting operation hit New Jersey particularly hard, triggering the resignations and bribery convictions of one of our United States Senators and two of our Congressmen. Throughout the past three decades, those and other instances of public corruption have compromised the public's trust in government.

Historically, New Jersey has launched significant efforts to combat corruption and to raise the public's trust in government.³ For example, in 1968, during a period of increasing public attention to organized crime and political corruption, a Joint Legislative Committee to Study Crime and the System of Criminal Justice recommended the creation of an independent State Commission of Investigation (SCI) and a Division of Criminal Justice under the

³ For a more detailed discussion of anti-corruption efforts in New Jersey, see

supervision of the Attorney General.

In 1973, the Legislature created ECES to administer and enforce New Jersey's Conflicts Law. That same year, the Legislature also created a bipartisan Election Law Enforcement Commission, to administer the Campaign Contributions and Expenditures Act. That commission also administers New Jersey's public financing programs.

In 1974, Governor Brendan T. Byrne and the Legislature created the Department of the Public Advocate. Although that department was abolished in 1994, Governor Codey has called for its re-establishment, as part of a comprehensive plan to restore a higher level of integrity and accountability to New Jersey's Government.

In 1977, after the voters approved casino gambling in Atlantic City, the Legislature created the Casino Control Commission, to license and regulate casino gaming. That commission is an independent agency "in, but not of," New Jersey's Department of Treasury. The Casino Control Commission's task of regulating casino activities is shared with the Division of Gaming Enforcement, in the Department of Law and Public Safety.

The creation of those agencies has been extraordinarily important to New Jersey's effort to increase the public's trust and reduce crime and corruption. Unfortunately, however, crime and public corruption have not disappeared. In its September 1992 report, Local Government Corruption, the SCI inventoried 277

instances of corruption and found that, although corruption in New Jersey was not as open, notorious, and systematic as in the past, it was nevertheless still a serious and disturbing problem. Since 1992, the SCI has issued numerous reports exposing waste, fraud, and abuses in the public sector, in areas ranging from school busing, pensions, and computer crimes, to E-ZPass and the privatization of New Jersey's motor vehicle inspection services. In its motor vehicle inspection investigation, the SCI uncovered a privatization process that was thoroughly undermined by mismanagement and political manipulation.

We have carefully reviewed all of the above reports and conclude that today, as in 1968, New Jersey must move forward with decisive, systematic interventions that discourage wrongdoing and encourage ethical behavior at all levels of State government. We therefore recommend a number of significant statutory, policy, and operational reforms for New Jersey's Executive Branch.

We hasten to add that our focus on the State's ethics infrastructure of laws, codes, reporting mechanisms, and training should not divert the State's attention to the critical importance of effective leadership, auditing, internal controls, and civil and criminal investigations. Full trust and confidence in government can only be restored if the State constructs and maintains an ethics system built on integrity, good management, and an abiding commitment by public employees to the democratic ideals of impartiality, equality, equity, and service in the public interest.

Although most public employees would profess their commitment to those principles, their application may nevertheless vary, depending upon individual employees' understanding of those principles. Moreover, ethics decisions often present a seeming choice between two or more goods, causing confusion for individuals who are not adequately informed about our State's ethics requirements. The need for clarity in such situations makes confidential inquiries imperative, so that State employees may obtain advice whenever they are unsure whether their actual or contemplated conduct would be consistent with the State's ethics laws and codes.

A principal finding of our review is that, even if New Jersey enacts and implements the best laws and codes of ethics, those measures will be ineffective if the State fails to ensure that State officers and employees are aware of their fiduciary responsibilities and the ethical dimensions of their jobs. Attaining that goal will require a comprehensive ethics-training program for all State personnel, without exception.

During our review, we often asked, "What must be done to maintain high levels of sensitivity to the importance of ethical behavior in public organizations?" We are convinced that the answer begins with the integrity of leaders, dedicated to serving the public interest, and committed to instilling respect for the law.

We are also convinced that the State needs an improved,

comprehensive statute governing conflicts of interest — one that imposes strict penalties for violations. We have drafted that statute, our proposed Uniform Ethics Code, Exhibit A. It provides clear and reasonable restrictions. It goes beyond mere conflicts of interest, and emphasizes the fiduciary responsibilities of State officers and employees.

Finally, we are convinced that one of the most important issues in ethics reform is the need for an independent State Ethics Commission with responsibility to oversee the implementation and enforcement of the ethics laws and the authority to impose stringent penalties for violations of those laws. The Commission must continue to provide confidential dissent channels, to allow employees and others to bring anonymous complaints of ethical violations, without fear of reprisals.

Implementing the systemic changes that we recommend can set the stage for a new beginning by redefining the partnership of our government, its employees, and the public. Trust is the foundation of good government. By rebuilding the public's trust, we can, in the words of Governor Codey, "show government as a force for compassion and a beacon of hope." Restoring a sense of nobility and accountability of government service is vital to this enterprise. When public employees come to believe that they and their work are unseen or unimportant, a window of vulnerability opens. We are convinced that the recommendations in this Report have the potential to close, or at least narrow that window, and

open a door back to the future, so that our most sustaining democratic ideals can once again flourish.

3. Executive Branch and Current Ethics System.

New Jersey's Executive Branch is comprised of the Governor and his staff, sixteen executive departments, and scores of agencies, boards, and commissions. The Governor, with the State Senate's approval, appoints the heads of each of those authorities. The authorities enforce the policies set forth by the Governor to fulfill his duty to faithfully execute the State's laws. One of those authorities, ECES, is specifically charged with implementing the Conflicts Law, N.J.S.A. 53:13D-12 to -28.

A. Executive Commission on Ethical Standards.

(1) Creation, Powers, and Jurisdiction.

More than 70,000 Executive Branch employees are currently subject to ECES' jurisdiction. The Commission was established in New Jersey's Department of Law and Public Safety in 1972 to administer and enforce the Conflicts Law. N.J.S.A. 52:13D-21(a), (h); N.J.A.C. 19:61-2.1(a). It also administers and enforces Sections 58 through 60 of New Jersey's Casino Control Act, N.J.S.A. 5:12-1 to -210, and administers Executive Orders 10 (McGreevey 2002), (Exhibit E), and 189 (Kean 1988), (Exhibit F), without enforcement powers. N.J.A.C. 19:61-2.1(a). The Commission's power with respect to the Conflicts Law's post-employment, casino-related, and inducement prohibitions is limited to rendering advice or making referrals to the Division of Criminal Justice, because

violations of those sections are disorderly-persons offenses that implicate up to six months' imprisonment, in addition to a \$500 fine. N.J.S.A. 52:13D-17, -17.2h, -26.

Within its jurisdiction to initiate, receive, and review complaints concerning alleged violations of the above laws and relevant authority codes, N.J.S.A. 52:13D-21(h), the Commission may carry out investigations and hold hearings, and may compel the production of papers and the attendance of witnesses, who may be examined under oath. N.J.S.A. 52:13D-21(f). The Commission may also render advisory opinions as to whether a particular set of facts and circumstances would constitute a violation of the Conflicts Law or any related code, rule, or regulation. N.J.S.A. 52:13D-21(g); N.J.A.C. 19:61-4.1. The Commission may seek the Attorney General's legal advice in rendering such opinions, N.J.S.A. 52:13D-21(d), it must file such opinions with the Office of Administrative Law (OAL), N.J.A.C. 19:61-5.2(a)1, and it may make such opinions available to the public. However, those opinions are only binding as to the particular facts and circumstances they address. N.J.A.C. 19:61-4.1.

(2) Investigations and Penalties.

ECES receives allegations of violations from a variety of sources, either orally or in writing. Complaints can be made anonymously, and all complainants' identities are held in confidence, even if they choose to identify themselves to the Commission. Allegations may also be filed with a suspected

violator's employing authority, which must then file a copy of the complaint with the Commission. N.J.A.C. 19:61-3.4. The Commission, in its discretion, may direct the authority to transfer the matter to ECES. Ibid. If the matter is retained by the employing authority, the authority must file with the Commission any determination made after a hearing conducted pursuant to N.J.A.C. 19:61-3.1. N.J.A.C. 19:61-2.1(b). The Commission may then affirm, reverse, or modify that determination. Ibid. An authority's determination to discipline or remove a State employee from office takes effect only when approved by the Commission. N.J.A.C. 19:61-3.6.

When the Commission receives an allegation, its staff first determines whether the alleged conduct falls within the Commission's jurisdiction. N.J.A.C. 19:61-3.1(a). If the Commission is without jurisdiction, it notifies the complainant and, if possible, forwards the matter to the proper agency for further action. N.J.A.C. 19:61-2.3, -3.1(a)(2). If the Commission has jurisdiction, its staff conducts a preliminary investigation, which may include document review and interviews of the complainant, the alleged violator, and any other individual who may possess knowledge of the circumstances surrounding the alleged conduct. N.J.A.C. 19:61-3.1(b).

The Commission may compel the production of witnesses and documents, if need be, by issuing subpoenas enforceable through the Superior Court. N.J.A.C. 19:61-3.2. The Commission's interviews

are conducted under oath and are tape-recorded. An interviewee may be accompanied by an attorney or by a union representative, if desired, and may obtain a copy of his or her recorded interview, upon request, once the matter has been reviewed by the Commission.

All information gathered during a preliminary investigation remains privileged and confidential until the Commission has reviewed the staff's investigation report in closed session. N.J.A.C. 19:61-3.1(c). Such sessions are not formal hearings, and no witnesses appear. However, the subject of the investigation, his or her representative, and the relevant authority's ELO may attend the closed session, and may answer questions posed by the Commission. See N.J.A.C. 19:61-3.1(d).

If the Commission determines that the alleged violation did not occur, the allegation is dismissed in public session. N.J.A.C. 19:61-3.1(g). If the Commission determines that a violation may have occurred, a complaint is issued, and a due process hearing is scheduled before the Office of Administrative Law (OAL) or the Commission. N.J.A.C. 19:61-3.1(h). Due to the Commission's time constraints, such hearings are normally conducted before the OAL. Unless the subject and the Commission enter into a public consent agreement before those proceedings are concluded, a decision is issued within the time period prescribed by the Administrative Procedure Act. N.J.A.C. 19:61-3.1(i).

If the subject of the hearing is found to have violated any provision of the Conflicts Law or an applicable authority's code of

ethics, the Commission must impose a fine of between \$500 and \$10,000, and it may order the violator's suspension from office for up to one year. N.J.S.A. 52:13D-21(i); N.J.A.C. 19:61-3.1(j)(1). If the Commission finds that the violator's conduct constitutes a "willful and continuous disregard" of any applicable ethics provision, it may order that person's removal from office, and it may further order that person's debarment from holding any public office in the State, for a period of up to five years. N.J.S.A. 52:13D-21(i); N.J.A.C. 19:61-3.1(j)(2). Each of those penalties may be imposed in addition to any other applicable civil or criminal penalties. N.J.S.A. 52:13D-21(j). The Commission must file notice of any fine, suspension, or debarment it imposes with the OAL. N.J.A.C. 19:61-5.2(a)2.

(3) Composition and Budget.

The Commission is currently comprised of nine members who are directly appointed by the Governor and serve without compensation. N.J.S.A. 52:13D-21(b)(1), (c). Seven members are Executive Branch officers or employees who serve at their appointing governor's pleasure, until their successors have been appointed and qualified. N.J.S.A. 52:13D-21(b)(1). The remaining two members of the Commission are appointed from the public at large, and only one of them may be of the same political party. Ibid. One of the public members serves a two-year term, while the other serves a four-year term. Ibid. The governor designates which two members of the Commission are to serve as Chair and Vice-Chair. Ibid.

Under current law, the Commission will be reduced to eight members in January 2006. N.J.S.A. 52:13D-21(b)(2). The governor is to appoint four members from the Executive Branch and four members from the public, and will continue to designate the Chair and Vice-Chair of the Commission. Ibid. The Executive Branch members will still serve at the governor's pleasure, but the public members will each serve four-year terms. Ibid. No more than two of the public members may be of the same political party. Ibid.

Governor Codey has proposed legislation that would transform the newly-named State Ethics Commission, from a nine-member body, with seven members from the Executive Branch and two member from the public, into a seven-member body, with three members from the Executive Branch and four public members, not more than two of whom of the same political party. The Chair would be selected from among the public members, whose four-year terms would be staggered, so that only one public member's term would expire in any given year. Under that pending legislation, the Commission would become a wholly independent body, "in but not of" the Department of Law and Public Safety.

Within the confines of its budget, the Commission may incur expenses and employ the professional, technical, and clerical staff necessary to perform its duties. N.J.S.A. 52:13D-21(e). The Commission's budget for the current fiscal year is \$661,000, which is primarily allocated to staff salaries.

The Commission's current staff is comprised of two management-

level employees and eight staff members. The Executive Director and Deputy Director are responsible for the day-to-day administrative and legal functions of the Commission. They oversee investigations and civil prosecutions, provide legal memoranda to the Commission, provide formal and informal advice in response to ethics-related inquiries, and provide training to the authorities' ELOs and select authority personnel. The staff members provide administrative, legal, investigative, and clerical support.

B. Current Ethics Strictures.

As noted, New Jersey's Executive Branch ethics laws are contained in a myriad of diverse, and sometimes disparate, sources. The Conflicts Law and rules promulgated by ECES, N.J.A.C. 19:61-1.1 to -7.5, set baseline standards applicable to all Executive Branch employees. In addition to the Conflicts Law, ECES regulations, and Executive Orders 10 and 189, an array of authority and agency-specific strictures may also apply.

(1) Executive Orders 10 and 189.

(a) Executive Order 10.

Executive Order 10 was issued by former Governor McGreevey on February 28, 2002. It rescinds Executive Order 2 (Whitman 1994), and is intended to combat financial conflicts of interest and the appearance of such conflicts. Toward that end, the order requires that certain Executive Branch members file annual financial disclosure statements with ECES, detailing their nuclear family's assets, liabilities, income, employment, and any other offices

held. (Exhibit E § I.1-3). Those individuals include: the Governor and specific members of his or her staff; the heads, assistant heads and deputy heads and commissioners of each principal department and division therein; all persons exercising similar authority in any independent authority and in any board or commission organized in, but not of, a principal department; all members of the State Boards of Agriculture, Education, Public Utilities, and Parole; the presidents of New Jersey public colleges and universities; all members of forty-one named boards, commissions, independent authorities, and public corporations; and the New Jersey members of twelve named interstate agencies. (Exhibit E § I.6).

The order requires that each designated individual file a financial disclosure statement within sixty days of assuming office, and by each May 15 thereafter. (Exhibit E § I.3.c). ECES must review each statement filed to determine whether the order and other applicable laws have been followed, and must maintain copies of approved statements on file for public inspection so long as the public officer or employee remains in office, and for five years thereafter. (Exhibit E § I.3.a, 4).

Executive Order 10 also prohibits the Governor, Cabinet members, and Cabinet-level appointees from receiving compensation from any outside source for the performance of official duties, and from receiving any earned or unearned income from any outside source, with a few, specified exceptions. (Exhibit E § I.7-9). To

implement those mandates, the order prescribes the terms and conditions of blind trusts and closely-held business interests that may be held by persons subject to the order. (Exhibit E §§ II-III).

To ensure that all authority-specific codes of ethics conform with the order and the Conflicts Law, each authority was required to review its code of ethics for compliance with those laws, and to submit its findings and proposed revisions to ECES within 120 days of the order. (Exhibit E § IV.1). As discussed below, the order also mandates that each authority appoint an individual to serve as its ELO, that ECES conduct quarterly meetings with those ELOs, and that ECES train all newly-appointed officers and employees covered by the order and offer annual training sessions to all covered individuals. (Exhibit E § IV.1-3).

(b) Executive Order 189.

Executive Order 189 was issued by former Governor Kean on July 20, 1988. It supplements Executive Order 34 (Byrne 1976), which provides the grounds and procedures for the debarment, suspension, and disqualification of State vendors who violate State or Federal laws, or the terms and conditions of their contracts with the State. (Exhibit F). Executive Order 189 is intended to combat State vendors'⁴ conflicts of interest by prescribing baseline rules and regulations to be adopted by each Executive

⁴ "'Vendor' means any person, firm, corporation, or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency." (Exhibit F § 1).

Branch department and agency concerning the causes, conditions, and procedures that govern the debarment, suspension, and disqualification of vendors for promoting violations of the Conflicts Law. (Exhibit F §§ 2-3). Toward that end, the order requires that the following prohibitions on vendor activities be promulgated by each department and agency, and be included in each request for proposal and each contract entered into by any State department or agency:

a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities

in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

f. The provisions cited above in paragraph 3a. through 3e. shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c.

[(Exhibit F § 3a-f).]

(2) Conflicts of Interest Law.

The Conflicts Law was designed to ensure propriety and

preserve public confidence in our State government by prescribing: (1) specific standards to guide the conduct of public officials and employees; and (2) disciplinary mechanisms to ensure the uniform maintenance of those standards. N.J.S.A. 52:13D-12b. The Conflicts Law governs the conduct of State officers and employees,⁵ special State officers and employees⁶ (collectively, State employees), and elected members of the State Senate and General Assembly. N.J.S.A. 52:13D-13b, c, e. The law also governs the conduct of other persons with respect to casino-related activities. N.J.S.A. 52:13D-17.2. Willfully inducing or attempting to induce a public servant to violate the Conflicts Law or any ethics code promulgated thereunder is a disorderly-persons offense, exposing the violator to up to six months' imprisonment, a fine of up to \$500, or both. N.J.S.A. 52:13D-26.

In keeping with our mission, this discussion is limited to those provisions of the Conflicts Law which apply to the Executive Branch. It does not address specific applications to the Legislative Branch, N.J.S.A. 52:13D-18, -22, -22.3, or to casino-

⁵ "'State officer or employee' means any person, other than a special State officer or employee (1) holding an office or employment in a State agency, excluding an interstate agency, other than a member of the Legislature or (2) appointed as a New Jersey member to an interstate agency." N.J.S.A. 52:13D-13b.

⁶ "'Special State officer or employee' means (1) any person holding an office or employment in a State agency, excluding an interstate agency, for which office or employment no compensation is authorized or provided by law, or no compensation other than a sum in reimbursement of expenses, whether payable per diem or per annum, is authorized or provided by law; (2) any person, not a member of the Legislature, holding a part-time elective or appointive office or employment in a State agency, excluding an interstate agency, or (3) any person appointed as a New Jersey member to an interstate agency the duties of which membership are not full-time." N.J.S.A. 52:13D-13e.

related activities, N.J.S.A. 52:13D-17.2.

(a) Gifts, Honoraria, and Other Things of Value.

The Conflicts Law contains three provisions governing State employees' solicitation or receipt of gifts, honoraria, and other things of value.

(i) Section 14.

Section 14 imposes a general ban on the acceptance of any thing of value that is offered to influence a State employee's performance of his or her public duties:

No State . . . employee . . . shall accept from any person,⁷ whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities.

[N.J.S.A. 52:13D-14.]

However, Section 14 does not apply to "the acceptance of contributions to the campaign of an announced candidate for elective public office." Ibid.

(ii) Section 24.

Section 14 is also inapplicable to the solicitation or receipt of compensation or reimbursement for the performance of certain official duties. Section 24 provides:

⁷ "'Person' means any natural person, association or corporation." N.J.S.A. 52:13D-13f.

a. No State . . . employee . . . shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, out-of-State travel or subsistence expense or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section.

b. A State . . . employee . . . may, in connection with any service, advice, assistance, appearance, speech or other matter related to the . . . employee['s] . . . official duties, solicit, receive or agree to receive, whether directly or indirectly, from sources other than the State, the following:

(1) reasonable fees for published books on matters within the . . . employee['s] . . . official duties;

(2) reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

(3) reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500.00 per trip limitation shall not apply if the reimbursement or payment is made by (a) a nonprofit organization of which the . . . employee . . . is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State . . . ; or (b) a nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services.

. . . .

As used in this subsection, "reasonable expenditures for travel or subsistence" means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive; and "allowable entertainment expenses" means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

c. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, except that campaign contributions may not be accepted if they are known to be given in lieu of a payment prohibited pursuant to this section.

d. (1) Notwithstanding any other provision of law, a designated State officer as defined in paragraph (2) of this subsection shall not solicit, receive or agree to receive, whether directly or indirectly, any compensation, salary, honorarium, fee, or other form of income from any source, other than the compensation paid or reimbursed to him or her by the State for the performance of official duties, for any service, advice, assistance, appearance, speech or other matter, except for investment income from stocks, mutual funds, bonds, bank accounts, notes, a beneficial interest⁸ in a trust, financial compensation

⁸ "'Interest' means (1) the ownership or control of more than 10% of the profits or assets of a firm, association, or partnership, or more than 10% of the stock in a corporation for profit other than a professional service corporation organized under the 'Professional Service Corporation Act,' P.L. 1969, c. 232 (C. 14A:17-1 et seq.); or (2) the ownership or control of more than 1% of the profits of a firm, association, or partnership, or more than 1% of the stock in any corporation, which is the holder of, or an applicant for, a casino license or in any holding or intermediary company with respect thereto, as defined by the 'Casino Control Act,' P.L. 1977, c. 110 (C. 5:12-1 et seq.)." N.J.S.A. 52:13D-13g. The provisions of the Conflicts Law governing the conduct of individuals are also "applicable to shareholders, associates or professional employees of a professional service corporation regardless of the extent or amount of their

received as a result of prior employment or contractual relationships, and income from the disposition or rental of real property, or any other similar financial instrument and except for reimbursement for travel as authorized in subsections (2) and (3) of paragraph b. of this section. To receive such income, a designated State officer shall first seek review and approval by the Executive Commission on Ethical Standards to ensure that the receipt of such income does not violate the . . . Conflicts . . . Law . . . or any applicable code of ethics, and does not undermine the full and diligent performance of the designated State officer's duties.

(2) For the purposes of this subsection, "designated State officer" shall include: the Governor, the Adjutant General, the Secretary of Agriculture, the Attorney General, the Commissioner of Banking and Insurance, the Secretary and Chief Executive Officer of the Commerce and Economic Growth Commission, the Commissioner of Community Affairs, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Commissioner of Labor, the Commissioner of Personnel, the President of the State Board of Public Utilities, the Secretary of State, the Superintendent of State Police, the Commissioner of Transportation, the State Treasurer, the head of any other department in the Executive Branch, and the following members of the staff of the Office of the Governor: Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel to the Governor, Director of Communications, Policy Counselor to the Governor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor listed in this subsection.

e. A violation of this section shall not

shareholder interest in such a corporation." Ibid.

constitute a crime or offense under the laws of this State.

[N.J.S.A. 52:13D-24.]

(iii) Section 24.1

Section 24 is supplemented by Section 24.1, which permits State employees to accept up to \$250 in things of value, annually, from lobbyists and governmental affairs agents:

Except as expressly authorized in [Section 24] . . . or when the lobbyist or legislative agent is a member of the immediate family⁹ of the officer or staff member of the Executive Branch . . . , no officer or staff member of the Executive Branch . . . may accept, directly or indirectly, any compensation, reward, employment, gift, honorarium or other thing of value from each lobbyist or governmental affairs agent, as defined in the "Legislative Activities Disclosure Act of 1971," P.L. 1971, c. 183 (C. 52:13C-18 et seq.), totaling more than \$250.00 in a calendar year. The \$250.00 limit on acceptance of compensation, reward, gift, honorarium or other thing of value shall also apply to each member of the immediate family of a member of the Legislature, as defined in section 2 of P.L. 1971, c. 182 (C. 52:13D-13) to be a spouse, child, parent, or sibling of the member residing in the same household as the member of the Legislature.

b. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if received in the course of employment, by an employer other than the State, of an individual covered in subsection a. of this section or a member of the immediate family. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or

⁹ "'Member of the immediate family' of any person means the person's spouse, child, parent or sibling residing in the same household." N.J.S.A. 52:13D-13i.

other thing of value shall not apply if acceptance is from a member of the immediate family when the family member received such in the course of his or her employment.

c. Subsection a. of this section shall not apply if an officer or staff member of the Executive Branch . . . who accepted any compensation, reward, gift, honorarium or other thing of value provided by a lobbyist or governmental affairs agent makes a full reimbursement, within 90 days of acceptance, to the lobbyist or governmental affairs agent in an amount equal to the money accepted or the fair market value of that which was accepted if other than money. As used in this subsection, "fair market value" means the actual cost of the compensation, reward, gift, honorarium or other thing of value accepted.

d. A violation of this section shall not constitute a crime or offense under the laws of this State.

[N.J.S.A. 52:13D-24.1.]

Section 24.1, as applied to the Executive Branch, has been limited by N.J.A.C. 19:61-6.9 to -6.10, as discussed in Chapter III., Section 10.

(b) Representations, Appearances, and Negotiations.

The Conflicts Law contains seven provisions that govern current and former State employees' negotiations with and representations and appearances before State agencies.

(i) Section 15 – Real and Personal Property Transactions.

Section 15 regulates State employees' conduct with respect to the State's acquisition or sale of property:

No . . . State . . . employee shall represent,

appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, whether by himself or by or through any partnership, firm or corporation in which he has an interest or by any partner, officer or employee of any such partnership, firm or corporation any person or party other than the State in any negotiations for the acquisition or sale by the State or a State agency¹⁰ of any interest in real or tangible or intangible personal property, or in any proceedings relative to such acquisition or sale before a condemnation commission or court; provided, however, nothing contained in this section shall be deemed to prohibit any person from representing himself in negotiations or proceedings concerning his own interest in real property.

[N.J.S.A. 52:13D-15.]

(ii) Section 16 – Pending Proceedings.

Section 16 regulates State employees' conduct with respect to proceedings pending before the State:

a. No special State officer or employee, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter¹¹ pending before

¹⁰ "'State agency' means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and, to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State." N.J.S.A. 52:13D-13a.

¹¹ "'Cause, proceeding, application or other matter' means a specific cause, proceeding or matter and does not mean or include determinations of general applicability or the preparation or review of legislation which is no longer pending before the Legislature or the Governor." N.J.S.A. 52:13D-13h.

the particular office, bureau, board, council, commission, authority, agency, fund or system in which such special State officer or employee holds office or employment.

b. No State . . . employee . . . , nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before any State agency. Nothing contained herein shall be deemed to prohibit any such partnership, firm or corporation from appearing on its own behalf. . . .

c. Nothing contained in this section shall be deemed to prohibit any . . . State . . . employee from representing, appearing for or negotiating on behalf of, or agreeing to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any proceeding:

(1) Pending before any court of record of this State,

(2) In regard to a claim for compensation arising under chapter 15 of Title 34 of the Revised Statutes (Workers' Compensation),

(3) In connection with the determination or review of transfer inheritance or estate taxes,

(4) In connection with the filing of corporate or other documents in the office of the Secretary of State,

(5) Before the Division on Civil Rights or any successor thereof,

(6) Before the New Jersey State Board of Mediation or any successor thereof,

(7) Before the New Jersey Public Employment

Relations Commission or any successor thereof,

(8) Before the Unsatisfied Claim and Judgment Fund Board or any successor thereof solely for the purpose of filing a notice of intention pursuant to P.L. 1952, c. 174, § 5 (C. 39:6-65), or

(9) Before any State agency on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof except where the State is an adverse party in the proceeding and provided he is not holding any office or employment in the State agency in which any such proceeding is pending.

[N.J.S.A. 52:13D-16.]

(iii) Section 17 - Post-Employment Conflicts.

Section 17 regulates former State employees' representation in matters in which they were substantially and directly involved during their State service:

No State . . . employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, or agree to represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State . . . employee shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment. Any person who willfully violates the provisions of this section is a disorderly

person, and shall be subject to a fine not to exceed \$500.00 or imprisonment not to exceed six months, or both.

[N.J.S.A. 52:13D-17.]

(iv) Section 19 – Goods and Services Contracts.

Section 19 regulates State employees' ability to enter into goods and services contracts with the State:

a. No . . . State officer or employee shall knowingly himself, or by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25.00 or more, made, entered into, awarded or granted by any State agency, except as provided in subsection b. of this section. No special State officer or employee having any duties or responsibilities in connection with the purchase or acquisition of property or services by the State agency where he is employed or an officer shall knowingly himself, by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25.00 or more, made, entered into, awarded or granted by that State agency, except as provided in subsection b. of this section. The restriction contained in this subsection shall apply to the contracts of interstate agencies to the extent consistent with law only if the contract, agreement, sale or purchase is undertaken or executed by a New Jersey member to that agency or by his partners or a corporation in which he owns or controls more than 1% of the stock.

b. The provisions of subsection a. of this section shall not apply, to (a) purchases, contracts, agreements or sales which (1) are

made or let after public notice and competitive bidding or which (2), pursuant to section 5 of chapter 48 of the laws of 1944 (C. 52:34-10) or such other similar provisions contained in the public bidding laws or regulations applicable to other State agencies, may be made, negotiated or awarded without public advertising for bids, or (b) any contract of insurance entered into by the Director of the Division of Purchase and Property pursuant to section 10 of article 6 of chapter 112 of the laws of 1944 (C. 52:27B-62), if such purchases, contracts or agreements, including change orders and amendments thereto, shall receive prior approval of . . . the Executive Commission on Ethical Standards if a State officer or employee or special State officer or employee in the Executive Branch has an interest therein.

[N.J.S.A. 52:13D-19.]

(v) Section 19.1 – Intellectual Property Contracts.

Section 19.1 regulates State employees' ability to enter into intellectual-property contracts with the State:

Notwithstanding the provisions of . . . [the Conflicts Law], a State . . . employee or his partners or any corporation or firm in which he owns or controls more than 1% of the stock, assets or profits may enter into a contract or agreement with a State agency where the contract or agreement is for the development of scientific or technological discoveries or innovations in which the State agency has a property right, if the State agency has a procedure in its code of ethics for authorizing these contracts or agreements which minimizes actual conflicts of interest and the code of ethics was approved in accordance with section 12 of P.L. 1971, c. 182 (C. 52:13D-23) and the contract or agreement complies with that code procedure.

[N.J.S.A. 52:13D-19.1.]

(vi) Section 19.2 – Rental Agreements.

Section 19.2 regulates State employees' ability to enter into rental agreements with State agencies operating facilities to assist small businesses:

Notwithstanding the provisions of P.L. 1971, c. 182 (C. 52:13D-12 et seq.), a State . . . employee or his partners or any corporation or firm in which he owns or controls more than 1% of the stock, assets or profits may enter into a rental agreement with a State agency which operates a facility which rents space or provides services to assist small businesses which employ 50 people or less, pursuant to the same terms and conditions as those offered to members of the public generally.

[N.J.S.A. 52:13D-19.2.]

(vii) Section 20 – Outside Pecuniary Interests.

Section 20 regulates a State employee's ability to represent State agencies in transactions involving the employee's pecuniary interest:

No . . . State . . . employee shall act as officer or agent for a State agency for the transaction of any business with himself or with a corporation, company, association or firm in the pecuniary profits of which he has an interest (except that ownership or control of 10% or less of the stock of a corporation shall not be deemed an interest within the meaning of this section).

[N.J.S.A. 52:13D-20.]

(c) Confidentiality.

Section 25 prohibits State employees' disclosure and use of

information not generally available to the public:

No State . . . employee . . . shall willfully disclose to any person, whether or not for pecuniary gain, any information not generally available to members of the public which he receives or acquires in the course of and by reason of his official duties. No State . . . employee . . . shall use for the purpose of pecuniary gain, whether directly or indirectly, any information not generally available to members of the public which he receives or acquires in the course of and by reason of his official duties.

[N.J.S.A. 52:13D-25.]

(3) Authority Codes.

Section 23 of the Conflicts Law requires that each authority promulgate its own code of ethics, and sets forth the minimum standards for such codes:

(a) The head¹² of each State agency, or the principal officer in charge of a division, board, bureau, commission or other instrumentality within a department of State Government designated by the head of such department for the purposes hereinafter set forth, shall within six months from the date of enactment, promulgate a code of ethics to govern and guide the conduct of . . . the State . . . employees in the agency to which said code is applicable. Such code shall conform to the general standards hereinafter set forth in this section, but it shall be formulated with respect to the particular needs and problems of the agency to which said code is to apply. Notwithstanding any other provisions of this section, the New Jersey members to any interstate agency to which New Jersey is a party and the officers and

¹² "'Head of a State agency' means (1) in the case of the Executive Branch of government, except with respect to interstate agencies, the department head or, if the agency is not assigned to a department, the Governor." N.J.S.A. 52:13D-13d.

employees of any State agency which fails to promulgate a code of ethics shall be deemed to be subject to a code of ethics the provisions of which shall be paragraphs (1) through (6) of subsection (e) of this section.

(b) A code of ethics formulated pursuant to this section to govern and guide the conduct of the State . . . employees in any State agency in the Executive Branch, or any portion of such a code, shall not be effective unless it has first been approved by the Executive Commission on Ethical Standards. When a proposed code is submitted to the said commission it shall be accompanied by an opinion of the Attorney General as to its compliance with the provisions of this act and any other applicable provision of law. Nothing contained herein shall prevent officers of State agencies in the Executive Branch from consulting with the Attorney General or with the Executive Commission on Ethical Standards at any time in connection with the preparation or revision of such codes of ethics.

. . . .

(d) Violations of a code of ethics promulgated pursuant to this section shall be cause for removal, suspension, demotion or other disciplinary action by the State officer or agency having the power of removal or discipline. When a person who is in the classified civil service is charged with a violation of such a code of ethics, the procedure leading to such removal or discipline shall be governed by any applicable provisions of the Civil Service Law and the Rules of the Department of Civil Service. No action for removal or discipline shall be taken under this subsection except upon the referral or with the approval of the Executive Commission on Ethical Standards

(e) A code of ethics for officers and employees of a State agency shall conform to the following general standards:

(1) No State . . . employee should have any

interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

(2) No State . . . employee should engage in any particular business, profession, trade or occupation which is subject to licensing or regulation by a specific agency of State Government without promptly filing notice of such activity with the Executive Commission on Ethical Standards, if he is an officer or employee in the Executive Branch

(3) No State . . . employee should use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

(4) No State . . . employee should act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment.

(5) No State . . . employee should undertake any employment or service, whether compensated or not, which might reasonably be expected to impair his objectivity and independence of judgment in the exercise of his official duties.

(6) No State . . . employee should accept any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing him in the discharge of his official duties.

(7) No State . . . employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a State . . . employee.

(8) Rules of conduct adopted pursuant to these principles should recognize that under our democratic form of government public officials and employees should be drawn from all of our society, that citizens who serve in government cannot and should not be expected to be without any personal interest in the decisions and policies of government; that citizens who are government officials and employees have a right to private interests of a personal, financial and economic nature; that standards of conduct should separate those conflicts of interest which are unavoidable in a free society from those conflicts of interest which are substantial and material, or which bring government into disrepute.

. . . .

[N.J.S.A. 52:13D-23.]

According to a recent ECES survey, (Exhibit G), forty-three authorities have adopted and follow their own codes of ethics. Four authorities have adopted codes of ethics, but have elected to follow their department's code instead. Eight authorities have never adopted a code of ethics, and follow their department's code. Eight authorities have promulgated codes of ethics that are pending review by the Attorney General's Office, and one authority has adopted a conflicts policy that has not been reviewed by the Attorney General's Office or approved by the Commission. Of the twelve State colleges and universities, eight have adopted entity-specific codes of ethics.

C. Current Ethics Training Programs.

(1) Training Conducted by ELOs.

In the 1970s, ECES established an informal network of ELOs throughout the Executive Branch to coordinate with and assist ECES in implementing and enforcing the Conflicts Law and related ethics codes. Since 2002, Executive Order 10 has required that each Executive Branch authority appoint an individual from within its organization to serve as an ELO. (Exhibit E § IV.3). However, no enforcement mechanism is attached to that requirement.

To date, sixty-six ELOs are known to the Commission. Approximately 57% of those individuals are attorneys. In addition to ethics-related duties, each ELO performs his or her primary job responsibilities, such as counsel, agency head, or personnel officer. Some ELOs report directly to their agency heads, while others are several layers removed from upper management. No ELO receives additional compensation for his or her ELO duties.

ELOs are expected to perform a variety of ethics-related tasks, including:

- distributing their authority's code of ethics and obtaining a signed receipt from each recipient;
- imposing and implementing disciplinary actions, with ECES' approval, for violations of their authority's code;
- promulgating and/or revising their authority's code of ethics with ECES' and the Attorney General's approval;
- making or processing authority determinations concerning applications of their code and the Conflicts Law and forwarding those determinations to ECES;
- reviewing and forwarding to ECES employees' outside-employment and business-interest disclosures;
- reviewing outside-activity invitations and the benefits

offered at such events;

- reviewing gifts offered to or accepted by employees;
- reviewing joint ventures proposed to or by employees and forwarding joint-venture determinations to ECES;
- acting as liaisons to ECES to provide information that it needs to provide advice and to conduct investigations; and
- disseminating communications from ECES to the Executive Branch at large, including ECES newsletters, guidelines, and memoranda.

Significantly, ELOs are not required to conduct regular training sessions. According to our audit results, only one-half of all authorities offer any form of training to all or a segment of their authority's personnel. Of those authorities, only one-third offer such training on an annual or more frequent basis, one-half require employee attendance or participation, and less than one-half rely upon ELOs to conduct such training. Some ELOs use their own training materials, some use a Power-Point presentation devised by ECES, and some invite ECES staff to their employee-training sessions.

(2) Training Conducted by ECES.

(a) ELO Training.

Pursuant to Executive Order 10, ECES must conduct quarterly meetings with ELOs to keep them abreast of changes in the Conflicts Law, regulations, and guidelines. (Exhibit E § IV.3). ECES also distributes a quarterly newsletter, which contains a summary of recent ECES cases, and statutory, regulatory, and guideline

updates. The newsletter is distributed to each authority either by paper copy or electronically, and is also available on the ECES website. ECES requests that each authority distribute the newsletter to its officers and employees, either electronically, or by posting the newsletter in an accessible area.

(b) Employee Training.

ECES has conducted numerous employee-training sessions in the past, upon the request of various agencies. However, the only Executive Branch ethics training required by law is that prescribed by Executive Order 10, which mandates that approximately 2000 newly-appointed officers and employees covered by the order attend training sessions concerning the order's financial-disclosure requirements, the Conflicts Law, and any applicable codes of ethics. (Exhibit E § IV.2). The order also mandates that ECES offer such training to covered officers and employees on an annual basis, but attendance is not required. Ibid. ECES conducted fifteen such sessions in 2003, and fifteen sessions in 2004. No other ethics training is mandated for the State's Executive Branch workforce.

(c) On-Line Training.

In 2003, ECES developed a group of six on-line training modules, to facilitate the training mandated by Executive Order 10, and to extend the availability of ethics training to all Executive Branch employees. See <http://www.state.nj.us/lps/ethics/modules.htm>. The training modules address the requirements of Executive

Order 10, as well as ethics rules concerning gifts, recusals, outside activities, outside events, and post-employment conduct. The modules are interactive and allow participants to proceed at their own pace and test their understanding at the end of each module. Once a test is completed, the participant must complete a receipt and forward it to ECES. As of December 13, 2004, ECES had received 771 such receipts.

**CHAPTER II:
ETHICS COMPLIANCE AUDIT**

In considerable measure, stringent ethics rules are now in force. Ethical lapses, when they occur, can be attributed either to: (1) ignorance, for which we recommend more effective mandatory training programs and increased public accessibility to ethics laws and guidelines; or (2) bad faith, for which we recommend aggressive enforcement and penalty-based mechanisms.

To learn more about the present state of affairs and to identify potential areas for improvement in the Executive Branch's current ethics laws, regulations, codes, training programs, compliance monitoring, and enforcement, we conducted a comprehensive Ethics Compliance Audit. To facilitate the audit, we developed and sent a standardized questionnaire¹³ to sixty New Jersey Executive Branch departments, agencies, boards, and commissions. (Exhibit H). The questionnaire consisted of twenty-seven inquiries, with multiple sub-parts, designed to elicit information that would permit us to assess Executive Branch officers' and employees' awareness of the State's ethics rules.

We received a ninety percent response rate to our Ethics Compliance Audit. Sufficiently detailed information was provided to support the following findings.

1. Awareness of Outside-Activity Restrictions Prior to and After Accepting Public Employment.

¹³ The questionnaire distributed was derived from a questionnaire created by the Connecticut Special Counsel for Ethics Compliance.

All State Executive Branch officers and employees are subject to the Conflicts Law, as are all personnel of the State's numerous authorities. In addition, most of those officers and employees are subject to specific ethics codes promulgated by their respective authorities. The Conflicts Law and many of the authorities' codes impose political-activity, financial-interest, and outside and post-employment restrictions that, if known in advance, might dissuade some individuals from accepting public employment, while assisting others in preventing inadvertent non-compliance upon commencing public employment.

Significantly, only fifteen percent of respondents indicated that all prospective employees are apprised of the State's ethics restrictions during the interview process or at any time before accepting public employment.¹⁴ Eleven percent of respondents indicated that applicants are apprised of such restrictions only if certain positions are applied for, or if a conflict of interest is suspected during the interview process. Another six percent indicated that they rely solely upon the pre-employment notice provided through the State's standard Application for Employment, which advises applicants that prior approval is necessary before accepting outside employment while working for the State. (Exhibit I at 4). Sixty-one percent of respondents indicated that prospective employees receive no notice of the ethics restrictions

¹⁴ The Casino Control Commission has an excellent, comprehensive "Employment Applicant Checklist," which all job applicants receive prior to their applications, and again upon offers of employment from the commission. (Exhibit

associated with their employment prior to accepting employment. The remaining three of forty-seven respondents failed to answer the question.

Generally, State employees are sufficiently apprised of the ethics restrictions placed upon them only after they have accepted and commenced employment. Only eight percent indicated that the subject authority's employees are not apprised of the State's ethics rules upon commencement of employment. Ninety-three percent indicated that they have authority-specific ethics codes, apart from State law. Ninety-one percent indicated that those codes are physically distributed to all new employees. Forty-nine percent indicated that the codes are distributed during new-employee orientation sessions, and thirteen percent indicated that the codes are also distributed annually thereafter. Eighty-five percent indicated that employees are required to acknowledge, in writing, their receipt of those materials.

A. Awareness of Political Activity Restrictions.

Seventy-seven percent of respondents indicated that employees are apprised of political-activity restrictions during their employment, through their codes of ethics and/or periodic or posted reminders. Four percent indicated that they only advise select officers or employees of their political-activity restrictions, and fifteen percent indicated that they do not advise personnel of such restrictions. Four percent failed to answer the question.

J). That checklist could be readily adapted by all New Jersey agencies,

B. Awareness of Post-Employment Restrictions.

Seventy-five percent of respondents indicated that employees are apprised of post-employment restrictions during their State employment, either through the authorities' respective codes of ethics, exit interviews, or both. Six percent indicated that employees are advised of those restrictions only on an "as needed" basis. The remaining nineteen percent of respondents indicated that employees are not apprised of those restrictions.

2. Availability of Ethics Training and Guidance.

A. Ethics Officers and Counselors.

Ninety-one percent of responding authorities indicated that they have at least one designated ethics counselor, ethics officer, or ethics liaison officer (ELO). Four percent reported that they relied upon a related authority's ELO for ethics guidance. The ELOs' described responsibilities ranged from merely answering ethics inquiries, to a myriad of tasks, including interfacing with ECES, conducting training sessions and promulgating written reminders, handling all inquiries and initial investigations, updating and distributing their respective codes of ethics, distributing and reviewing all required conflict-of-interest and outside-activity, -employment, and financial disclosure forms, reviewing all reports of gifts offered or received, providing post-employment conflicts advice, and maintaining their authority's intranet ethics site, if any. The estimated time ELOs spent on

departments, and authorities.

ethics-related duties ranged from a low of zero point five percent to a high of seventy percent per year. The reported number of ethics inquiries received by each ELO ranged from an average of four, to an average of 1,800, per year.

The majority of ELOs, eighty-one percent, reported that they stay current with changes in the State's ethics laws by attending quarterly ELO/ECES meetings and by reading ECES communications distributed to ELOs. Twenty-eight percent also reported monitoring legislation and/or related press releases and articles to stay abreast of new developments. Fourteen percent reported relying solely upon other ELOs, and/or monitoring legislation, press releases, and ECES' communications and website to stay informed. One reported relying solely upon ECES' quarterly ELO meetings, and one reported that she was aware of, but "not invited" to, the quarterly meetings.

B. Ethics Training Programs.

Forty-five percent of responding authorities reported that they offered no formal ethics training to their officers or employees, but four of those authorities reported that training programs were under development and would be implemented in the near future. Of the remaining fifty-five percent of responding authorities that do offer formal ethics training, only twenty-five percent appear to offer training to all officers and employees, while thirty percent offer training only to select personnel. Thirty percent of authorities offering ethics training rely

exclusively upon ECES or the ECES website, forty-two percent rely solely upon their ELOs or internal training staff, and fifteen percent rely upon a combination of ECES and ELO programs. Of the remaining thirteen percent, one authority relies upon the Department of Personnel's Human Resources Development Institute for its training, one relies upon the Attorney General's Office and ECES, and two did not specify who conducted their training. Only thirty-five authorities reported that training is conducted on an annual or more frequent basis, and only fifty-three percent reported that attendance or participation in their training programs is mandatory for all subject personnel.

C. Ethics Guidance and Reporting Procedures.

Eighty-three percent of responding authorities indicated that employees are actively encouraged to identify and report potential ethics problems, and seventy-seven percent indicated that they have formal procedures to address ethics-related inquiries from personnel. Fifty-one percent reported that all ethics inquiries are to be directed initially to their respective authority's ELO. Nineteen percent reported that ethics inquiries are to be directed to other authority personnel first, such as an executive director, a supervisor, or a human resources manager. Twenty-five percent reported that ethics inquiries may be directed to such personnel, to the ELO, or to ECES, at the inquirer's option.

Sixty-six percent indicated that they permit anonymous ethics-related complaints. Eleven percent indicated that they would

protect complainants' identities either automatically or upon request, and seventeen percent indicated that no anonymous or confidential complaints are permitted. Six percent failed to answer the question.

Sixty-one percent reported that they protect "whistleblowers" against retaliatory measures. Of those authorities, seventy-six percent rely only upon CEPA for such protection, and seven percent rely upon their own policies, in addition to CEPA. Seventeen percent did not discuss CEPA, and instead reported reliance on other protective policies or measures, such as warning potential retaliators, or transferring whistleblowers to other departments. Three authorities indicated that they do not protect whistleblowers or are unaware of any such protection.

3. Compliance Monitoring Procedures.

Seventy-seven percent of responding authorities reported that they have ethics monitoring, auditing, or investigative procedures in place. The procedures reported vary widely, ranging from such measures as ELOs' reviews of outside-activity and -employment disclosure forms, to "multi-layered" procurement processes, internal and/or external financial audits, and targeted investigations of suspected wrongdoing. Of those authorities with compliance monitoring procedures, twenty-four percent of authorities reported that internal auditors had identified ethics-compliance issues in the past. Reported follow-up measures include investigations, counseling, re-training, discipline, termination,

referrals to ECES and/or the Criminal Justice Division, and revisions to monitoring or auditing procedures.

Sixty-four percent of the total responding authorities indicated that their awareness of potential compliance issues came from supervisors' or employees' inquiries or complaints. Fifteen percent reported that they were also informed by complaints from the public, and fifteen percent reported that they became aware of potential compliance issues through ELO reviews of outside-activity requests and mandatory conflict-of-interest disclosure forms. Nine percent also credited internal or external audits or investigations for bringing potential issues to their attention. The remaining authorities failed to answer the question.

A. Monitoring Interested Parties.

Seventy-two percent of responding authorities reported that they keep a record of persons who request official action from their authority. Nineteen percent do not keep such records, and nine percent failed to answer the question.

Twenty-three percent indicated that they have a system through which employees are apprised of the identities of persons doing business or seeking to do business with the State. Fifty-three have no such system, and twenty-four percent failed to answer the question.

Fifteen percent indicated that their employees know how to check if a person is a registered lobbyist. Fifty-five percent indicated that their employees would not know how to do so, and

thirty percent failed to answer the question.

B. Monitoring Outside Employment.

Seventy-five percent of responding authorities indicated that employees are required to obtain approval before accepting outside employment. Four percent reported that employees need only report such outside employment if there appears to be a conflict of interest with their official duties. Nine percent merely indicated that employees must file annual outside-employment disclosures, and twelve percent indicated that no notice of outside employment is required.

C. Monitoring Post-Employment.

Only nine percent of respondents indicated that they routinely follow up to ensure former employees' compliance with post-employment restrictions. One authority's licensing division maintains a "restricted employment" list of former employees, which is accessible to all potential employers. Another authority reported that it relies on the Department of Personnel's Shared Services Center to detect infractions. Sixty percent indicated that they do not routinely follow up to ensure former employees' compliance with post-employment restrictions, but thirty-two percent of those authorities indicated that they would investigate suspected post-employment violations or refer those matters to ECES. Twenty-nine percent of respondents failed to answer the question.

4. Procurement Policies and Procedures.

Signatory authority for official contracts was reported in three distinct categories: (1) commissioners, executive directors, chief officers, and/or their designated assistants, deputies, or managers; (2) designated authority officers or the Department of Treasury Purchases and Property Division, depending upon the amount of the contract; and (3) a variety of individuals, depending upon the subject matter and/or the amount of the contract.

Twenty-one percent reported that they have procedures for personnel that award contracts to determine whether a contract was bid on or awarded to a State employee or his or her immediate family member. Fifty-five percent have no such procedures, and twenty-four percent failed to answer the question.

Reported measures employed to preclude a signatory's conflict of interest vary widely, and include reliance on: (1) the signatory's ethics training, self-reporting, and recusal; (2) the signatory's annual conflict-of-interest disclosures; (3) multi-layered or outside-approval processes for "large" contracts; (4) reliance upon competitive bidding and vendors' disclosure certifications; and (5) reliance upon the authority's ELO to review each contract for conflicts.

Forty percent reported having previously reviewed their procurement/contracting policies and procedures for potential ethics and integrity flaws or loopholes. Of that forty percent, thirty-one percent reported that their policies were revised after weaknesses were discovered. Forty percent reported never having

reviewed their procurement/contracting methods, and twenty percent failed to respond to the question.

5. Gift Policies and Procedures.

Seventy-seven percent of respondents indicated that they have independent gift-acceptance policies, apart from State laws. Twenty-three percent reported no separate policies. Thirty-four percent indicated that they accept "gifts to the State," ranging from construction funds and historical items, to honoraria and perishables. Reported methods for approving gifts received range from obtaining supervisory or ELO approval, to seeking Governor's Counsel approval. The most common reported method for "recording" gifts received is placing them on public display. Fifty-five percent indicated that they do not accept gifts, and eleven percent did not respond to the question.

Sixty-four percent indicated that employees must report any offers and/or receipts of gifts to their superiors or the agency ethics officer. One authority indicated that only "inappropriate" gifts must be reported. Ten percent indicated that no reports are required. Twenty-five respondents failed to answer the question.

Eighty-three percent indicated that they have or would follow-up with any employee found have violated their gift policies, primarily through counseling and/or discipline, with ECES' concurrence. Three authorities indicated they have no follow-up procedure, and five authorities failed to answer the question.

Fifty-one percent indicated that illegal gifts would be

donated or returned to their donors with a verbal or written explanation of the respective authority's gift policy. However, only twenty-three percent indicated that they routinely apprise outside entities of their gift policies before violations occur, through the authorities' codes of ethics, dedicated request-for-proposal clauses, periodic written notices to their vendors, or, in the case of two authorities, the authority's Vendor Code of Ethics.

6. Suggestions.

In addition to the above information, our survey also solicited the authorities' suggestions for improvements to the State's current ethics system, in four basic areas: (1) the laws; (2) training procedures; (3) compliance procedures; and (4) enforcement procedures. Fourteen respondents had no suggestions, and two of those volunteered that the present system was "working well," or was "well served" by ECES. The remaining thirty-three respondents made suggestions in one or more areas for improvement.

A. Suggestions to Improve Current Laws.

The responding authorities' suggested improvements to the State's current ethics laws include adopting new, plain-language rules, adopting uniform rules applicable to all State, county, and municipal employees, permitting the federal and other state governments to reimburse employees for official out-of-state travel, strengthening post-employment restrictions and penalties, prohibiting lunch gifts or mandating that all such gifts and offers be reported, permitting gifts of \$20 or less per occasion, up to

\$50 per year, and increasing ECES' budget. In addition, one authority suggested that the financial disclosure requirements mandated by Executive Order 10 be made applicable to all present and future boards and commissions, rather than only to the exhaustive list described therein.

B. Suggestions to Improve Current Training Procedures.

Suggestions for improving training procedures fell into two broad categories: training personnel and "training the trainers." General training suggestions included increased training and educational outreach "on every level," offering and/or mandating ECES on-line training to some or all personnel, mandating that all new officers and employees attend ethics-orientation training, and mandating regular refresher courses thereafter, ranging from every one to every three years. A few authorities also recommended that all State board members, including appointed members of the public, receive mandatory training and/or ethics guidelines.

The frustration of some ELOs was apparent in the responses received. Four ELOs suggested that an "external" trainer, such as ECES or the Human Resources Development Institute, conduct personnel training to reduce ELO work loads and differing interpretations of State ethics laws. Six suggested more formal, frequent, and "live" external training for ELOs, and two suggested that actual ECES cases be disseminated to ELOs for training purposes. Two suggested that a manual of standard procedures and protocols be developed for all ELOs. One suggested that a uniform

official training program be designed for all of the authorities, and another suggested that all ELO posts be made full-time, State-classified positions.

C. Suggestions to Improve Current Compliance Procedures.

As for improving compliance procedures, many authorities simply cross-referenced their law-revision or training suggestions. Two respondents also suggested that ECES decisions be distributed to all personnel to discourage similar violations. One authority suggested that post-employment rules be distributed in exit interviews. One suggested that procurement policies and vendor ethics be more closely scrutinized, and another suggested that vendors' relationships with State officials be made more transparent. One authority suggested that a website listing of all State vendors be developed and maintained, and three suggested that the public and all State vendors be educated about the State's ethics laws — particularly its gift laws — perhaps through public service announcements on radio or television, or by printing the relevant ethics rules on all State requests for proposals.

D. Suggestions to Improve Current Enforcement Procedures.

Finally, as for improving enforcement procedures, two respondents suggested that ECES must be more adequately staffed and funded to respond to complaints and ELO requests for guidance. One respondent suggested that violators should be more often or more heavily penalized. One suggested that authorities' auditing and

ethics personnel be formally coordinated so that ethics lapses could be more readily detected and punished, and one suggested that all authorities be required to operate with centralized accounting and personnel systems, to detect more ethics lapses.

**CHAPTER III:
STRENGTHS, WEAKNESSES, AND RECOMMENDATIONS FOR CHANGE**

New Jersey has had its share of scandals. Still, our Ethics Audit reveals that, overall, New Jersey's Executive Branch officers and employees strive to do right for the State and its citizens. The State must reinforce that resolve by ensuring that every level of government is beyond reproach.

Recent ethics investigations of several high-profile Executive Branch officials have exposed deficiencies in our current system and some of its actors. Our review is not intended to add fuel to that fire, but instead to reflect the earnest belief that, with the reforms proposed, New Jersey can do better. However dismal those ethical lapses may be, our review of the national experience in the realm of government ethics reveals that, contrary to popular perception, New Jersey is not the "corruption capital" of the United States.¹⁵ In fact, New Jersey is not even in the top ten.¹⁶

¹⁵ In the Corporate Crime Reporter's analysis of United States Department of Justice statistics tracking federal convictions of public officials from 1993 to 2002, New Jersey ranked sixteenth among states for the title of "most corrupt" state in the nation. Public Corruption in the United States, Corp. Crime Rep., Jan. 16, 2004, at 6, 13 (Public Corruption) available at <http://www.corporatecrimereporter.com/corruptreport.pdf>. With a public corruption index rating of 3.57, New Jersey's corruption rate was less than half of the "most corrupt" state's rate. Ibid. Since the issuance of that report in early 2003, the Public Integrity Section of the Department of Justice, pursuant to an agency-wide nondisclosure policy adopted by the Ashcroft administration, has not been permitted to give interviews and has not made available more current data. In the Better Government Association's (BGA) 2002 Integrity Index, which ranked all fifty states based on the relative strength of their laws to prevent corruption and promote integrity in state government, New Jersey ranked thirty-ninth. Better Gov't Assoc. & Ford Motor Co. Ctr. for Global Citizenship, The BGA Integrity Index, at 8-9, 13, available at http://www.bettergov.org/pdfs/IntegrityIndex_10.22.02.pdf. However, strong laws do not guarantee integrity. Public Corruption, supra, at 9. Apparently, "what matters more than strong laws is a strong political economy — reporters, citizen groups, prosecutors, judges, religious leaders — who are willing to speak out about the rampant corruption in our midst." Id. at 10. With Governor Codey leading the charge, New Jersey's

Thus, we are not alone in our embarrassment. The moniker of "corruption capital" has been applied to a number of other states and local governments in recent years, including Connecticut,¹⁷ Florida,¹⁸ Georgia,¹⁹ Louisiana,²⁰ New York,²¹ Ohio,²² Washington,

"political economy" has never been stronger, nor more conducive to the recommendations we now propose.

¹⁶ Public Corruption, supra, note 15.

¹⁷ See, e.g., Tandaleya Wilder, Connecticut's New Governor, Jodi Rell, Will Be Sworn in Today [DP] (National Public Radio broadcast July 1, 2004) (referring to Connecticut as a "state mired in scandal and nicknamed the Corruption Capital of the North"); Charles Walsh, State Government Learning How to Just Say 'No', Conn. Post, June 23, 2004 ("The gifts that brought Rowland low also further secure Connecticut's standing as the corruption capital of America.").

¹⁸ See, e.g., Daniel Ruth, In The End, A Fine Emily Litella Impersonation, Tampa Tribune, Dec. 10, 2003, at 2 (remarking that rumors of corruption in the Hillsborough County judiciary were not surprising considering that "Florida's open meeting/public record laws were drafted in direct response to Hillsborough County's historic role as a public corruption capital"); Ted B. Kissell, Gelber Unbound, Miami New Times, July 9, 1998 (referring to "South Florida's re-emergence as the nation's corruption capital"); Mike Clary, Corruption Count Rising in Florida, L.A. Times, June 18, 1998, at A5 (quoting a letter advocating the formation of a government watchdog group as stating that South Florida had gone from "the crime capital of America" to "its corruption capital").

¹⁹ See, e.g., Sue Anne Pressley, Georgia Sheriff's Office is in the Line of Fire: Two Shootings Follow Allegations of Corruption, Wash. Post, Mar. 24, 2001, at A3 (describing citizens' embarrassment over "DeKalb's growing national reputation as a corruption capital" after the gunning down of Sheriff-elect Derwin Brown in 2000).

²⁰ See, e.g., Adam Nossiter, Tough Judge Shocks New Orleans With His Own Indictment: Ex-Prosecutor Faces Federal Drug Charge, Wash. Post, Aug. 6, 2002, at A3 ("It is a fresh season for scandal in America's regional corruption capital (there were more public corruption indictments and convictions in Louisiana in 2000 than in any other state, according to the FBI). . . ."); John L. Smith, Jack Binion's Illinois Troubles Business as Usual in Las Vegas, Las Vegas Rev. J., Jan. 6, 2000, at 1B (referring to Louisiana as the "political corruption capital of North America").

²¹ See, e.g., Steven Greenhouse, Scandals Affirm New York As Union Corruption Capital, N.Y. Times (Feb. 15, 1999).

²² See, e.g., Steve Stephens, New Rome's Days Might Be Numbered, Columbus Dispatch, Dec. 2, 2003, at 3C ("[A]s state auditor, [Jim Petro] called the [New Rome, Ohio, a village of 60 people that collected almost \$400,000 in traffic fines per year] the per-capita corruption capital of Ohio and suggested the village government be dissolved.").

D.C.,²³ and Wisconsin.²⁴ However, that New Jersey finds ample company in its reputation for corruption is of little comfort, and does nothing to further our cause. Our following prescriptions for ethics reform are intended to close the gap between what is, and what ought to be, in the conduct of New Jersey's affairs.

1. CREATE AN ENTIRELY NEW, INDEPENDENT AND PROACTIVE ENFORCEMENT AGENCY, CALLED THE "STATE ETHICS COMMISSION" (COMMISSION).

A. Make The Commission An Independent Watchdog.

The new State Ethics Commission is to replace the Executive Commission on Ethical Standards. To ensure maximum independence, the Commission should be bipartisan and, ultimately, be composed entirely of seven public members. Its members should serve staggered four-year terms. Its Chair and Vice-Chair should be elected by its members to two-year terms.

Governor Codey has proposed legislation that would transform this newly-named State Ethics Commission from a nine-member body, with seven members from the Executive Branch and two public members, into a seven-member body, with three members from the Executive Branch and four public members. Not more than two of the

²³ See, e.g., Brickbats Over Religious Inscription, Chicago Tribune, July 27, 2003 ("[S]omething should be said here about the stench coming from the corruption of the capital itself, with its parasitic, fundraising solons; their pestilent, rapsallion troop followers; the piggish lobbyists with their stinking and infectious slush funds.").

²⁴ See, e.g., Capitol Scandal Brings Shame on State, Green Bay Press-Gazette, Oct. 19, 2002, at 7A (discussing the criminal investigations of four legislative officials and noting that "[a] state once known for its squeaky-clean government now is the corruption capital of the country").

public members would be of the same political party, and the Chair would be selected from among its public members. Given the strength of the Governor's commitment to ethics reform, that movement toward change could pave the way for the implementation, over time, of an entirely independent body composed of seven public members, while assuring a smooth transition toward that end.

Our recommendations are consistent with a national trend toward stronger, independent ethics commissions. Of thirty-nine states with state-wide ethics monitoring entities²⁵ (commissions), almost all are bipartisan, and twenty-eight are composed entirely of public members. Of those twenty-eight, twenty-two allow commission members to elect the Chair and Vice-Chair.

While some states, like Iowa, have commissions composed of an even number of government and public members and require a political balance, most have an odd number of members, but limit the number of members of the same political party to a bare majority. For example, the Delaware Public Integrity Commission's board is comprised of seven public members, appointed by the Governor and confirmed by the Senate, with no more than four members belonging to the same political party. The Oregon Government Standards and Practices Commission also has a seven-member board, with three gubernatorial appointments, four

²⁵ State executive ethics entities range from a single attorney within state Attorney General's Office to a commission, board, or agency charged with of monitoring ethics laws. Of the states that do not have a specific entity in charge of ethics, some have city specific ethics entities, while others have codes of ethics administered internally by individual agencies.

appointments upon the recommendation of Democratic and Republican leaders of the House and Senate, and a requirement that no more than four members be of the same political party. In addition, many states, whether their boards are independent or composed of both public and government members, provide for staggered terms of their members, ranging from three years in Maine and Pennsylvania, to six years in Iowa, Montana, and Ohio.

Twenty-eight states with independent commissions prohibit members from holding other public office, office in a political party or campaign committee, or employment by lobbyist groups. In addition to requiring independence during tenure, some states further require complete independence for a period of time before or after a member's term. For example, the Georgia State Ethics Commission eligibility requirements prohibit the appointment of anyone who has held a federal, state, or local public office within the five-year period prior to appointment. Other states with such pre-appointment requirements include Connecticut, Maine, and Pennsylvania, with periods ranging from one to five years. Missouri and Arizona, on the other hand, impose post-employment bans, prohibiting their former commissioners' assumption of other public offices for one and three years, respectively.

To further ensure the integrity of an independent commission, most state commission members are not salaried, although many states allow reimbursement for necessary expenses, plus modest per

meeting stipends, ranging from \$75 in Ohio, to \$250 in Pennsylvania. Other states providing per meeting stipends include Delaware, Iowa, Mississippi, Missouri, Nevada, Ohio and Rhode Island. In keeping with those practices, we recommend that commissioners of the proposed New Jersey State Ethics Commission receive a stipend of \$250 per meeting, consistent with the stipend received by commissioners of the New Jersey Election Law Enforcement Commission.

B. Vest The Commission With Much Greater Enforcement Powers Than Those Possessed By The Existing Executive Commission On Ethical Standards.

Presently, many of the State's ethical strictures are well intended, but toothless. The new State Ethics Commission should be vested with vigorous enforcement mechanisms, as well as with responsibility for undertaking routine ethics audits and implementing mandatory ethics training programs. It should have the authority to impose a broad range of significant penalties for non-compliance and ethics violations, including: removal from office, suspension from office, demotion, public censure, reprimand, restitution of any untoward pecuniary benefits, and a rigorous fine structure, including an automatic late-filing fee of up to \$50 per day for failing to file required disclosure and authorization forms in a timely manner.

The Commission should also have express authority to adopt regulations, and to enforce Executive Orders, and the discretion to

dismiss frivolous complaints. It should be vested with civil-penalty enforcement jurisdiction (up to \$10,000 per infraction) for violations of post-employment restrictions. In that vein, the Commission's jurisdiction must be expanded to include transgressors who leave State service, provided the Commission's investigation begins within two years past the date on which the alleged violation has been committed. That expanded jurisdiction would prevent State employees from escaping civil liability for ethical breaches simply by leaving State employ.

(1) More Stringent Enforcement Powers.

Giving the State Ethics Commission a broad range of penalty and enforcement mechanisms will add muscle to its mandate. Our recommendations are consistent with the scope of authority afforded more formidable state ethics commissions throughout the nation. Comparable state ethics commissions have much stronger enforcement powers than the current ECES. For example, most state commissions charged with monitoring financial disclosure forms have penalty schemes in place for late filers, ranging from a one-time fee to a per-day fine, or a hybrid of both. The Ohio Ethics Commission imposes a \$10 per-day late fine, up to a maximum of \$250. Knowingly failing to file a financial disclosure form is a fourth-degree misdemeanor, with potential penalties of up to \$1,000 and six months' jail time. The Louisiana Ethics Administration Program imposes a \$50 per-day fine, up to \$1,500. The Hawaii State Ethics Commission imposes an initial fine of \$50, in addition to a \$25

per-day fine, with no maximum limit.

Those states and others vary as to whether a cap is imposed on late filing penalties and the amount of the cap. The cap limits range from \$100 in Montana and Wisconsin, to \$10,000 in New York, while at least three states, Hawaii, Texas, and North Carolina, have no caps at all. The South Carolina Ethics Commission employs a two-stage, progressive fine system, with no dollar limit. The first stage grants a five-day grace period, with a flat \$100 fine after five days have elapsed. The second stage is triggered once the commission has notified the official of the delinquency by certified mail. The fine then increases by \$10 per day for the first ten days, and by \$100 per day for each additional day the required disclosure form is not filed. South Carolina also publishes the names of delinquent filers on its ethics web page, along with the amount owed. The highest fine reported on that web site as of October, 2004, was \$84,588.

The range of civil and criminal penalties imposed by state commissions for offenses other than late filing fees also varies widely, from \$100, with no prison term in Wisconsin, to \$10,000, with a maximum five-year term of imprisonment in Pennsylvania, to a \$50,000 maximum fine in Oklahoma. Penalties associated with unjust enrichment include treble damages in Pennsylvania, and a fine based on a percentage of the amount of unjust enrichment in Nebraska.

Other common enforcement powers include removal from office, disqualification from elections, and post-employment bans. For

example, a conviction based on a violation of Ohio's ethics code can result in disqualification from holding public office or employment for up to seven years from the date of conviction.

(2) The Power To Adopt Regulations.

Giving the State Ethics Commission explicit statutory authority to adopt regulations is consistent with the successful experiences of other jurisdictions, such as Rhode Island. For example, by law, the Rhode Island Commission is empowered to "[p]rescribe and publish, after notice and public hearings, rules and regulations to carry out the provisions" of the Rhode Island Code of Ethics. R.I. Gen. Laws. § 36-14-9(a)(3) (2004).

(3) Treatment Of Frivolous Complaints.

It is essential to confer absolute immunity on the filers of any and all complaints, in order to prevent a chilling effect on legitimate, good-faith reporting. However, to minimize the potential waste of time and resources, the State Ethics Commission should be afforded broad discretion to dismiss frivolous complaints.

(4) Jurisdiction To Proceed Against Transgressors Who Leave State Service.

The State Ethics Commission should be vested, expressly, with jurisdiction to proceed against transgressors who leave State service. Other Jurisdictions have lamented the enforcement difficulties that post-employment enforcement loopholes present. For example, New York State officials are now endeavoring to render

state employees who leave state service subject to the jurisdiction of New York's State Ethics Commission, provided that commission's investigation begins within one year after the employee leaves public service.²⁶

Presently, our ethics laws are silent on the Commission's jurisdiction over employees who leave State service. While ECES has proceeded against transgressors after they left State service, the Conflicts Law should be amended to explicitly authorize such actions. However, to promote repose, post-employment actions should commence within two years past the date on which the alleged violation has been committed.

**C. Require The Commission To Conduct
Mandatory Ethics Training For All State
Employees.**

The State Ethics Commission should be staffed with a full-time Training Officer with adequate support personnel, and charged with the responsibility of creating, coordinating, and refining comprehensive mandatory ethics training programs (both in-person and on-line). Each agency or department's Ethics Liaison Officer should be required to coordinate with the Training Officer to facilitate the ethics training programs that the Training Officer develops. Training should include mandatory annual briefings and routine refresher courses on ethics and standards of conduct for all State employees, and mandatory, annual, financial-integrity training for all State officers, all board members of State

²⁶ See, e.g., Michael Slackman, Albany Ethics Case That Died Points to Loophole,

entities, and all employees vested with procurement-related authority.

Even if New Jersey passes the most stringent laws and implements the finest ethics code, the State will be ineffective if it fails to ensure that employees and officials are aware of their fiduciary and ethical responsibilities. Comprehensive mandatory training programs are an effective means to achieve that awareness.

The need for training was a common response among the New Jersey authorities surveyed. Of the authorities to respond with recommendations, seventy-five percent identified ethics training as an area in need of improvement. Thus, although fifty-five percent of authorities reported the existence of a formal ethics training program, many still expressed the need to expand training to encompass all employees, at all levels, as well as to increase the frequency of training sessions.

That demand for enhanced ethics training is in keeping with the larger public demand for heightened accountability in both the private and public sectors. In the private sector, the Sarbanes-Oxley financial oversight certifications required of all publicly-traded companies represent a meaningful check on the potential for abuse and provide a useful model for certain public sector domains. Although the Sarbanes-Oxley Act does not mandate ethics and monitoring training, chief executive officers and chief financial officers must certify to the integrity of the public financial

Not a Crime, N.Y. Times, Feb. 25, 2005, at A1.

reports and the financial auditing process. Furthermore, Sarbanes-Oxley requires managerial assessment of internal monitoring controls. Thus, companies subject to Sarbanes-Oxley have sought and implemented comprehensive training programs to facilitate compliance and to provide a defense to potential liability.

Typical Sarbanes-Oxley training programs designed by outside consultants not only brief employees on company ethics policies, but also train high-level officers and supervisors in ethics monitoring. Additionally, the typical substantive ethics training focuses on those individuals who, by position and power, are more susceptible to committing violations.²⁷ The format of that training encompasses both general company-wide presentations and tailored presentations for select offices to ensure compliance. That format can and should be adapted by New Jersey to satisfy the heightened ethics strictures recommended in this Report.

Both the private and public sectors now make use of Internet-based training programs to efficiently reach the largest number of employees in the least amount of time. ECES is already a leader in on-line ethics training, as one of only twelve²⁸ states with an interactive on-line program that is easily accessible to all Executive Branch employees and members of the public. Moreover, unlike many states with such programs, New Jersey's program

²⁷ For example, Integrity Interactive's "Risk-Based Curricula" evaluates employee risk based on a risk profile developed through an evaluation of an employee's job level, function, division, and experience in combination with the industry, type of company, location and language used. See http://www.integrity-interactive.com/compliance/riskbased_curricula.htm.

encompasses more than just conflict of interest laws, and includes thematic modules on "Attendance at Events," "Gifts," "Executive Order 10," "Outside Activities," "Outside Activities/Special State Officers and Employees," "Post-Employment," and "Recusal."

The effectiveness of that on-line program was reflected in the audit responses we received. Of the authorities reporting a formal ethics training program, forty-six percent indicated that they successfully relied on the ECES programs to provide employee training. That strength can be built upon, to achieve 100% compliance with our recommendations for mandatory ethics training. For example, when Illinois revised its ethics laws to require ethics training for all 140,000 state officers, employees, and state university employees, the Illinois Ethics Training and Compliance Center relied primarily on an Internet-based training program which, when combined with traditional training methods, enabled Illinois to achieve 100% compliance within a one-year period.

Outside consultants are also available to develop prototypes for ethics training. Examples of such services are appended as Exhibit L.²⁹ We have concluded that employee ethics training can be

²⁹ Strategic programs available include web-based educational components, and have been developed to support states' need to educate employees and implement training courses and course certifications. Such a program could enable the State of New Jersey to track violations electronically, to facilitate case management and appropriate disciplinary responses, as well as to provide easy training access to all employees. Outside consultants can also tailor educational programs, both in-person and on-line, to specific agencies. Each of the consultants we heard from recommended some type of risk analysis of employees and their departments to more appropriately gauge the level of training needed. Some suggestions for risk analysis include an on-line employee survey, personal interviews, focus groups to determine general attitudes toward the ethics

accomplished effectively under the aegis of the newly-formed State Ethics Commission. However, we recommend that the State Ethics Commission evaluate what role, if any, outside consultants might play in providing relevant prototypes for appropriate financial-integrity training.

D. Enable The Commission To Perform Regular And Systematic Ethics Audits And Monitoring For Ethics Compliance.

The State Ethics Commission should be staffed with a full-time Ethics Compliance Officer and adequate support personnel to ensure that, in each agency, all required employee disclosures are monitored for compliance and all ethics codes and notices are distributed to and acknowledged by every employee. Duties of the Ethics Compliance Officer should include tracking compliance on matters such as outside employment, business activities, gifts, financial disclosures, contacts by legislators, lobbyists, or governmental-affairs agents, procurements and contracts, and attendance at outside events.

Our recommendation is consistent with the successful models of other state ethics commissions that have at least one full-time staff member in charge of compliance. Those states include Alabama, California, Kansas, Ohio, Oklahoma, Oregon, Rhode Island and South Carolina. Among them, California is unique in employing a comprehensive auditing program, with its own full-time staff,

compliance, and ethics monitoring systems already in place. Other services include creating on-line training modules, "train the trainer" instructor led sessions, and regular newsletter updates geared toward compliance monitors

which is part of its state ethics commission.

E. Coordinate The Duties Of The Commission With Those Of Other Agencies Charged With Fighting Fraud, Waste, And Ethical Misconduct In Government.

The Commission should routinely communicate and coordinate its efforts with those of the State Auditor, the Inspector General, the State Commission of Investigations, and the Office of Government Integrity of the Attorney General's Office. In the course of our investigation, several events transpired that enhanced our perception of the need to coordinate the activities of various investigative authorities within the Executive Branch.

In one of our early interviews, we discussed the role of the State Auditor with Albert Porroni, Executive Director of the Office of Legislative Services. The State Auditor is a constitutional officer (i.e., the office is created by the State Constitution), appointed by the Legislature, for a term of five years. The Office of the State Auditor performs financial post-audits of State agencies and verifies all assets, liabilities, revenues, and expenditures. The State Auditor may conduct studies of State and State-supported agencies with respect to their economy, internal management control, and compliance with laws and regulations.

It was the State Auditor's office that unearthed recent misconduct at the Commerce Commission. The former chief of staff of the Commerce Commission refused to open up her records during a routine audit of the Commission. She insisted that requests to

providing ethics communication tools.

inspect agency documents had to be presented in writing and channeled through her. That prompted a State Police investigation, leading to evidence of misdeeds. Thus, we have considered the wisdom of enhancing the Office of the State Auditor by including within its ambit an evaluation of the ethics programs in the agencies and departments of State government.

After our appointment in November, 2004, Governor Codey created the Office of Inspector General by Executive Order, to "review procurements and public contracts; receive complaints and perform investigations to ensure programs are in compliance with State laws; conduct performance reviews to see how well programs are working and how they can be run more effectively; and look at technology and better business practices that can save time and taxpayer dollars."³⁰ Exec. Order No. 7 (Codey 2004). Under a bill intended to make that office a statutory one, the Inspector General's Office would be authorized to initiate investigations of contracts and other spending practices at every level of state, county, and local government, including school boards, commissions, and authorities. S. 2195, 211th Leg. § 7 (2004) (substitute adopted Jan. 31, 2005) (amended mar. 7, 2005).

In addition, New Jersey has a State Commission of Investigation (SCI), created in 1968, amid an intensifying problem

³⁰ The Office of the Inspector General is also authorized to "investigate the performance of governmental officers, employees, appointees, functions and programs in order to promote efficiency, to identify cost savings, and to detect and prevent misconduct within the programs and operations of any governmental agency funded by or disbursing State funds," and "to receive and investigate complaints concerning alleged fraud, waste, abuse or mismanagement of State

involving organized crime and political corruption. The SCI was intended to have a temporary mission, and was designed to conduct fact-finding investigations, bring the facts to the public's attention, refer findings to appropriate law enforcement agencies for possible prosecution, and make recommendations to the Governor and the Legislature for improvements in laws and in the operations of government. The Commission was designed to be more than a Crime Commission, it was to "provide a significant, independent 'watchdog' for the entire system." The Commission's status as a temporary agency subject to periodic review came to an end on January 7, 2002, at which time, legislation was signed establishing the Commission as a permanent entity of New Jersey government.

Finally, the Attorney General's Office has its own Office of Government Integrity, the successor to an Inspector General's Office that was created by Governor Whitman and later dissolved.

Close attention should be paid to coordinating the functions of those various agencies, as well as any that might be created in the future, and the State Ethics Commission. Just as there are joint task forces of state and federal agencies to fight crime or pollution, there can and should be a joint task force of the several agencies to fight fraud, waste, and ethical misconduct in government. In keeping with that spirit, Inspector General Mary Jane Cooper was extremely gracious in taking time from her already full schedule to discuss the role of Inspector General with us, and

funds." Exec. Order No. 7 §§ 5, 8 (Codey 2004).

her readiness to coordinate the functions of her Office with the functions of the State Ethics Commission.

F. Improve Access To Ethics Advice and Information.

The Commission should maintain the reporting hotline and website that is now in effect, adding a toll-free number to be available to the general public and to State employees for voicing concerns, making complaints, and asking questions. It is imperative that the hotline continue to be a safe and open channel for reporting transgressions. Communication must therefore continue to be privileged and confidential. Additionally, to enhance public access and promote transparency, we recommend a new requirement that all financial disclosure forms be viewable on the Commission's website.

Presently, ECES has a website that provides a large amount of information to State officials and the general public. The Conflicts Law, ECES rules, pertinent Executive Orders, Guidelines, agency codes of ethics, the names of ELOs, disclosure forms and instructions, and contact information are all available on that site.

Since the website was established, ECES staff has noted a substantial increase in contacts from the public, including queries outside of ECES' jurisdiction, such as complaints about private sector attorneys, local government officials, private contractors, and retailers. Whenever possible, the inquirers are referred to appropriate agencies.

To avoid any chilling effect, we recommend that, after ECES is reconstituted as the State Ethics Commission, its website address and appearance be changed to reflect the Commission's independence from any other State agency.³¹

G. Afford The Commission A Budget Sufficient To Accomplish Its Charge.

To implement the changes and improvements proposed in this Report, the total necessary increase to the budget allocated to the State Ethics Commission is approximately \$440,000, for a total 2006 budget of \$1,100,000. The present ECES budget of \$661,000 is low when compared to the budgets of comparable state ethics commissions of similar jurisdiction and population. Indeed, it appears that New Jersey's budget may be the lowest. Presently, ECES has a staff of ten and jurisdiction over 70,000 Executive Branch officers and employees, including officers and employees of the State colleges and universities. In contrast, Alabama, Georgia, and Hawaii each have an ethics commission with a staff of ten, but with budgets for the 2004 fiscal year of \$914,849, \$1,016,726, and \$730,000, respectively. The San Francisco Ethics Commission, also with a staff of ten, had a 2004 budget of \$1,722,389. The Rhode Island Ethics Commission, with a staff of nine, had a 2004 budget of \$942,594.

Other state commissions employing more staff had considerably higher budgets. For example, the Connecticut State Ethics

³¹ Currently, the Department of Law and Public Safety (LPS), is contained in ECES' web address, in keeping with computer protocols in effect when the site was

Commission, with twelve full time employees and jurisdiction over 62,470 legislative and executive branch employees and lobbyists, had a 2004-2005 budget of \$1,085,000, with an increase of \$346,464 for the 2005-2006 fiscal year. That budget increase included an allocation for the salaries of four additional full-time staff members, raising the total full-time staff to sixteen. The Ohio Ethics Commission, with a staff of twenty, including a full-time training coordinator and a compliance coordinator, only has jurisdiction over 56,500 executive branch and local officials, but had a 2004 budget of \$1,710,000. The New York State Ethics Commission, with a staff of twenty and jurisdiction over 250,000 executive branch officers and employees, had a 2004 budget of \$1,520,000. The Pennsylvania Ethics Commission, with a staff of twenty-one, had a 2004 annual budget of \$1,650,000. The Massachusetts Ethics Commission, with a staff of nineteen, had a 2004 budget of \$1,265,221.

The state ethics commissions with a 2004 budget lower than New Jersey's each had smaller staffs, ranging from Delaware's Public Integrity Commission, with a staff of two, and a 2004 budget of \$164,100, to Kansas's Executive Branch Ethics Commission, with a staff of nine, and a 2004 budget of \$629,750.

Our recommendations for the creation of Ethics Training Officer and Ethics Compliance Officer positions, together with adequate support personnel, would increase the State Ethics

created.

Commission staff from ten to sixteen. The six personnel additions proposed would require an additional budget allocation of \$355,000, to be used for salaries. In addition, in furtherance of its expanded charge, the Commission would require approximately \$85,000 for computers, furniture, and telephones, including the cost of installing the recommended toll-free reporting hotline. We have consulted with ECES staff, who have determined that a toll-free hotline can be installed at a nominal cost. To accommodate the additional staff members, the Department of Treasury should provide for costs of additional office space, as ECES has reached the capacity of its current quarters in the privately owned building where it is currently housed.³²

In consultation with ECES staff, we have also concluded that the best means of making financial disclosure forms available and easily accessible to the public is to create a structured, on-line database system that could be searched by simple name-based queries. The Election Law Enforcement Commission has implemented a similar system. The recommended system would also permit electronic filing, consistent with the Election Law Enforcement Commission model. The start up cost of installing such a system would add approximately \$100,000 to our budget recommendation.

In addition, we strongly recommend that the salaries of the State Ethics Commission's Executive Director and Deputy Director be commensurate with that of their counterparts at the Election Law

³² Office lease costs are paid by the Department of Treasury, and are not

Enforcement Commission. The current salaries of the Executive Director and Deputy Director of the Election Law Enforcement Commission are \$120,393 and \$113,190, respectively. In contrast, the salaries of the Executive Director and Deputy Director of ECES are \$111,255 and \$103,620, respectively. We have observed extensively the exceptionally fine work performed by the ECES Executive Director and Deputy Director and, we add, their equally outstanding counterparts at the Election Law Enforcement Commission. All four positions are vitally important, and filled by superbly qualified individuals who are unsung heroes in the pursuit of the public interest.

Finally, as previously noted, we recommend that Commissioners of the State Ethics Commission receive a stipend of \$250 per meeting. That stipend is commensurate with the Election Law Enforcement Commission stipend, as well as those employed by other state ethics commissions, including, Delaware, Iowa, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, and Rhode Island.

2. ENACT A UNIFORM ETHICS CODE, APPLICABLE TO ALL STATE EMPLOYEES, TO CONSOLIDATE THE STATE'S SCATTERED ETHICS LAWS INTO A SINGLE ACT.

Currently, our State ethics restrictions are set forth in a multitude of separate codes and in the regulations of a myriad of diverse agencies. Uniform baseline standards of conduct should be enacted and made applicable to all State employees. Our proposed Uniform Ethics Code (Exhibit A), simplifies, clarifies, and

included in the Commission's budget.

modernizes the otherwise disparate governing strictures. Our recommendations require the State Ethics Commission to promulgate such a uniform code, binding upon the Executive Branch, which adopts all applicable provisions of our proposed Uniform Ethics Code, as supplemented by relevant agency-specific strictures.

Although the scope of the current Conflicts Law is expansive, it does not contain provisions governing public disclosure of public officials' personal financial interests and prohibiting legislative agents from accepting contingency fees to influence legislation. Notwithstanding recent executive orders have promulgated guidelines with regard to those topics, the time has come for New Jersey to heed the trend established by other jurisdictions and incorporate such laws into a Uniform Ethics Code.

A. Public Disclosure of Personal Financial Interests of Public Officials.

On February 28, 2002, Governor McGreevey issued Executive Order 10, which established certain ethical guidelines for the Governor's office, Cabinet-level staff, and other high-ranking officers. (Exhibit E). Executive Order 10 requires those public officials to file personal disclosure statements on behalf of themselves, their spouses and their dependent children. Those statements must include, among other things, all sources of financial income and any real and/or personal assets and liabilities exceeding \$1,000 in value. The tenets of Executive Order 10 reflect long-standing executive policies of prior governors and mirror statutory ethics requirements adopted by

several other jurisdictions, including Ohio, Ohio Rev. Code Ann. § 102.02, and Indiana, Ind. Code Ann. § 4-2-6-8.

The marked difference between Executive Order 10 and its statutory counterparts from other jurisdictions, however, pertains to the issue of sanctions. Specifically, a public official's failure to comply with the dictates of Executive Order 10 "shall constitute good cause for his or her removal from office." Such a draconian sanction presents great potential for both under-use and abuse.

Conversely, Ohio has more palatable, enforceable sanctions. Under Ohio ethics laws, failure to file a public disclosure statement constitutes a fourth-degree misdemeanor, Ohio Rev. Code Ann. § 102.99, which is punishable by a fine of up to \$250, id. § 2929.28. Indiana's law is more stringent, providing that failure to file a disclosure statement, or filing of a deficient disclosure statement, may trigger a civil penalty of \$10 per day, up to \$1000. Ind. Code Ann. § 4-2-6-8(d). Such mandatory statutory penalties would better serve the spirit of our proposed Uniform Ethics Code public disclosure requirements, than those discretionary sanctions currently provided by Executive Order 10.

B. Prohibitions on Legislative Agents From Accepting Contingency Fees to Influence Legislation.

Several states prohibit individuals (both public officials and private citizens) from employing another to lobby for or against any legislative, executive, or administrative action for

compensation contingent upon the outcome of that action. See, e.g., 25 Ill. Comp. Stat. 170/8. New Jersey law contains no such provision, although Governor Codey recently issued Executive Order 9 (Codey 2005), which prohibits bond-underwriting firms doing business with the State from employing or retaining "any consultant who will be paid on a contingency basis if the State engages the firm to provide such underwriting services." That order, however, does not prescribe sanctions for violations.

Prohibiting legislative agents from accepting contingency fees to influence legislation nevertheless marks an important step in restoring faith in and integrity to State government. Simply stated, agreements intended to influence government action in exchange for contingent fees should be considered void as contrary to public policy.

3. IMPLEMENT A PLAIN LANGUAGE ETHICS GUIDE THAT CAN BE EASILY UNDERSTOOD BY ALL STATE EMPLOYEES AND THE PUBLIC.

A Plain Language Ethics Guide should be adopted to explain clearly and plainly to all State employees and to the public the ethical standards and requirements that must be met by all Executive Branch personnel. Our Ethics Audit revealed that consistent ethics training is lacking in many vicinages of the Executive Branch, and that the body of existing New Jersey ethics statutes needs to be more accessible and comprehensible to the subject officials and employees.

As a consequence of our research, assimilation of current governing strictures, and investigation of other state and federal models, we have drafted and have appended to this Report as Exhibit B, a Plain Language Ethics Guide for New Jersey State employees. That Guide is consistent with the ethics laws now in place in New Jersey, including the current Conflicts Law. However, the Guide should be supplemented appropriately to reflect subsequent legislative changes.

The Guide's clear and concise summary of the ethics requirements is intended to be a helpful communication and training tool that will enhance employees' understanding of the ethics laws. We recommend the adoption of such a Plain Language Guide based on the simple premise that better understanding yields better compliance.

The Guide will provide State officers and employees with the information they need to make ethical decisions on a day-to-day basis. It identifies the types of issues that should be raised with an ELO, and provides general ethics advice regarding standards of conduct, conflicts of interest, gifts, nepotism, compensation, financial-disclosure requirements, and post-employment restrictions, with easy references to relevant State statutes and rules. The Guide also outlines the composition of the State Ethics Commission and its investigatory, advisory, and prosecutorial roles, and makes plain the procedures for filing a complaint.

To maximize the Guide's effectiveness, we recommend that every

State employee be required to certify that he or she has read the Guide, understands it, and vows to uphold its terms. In that way, no employee will be able to use ignorance of the law as a viable defense to an ethics violation.

4. IMPLEMENT A BUSINESS ETHICS GUIDE THAT IS BINDING ON THIRD PARTIES THAT DO BUSINESS WITH THE STATE.

It is not enough to impose strictures on State employees. Most ethics violations do not occur without the participation and consent of third parties. Hence, we have drafted and append to this Report as Exhibit C, a Plain Language Business Ethics Guide for third parties who conduct business with the State. The Business Ethics Guide is consistent with existing ethics laws now in place in New Jersey. In order to maximize the effectiveness of the Business Ethics Guide, we recommend that, as a prerequisite to doing business with the State, and before the consideration of any bid, all interested parties must certify, in writing, that they understand the rules of the Guide, and that they are in compliance with those rules.

The Business Ethics Guide, modeled after Executive Order 189 (Kean 1988), applies to private parties doing business with, regulated by, licensed by, or lobbying Executive Branch agencies and independent authorities, as well as to businesses that hire current or former state employees. The Business Ethics Guide delineates the general standard of behavior that is expected of all businesses contracting with the State and concisely sets forth

conflict-of-interest and gift prohibitions. It also addresses particular problem areas, such as illegal kickbacks and political contributions. Under our Business Ethics Guide, private entities conducting business with the State will be subject to strict ethical standards of fair dealing, reporting, and integrity.

Our Business Ethics Guide recommendations can be effective only to the extent that meaningful penalties are imposed for non-compliance with the required vendor certification and its terms. Those penalties should include criminal prosecution, suspension from doing business with State agencies, and/or the disqualification of any non-compliant bid submitted. Currently, there are no penalties for businesses that commit ethics violations, with the result that businesses have little incentive to aid the State in conducting business ethically. The Business Ethics Guide and requisite pre-bid certifications will ensure that businesses acting in good faith cannot unwittingly violate New Jersey's ethics laws and regulations out of ignorance. The recommended penalties for non-compliance should deter bad-faith violations.

5. PROVIDE LEADERSHIP FROM THE TOP.

The Governor should set the appropriate tone and lead by example and initiative to avoid even an appearance of impropriety. A repeated theme was heard in our consultations with ethics officials from across the nation —leadership must come from the top. Very early on in our investigation, former cabinet officers

expressed the same sentiment. They recited their experiences with former Governors and impressed us with how those Governors had set an ethical tone for their administration from its outset. We were impressed too that another Governor had invited Rita Strmensky, Executive Director of ECES, to attend regular meetings of the Cabinet. Conversely, we also heard accounts of administrations that used private sector lawyers, rather than ECES or the Attorney General's Office, to advise prospective State employees of their ethical duties. While that may have been expedient and technically legal, it set a bad tone, sending the wrong message to those employees.

In order to ensure leadership from the top, we recommend that:

- The Executive Director of the State Ethics Commission meet with every new Cabinet member shortly after inauguration.
- The Executive Director of the State Ethics Commission appear before the Cabinet at least once each year to remind all members of the ethics strictures.

The Governor's Code of Conduct (Exhibit M), was promulgated by an independent advisory panel pursuant to Executive Order 77 (McGreevey 2003), and contains thorough and significant strictures, consistent with the core premise that leadership and direction must come from the top.

Building a strong ethical culture in government is not easy. It demands work. A Governor can set the example by:

- Ensuring regular departmental review of the code of ethics and compliance with that code.

- Providing ELOs with the authority to discuss key issues directly with department heads and the Governor's staff.
- Refreshing the administration's commitment to ethics with periodic presentations to the Cabinet and to major State agencies.

In the private sector, widely-publicized corporate scandals at companies like Enron, Tyco, and Marsh & McLennan have shown what is wrong with ethics in the business-place. However, those scandals have also contributed to public education on leadership in ethics.

Business Week, for example, has written that, "Leadership must create an environment where honesty and fairness is paramount. If integrity is to be the foundation for competitiveness, it has to begin at the top The CEO must set the company's moral tone by being forthright and by taking responsibility for any shortcomings." Special Report: The Crisis in Corporate Governance, Bus. Week Mag., May 6, 2002, available at http://www.businessweek.com/magazine/content/02_18/b3781708.htm.

That principle applies in governments, as well. The obligation to enforce our State's ethics laws rests, ultimately, with the Governor, but independent oversight must be ensured. Hence, we recommend strengthening the system from top to bottom.

Harry Truman said of the role of the chief executive, "The buck stops here." By the same token, a Governor should say, "I must take a stand. I must not pass the buck. I have a personal obligation to provide ethical leadership to others. I will endeavor to embody trustworthiness, respect, and responsibility and to share

those ethical principles with others and to measure every action by asking whether my personal decisions will work for the common good." That may translate into less partisanship, but, as Mark Twain said, "Always do right. This will gratify some people and astonish the rest."

6. CLOSE THE REVOLVING DOOR OF UNDUE INFLUENCE BY ADOPTING RIGOROUS POST-EMPLOYMENT RESTRICTIONS AND EFFECTIVE FOLLOW-UP PROCEDURES.

Presently, a general post-employment restriction prohibits a former State officer or employee, or special State officer or employee, from representing or acting on behalf of a party other than the State in connection with any matter in which the employee was substantially and directly involved during his or her State tenure. That is a lifelong restriction, but the only enforcement mechanism is a disorderly-persons penalty, which has never been imposed.

To construct laws that are stronger, realistic, and readily enforceable, we recommend:

- A new, explicit lifetime ban on all former State officers' and employees' use of confidential information.
- A general two-year post-employment restriction prohibiting a former State employee from representing an entity on any matter that he or she was substantially and directly involved in while in State service. That ban would allow highly qualified individuals to enter government service with the expectation that they will be able to continue to earn a living after they leave State employ. Consistent with the experience of other jurisdictions, after two years, former State employees are apt to be sought by a new employer for their expertise, rather than for their ability to influence.

- A new one-year ban on "side-switching," to apply to designated State officers, heads, deputy heads and assistant heads of principal departments, boards, commissions and authorities. That ban would prohibit such an employee, for one year after leaving State service, from representing anyone on any matter before the agency in which he or she was employed. Our investigation revealed the significant concern about the appearance of impropriety that arises when a former senior official appears before his or her agency shortly after leaving government service.
- Greatly enhanced penalties for violating post-employment restrictions, applicable to both former employees and their new employers. Those penalties should include fines of up to \$10,000 per offense.

A. General Post-Employment Restrictions.

The Conflicts Law contains two post-employment restrictions. Section 17, a general restriction, provides that no former State officer or employee is permitted to represent or act on behalf of a party other than the State in connection with any matter in which he or she was substantially and directly involved during his or her State tenure. That restriction also applies to any partnership, firm, or corporation in which the former officer or employee has an interest (more than 10% ownership or control), and to professional service corporations with which he or she is affiliated. It is a life-long restriction and carries a disorderly-persons penalty. The Commission issues opinions as to whether a given set of circumstances violates the post-employment restriction, and has made referrals to the Division of Criminal Justice over the years when allegations of violation have been made and substantiated through Commission staff investigations. However, no post-

employment violation has ever been prosecuted.

Several agencies of New Jersey State Government have agency-specific bans. For example, the Board of Public Utilities Code of Ethics contains the general Section 17 post-employment ban, as well as a six-month ban on appearances before the Board. The Commission staff has felt for many years that changing the penalty to a civil penalty would actually add more strength to that prohibition. Previous Commissions have expressed frustration with the lack of prosecution, and would undoubtedly have engaged in enforcement actions if permitted by law. In short, this is a significant enforcement problem area, and the lack of enforcement sends an unmistakable message to State employees that the only punishment for a violating the post-employment ban may be bad publicity.

A major weakness in the current law is the absence of an agency ban as applied to former senior officials. As noted, thirteen jurisdictions, including the Federal Government, impose bans of varying lengths on former officials appearing before their former agencies on behalf of private clients. Our investigation revealed the significant concern about the appearance of impropriety that arises when a former senior official appears before his or her agency shortly after leaving government service.

In addition, the current penalties are, essentially, toothless.

Accordingly, we make the following recommendations: (1) a lifetime ban should be imposed on all former State officers' and employees' use of confidential information; (2) the ban on

representation in specific matters in which the employee had substantial responsibility should be limited to two years; and (3) there should be a one-year ban on side-switching, to apply to designated State officers, heads, deputy heads, and assistant heads of principal departments, boards, commissions and authorities.

In addition, greatly enhanced penalties for violating post-employment restrictions should be applicable to both former employees and their new employers.

Consistent with those recommendations, Section 5 of our Proposed Uniform Ethics Code changes the post-employment restrictions and eliminates the disorderly-persons penalty. Our reasoning for recommending the replacement of the lifetime ban on acting in specific matters is two-fold. We believe that a lifetime ban is unnecessary and oppressive. Indeed, a majority of jurisdictions do not perceive a need for a lifetime ban. Further, retention of the lifetime ban on the use of confidential information and the new agency ban effectively promotes the public interest. We believe that the lifetime ban is unduly oppressive, insofar as it unreasonably hampers the careers of public-spirited individuals who devote a portion of their careers to public service. Consider the example of an assistant commissioner or division director in the Department of Transportation who may have been involved in the design of an access ramp on a State highway in 2003. Then consider whether, in 2010, for example, there is any possible prejudice to the State or the public if that person

counsels a homeowners' association about the redesign of that ramp due to new development in the area.

B. Casino Post-Employment Restrictions.

There is also a two-year employment and representation ban with respect to casino-license holders. That ban applies to individuals defined as "persons" in Section 17.2(a) of the statute, to immediate family members of those "persons," and to any partnership, firm, or corporation with which those "persons" are associated or have an interest. Generally, "persons" are those individuals in the Executive Branch who are required to file financial-disclosure statements by law or Executive Order.³³ Other "persons" are members of the Legislature, full-time members of the Judiciary, all full-time professional employees of the Governor's Office and the Legislature, members of the Casino Reinvestment Development Authority, members of the governing body, the municipal judge, and the municipal attorney of any municipality wherein a casino is located, as well as members of or attorneys for the planning boards and zoning boards of adjustment and professional planners or consultants employed by the planning boards or zoning boards of adjustment in municipalities wherein a casino is located. The ban, as applied to immediate family members, can be waived by the Commission.

The casino-related restrictions have stood the test of time.

³³ L. 2001, c. 075 exempts from the restriction, under conditions of proper screening, any law firm with which a former member of the Judiciary is associated, and any partner, officer, director or employee of such law firm.

Although burdensome, they are not onerous, and they are justified by the nature of the industry. In one respect, we recommend modification. A waiver provision should be added to the post-employment casino ban because many individuals in the Executive Branch of government who are affected by that ban have no involvement in the course of their official duties with gaming activities. The ban was originally enacted following the Abscam scandals of 1978,³⁴ when other casino restrictions were put in place to assure the citizens of New Jersey that there would be no exchanges of untoward advantage between the government and casinos. More than twenty-five years of experience has shown that the post-employment ban, as applied to State officials with no involvement in gaming, is burdensome and counterproductive with respect to the recruitment of professionals such as lawyers and certified public accountants because the ban applies not only to those individuals, but also to any firms with which they become associated after leaving State government.

In Section 6 of our Proposed Uniform Code, the above-described waiver for post-employment restrictions has been added as subsection (c)(1). By providing no separate penalty subsection in Sections 5 and 6, our proposed code places jurisdiction with the State Ethics Commission, which would treat violations of those two

³⁴ In 1978, the FBI created a front, Abdul Enterprises, Ltd. (Abscam) for its agents, who, posing as associates of an Arab sheik, offered targeted public officials money or other consideration in exchange for special favors. Among those indicted and convicted were public officials of the State of New Jersey who were importuned to influence casino-related activity.

sections as they would be treated under the penalties prescribed by Sub-section 10(i).

C. Recommendations For Change.

Our post-employment recommendations are based upon the more effective restrictions in place in other large cities and states. For example, New York City's stringent Conflicts of Interest Law³⁵ imposes rigid standards of conduct on all city officials and employees. Among its post-employment restrictions are: a lifetime ban on working on any matter in which the former employee had personal and substantial involvement; a two-year ban on former officials from appearing before city agencies on behalf of private interests they dealt with in office; and a one-year prohibition on acceptance of anything from anyone for communicating with their former agency.³⁶ In addition, New York City prohibits anyone, whether a current or former employee, or member of the public, from inducing others to violate the conflicts law or regulation. Penalties for violating the New York City Conflicts Law include fines, suspensions or dismissals.

The post-employment provisions within New York City's

³⁵ New York City's Conflicts of Interest Law, City Charter §2604, is contained in Chapter 68 of the City Charter and is generally known as the City's "Ethics Law." See COIB: Conflicts of Interest Board of the City of New York, website, at <http://www.nyc.gov>. The Conflicts of Interest Law was adopted in 1959 after decades of misuse of office, misuse of government funds, flagrant conflicts of interest, nepotism and other largely unpunished misdeeds, many attributed to Tammany Hall, the powerful Manhattan Democratic organization.

³⁶ For higher level officials, including elected officials, deputy mayor, chair or head of a city office or commission, this post employment ban is stricter, barring acceptance of anything from anyone for communicating with any part of such higher official's former branch of city government.

Conflicts Law acknowledge the importance of regulating post-employment activities in the overall effort to protect the public trust. "City administrations change but the fundamental concepts of ethics as written into law are ageless because they have inherent in them the object of government in our Republic — to be fair to the people who serve and who are served by our municipality." Robert D. McFadden, Stanley Kreutzer, 98, Author of New York City Ethics Code, N.Y. Times, Feb. 22, 2005, at B9 (quoting S. Stanley Kreutzer). That is the simple premise upon which our post-employment recommendations are based.

The concept of post-employment restrictions is not unique to the public sector. Courts have long recognized the rights of private employers to include restrictive covenants in employment and contracts to limit an employee's actions, post-employment, provided such restrictions are specific in scope and limited in time. Although employment restrictive covenants that are indefinite are generally unenforceable, typically a two-year period or less is enforceable, depending on the circumstances. Furthermore, because courts view the issue as one of restraint of trade, an employer must demonstrate that the post-employment restriction addresses a legitimate harm to the employer before a restrictive covenant may be imposed on an employee.

In the public sector, because the employer is a government, the employer's interest is great: preservation of the public trust and protection of the public interest. Thus, a government must

balance its desire to minimize the hardship to its employees against any appearance of impropriety that could affect the public trust. The prospect of outside employment can create a real or perceived conflict of interest for employees who may obtain preferential treatment or privileged access to government after they leave office. For example, a former employee may have access to government entities that others would not have, could take personal advantage of information obtained in the course of government employment, or could use public office as an unfair advantage to gain future employment.

Although the potential for harm is great, just as courts require that private-sector post-employment restrictive covenants be reasonable, any post-employment restrictions on public employees must also be reasonable. A "revolving-door" prohibition should not impose greater restraints than are necessary to protect legitimate government interests.

To aid in our determination of what is reasonable, we have examined the laws of our sister states and of the Federal Government. Our review has revealed that most government ethics codes generally restrict employees from representing others before their former departments for a specified period of time, ranging from six months to two years. Connecticut, for example, imposes a two-year agency ban on all employees, as do New York State and New York City. Several federal agencies also impose two-year bans. Similarly, former employees are restricted from advising others on

policies and programs over which such employees had a significant interest or involvement during their government tenure. In order to alleviate the hardship on the former employee, many codes allow a former employee to represent entities before other government departments, as the perception of unfairness attached to lobbying an employee's former department is absent in those instances.

One workable solution can be found in the United States Department of Defense regulations, which provide the following two-year ban:

For two years after leaving Federal service, former employees are prohibited from communicating with or appearing before a current Federal employee with the intent to influence official matters involving non-Federal parties that were under the former employee's "official responsibility" during his or her last year of Federal service.

[Information Paper: Representations of Local Reuse Authorities by Former Army Personnel, Aug. 8, 1997 (summarizing the post-employment restrictions under 18 U.S.C.A. § 207), available at <http://www-tradoc.army.mil/sja/webdocs/ethics/BRAC.htm>.]

That restriction balances the interest of government and the individual because it permits the former employee to engage in "behind-the-scenes" assistance to a new outside employer in connection with its communications to, or appearances before, federal agencies.³⁷ In contrast, the post-employment restrictions codified in 18 U.S.C.A. § 207,³⁸ only bar former Federal Executive

³⁷ Provided, however, that a former employee may not participate in a matter in which such former employee had been substantially and directly involved during State service.

³⁸ 18 U.S.C.A. § 207 was enacted in 1962 and, although amended several times and most significantly in 1989 by the Ethics Reform Act, has remained the primary

Branch employees' oral or written communications to, or appearances³⁹ before, federal employees as a private-sector employer's representative.

Finally, at our request, ECES staff researched the nature of post-employment restrictions in thirty-two jurisdictions. Of the thirty-two jurisdictions, including New Jersey and the Federal Government, thirteen have lifetime bans on former employees' activities associated with any matter in which he or she had substantial involvement. Of those thirteen, eight also have a ban of one or two years on appearing before or dealing with one's former agency. Of the nineteen jurisdictions that do not have a lifetime ban, fourteen have one- or two-year bans on activities associated with any matter with which a former employee had substantial involvement. A few jurisdictions have restrictions on seeking or holding employment with entities that did business with, were regulated by, or had contracts with the former employee's former agency. Those restrictions run for one or two years. Set forth is a chart summarizing post-employment restrictions in other jurisdictions.

Post Employment Restrictions in Other Jurisdictions

State	Lifelong Ban re: Specific Matters	Ban re: Specific Matters	Ban on Dealing with Former Agency	Limitations re: New Employer
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source of post-employment restrictions applicable to executive branch officers and employees.

³⁹ Depending on the circumstances, attendance at a government meeting could constitute such an appearance.

Alabama	No	2 years	2 years	
Alaska	No	2 years	No	
Arizona	No	1 year	1 year	
California	Yes		No	
Connecticut	Yes		1 year	Cannot seek employment with an interested party; duration of ban depends on former position and duties.
Delaware	No	2 years	No	
Florida	Yes (depends on level of former position)	2 years (depends on level of former position)	2 years	
Hawaii	No	1 year	No	
Illinois	No	1 year	No	1 year ban on employment by an interested party. Waiver possible.
Indiana	No	1 year (waiver possible)	No	

Iowa	No	2 years	2 years	
Kentucky	No	1 year	6 months	
Louisiana	No		2 years	Cannot provide contractual services to former agency for 2 years.
Maryland	Yes			
Massachusetts	Yes		1 year	Prohibits high-level employees from joining an entity with a privatization contract. Waiver possible.
Mississippi	Yes			
Missouri	Yes		1 year	
Montana	No	1 year	No	
Nevada	No			1 year restriction on dealing with an interested party.
New Hampshire	No	1 year	No	
New Mexico	Yes	No	1 year	

New Jersey	Yes	No	No	
New York	Yes	No	2 years	
Ohio	No	1 year		
Oregon	No		2 years	1 year restriction on dealing with an interested party.
Pennsylvania	No	2 years	1 year	
Rhode Island	No		1 year	
South Carolina	No	1 year	1 year	1 year ban on employment by an interested party.
Texas	No		2 years	
Washington	Yes			1 year ban on employment by an interested party; 2 year ban on having an interest in certain contracts.
Wisconsin	Yes	1 year (for judicial or quasi-judicial proceedings)	1 year	
Federal Government	Yes		1 year (Senior and very senior former)	

			officials have expanded time and appearance restrictions.	
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7. STRENGTHEN ANTI-NEPOTISM LAWS.

The Legislature's 2004 enactment prohibiting certain relatives of State officials from serving in State government positions, N.J.S.A. § 52:14-7.1, was a step in the right direction. Currently, however, there are no enforcement mechanisms or penalty provisions in the statute to ensure compliance. Therefore, we recommend the following:

- Make N.J.S.A. § 52:14-7.1 part of the Conflicts Law, giving the State Ethics Commission authority to impose a broad range of penalties for violations.
- Prohibit State officers and employees from participating in decisions to hire, retain, promote or determine the salaries of immediate family members, cohabitants, and persons with whom the officer or employee has a dating relationship.
- Prohibit State officers and employees from supervising or exercising authority over immediate family members, cohabitants, and persons with whom the officer or employee has a dating relationship.

Those strictures are contained in our proposed Uniform Ethics Code. (Exhibit A).

8. IMPOSE THE ETHICS LAWS ON ADMINISTRATION TRANSITION TEAMS.

The ethical responsibilities and obligations of a newly-elected State administration begin not on a governor's inaugural

day, but on the very first day that a transition team is formed. Policies and operational and personnel decisions are forged during a transition. Consequently, the public trust is involved. Currently, transition teams are not subject to the ethics laws applicable to other Executive Branch employees. To increase public confidence, we recommend that all full-time, paid transition team members:

- Be subject to the constraints of the ethics laws immediately upon appointment, and that their salaries and sources of income be fully disclosed.
- Be notified of the ethics and conflicts laws and receive ethics training immediately upon appointment, and that they be required to certify, in writing, that they are in compliance with those strictures, including all financial disclosure requirements.

We also recommend that the Gubernatorial Transition Act, N.J.S.A. 52:15A-1 to -5, be amended to subject full-time, paid transition team members to the Conflicts Law.

9. ENSURE TRANSPARENCY AND PROMOTE INTEGRITY IN THE PROCUREMENT PROCESS.

In the course of our investigation, we interviewed a senior cabinet officer from a prior administration. He related to us two experiences that influenced him profoundly. The first was an experience with the then-governor, who gathered his team around him on the first days in office and said, "Ladies and Gentlemen, this is the way that it is going to be. We will play it straight. There will be no ethical shortcuts in my administration." The

unforgettable impact of that message lasted throughout that governor's term of office.

However, the same cabinet officer's subsequent experiences with private-sector relationships in succeeding administrations left him disillusioned. He related that he submitted a professional services proposal to administration contracting officers. Despite the fact that he was the low bidder on several proposals, the contracting officers kept re-bidding the job, presumably, to avoid awarding him the contract. He sensed, and we agree, that career officials who are forced to play games with bidders are dissuaded and discouraged from the effective performance of their duties. He recommended a mandate that once the procurement process has started, senior procurement officers be shielded from contact by legislators, lobbyists, and even Executive Branch officials.

The same concept of a protective shield around the bidding process was suggested to us in materials furnished by the Honorable Alan Rockoff, Executive Director of the SCI. We later had discussions with W. Cary Edwards, Commissioner of the SCI, who ordered a canvass of relevant SCI recommendations.

We explored the concept of a protective zone in discussions with Cabinet officers, past and present. They were not enthusiastic about a complete ban on contacts, recognizing that legitimate consultation is needed between procurement officers and parties providing goods or services. We considered the concept of

a reporting system. If there had to be contacts, memorialize them. This, too, met a lukewarm reception. One of the reasons, we believe, is that honest people sense no need for the monitoring of their activities. But we find a useful analogy in the law-enforcement context. Police investigating crimes are required to keep notes of the investigation. In a number of cases, courts have cautioned against the destruction of interview notes upon preparation of the law enforcement officer's report, pointing to the difficulty that would be encountered at the trial in determining defendant's rights when the trial judge is unable to see the notes. See United States v. Thomas, 282 F.2d 191, 194 (2d Cir. 1960); United States v. Johnson, 337 F.2d 180, 202 (4th Cir. 1964); United States v. Bundy, 472 F.2d 1266 (1972). The salutary effect of note taking is that it tends to keep people honest.

Based upon those recommendations and other recent developments, we recommend changes in the procurement process, especially in the no-bid area of specialized service. Transparency in the procurement process, coupled with scrutiny provided by the Office of the Inspector General in coordination with the State Ethics Commission, is essential to deter, as well as to remediate abuse.

The Karcher-Scutari Bill is an important part of the solution.

That bill would require State officials who deal with potential contractors to keep written records of contacts with vendors once a matter has entered the procurement process. Those contacts would

then become public information after negotiations are completed, alleviating any appearance of impropriety.

A. The E-ZPass Report.

The Karcher-Scutari Bill was a response to the SCI's June 2004 probe into the E-ZPass financial debacle, which exposed a procurement process prone to abuse, without proper oversight and accountability. In its report, "E-ZPass: The Making of a Procurement Disaster,"⁴⁰ the SCI found that senior officials of the New Jersey Turnpike Authority and the State Department of Transportation had engaged in widespread mismanagement and manipulation of the contracting process. The SCI report revealed that the E-ZPass contract was based on a flawed projection that the electronic toll system would pay for itself, through fines paid by toll violators. That projection was accepted with virtually no scrutiny by State officials charged with overseeing the contract, resulting in hundreds of millions of dollars of debt. Ultimately, the SCI report faulted the State for its lax contract oversight, use of untrained contract evaluators, and atmosphere permitting undue pressure from superiors to obtain underlings' approval of the vendor's projections.

Because of the E-ZPass debacle, the SCI concluded that something needed to be done to safeguard the integrity of contracting procedures vital to the public interest. Additionally, it was apparent that the existing procurement process lacked proper

⁴⁰ Available from the Office of the Governor's Counsel.

oversight and accountability, which left it prone to abuse.

B. The Karcher-Scutari Bill.

On December 13, 2004, Senators Ellen Karcher and Nicholas Scutari introduced S-2194. That bill seeks to re-structure State purchasing procedures and to implement reforms recommended by the SCI after its probe of the E-ZPass electronic toll-collection contract.

The bill would require State-authorized vendor evaluators to be proficient in the area of the contract and to have relevant experience to assess a project. In addition, the bill would restrict the type of State contract that could be awarded as a "professional service," in which the normal bidding process could be bypassed. The bill would also require State officials who deal with potential contractors to keep written records of contacts with vendors, which would become public information after negotiations are completed.

Other key aspects of the bill include:

- Permitting State agencies to post notices of intent about upcoming contracts on the Internet, to solicit information from potential bidders.
- Banning members of contract-evaluation committees from having any family ties, personal interests, or financial links to potential vendors.
- Requiring the Director of the Purchase and Property Division to promulgate regulations concerning contract oversight and monitoring contract performance.
- Authorizing the Director of the Purchase and Property Division to enter into bulk-purchase agreements with other states or agencies for supplies deemed necessary

for domestic preparedness and homeland security.

- Requiring all State employees who communicate with potential or actual bidders on contracts to keep written records of those contacts for at least three years.
- Creating a State Contract Manager to oversee and monitor complaints and to settle disputes about vendor performance in all major State contracts, establishing a clear line of authority.

C. Recommendations For Change.

Each measure of the Karcher-Scutari Bill constitutes a significant step toward safeguarding the integrity of New Jersey's contracting procedures and restoring the public's trust in the way our government does business. However, in order to close the circle of improper influences, we recommend that the Bill be amended to clarify that it is not just communications between vendors and purchasing agents that must be recorded, but also communications between purchasing agents and lobbyists, consultants, legislators, legislative staff, and Executive Branch members.

Miami Dade County calls such a system a "Cone of Silence," "designed to protect the integrity of the procurement process by shielding it from undue influences prior to the recommendation of contract award." The Cone of Silence falls over contracts after advertisement.

The Dade County Cone of Silence also prohibits oral communications regarding a particular bid or request for proposal (RFP) between potential vendors, service providers, bidders,

lobbyists, and consultants and:

- the Mayor, County/City Commissioners and their respective staffs;
- the County/City Manager and his or her staff;
- the County's/City's professional staff; and
- any member of the respective selection, including the County/City Manager.

The Cone of Silence also prohibits oral communications regarding a particular bid between the Mayor, County/City Commissioners or their respective staffs and any member of the County's/City's professional staff, including the County/City Manager and his or her staff. In addition, the Cone of Silence prohibits oral communications regarding a particular bid, between the Mayor, County/City Commissioners or their respective staffs, and any member of the respective selection committee.

We recommend the enactment of the Karcher-Scutari Bill, with amendments to clarify that it will protect the integrity of the procurement process by putting all procurement-process contacts in writing. If a contact is above-board, there is no reason that it should not be in writing.

10. ADOPT A ZERO-TOLERANCE POLICY ON GIFTS.

Last year, the Legislature passed a law allowing Executive Branch officials to receive \$250 total value in gifts, annually, from governmental affairs agents, thereby conflicting with current ECES guidelines. To eliminate confusion and render the gift ban

more rigorous, we recommend:

- A new, simple flat ban, prohibiting all Executive Branch employees from accepting any and all gifts or other things of value from any source other than the State for any matter related to their official duties. That zero-tolerance policy will establish a clear, bright-line standard that is easy to apply and that helps to avoid even an appearance of impropriety.

Presently, there are three provisions in the Conflicts Law that deal with receipt of things of value. Section 14 provides that no State official shall accept anything of value which s/he knows or has reason to believe is offered with the intent to influence the performance of public duties and responsibilities. Section 23(b)(6) provides that no State official should accept anything of value under circumstances from which it might reasonably be inferred that the gift or thing of value was given or offered for the purpose of influencing the discharge of official duties. Section 24 provides that no State official shall solicit or receive any compensation, reward, employment, gift, honorarium, out-of-state travel or subsistence expense or other thing of value from any source other than the State for any services, advice or assistance related to the officials public duties, with a few enumerated exceptions. Those restrictions apply to all State officers and employees and special State officers and employees in the Executive Branch.

In 2004, the Legislature added section 24.1 to the Conflicts Law and specifically allowed State officials in the Executive Branch as well as members of the Legislative Branch to accept up to

\$250 worth of gifts and things of value per year per lobbyist or governmental affairs agent. The Executive Commission on Ethical Standards promulgated N.J.A.C. 19:61-6.9 to -6.10, formalizing the gift guidelines and adding a provision that Executive Branch officials are not permitted to accept anything of value from interested parties. Lobbyists or governmental affairs agents with matters pending before a particular agency would be interested parties with respect to that agency.

We recommend that Section 24.1 of the Conflicts Law be repealed with respect to the Executive Branch and that Executive Branch employees be prohibited from accepting any and all gifts or other things of value from a source other than the State for any matter related to their official duties. A gift of nominal value available to the public generally would not violate this standard.

Our nationwide search revealed three principal types of restrictions on gifts: (1) zero-tolerance laws, prohibiting the receipt of any gift or thing of value; (2) laws that impose a ceiling on permissible gifts, ranging from \$50 to \$500; and (3) laws that restrict only gifts that influence official action. The latter two models present significant disadvantages, raising problems of valuation and interpretation. By contrast, a zero-tolerance policy with respect to prohibiting any and all gifts, related in any way to the employee's or officer's official duties imposes a clear bright-line standard that is easy to administer and avoids the potential for abuse.

CONCLUSION

A fundamental principle of democracy is that a representative government must hold the public's trust. All government exists by the consent of the governed. Scandals undermine public trust in the integrity of government and threaten the fundamental premise of democracy. Yet the problem of mistrust is not new. Abner Mikva, a distinguished judge who lived an exemplary public life, said:

America has grown highly distrustful of its government and its leaders. Americans seem to expect and believe the worst about government, even if there is no evidence to back up the case. It's true that this paranoia isn't altogether a new problem. There were suspicions about government going all the way back to our founding. Much of the criticism of the Constitution during the ratification struggle stemmed from distrust about what government would do. Pieces of the Constitution, and most of the Bill of Rights were aimed at protecting the people from their government. The "Know Nothings" of the last century, the anarchist movement of this century, some of the constitutional proposals currently in vogue — all stem from suspicions or beliefs that government and its actors are corrupt.

[Abner J. Mikva, Ethics In Government: Not an Oxymoron, Lecture upon receiving 1998 Paul H. Douglas Ethics in Government Award (March 1, 1998), <http://www.igpa.uillinois.edu/ethics/lecture-Mikva.htm>.]

Today in New Jersey, the public trust has been broken and, as a result, the actions of political leaders now face more skeptical investigation than ever before. How do we restore the trust? Unethical or improper behavior on the part of State officials or employees is the exception, not the rule, but we are nevertheless

reminded, from time to time, that our laws and regulations may not be adequate to the times and circumstances.

The best answer to potential ethical problems in government is honest people in a proper and ethical environment. No regulation can cope with a person determined to challenge the public interest and public trust. Still, formal regulation is required. Clear rules regarding performance and punishment have an important role to play in the task of ethics reform. Moreover, they can express the core values of an organization and set governing standards.

But expression of core values is not enough. Michael Josephson of the Josephson Institute of Ethics cautioned us against "over-legalizing" the system. In his view, that encourages an attitude of gamesmanship that honors no more than the letter of the law and creates the attitude, "If it's legal, it's ethical." Josephson encourages creation of a cultural climate of ethics that will pervade the target institution. Building such values within an organization requires leadership.

The public yearns for assurance that it can rely on the integrity of its elected and appointed leaders. People want leaders reaching beyond compliance. They want evidence that leaders are making an ethical culture the central hub of governance. They want to see leaders who will guide managers at all levels to do the right thing, when faced with tough decisions. They want to see less partisan politics and more public interest politics. And they want to see greater transparency in all aspects of activity, so as

to be able to better monitor ethical performance.

In her speech on the Occasion of the Opening of the Governor General's Canadian Leadership Conference 2004, Her Excellency the Right Honorable Adrienne Clarkson reminded us that when we speak of leadership, we are not necessarily talking about "charismatic leadership, the woman or man who is going to lead our government . . . out of the wilderness by dazzling all with his or her brilliance, or by 'making the tough decisions.'" Adrienne Clarkson, Speech on the Occasion of the Opening of the Governor General's Canadian Leadership Conference 2004 (May 7, 2004), <http://www.leadership2004.ca/links/media01.cfm>.

This is the model of the leader as saviour, dynamo, hero. Actually, though, it has been found in studies of business that there is a negative correlation between this brand of leadership and sustained success. Leadership is not as solitary, as independent a function as we often think. There are wonderful leaders who watch where people are going and gently, insistently herd them from behind, rather like a good sheepdog.

. . . . Leaders deal with moral issues, many of which are not particularly valued by those elements of our society that emphasize competition and winning at all costs. . . .

[Ibid.]

Building a strong ethical culture in government is not an easy thing. It demands work. It demands a combination of clear standards, substantial employee training programs, incentives, monitoring, and example-setting from the top. With the changes recommended in this Report, and the continuing leadership that this

initiative represents, New Jersey is on the road to reclaiming its promise.

EXHIBIT A

PROPOSED UNIFORM ETHICS CODE

INTRODUCTION

This proposed Uniform Ethics Code simplifies, clarifies and modernizes the otherwise disparate ethics strictures contained in a multitude of separate codes and regulations. It uses the existing New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 to -28, as a base, and is a compilation of the Conflicts Law, other New Jersey statutes, bills currently pending in the Legislature, the Model Law developed by the Council on Government Ethics Laws, laws of other states and the Federal Government, and comments and suggestions from government officials, ethics and conflicts experts and the public. The internal cites to the existing Conflicts Law in sections that apply to the Executive Branch have been deleted to eliminate confusion. The standards in the existing Conflicts Law that are applicable to the Legislative Branch have not been modified in any way.¹

¹ This proposed Code is merely thematic. We leave the drafting to the experts in the Office of Legislative Services. For example, we have not attempted to resolve how protections afforded under the Merit Protection Law will be integrated with our proposed penalties. Moreover, this Uniform Ethics Code does not displace relevant agency-specific strictures.

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UNIFORM ETHICS CODE

1. Definitions.

As used in this Act, and unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(a) "State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by or allocated to such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and, to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

(b) "State officer or employee" means any person, other than a special State officer or employee (1) holding an office or employment in a State agency, excluding an interstate agency, other than a member of the Legislature or (2) appointed as a New Jersey member to an interstate agency.

(c) "Member of the Legislature" means any person elected to serve in the General Assembly or the Senate.

(d) "Head of a State agency" means: (1) in the case of the Executive Branch of government, except with respect to interstate agencies, the department head or, if the agency is not allocated to a department, or is allocated to but is not subject to the supervision or control of a department, the governing body or chief executive officer of the agency; and (2) in the case of the Legislative Branch, the chief presiding officer of each House of the Legislature.

(e) "Special State officer or employee" means: (1) any person holding an office or employment in a State agency, excluding an interstate agency, for which office or employment no compensation is authorized or provided by law, or no compensation other than a sum in reimbursement of expenses, whether payable per diem or per annum, is authorized or provided by law; (2) any person, not a member of the Legislature, holding a part-time elective or appointive office or employment in a State agency, excluding an interstate agency; or (3) any person appointed as a New Jersey member to an interstate agency the duties of which membership are not full-time.

(f) "Person" means any natural person, association or corporation.

(g) "Interest" means: (1) the ownership or control of more than 10% of the profits or assets of a firm, association, or partnership, or more than 10% of the stock in a corporation for

profit other than a professional service corporation organized under the Professional Service Corporation Act, L. 1969, c. 232 (N.J.S.A. 14A:17-1 to -18); or (2) the ownership or control of more than 1% of the profits of a firm, association, or partnership, or more than 1% of the stock in any corporation, which is the holder of, or an applicant for, a casino license or in any holding or intermediary company with respect thereto, as defined by the Casino Control Act, L. 1977, c. 110 (N.J.S.A. 5:12-1 to -210). The provisions of this Act governing the conduct of individuals are applicable to shareholders, associates, or professional employees of a professional service corporation or of any other firm, partnership, or association that provides professional services, regardless of the extent or amount of their shareholder interest in such a corporation or of the amount of the assets or profits of the firm, partnership, or association that they control.

(h) "Cause, proceeding, application or other matter" means a specific cause, proceeding, or matter, and does not mean or include determinations of general applicability or the preparation or review of legislation which is no longer pending before the Legislature or the Governor or regulations which are no longer pending before the promulgating agency.

(i) "Member of the immediate family" of any person means the person's spouse, child, parent or sibling residing in the same household.

(j) "Code of ethics" means the plain-language code of ethics promulgated for the Executive Branch of State Government or the Legislative Branch of State Government pursuant to section _____ of L. _____, c. _____ (N.J.S.A. _____), and any code of ethics adopted by a State agency pursuant to that section to apply to the particular needs and problems of that agency.

2. State officer or employee or member of legislature; acceptance of thing of value to influence public duties.

No State officer or employee, special State officer or employee, or member of the Legislature shall accept from any person, whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities. This section shall not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

3. Representation, appearance or negotiation, directly or indirectly, for acquisition or sale of property by State.

No member of the Legislature or State officer or employee shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, whether by himself or by or through any partnership, firm or corporation in which he has an interest or by any partner, officer or employee of any such partnership, firm or corporation any person or party other than the State in any negotiations for the acquisition or sale by the State or a State agency of any interest in real or tangible or intangible personal property, or in any proceedings relative to such acquisition or sale before a condemnation commission or court; provided, however, nothing contained in this section shall be deemed to prohibit any person from representing himself in negotiations or proceedings concerning his own interest in real property.

4. Representation, appearance or negotiation on proceeding pending before particular office, bureau, etc., or State agency.

(a) No special State officer or employee, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other

matter pending before the particular office, bureau, board, council, commission, authority, agency, fund or system in which such special State officer or employee holds office or employment.

(b) No State officer or employee or member of the Legislature, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before any State agency. Nothing contained herein shall be deemed to prohibit any such partnership, firm or corporation from appearing on its own behalf. This subsection shall not be deemed to prohibit a member of the Legislature or an employee on the member's behalf from: (1) making an inquiry for information on behalf of a constituent, which may include ascertaining the status of a matter, identifying the statutes or regulations involved in a matter or inquiring how to expedite a matter; (2) assisting the constituent in bringing the merits of the constituent's position to the attention of a State agency; or (3) making a recommendation on a matter or indicating support for a constituent's position to a State agency if no fee, reward,

employment, offer of employment, or other thing of value is promised to, given to or accepted by the member of the Legislature or an employee therefor, whether directly or indirectly, and the member or employee does not endeavor to use his official position to improperly influence any determination. As used in this subsection, "constituent" shall mean any State resident or other person seeking legislative assistance. Nothing contained herein shall authorize contact with State agencies by members of the Legislature or their employees which is otherwise prohibited by the criminal law, this Act, or the Code of Ethics and nothing contained herein shall authorize contact with an administrative law judge or agency head during the hearing of a contested case.

(c) Nothing contained in this section shall be deemed to prohibit any legislator, or any State officer or employee or special State officer or employee from representing, appearing for or negotiating on behalf of, or agreeing to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any proceeding:

(1) Pending before any court of record of this State;

(2) In regard to a claim for compensation arising under chapter 15 of Title 34 of the Revised Statutes (Workers' Compensation);

(3) In connection with the determination or review of transfer inheritance or estate taxes;

(4) In connection with the filing of corporate or other documents in the office of the Secretary of State;

(5) Before the Division on Civil Rights or any successor thereof;

(6) Before the New Jersey State Board of Mediation or any successor thereof;

(7) Before the New Jersey Public Employment Relations Commission or any successor thereof;

(8) Before the Unsatisfied Claim and Judgment Fund Board or any successor thereof solely for the purpose of filing a notice of intention pursuant to L. 1952, c. 174, §5 (N.J.S.A. 39:6-65); or

(9) Before any State agency on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof except where the State is an adverse party in the proceeding and provided he is not holding any office or employment in the State agency in which any such proceeding is pending.

5. Post-Employment.

(a) No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment, shall use or disclose any information not generally

available to members of the public, gained during the course of his office or employment, for the benefit of any person or party other than the State.

(b) For two years subsequent to the termination of his office or employment, no State officer or employee or special State officer or employee shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment.

(c) For one year subsequent to the termination of his office or employment, no State head, deputy head or assistant head of principal departments, boards, commissions and authorities, or designated State officer, as defined in § 13(d)(2), shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of any person or party other than the State before any officer or

employee of the State agency in which such individual served. The provisions of this subsection shall not apply to any partnership, firm or corporation in which such person has an interest or is employed, or to any partner, officer, director or employee of such partnership, firm or corporation.

(d) Nothing contained in this section shall prohibit a State agency from contracting with a former State officer or employee to act on behalf of the State.

6. Casino-related restrictions.

(a) As used in this section, "person" means any State officer or employee subject to financial disclosure by law or executive order and any other State officer or employee with responsibility for matters affecting casino activity; any special State officer or employee with responsibility for matters affecting casino activity; the Governor; any member of the Legislature or any full-time member of the Judiciary; any full-time professional employee of the Office of the Governor, or the Legislature; members of the Casino Reinvestment Development Authority; the head of a principal department; the assistant or deputy heads of a principal department, including all assistant and deputy commissioners; the head of any division of a principal department; any member of the governing body, or the municipal judge or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the

planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment.

(b) No State officer or employee, nor any person, nor any member of the immediate family of any State officer or employee, or person, nor any partnership, firm or corporation with which any such State officer or employee or person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm, or corporation, shall hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, in connection with any cause, application, or matter, except that (1) a State officer or employee other than a State officer or employee included in the definition of person, and (2) a member of the immediate family of a State officer or employee, or of a person, may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the State officer or employee, or person, and will not create a conflict

of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the State officer or employee, or person. No special State officer or employee without responsibility for matters affecting casino activity, excluding those serving in the Departments of Education, Health, and Human Services and the Commission on Higher Education, shall hold, directly or indirectly, an interest in, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, in connection with any cause, application, or matter. However, a special State officer or employee without responsibility for matters affecting casino activity may hold employment directly with any holder of or applicant for a casino license or any holding or intermediary company thereof and if so employed may hold, directly or indirectly, an interest in, or represent, appear for, or negotiate on behalf of, his employer, except as otherwise prohibited by law.

(c) No person or any member of his immediate family, nor any partnership, firm or corporation with which such person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm or corporation, shall, within two years subsequent to the termination of the office or employment of

such person, hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for or negotiate on behalf of, any holder of, or applicant for, a casino license in connection with any cause, application or matter, or any holding or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity, except that:

(1) a person, or any partnership, firm or corporation with which such person is associated or in which he has an interest, or any partner, officer, director or employee while he is associated with such partnership, firm or corporation may, within 2 years next subsequent to the termination of the office or employment of such person, hold, directly, or indirectly, an interest in or hold employment with, or represent, appear for or negotiate on behalf of, any holder of, or applicant for, a casino license in connection with any cause, application or matter, or any holding or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase if casino development, permitting, licensure or any other matter whatsoever related if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court as appropriate, holding such employment or interest in, or representing, appearing for

or negotiating on behalf of, any holder of or applicant for a casino license or any holding or intermediary company with respect thereto will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest;

(2) a member of the immediate family of a person may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the person and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the person; and

(3) an employee who is terminated as a result of a reduction in the workforce at the agency where employed, other than an employee who held a policy-making management position at any time during the five years prior to termination of employment, may, at any time prior to the end of the two-year period, accept employment with the holder of, or applicant for, a casino license if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not create a conflict of interest, or reasonable risk of

the public perception of a conflict of interest, on the part of the employee. In no case shall the restrictions of this subsection apply to a secretarial or clerical employee. Nothing herein contained shall alter or amend the post-employment restrictions applicable to members and employees of the Casino Control Commission and employees and agents of the Division of Gaming Enforcement pursuant to section 59b(2) and section 60 of L. 1977, c. 110 (N.J.S.A. 5:12-59 to -60).

(4) any partnership, firm or corporation engaged in the practice of law with which a former member of the Judiciary is associated, and any partner, officer, director or employee thereof, other than the former member, may represent, appear for or negotiate on behalf of any holder of, or applicant for, a casino license in connection with any cause, application or matter or any holding company or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity, and the former member shall not be barred from association with such partnership, firm or corporation, if the former member: (1) is screened, for a period of two years next subsequent to the termination of the former member's employment, from personal participation in any such representation,

appearance or negotiation; and (2) the former member is associated with the partnership, firm or corporation in a position considered "of counsel," which does not entail any equity interest in the partnership, firm or corporation.

(d) This section shall not apply to the spouse of a State officer or employee, which State officer or employee is without responsibility for matters affecting casino activity, who becomes the spouse subsequent to the State officer's or employee's appointment or employment as a State officer or employee and who is not individually or directly employed by a holder of, or applicant for, a casino license, or any holding or intermediary company.

(e) The Joint Legislative Committee on Ethical Standards and the State Ethics Commission, as appropriate, shall forthwith determine and publish, and periodically update, a list of those positions in State government with responsibility for matters affecting casino activity.

(f) No person shall solicit or accept, directly or indirectly, any complimentary service or discount from any casino applicant or licensee which he knows or has reason to know is other than a service or discount that is offered to members of the general public in like circumstance.

(g) No person shall influence, or attempt to influence, by use of his official authority, the decision of the commission or

the investigation of the division in any application for licensure or in any proceeding to enforce the provisions of this Act or the regulations of the commission. Any such attempt shall be promptly reported to the Attorney General; provided, however, that nothing in this section shall be deemed to proscribe a request for information by any person concerning the status of any application for licensure or any proceeding to enforce the provisions of this Act or the regulations of the commission.

7. Vote, any other action by member of legislature with personal interest; prohibition.

(a) No member of the Legislature shall participate by voting or any other action, on the floor of the General Assembly or the Senate, or in committee or elsewhere, in the enactment or defeat of legislation in which he has a personal interest.

(b) A member of the Legislature shall be deemed to have a personal interest in any legislation within the meaning of this section if, by reason of his participation in the enactment or defeat of any legislation, he has reason to believe that he, or a member of his immediate family, will derive a direct monetary gain or suffer a direct monetary loss. No member of the Legislature shall be deemed to have a personal interest in any legislation within the meaning of this section if, by reason of his participation in the enactment or defeat of any legislation,

no benefit or detriment could reasonably be expected to accrue to him, or a member of his immediate family, as a member of a business, profession, occupation or group, to any greater extent than any such benefit or detriment could reasonably be expected to accrue to any other member of such business, profession, occupation or group.

8. Contracts, agreements, sales or purchases with State.

(a) No member of the Legislature or State officer or employee shall knowingly himself, or by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25 or more, made, entered into, awarded or granted by any State agency, except as provided in subsection b. of this section. No special State officer or employee having any duties or responsibilities in connection with the purchase or acquisition of property or services by the State agency where he is employed or an officer shall knowingly himself, by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25 or more, made, entered into,

awarded or granted by that State agency, except as provided in subsection b. of this section. The restriction contained in this subsection shall apply to the contracts of interstate agencies to the extent consistent with law only if the contract, agreement, sale or purchase is undertaken or executed by a New Jersey member to that agency or by his partners or a corporation in which he owns or controls more than 1% of the stock.

(b) The provisions of subsection a. of this section shall not apply, to (a) purchases, contracts, agreements or sales which (1) are made or let after public notice and competitive bidding or, which (2) pursuant to section 5 of chapter 48 of the laws of 1944 (N.J.S.A. 52:34-10) or such other similar provisions contained in the public bidding laws or regulations applicable to other State agencies, may be made, negotiated or awarded without public advertising for bids, or (b) any contract of insurance entered into by the Director of the Division of Purchase and Property pursuant to section 10 of article 6 of chapter 112 of the laws of 1944 (N.J.S.A. 52:27B-62), if such purchases, contracts or agreements, including change orders and amendments thereto, shall receive prior approval of the Joint Legislative Committee on Ethical Standards if a member of the Legislature or State officer or employee or special State officer or employee in the Legislative Branch has an interest therein, or the State Ethics Commission if a State officer or

employee or special State officer or employee in the Executive Branch has an interest therein.

8.1. Contracts or agreements for development of scientific or technological discoveries or innovations where State has property right.

Notwithstanding the provisions of L. _____, c. _____ (N.J.S.A. _____), a State officer or employee or a special State officer or employee or his partners or any corporation or firm in which he owns or controls more than 1% of the stock, assets or profits may enter into a contract or agreement with a State agency where the contract or agreement is for the development of scientific or technological discoveries or innovations in which the State agency has a property right, if the State agency has a procedure in its code of ethics for authorizing these contracts or agreements which minimizes actual conflicts of interest and the code of ethics was approved in accordance with section _____ of L. _____, c. _____ (N.J.S.A. _____) and the contract or agreement complies with that code procedure.

8.2. Rental agreements with state agencies operating facilities to assist small businesses.

Notwithstanding the provisions of L. _____, c. _____ (N.J.S.A. _____), a State officer or employee or a special State officer or employee or his partners or any corporation or firm in which he owns or controls more than 1% of the stock, assets

or profits may enter into a rental agreement with a State agency which operates a facility which rents space or provides services to assist small businesses which employ 50 people or less, pursuant to the same terms and conditions as those offered to members of the public generally.

8.3. No effect on public contract provisions.

Nothing in this Act shall alter or affect any other applicable provisions regulating public contracts.

8.4. Contracting with the Department of Human Services.

(a) Notwithstanding the provisions of L. _____, c. _____ (N.J.S.A. _____), a State officer or employee may enter into a contract or agreement with a Division or other unit of the Department of Human Services, in conformance with the standards of the Code of Ethics promulgated by the Department and with the approval of the employee's Division, where the contract or agreement is for the provision of community care residential services or home instruction, with the exception of employees of the Division or other unit through which the specific contract funding flows, unless the Division or unit Director approves due to a pre-existing relationship between the employee and the client.

(b) Notwithstanding the provisions of L. _____, c. _____ (N.J.S.A. _____), a State officer or employee, who would otherwise be prohibited from entering into a contract or

agreement with a Division or other unit of the Department of Human Services for the provision of community care residential services or home instruction, shall not be prohibited from continuing to provide such services or instruction until such time as the existing relationship with the client/clients is terminated.

(c) Community care residential services shall include Division of Developmental Disabilities services as a licensed skill development sponsor in accordance with N.J.S.A. 30:11B-1 to -7; Division of Youth and Family Services services as a foster parent in accordance with N.J.S.A. 30:4C-26 to -28, or as an adoptive parent in accordance with N.J.S.A. 9:3-37 to -56; and Division of Family Development services as an approved adult-supervised supportive living arrangement provider in accordance with N.J.S.A. 44:10-54 et seq.; and any other Division approved care-giver services program in accord with the law.

9. Representation of State agency in transaction involving pecuniary interest for legislator or State officer employee.

No member of the Legislature or State officer or employee or special State officer or employee shall act as officer or agent for a State agency for the transaction of any business with himself or with a corporation, company, association or firm in the pecuniary profits of which he has an interest (except

that ownership or control of 10% or less of the stock of a corporation shall not be deemed an interest within the meaning of this section).

10. State Ethics Commission.

(a) The State Ethics Commission is established in but not of the Department of Law and Public Safety and shall be independent of any supervision and control by the department or any board or office thereof.

(b)(1) The commission shall be composed of seven members of the public appointed by the Governor, not more than three of whom shall be of the same political party. The members shall serve for terms of four years. The first members appointed pursuant to this Uniform Code shall serve as follows: two shall serve a term of four years; two shall serve a term of three years; two shall serve a term of two years; and one shall serve a term of one year. Members may be re-appointed for subsequent terms on the commission. Members shall annually elect a chairperson and vice chairperson from among their members.

(2) No member may hold office in a political party or be a lobbyist of governmental affairs agent. No member may hold office or employment in the public sector except by reason of his service on the commission.

(3) Vacancies in the membership of the commission shall be filled in the same manner as the original appointment but for the unexpired term only.

(c) Members of the commission shall be compensated at the rate of \$250 for each meeting that they attend and shall be entitled to be reimbursed for all actual and necessary expenses incurred in the performance of their duties.

(d) The Attorney General shall act as legal adviser and counsel to the commission. The Attorney General shall upon request advise the commission in the rendering of advisory opinions by the commission, in the approval and review of codes of ethics adopted by State agencies in the Executive Branch and in the recommendation of revisions in codes of ethics or legislation relating to the conduct of State officers or employees or special State officers or employees in the Executive Branch.

(e) The commission may, within the limits of funds appropriated or otherwise made available to it for the purpose, employ, an executive director who shall administer the daily business of the commission and shall have the responsibility for employing other personnel, without regard to the provisions of Title 11A, as may be necessary.

(f) The commission, in order to perform its duties pursuant to the provisions of this Act, shall have the power to conduct

investigations, hold hearings, compel the attendance of witnesses and the production before it of such books and papers as it may deem necessary, proper and relevant to the matter under investigation. The members of the commission and the persons appointed by the commission for that purpose are hereby empowered to administer oaths and examine witnesses under oath.

(g)(1) The commission is authorized to render advisory opinions as to whether a given set of facts and circumstances would, in its opinion, constitute a violation of the provisions of L. _____, c. _____ (N.J.S.A. _____), a code of ethics promulgated pursuant to the provisions of L. _____, c. _____ (N.J.S.A. _____), or an executive order in which the Governor has granted the commission jurisdiction of its provisions. These advisory opinions shall be filed with the commission and shall be public records, but no opinion so filed shall contain the name of the person or persons who shall have requested the opinion. Any person who takes official action consistent with such an advisory opinion shall not be subject to charges of unethical conduct for violations of this Uniform Code of Ethics or the ethics regulations adopted by other agencies of State government. The commission is also authorized to develop methods to assist any State officer or employee and any special State officer or employee in understanding and complying with the obligations of that officer or employee under this Act.

(2) The commission shall promulgate such regulations and official forms and perform such duties as are necessary to implement the provisions of this Act.

(h) The commission shall have jurisdiction to initiate, receive, hear, and review complaints regarding violations by any State officer or employee or special State officer or employee in the Executive Branch, or any individual who formerly held such position if a complaint of alleged violation is received within two years past the date on which the alleged violation has been committed, or by any third person or party who shall act in participation with such State officer, employee, or special State officer, of the provisions of L. _____, c. _____ (N.J.S.A. _____), of any code of ethics promulgated pursuant to the provisions of L. _____, c. _____ (N.J.S.A. _____), or of any executive order in which the Governor has granted the commission jurisdiction. The identities of complainants to the commission shall be confidential. Any complaint regarding a violation of a code of ethics or such executive order may be referred by the commission for disposition in accordance with subsection _____ of L. _____, c. _____ (N.J.S.A. _____). The commission shall not initiate or accept for review any allegation of violation after two years past the date on which the alleged violation had been committed. The commission shall have the power to adopt regulations establishing minimum penalties up to the amount of

\$50 for late filing of financial disclosure forms and for noncompliance with commission directives, and to impose cumulative penalties for each day of disregard of such requirements.

(i) Any person found guilty by the commission of violating any provision of L. _____, c. _____ (N.J.S.A. _____), or of a code of ethics promulgated pursuant to the provisions of L. _____, c. _____ (N.J.S.A. _____), shall be subject, by order of the commission, to reprimand, public censure, demotion, restitution of pecuniary benefit received because of violation, suspension and/or a fine of not less than \$500 nor more than \$10,000, which penalty may be collected in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, L. 1999, c. 274 (N.J.S.A. 2A:58-10 to -12). If the commission finds that the conduct of such person, given the nature and frequency of his conduct and his functions and responsibilities, evidences a careless disregard of the provisions of this Act or a code of ethics promulgated pursuant to the provisions of this Act, it may order such person removed from the person's office or employment and may further bar such person from holding any public office or employment in this State in any capacity whatsoever for a period not exceeding 5 years from the date on which the person was found by the commission to have violated

any of the provisions of this Act or of a code of ethics promulgated pursuant to the provisions of this Act.

(j) Upon a determination of guilt, all proceedings conducted under this Act shall become public.

(k) The remedies provided herein are in addition to all other criminal and civil remedies provided under the law.

11. Joint legislative committee on ethical standards; penalties for State officers or employees found guilty by committee.

(a) The Joint Legislative Committee on Ethical Standards created pursuant to the provisions of L. 1967, c. 229, as continued and established pursuant to L. 1971, c. 182, is continued and established in the Legislative Branch of State Government with the addition of the public members as set forth in this section.

(b)(1) The joint committee shall be composed of 12 members as follows: four members of the Senate appointed by the President thereof, no more than two of whom shall be of the same political party; four members of the General Assembly, appointed by the Speaker thereof, no more than two of whom shall be of the same political party; and four public members, one appointed by the President of the Senate, one appointed by the Speaker of the General Assembly, one appointed by the Minority Leader of the Senate and one appointed by the Minority Leader of the General Assembly.

(2) Commencing with the second Tuesday in January of the next even numbered year following the effective date of L. 2004, c. 24, the Joint committee shall be composed of sixteen members as follows: four members of the Senate, appointed by the President thereof, no more than two of whom shall be of the same political party; four members of the General Assembly, appointed by the Speaker thereof, no more than two of whom shall be of the same political party; and eight public members, two appointed by the President of the Senate, two appointed by the Speaker of the General Assembly, two appointed by the Minority Leader of the Senate and two appointed by the Minority Leader of the General Assembly.

(3) No public member shall be a lobbyist or legislative agent as defined by the Legislative Activities Disclosure Act of 1971, L. 1971, c. 183 (N.J.S.A. 52:13C-18 to -36), a full-time State employee or an officer or director of any entity which is required to file a statement with the Election Law Enforcement Commission, and no former lobbyist or legislative agent shall be eligible to serve as a public member for one year following the cessation of all activity by that person as a legislative agent or lobbyist. The legislative members shall serve until the end of the two-year legislative term during which the members are appointed. The public members shall serve for terms of two years and until the appointment and qualification of their

successors. The terms of the public members shall run from the second Tuesday in January of an even-numbered year to the second Tuesday in January of the next even-numbered year, regardless of the original date of appointment. Vacancies in the membership of the joint committee shall be filled in the same manner as the original appointments, but for the unexpired term only. Public members of the joint committee shall serve without compensation, but shall be entitled to be reimbursed for all actual and necessary expenses incurred in the performance of their duties.

(c) The joint committee shall organize as soon as may be practicable after the appointment of its members, by the selection of a chairman and vice chairman from among its membership and the appointment of a secretary, who need not be a member of the joint committee.

(d) The Legislative Counsel in the Office of Legislative Services shall act as legal adviser to the joint committee. The Legislative Counsel shall, upon request, assist and advise the joint committee in the rendering of advisory opinions by the joint committee, in the approval and review of codes of ethics adopted by State agencies in the Legislative Branch, and in the recommendation of revisions in codes of ethics or legislation relating to the conduct of members of the Legislature or State officers and employees in the Legislative Branch.

(e) The joint committee may, within the limits of funds appropriated or otherwise available to it for the purpose, employ other professional, technical, clerical or other assistants, excepting legal counsel, and incur expenses as may be necessary to the performance of its duties.

(f) The joint committee shall have all the powers granted pursuant to chapter 13 of Title 52 of the Revised Statutes.

(g) The joint committee is authorized to render advisory opinions as to whether a given set of facts and circumstances would, in its opinion, constitute a violation of the provisions of this Act, of a code of ethics promulgated pursuant to the provisions of this Act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter.

(h) The joint committee shall have jurisdiction to initiate, receive, hear and review complaints regarding violations of the provisions of this Act or of a code of ethics promulgated pursuant to the provisions of this Act. It shall further have such jurisdiction as to enforcement of the rules of either or both Houses of the Legislature governing the conduct of the members or employees thereof as those rules may confer upon the joint committee. A complaint regarding a violation of a code of ethics promulgated pursuant to the provisions of this

Act may be referred by the joint committee for disposition in accordance with subsection 12(d) of this Act.

(i) Any State officer or employee or special State officer or employee in the Legislative Branch found guilty by the joint committee of violating any provisions of this Act, of a code of ethics promulgated pursuant to the provisions of this Act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter shall be fined not less than \$500 nor more than \$10,000, which penalty may be collected in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, L. 1999, c. 274 (N.J.S.A. 2A:58-10 to -12), and may be reprimanded and ordered to pay restitution where appropriate and may be suspended from office or employment by order of the joint committee for a period not in excess of 1 year. If the joint committee finds that the conduct of the officer or employee constitutes a willful and continuous disregard of the provisions of this Act, of a code of ethics promulgated pursuant to the provisions of this Act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter, it may order that person removed from office or employment and may further bar the person from holding any public office or employment in this State in any capacity

whatsoever for a period of not exceeding 5 years from the date on which the person was found guilty by the joint committee.

(j) A member of the Legislature who shall be found guilty by the joint committee of violating the provisions of this Act, of a code of ethics promulgated pursuant to the provisions of this Act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter shall be fined not less than \$500 nor more than \$10,000, which penalty may be collected in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, L. 1999, c. 274 (N.J.S.A. 2A:58-10 to -12), and shall be subject to such further action as may be determined by the House of which the person is a member. In such cases the joint committee shall report its findings to the appropriate House and shall recommend to the House such further action as the joint committee deems appropriate, but it shall be the sole responsibility of the House to determine what further action, if any, shall be taken against such member.

11.1. Definitions regarding filing of documents with Joint Legislative Committee on Ethical Standards.

As used in this Act, "document" means any statement, report, form, or accounting which is required to be filed with the Joint Legislative Committee on Ethical Standards within a prescribed period or on or before a prescribed date pursuant to

law or the legislative code of ethics promulgated pursuant to the New Jersey Conflicts of Interest Law, L. 1971, c. 182 (N.J.S.A. 52:13D-12 to -28). The term "within a prescribed period or on or before a prescribed date" includes any extension of time granted by the committee for filing a document.

11.2. Timely filing of documents.

Any document which is mailed shall be deemed to be timely filed if the postmark stamped on the cover, envelope or wrapper in which the document was mailed bears a date on or before the date of the last day prescribed for filing the document.

11.3. Filing date falling on Saturday, Sunday, or legal holiday.

When the date or the last day prescribed for filing a document falls on a Saturday, Sunday or legal holiday, the next succeeding business day shall be regarded as the date of the last day prescribed for filing the document.

12. Code of ethics.

(a) The commission shall within six months from the effective date of this amendatory and supplementary act, L. _____, c. _____ (now pending before the Legislature as this bill), promulgate and revise from time to time a plain-language code of ethics to govern and guide the conduct of State officers or employees and special State officers or employees in the Executive Branch of the State Government. Such code shall

conform to the general standards set forth in paragraphs (1) through (7) of subsection e. of this section. The head of a State agency may adopt a code of ethics, the provisions of which shall be at least as stringent as those of the uniform code, to apply to the particular needs and problems of the agency, provided that the State agency code of ethics is approved by the commission. Notwithstanding any other provisions of this section, the New Jersey members to any interstate agency to which New Jersey is a party and the officers and employees of any State agency which does not promulgate its own code of ethics shall be deemed to be subject to the uniform code of ethics promulgated pursuant to this subsection.

(b) Prior to the adoption of a uniform code the Attorney General shall provide an opinion as to its compliance with the provisions of this Act and any other applicable provisions of law. Nothing contained herein shall prevent officers of State agencies in the Executive Branch from consulting with the Attorney General or with the State Ethics Commission at any time in connection with the preparation or revision of codes of ethics.

(c) A code of ethics shall be formulated pursuant to this section to govern and guide the conduct of the members of the Legislature, State officers or employees or special State officers and employees in any State agency in the Legislative

Branch and shall not be effective unless it has first been approved by the Legislature by concurrent resolution. A State agency in the Legislative Branch may adopt a code of ethics, the provisions of which shall not be inconsistent with the Legislative Code of Ethics, to apply to the particular needs and problems of the agency, provided that the State agency code of ethics is approved in accordance with this subsection. When a proposed code is submitted to the Legislature for approval it shall be accompanied by an opinion of the Legislative Counsel as to its compliance with the provisions of this Act and any other applicable provisions of law. Nothing contained herein shall prevent officers of State agencies in the Legislative Branch from consulting with the Legislative Counsel or the Joint Legislative Committee on Ethical Standards at any time in connection with the preparation or revision of such codes of ethics.

(d) Violations of a code of ethics promulgated pursuant to this section or an executive order in which the Governor has granted the commission jurisdiction of its provisions shall be cause for removal, suspension, demotion or other disciplinary action by the State officer or agency having the power of removal or discipline. When a person who is in the career service is charged with a violation of such a code of ethics, the procedure leading to such removal or discipline shall be

governed by any applicable provisions of the Civil Service Act and the Rules of the Department of Personnel. No action for removal or discipline shall be taken under this subsection except upon the referral or with the approval of the State Ethics Commission or the Joint Legislative Committee on Ethical Standards, whichever is authorized to exercise jurisdiction with respect to the complaint upon which such action for removal or discipline is to be taken.

(e) A code of ethics for officers and employees of a State agency shall include the following general standards:

(1) No State officer or employee or special State officer or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

(2) No State officer or employee or special State officer or employee should engage in any particular business, profession, trade or occupation which is subject to licensing or regulation by a specific agency of State Government without promptly filing notice of such activity with the State Ethics Commission, if he is an officer or employee in the Executive Branch, or with the Joint Legislative Committee on Ethical Standards, if he is an officer or employee in the Legislative Branch;

(3) No State officer or employee or special State officer or employee should use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others;

(4) No State officer or employee or special State officer or employee should act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment;

(5) No State officer or employee or special State officer or employee should undertake any employment or service, whether compensated or not, which might reasonably be expected to impair his objectivity and independence of judgment in the exercise of his official duties;

(6) No State officer or employee or special State officer or employee should accept any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing him in the discharge of his official duties;

(7) No State officer or employee or special State officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be

engaged in conduct violative of his trust as a State officer or employee or special State officer or employee;

(8) Rules of conduct adopted pursuant to these principles should recognize that under our democratic form of government public officials and employees should be drawn from all of our society, that citizens who serve in government cannot and should not be expected to be without any personal interest in the decisions and policies of government; that citizens who are government officials and employees have a right to private interests of a personal, financial and economic nature; that standards of conduct should separate those conflicts of interest which are unavoidable in a free society from those conflicts of interest which are substantial and material, or which bring government into disrepute.

(f) The code of ethics for members of the Legislature shall conform to subsection e. hereof as nearly as may be possible.

13. Solicitation, receipt or agreement to receive, thing of value for service related to official duties; exceptions.

(a) No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, travel or subsistence expense or other thing of value from any source other than the State of New Jersey, for any service, advice,

assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section or by regulations promulgated by the State Ethics Commission.

(b) A State officer or employee or special State officer or employee of a State agency in the Legislative Branch or member of the Legislature may, in connection with any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, solicit, receive or agree to receive, whether directly or indirectly, from sources other than the State, the following:

(1) reasonable fees for published books on matters within the officer, employee, or member's official duties;

(2) reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

(3) reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500 per trip limitation shall not

apply if the reimbursement or payment is made by: (a) a nonprofit organization of which the officer, employee, or member is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State or the Legislature in the case of a member of the Legislature; or (b) a nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services.

Members of the Legislature shall obtain the approval of the presiding officer of the member's House before accepting any reimbursement or payment of expenditures for travel or subsistence outside New Jersey.

As used in this subsection, "reasonable expenditures for travel or subsistence" means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive; and "allowable entertainment expenses" means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

(c) This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, except that campaign contributions may not be accepted if they are known to be given in lieu of a payment prohibited pursuant to this section.

(d)(1) Notwithstanding any other provision of law, a designated State officer as defined in paragraph (2) of this subsection shall not solicit, receive or agree to receive, whether directly or indirectly, any compensation, salary, honorarium, fee, or other form of income from any source, other than the compensation paid or reimbursed to him or her by the State for the performance of official duties, for any service, advice, assistance, appearance, speech or other matter, except for investment income from stocks, mutual funds, bonds, bank accounts, notes, a beneficial interest in a trust, financial compensation received as a result of prior employment or contractual relationships, and income from the disposition or rental of real property, or any other similar financial instrument and except for reimbursement for travel as authorized by regulations promulgated by the State Ethics Commission. To receive such income, a designated State officer shall first seek review and approval by the State Ethics Commission to ensure that the receipt of such income does not violate the New Jersey Conflicts of Interest Law, L. _____, c. _____ (N.J.S.A. _____),

or any applicable code of ethics, and does not undermine the full and diligent performance of the designated State officer's duties.

(2) For the purposes of this subsection, "designated State officer" shall include: the Secretary of Agriculture, the Attorney General, the Commissioner of Banking and Insurance, the Secretary and Chief Executive Officer of the Commerce and Economic Growth Commission, the Commissioner of Community Affairs, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Commissioner of Labor, the Commissioner of Personnel, the President of the State Board of Public Utilities, the Secretary of State, the Superintendent of State Police, the Commissioner of Transportation, the State Treasurer, the head of any other department in the Executive Branch, and the following members of the staff of the Office of the Governor: Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel to the Governor, Director of Communications, Policy Counselor to the Governor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor listed in this subsection.

(e) A violation of this section shall not constitute a crime or offense under the laws of this State.

13.1. Prohibition on accepting compensation, rewards, gifts, honorariums; exceptions.

(a) Except as expressly authorized in section 13 of L. 1971, c. 182 (N.J.S.A. 52:13D-24) or when the lobbyist or legislative agent is a member of the immediate family of the member of the Legislature or legislative staff, no member of the Legislature or legislative staff may accept, directly or indirectly, any compensation, reward, employment, gift, honorarium or other thing of value from each lobbyist or governmental affairs agent, as defined in the Legislative Activities Disclosure Act of 1971, L. 1971, c. 183 (N.J.S.A. 52:13C-18 to -36), totaling more than \$250 in a calendar year. The \$250 limit on acceptance of compensation, reward, gift, honorarium or other thing of value shall also apply to each member of the immediate family of a member of the Legislature, as defined in section 2 of L. 1971, c. 182 (N.J.S.A. 52:13D-13) to be a spouse, child, parent, or sibling of the member residing in the same household as the member of the Legislature.

(b) The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if received in the course of employment, by an employer other than the State, of an

individual covered in subsection a. of this section or a member of the immediate family. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if acceptance is from a member of the immediate family when the family member received such in the course of his or her employment.

(c) Subsection a. of this section shall not apply if a member of the Legislature or legislative staff who accepted any compensation, reward, gift, honorarium or other thing of value provided by a lobbyist or governmental affairs agent makes a full reimbursement, within 90 days of acceptance, to the lobbyist or governmental affairs agent in an amount equal to the money accepted or the fair market value of that which was accepted if other than money. As used in this subsection, "fair market value" means the actual cost of the compensation, reward, gift, honorarium or other thing of value accepted.

(d) A violation of this section shall not constitute a crime or offense under the laws of this State.

14. Disclosure or use for personal gain of information not available to public.

No State officer or employee, special State officer or employee, or member of the Legislature shall willfully disclose to any person, whether or not for pecuniary gain, any information not generally available to members of the public

which he receives or acquires in the course of and by reason of his official duties. No State officer or employee, special State officer or employee, or member of the Legislature shall use for the purpose of pecuniary gain, whether directly or indirectly, any information not generally available to members of the public which he receives or acquires in the course of and by reason of his official duties.

15. Inducing or attempting to induce legislative member or State officer or employee to violate act; penalty.

No person shall induce or attempt to induce any State officer or employee, special State officer or employee, or member of the Legislature to violate any provision of this Act or any code of ethics promulgated thereunder. Any person who willfully violates any provision of this section is a disorderly person, and shall be subject to a fine not to exceed \$500 or imprisonment not to exceed 6 months, or both.

16. Program on legislative ethics.

The Legislature shall provide a program on legislative ethics for its members and State officers or employees and special State officers or employees in the Legislative Branch of government no later than April 1 of every even-numbered year.

17. Nepotism.

(a)(1) A relative of the Governor shall not be employed in an office or position in the unclassified service of the civil

service of the State in the Executive Branch of State Government.

(2) A relative of the commissioner or head of a principal department in the Executive Branch of State Government shall not be employed in an office or position in the unclassified service of the civil service of the State in the principal department over which the commissioner or head of the principal department exercises authority, supervision, or control.

(3) A relative of an assistant or deputy commissioner or head of a principal department in the Executive Branch of State Government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the assistant or deputy commissioner or head serves, but shall not be assigned to a position over which the assistant or deputy commissioner or head exercises authority, supervision, or control.

(4) A relative of a designated State officer, head or assistant head of a division of a principal department in the Executive Branch of State government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the head or assistant head of a division serves, but shall not be assigned to a position over which the head or assistant head exercises authority, supervision, or control.

(b)(1) A relative of an appointed member of a governing or advisory body of an independent authority, board, commission, agency or instrumentality of the State shall not be employed in an office or position in that independent authority, board, commission, agency or instrumentality.

(2) A relative of an appointed New Jersey member of a governing body of a bi-state or multi-state agency shall not be employed in an office or position in that bi-state or multi-state agency, to the extent permitted by law.

(c) No State officer or employee or special State officer or employee of the Executive Branch shall supervise or exercise any authority with regard to personnel actions with respect to any relative, cohabitant or person with whom the officer or employee has a dating relationship.

(d) As used in this section, "relative" means an individual's spouse or the individual's or spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to the individual or the individual's spouse by blood, marriage or adoption.

(e) As used in this section, and solely for the purpose of evaluating claims of nepotism, "spouse" shall include persons

with whom the individual has an intimate and steady personal relationship.

18. Financial Disclosure.

Financial disclosure requirements should be codified for continuity as well as notice to incoming officials.

EXHIBIT B

PROPOSED PLAIN LANGUAGE GUIDE

PLAIN LANGUAGE GUIDE*

An Ethics Handbook in Plain Language for Employees In the Executive Branch of New Jersey State Government and in the Employment or Service of State Agencies

“Always do right. This will gratify some people and astonish the rest.”

Mark Twain (Samuel Longhorne Clemens) 1835-1910
(Courtesy of the Ethics Handbook for Federal Officials)

Most State employees are honest, loyal, and hardworking men and women, eager to meet the high standards the public expects of its public servants. Understandably, these men and women may ask why they need to read this handbook. The answer is that although many of the standards of conduct are highly intuitive, some are not. The rules in this handbook derive from detailed statutes, regulations, and executive orders. There are, however, ten simple principles that will guide you through the details. If you follow these principles you will not have concern.

THE TEN PRINCIPLES OF ETHICAL CONDUCT

- **Exploitation of Official Position**

You may not use your position to secure a job, contract, or governmental approval for a friend or family member.

- **Compensation for Official Duties**

Your paycheck is your only permitted compensation. You may not accept any other compensation for performing your job. You may not “moonlight” without the approval of your superior.

- **Gifts and Favors**

You may not accept any gift of more than nominal value (e.g., a tee-shirt or a pen) from anyone with whom your agency conducts business.

* This Guide reflects current Conflicts Law. It does not reflect the recommendations contained within the Final Report of the Special Ethics Counsel. This Guide should be supplemented appropriately to reflect subsequent legislative changes to codify any or all of the Final Report’s proposals.

- **Attendance at Events: Honoraria, Activities, and Expenses**

You may not be “wined and dined” by people with whom your agency conducts business. You may not accept honoraria or official travel reimbursements without prior approval from your agency or the Ethics Commission. If a donor conducts business with your agency, it is unlikely that you may accept such payments.

- **Political Activity**

You may not become involved in political activities without clearance from your supervisor.

- **Conflicts of Interest**

You may not act in any matter in which you, your family, or your close friends have a financial interest that might tend to conflict with the proper discharge of your official duties. Rather, you should recuse yourself and ask someone else to perform the State task.

- **Prohibition on Use of Confidential Information**

You may not accept employment or engage in any activity that may require or induce you to disclose confidential information acquired through your position.

- **Nepotism**

You may not hire, promote, or supervise a relative.

- **Post-Employment Lifetime Restrictions**

After you leave public employment, you may not represent or assist a person concerning a particular matter if you were substantially and directly involved in that particular matter while in State employ. Further, you may not use or disclose any information not generally available to members of the public, gained during the course of your employment.

- **When in Doubt, Ask!**

If you think you have a conflict of interest or are unsure of any of these rules, ask your Ethics Liaison Officer or the Commission. If you suspect any wrongdoing, report your suspicion. Complaints may be made anonymously to the Commission and are kept confidential.

INTRODUCTION

This is a Guide for State officers and employees and special State officers and employees in the Executive Branch of New Jersey State Government. If you are one of these persons, you should read this Guide carefully. It explains the ethics rules and laws found in the New Jersey Conflicts of Interest Law ([N.J.S.A. 52:13D-12 et seq.](#)) and in [N.J.A.C. 19:61-1.1 et seq.](#), to which you are subject and which can be found at the end of this Guide. In addition to those laws and rules, you are also bound by the unique ethics code adopted by the agency for which you work. **You are responsible for knowing the laws and rules described in this guide, as well as the specific policies and procedures of your particular agency.**

As we in State government do our work, it is important that the public have the highest degree of confidence in our conduct. Our fellow employees depend on us to make lawful, ethical decisions. This Guide deals with ethics laws that are the minimum standards, and we need to live up to them. But our goal should be to do more than is required, more than just not acting illegally. Our goal should be the highest ethical standards of public service.

This Guide provides general information only and does not have the force and effect of law. It does not replace any actual laws or rules, and it does not address every ethical restriction contained in the laws and rules it summarizes. It does not cover the requirements contained in your agency's ethics code, to which you are also subject. Ethical issues may also be addressed in procurement, personnel, and travel rules, as well as in open meetings, open records, and criminal laws. The statutes creating your agency may also contain ethical prohibitions. In addition, members of particular professions (such as lawyers and accountants) are subject to their own codes of professional responsibility.

If you have questions (and most of us do, from time to time), you should contact your supervisor, Department Head or Ethics Liaison Officer ("ELO"). Most of the reporting requirements discussed in this Guide refer you to your agency's ELO. A list of ELOs is available at www.nj.gov/lps/ethics/elolist.htm. You may also address questions directly to the Executive Commission on Ethical Standards (which we refer to in this Guide as the "Commission"). We urge you to ask before you do something, rather than need to try to explain what you did.

To obtain more information or to check for revisions to these rules, call the Commission at (609) 292-1892. You may also visit our web site at www.nj.gov/lps/ethics.

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GENERAL STANDARDS OF CONDUCT

These rules promote the principle that public office is a public trust. Where government is based upon the consent of its citizens, the public is entitled to have complete confidence in the integrity of government. The business of New Jersey is conducted in a manner intended to assure the citizens of our State that the character and conduct of its officials and employees are above reproach.

To achieve this result, the State has ethics rules that are general in nature, as well as rules that deal with very specific situations. Under the general rules, you must not:

- have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of your duties in the public interest;
- use or attempt to use your official position to secure privileges or advantages for yourself or others;
- act in your official capacity in any matter in which you have a direct or indirect personal financial interest that might reasonably be expected to impair your objectivity or independence of judgment; or
- knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of your acts that you may be engaged in conduct violative of your trust as an officer or employee of the State.

These rules apply if you are a State officer or employee (holding office or employment in a State agency or a full-time New Jersey member of an interstate agency) or a special State officer or employee (holding office or employment in a State agency for which you receive no compensation, except possibly reimbursement of expenses, a part-time employee or a New Jersey member of an interstate agency if your duties are not full-time).

GIFTS, FAVORS, SERVICES AND OTHER THINGS OF VALUE

You are not allowed to accept any gift, favor, service, or other thing of value from any person or entity under circumstances from which it might be reasonably inferred that the thing was given or offered in order to influence you in the discharge of your official duties.

Some things of value are obvious, such as money, stock, debt forgiveness, real estate, or automobiles. But less obvious things also have value, including offers of employment, loans, labor, rebates, price discounts, entertainment, and meals.

- ***When an Interested Party is Involved***

Regardless of the circumstances, you are always prohibited from soliciting or accepting any thing of

value from an interested party. An “*interested party*” is:

- a person or entity that is or may reasonably be anticipated to be subject to the regulatory, licensing, or supervisory authority of your agency, or any employee, representative or agent of that person or entity;
- a supplier to your agency (meaning any private sector person or entity that is providing or is seeking to provide or may reasonably be expected to provide goods and/or services to your agency) or any employee, representative, or agent of a supplier;
- an organization that advocates or represents the positions of its members to your agency; or
- an organization a majority of whose members are interested parties.

In general, an interested party is any person or entity that you or your agency deal with, contact, or regulate in the course of official business.

- **Example:** An employee inspects a business for health and safety violations. She may not accept a \$20 gift certificate from the business.
- **Note:** A separate set of rules applies to attending events sponsored by interested parties. See “*Attendance at Events: Honoraria, Activities, and Expenses,*” below.

- ***Reporting Requirement***

You are required to disclose and hand over to your ELO any offer or receipt of a thing of value from any person or entity.

- ***Determination by Your ELO***

If your ELO determines that it is inappropriate under the applicable ethics rules for you to accept the thing of value, he or she will return it to the donor or, if it is perishable, give it to a nonprofit entity in the name of the donor. Your ELO will also determine whether a lobbyist or governmental affairs agent offered the thing of value. If so, your ELO will let you know whether accepting it will exceed the calendar year limit of \$250.

- ***Unsolicited Gifts of Nominal Value***

From time to time, all of us receive unsolicited gifts or benefits of trivial or nominal value, such as complimentary articles offered to the general public (e.g., key chains, pencils, and calendars), and gifts received as a result of mass advertising mailings to the general business public. However inconsequential, you must disclose your receipt of these items to your ELO. If he or she determines that it will not create an impression of a conflict of interest or a violation of the public trust, you or your agency will be permitted to retain and use the items.

- ***Caution Against Inappropriate Uses***

An item that is otherwise permissible to accept might be impermissible if it is used or displayed in an inappropriate manner. For instance, an official in a regulatory agency should not use a pocket calendar conspicuously marked with the name of a company that is regulated by the agency, as this might create the impression of favoritism. A State agency should not display in any of its offices a wall calendar from a vendor, as this might create the impression of an endorsement.

- ***Other Resources***

For a more complete discussion of this subject, see “*Guidelines Governing Receipt of Gifts and Favors by State Officers and Employees*,” www.nj.gov/lps/ethics/giftcode.htm, and N.J.A.C. 19:61-6.9 to -6.10, www.nj.gov/lps/ethics/ecesrules.pdf. You should also see “*Advisory Opinions*” on page 19 for information on advisory opinions that the Commission has issued on this topic and how to request an advisory opinion concerning your particular circumstances.

COMPENSATION FOR OFFICIAL DUTIES

- ***Your State Paycheck is Your Only Permitted Compensation***

The only compensation or other thing of value that you are allowed to solicit or accept for doing your State duties is your State paycheck. Payment or reimbursement of your expenses for attending events is not compensation, and is addressed below under the heading “*Attendance at Events: Honoraria, Activities, and Expenses*.”

- ***Other Resources***

For a more complete discussion of this subject, see the Commission’s guidelines on various topics, at www.gov/lps/ethics/general.htm. You should also see “*Advisory Opinions*” on page 19 for information on advisory opinions that the Commission has issued on this topic and how to request an advisory opinion concerning your particular circumstances.

ATTENDANCE AT EVENTS: HONORARIA, ACTIVITIES, AND EXPENSES

An “*event*” is any meeting, conference, seminar, speaking engagement, symposium, training course, ground-breaking, ribbon-cutting, meal, open house, cocktail party, fundraiser, holiday party, social function, or similar event that takes place away from your work location, is sponsored or co-sponsored by a non-State government source and the invitation for which is extended to you because of your official position.

Meetings that you attend at other State agencies in the course of your official duties are not “events.”

- You must obtain prior approval from your ELO to attend any event.
- You are not allowed to accept an honorarium or fee for a speech or presentation at an event.
- You are not allowed to use your official title for the purpose of fundraising for a private organization (whether at an event or elsewhere).
- Regardless of the sponsor or the purpose of the event, you are permitted to accept nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).
- *If the Event is Not Sponsored by an Interested Party* (see page 3 for definition)

The State may pay your reasonable expenses associated with attending the event or it may permit you to accept (but not from an interested party) travel, meals, accommodation, waiver of conference or event fees or any other costs associated with attending the event, or reimbursement for such costs.

You are prohibited from accepting entertainment that is collateral to the event, such as a golf outing, or meals taken other than in a group setting with all attendees, or reimbursement for such items.

- **Examples:** An employee of Travel and Tourism at the Department of Commerce has been invited, by the Mexican Tourist Bureau, an agency of the Mexican government, to attend a series of meetings on promoting tourism in both countries. The employee will be giving a speech at a dinner on the final day of the meetings and has been offered a \$500 honorarium. The employee may attend the meetings, but is not permitted to accept an honorarium in connection with his speech. He may accept, directly or by reimbursement, actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State, not to exceed the statutory limit of \$500.

A local non-profit organization would like to hold a dinner/fundraiser honoring a Technical Assistant from the Department of Insurance who has been a long-time supporter of the organization. The organization plans to use the Technical Assistant’s picture, name, and official title on the promotional literature. The

Technical Assistant may attend the event, but is prohibited from allowing the use of his official title for fundraising purposes.

- ***If the Event is Sponsored by an Interested Party***

The State must pay your reasonable expenses associated with attending the event, and neither you nor the State can receive travel, meals, accommodation, waiver of conference or event fees or any other costs associated with attending the event, or reimbursement for such costs, from any source. There may be an exception to this rule if you take an active role in the event (see below).

- ***If You Take an Active Role in the Event***

If an event is designed to provide training, dissemination of information, or the exchange of ideas, and you will be making a speech, participating in a panel at the event, or acting as an accompanying resource person for the speaker and/or participant, you must seek approval from your ELO. If he or she determines that doing so will not create a conflict or the appearance of one, your ELO can permit you to attend the event and permit the interested party sponsor to reimburse or pay for the following expenses associated with attending the event, if those expenses are not paid for by the State:

- “***Allowable Entertainment Expenses***” — the costs for a guest speaker, incidental music, and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive; but not the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.
- “***Actual and Reasonable Expenditures for Travel or Subsistence***” — include commercial travel rates directly to and from the event and food and lodging expenses which are moderate and neither elaborate nor excessive. For an event outside New Jersey, this amount must not exceed \$500 per trip, for expenditures for travel or subsistence and entertainment expenses that are not paid for by the State of New Jersey. The \$500 per trip limitation does not apply if the reimbursement or payment is made by a nonprofit organization if:
 - you are an active member of the organization because the State pays a membership fee or charge; or
 - the organization does not contract with any State agency to provide goods, materials, equipment, or services.
- **Examples:** An employee of the Department of Environmental Protection has been invited to attend a conference of the Association of Environmental Authorities and has been asked to present a short program to explain a new series of forms being proposed by the Department. The Association has offered to waive the \$200 conference fee; the conference program includes morning and afternoon refreshments and lunch. If the ELO approves the employee’s attendance and participation in the conference, the employee may accept the waiver of the fee and

the refreshments and meal included in the program. A copy of the ELO's approval must be forwarded to the Commission.

The Division of Motor Vehicles is considering the purchase of new pollution-testing equipment. One of the companies that plans to submit a bid invites several Division employees to a demonstration of the equipment to be held at a hotel conference center. A seafood buffet will be served after the demonstration. With proper approval, the employees may attend the demonstration, but because the company plans to submit a bid to provide this equipment, and is therefore an interested party with respect to the Division, the employees may not partake of the seafood buffet at the expense of the vendor. The employees may, however, pay the cost of the buffet personally.

Three employees from different units of the Department of Transportation are responsible for weekly monitoring of a construction project. Each Friday morning, they meet with the contractor's representative at the site field office to review the week's progress and to assess projected schedules. The meetings generally last one to two hours; coffee is available, but no other refreshments or meals are served or offered. Because no direct or indirect benefits are offered or provided, and because the meetings are part of the employees' job responsibilities, the meetings are not considered "events" for the purposes of this Guide.

- ***Considerations in Granting Approval***

Your ELO must determine whether a legitimate State purpose will be served by your attendance at an event, and must consider applicable laws, regulations, ethics codes, guidelines, departmental administrative policies, and any other relevant considerations. These might include the identity of the sponsor and the other participants, the purpose of the event, whether the event will assist you in carrying out your official duties and support your agency's mission, and the value and character of the costs, benefits, and/or honoraria provided by the sponsor (including whether they are comparable to those offered to or purchased by other attendees). In some instances, the ELO is required to forward the approval to the Commission for review.

- ***Special Rules Applicable to Designated State Officers***

The Governor, the Attorney General, Commissioners of State agencies, heads of the other Executive Branch departments, specified members of the Governor's staff, and certain other persons are identified in N.J.S.A. 52:13D-24 as "***designated State officers***." These persons are subject to stricter rules concerning compensation, honoraria, and other forms of income from any source other than their State paycheck. Designated State officers are required, in certain instances, and are urged in all others, to seek prior review and approval from the Commission before soliciting or accepting payment or reimbursement of their expenses in connection with an event from any outside source.

- ***Other Resources***

For a more complete discussion of this subject, see N.J.A.C. 19:61-6.1 to -6.8, at

www.nj.gov/lps/ethics/ecesrules.pdf. You should also see “*Advisory Opinions*,” below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

POLITICAL ACTIVITY

You are permitted to be involved in partisan political activities, provided there is no provision in your departmental code of ethics prohibiting those activities. The Ethics Codes of the Election Law Enforcement Commission, the Executive Commission on Ethical Standards, and several other agencies have specific provisions prohibiting such activities. Under no circumstances may you use State time or State resources in pursuit of political activities. As with other outside activities, you must obtain the prior approval of your ELO.

The restrictions on your soliciting or accepting things of value do not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office. However, you cannot accept a campaign contribution if you know it is being given in lieu of a payment that you would otherwise be prohibited from accepting.

- ***Federal Hatch Act***

The Hatch Act restricts the political activity of an individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants. There is a misperception that the Hatch Act only applies if one’s salary is federally funded. The Act may apply more broadly than that.

Covered State and Local Employees May:

- run for public office in nonpartisan elections;
- actively campaign for candidates for public office in partisan and nonpartisan elections; and
- contribute money to political organizations and attend political fundraising functions.

Covered State and Local Employees May Not:

- be a candidate for public office in a partisan election (this does not eliminate being a candidate for school board, a nonpartisan office in New Jersey);
- use official authority or influence to interfere with or affect the results of an election or nomination; or
- directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

The Hatch Act is a federal statute, not under the jurisdiction of the Commission. Any interested party may request advisory opinions from the Office of Special Counsel, Hatch Act Unit, 1730 M Street, N.W., Suite 300, Washington, D.C. 20036-4505. Telephone: 800-85-HATCH (800-854-2824) or 202-653-7143. You may also visit the website of the United States Office of Special Counsel, at www.osc.gov.

- ***Other Resources***

For a more complete discussion of this subject, see “State Employees’ Participation in Political Activities,” www.nj.gov/lps/ethics/polcode.htm. See “*Advisory Opinions*,” below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

OUTSIDE EMPLOYMENT

You may have a second job, outside volunteer activity, or personal business interest only if it is compatible with your agency rules and your State responsibilities. You must not:

- undertake any employment or service which might reasonably be expected to impair your objectivity and independence of judgment in the exercise of your official duties;
- engage in any business, profession, trade, or occupation that is subject to licensing or regulation by a specific agency of State Government, without promptly filing notice of that activity with the Commission;
- engage in any business, transaction, or professional activity that is in substantial conflict with the proper discharge of your duties in the public interest; or
- use state time, personnel, or other resources for the other job or activity.

Neither you nor your immediate family members can hold employment with, hold an interest in, or represent, appear for, or negotiate on behalf of a holder of or applicant for a casino license unless the Commission grants a waiver. To ask for a waiver, contact the Commission.

Prior to engaging in any outside employment or other activity, you must get approval from your agency. Ask your ELO.

If you are not certain whether you are permitted to take on a job or other outside activity according to these rules, you should ask the Commission for an advisory opinion. These cases are frequently very fact-sensitive, and the Commission decides each individually.

- ***Other Resources***

For a more complete discussion of this subject, see “*Guidelines Governing Outside Activities*,” at

www.nj.gov/lps/ethics/2arycode.htm. See also, “*Outside Activity Questionnaire*,” at www.nj.gov/lps/ethics/outsideact.htm. See “*Advisory Opinions*,” below, for information on how to find advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

CONFLICTS OF INTEREST

As a State officer or employee or special State officer or employee, you are prohibited from acting in your official capacity in any matter in which you have a direct or indirect personal financial interest that might be expected to impair your objectivity or independence of judgment. As a practical matter, this means that you should not participate in any decision, even informally, on a matter in which you have a financial interest.

You Could Have a Financial Interest through Such Things as:

- A purchase, sale, lease, contract, option, or other transaction;
- Property or services; and
- Employment or negotiations for prospective employment.

The Conflicts Law contains an exception that permits you to represent yourself in negotiations or proceedings concerning your own interest in real property.

• *Prohibitions on Contracts with a State Agency*

Special State Officers and Employees

You may not knowingly undertake or execute any contract, agreement, sale or purchase valued at \$25 or more with the State agency with which you are affiliated if you have any duties or responsibilities in connection with the purchase or acquisition of property or services. This prohibition also applies to your partners and to any corporation that you control, or in which you own or control more than 1% of the stock. The prohibition does not extend to other State agencies.

State Officers and Employees

You, along with your partners or any corporation you control or in which you own or control more than 1% of the stock, may not knowingly undertake or execute any contract, agreement, sale or purchase valued at \$25 or more with any State agency, *whether or not* it is the agency for which you work.

Limited Exceptions to these Prohibitions

Three categories of contracts are exempt from the general prohibition on contracting with the

State. However, before entering into a contract falling within any of these categories, approval must first be obtained from the Commission. The three categories are:

- Those purchases, contracts, agreements, or sales that are made after public notice and competitive bidding. The Commission typically approves such contracts unless the contract in question is with the State employee's own agency. In these situations, the Commission has determined that such contracts raise the issue of an appearance of impropriety under section 23(e)(7) of the Conflicts Law.
- Those contracts that may be awarded without public advertising and competitive bidding pursuant to N.J.S.A. 52:34-10.
- Any contract of insurance entered into by the Director of the Division of Purchase and Property, Department of Treasury, pursuant to N.J.S.A. 52: 27B-62.

In addition, there are two statutory exemptions that do not require advance approval by the Commission:

- Contracts for the development of scientific or technological discoveries or innovations: Section 19.1 of the Conflicts Law excepts contracts for the development of scientific or technological discoveries or innovations in which the State agency has a property right, if the State agency has a procedure in its code of ethics authorizing these contracts that minimizes actual conflicts of interest, and the contract complies with the code procedure.
- Certain rental agreements with State agencies: Section 19.2 of the Conflicts Law excepts rental agreements with a State agency that operates a facility which rents space or provides services to assist small businesses employing fifty people or less, pursuant to the same terms and conditions as those offered to members of the public generally.

- ***Prohibitions on Representing Parties other than the State***

There are severe restrictions on your ability (and that of any partnership, corporation, or firm in which you have an interest) to represent, appear for, or negotiate on behalf of a person other than the State in connection with any cause, proceeding, application, or other matter, including a negotiation concerning the acquisition or sale of property of any sort, pending before any State agency. See N.J.S.A. 52:13D-15 to -16.

Representation does not only involve personally appearing before a State agency on behalf of an individual or entity. Under Commission precedent, representational activities also include:

- correspondence to a State agency on behalf of a third party;
- telephone calls to a State agency on behalf of a third party; and

- a State employee’s signature on an application or other document submitted to a State agency on behalf of a third party (e.g., an engineering report).

You should carefully review these restrictions or consult with your ELO if you are considering taking any action on behalf of another person or entity that might be considered representing, appearing for, or negotiating on behalf of that person or entity in opposition to the State or before a State agency.

For special State officers or employees, the restriction on representing parties other than the State is limited to their own agencies.

- ***Advisory Opinions***

If you think that you may have a conflict of interest, you should ask your ELO or the Commission for an opinion. These cases are frequently very fact-sensitive, and the Commission decides each individually. See “*Advisory Opinions*,” below, for information on how to find advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

RULES REGARDING PUBLISHED WORKS

The Commission staff frequently receives inquiries concerning State employees’ activities in connection with authoring and publishing research papers, articles, and books. Based on applicable rules and Commission precedent, you may accept compensation for published works only if you meet all of these conditions:

- There is no prohibition governing that activity in your department’s enabling legislation or code of ethics;
- You obtain prior approval from your ELO;
- The published work does not use or disclose information that is not generally available to the public;
- You do not use State time or resources in connection with the published work;
- You do not use your official title in connection with publication or promotion of the published work;
- You indicate that your views do not represent those of the State;
- You do not promote, advertise, or solicit sales of the published work to co-workers or individuals or entities with whom you have official dealings;

- You do not contract to sell the published work to the State, except in compliance with section 19 of the Conflicts Law; and
- The published work is not prepared as part of your official duties.

Note that the term “***published work***” includes not only research papers, articles, and books, but also any tangible mediums of expression, such as literary, pictorial, graphic and sculptural matter, sound recordings, and software.

- **Examples:** As part of his official duties, a Department of Transportation employee evaluates surveying equipment and trains Department employees on its use. The employee recently completed an in-depth evaluation of ten different types of surveying instruments and made a recommendation to the purchasing unit. The employee would like to publish the entire report in Transportation Magazine. He has been offered \$500 for the article. The Department must make a policy decision as to whether the article may be published. The employee is prohibited from accepting compensation for the article, even if the Department grants permission for the publication, since it was created as part of his official duties prepared on State time and utilizing State resources.

An Environmental Technician at the Department of Environmental Protection has been asked to write an article for an environmental journal on how New Jersey’s automobile emission standards differ from those of Pennsylvania. He has been offered \$500 for the article. The Environmental Technician is permitted to publish the article and receive compensation since it is on a subject matter related to, but not part of, his official duties, so long as he prepares the article at home, on his own time, without using any State resources.

- ***Other Resources***

For a more complete discussion of this subject, see “*Guidelines Governing Outside Activities*,” at www.nj.gov/lps/ethics/2arycode.htm, “*Guidelines Governing Published Works*,” at www.nj.gov/lps/ethics/pubworks.htm, and N.J.A.C. 19:61-6.7, at www.nj.gov/lps/ethics/ecesrules.pdf. See “*Advisory Opinions*,” below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

CONFIDENTIAL INFORMATION

You may not divulge any information that you obtain in the course of your official duties that is not generally available to members of the public. You may not use any such confidential information for your own benefit, whether direct or indirect. These restrictions continue even after you are no longer a State employee.

USE OF OFFICIAL STATIONERY

Agency stationery can only be used for agency purposes. Use of official stationery for personal purposes will result in disciplinary action by the agency or administrative action by the Commission. See “*Guidelines Governing the Use of Official Stationery*,” at www.nj.gov/lps/ethics/gdstcode.pdf.

POST-EMPLOYMENT RESTRICTIONS

- ***Seeking Future Employment***

If you have direct and substantial contact with any consultants or vendors doing business with the State, you must refrain from circulating resumes or in any manner seeking employment with those firms while you are still in State service. If you are solicited for potential employment by a firm with which you have direct and substantial contact, that solicitation must be disclosed immediately to your management and to your ELO to avoid a situation where you may appear to be using your official position to gain an unwarranted advantage. If you do not have direct and substantial contact with a particular consultant or vendor doing business with the State, you may circulate your resume and enter into discussions concerning potential employment with that firm, so long as you avoid any situation that may give rise to an unwarranted advantage. Your discussions, interviews, and negotiations should not take place on State time.

If the agency in which you are employed regulates non-State entities, solicitation or discussion of employment with those regulated entities (or their representatives) which have a specific cause, proceeding, application, or other matter before your agency is not permitted. If the entity does not have a specific cause, proceeding, application, or other matter before your agency, the situation must be reviewed by your ELO or the Commission on a case-by-case basis, and you can not proceed with any job-seeking activities related to that entity unless you obtain prior approval.

- ***Dealing with the State after your Departure***

As a former employee, you will be prohibited from representing or assisting a person concerning a particular matter if you were substantially and directly involved in that particular matter while in State employment. This prohibition does not extend to “determinations of general applicability or to the preparation or review of legislation that is no longer pending before the Legislature or the Governor.” In addition you may be banned from assisting or representing persons in any matter that is pending before your former agency. The statute, rules, and precedent governing these prohibitions are complex. Questions about the nature of matters with which you had involvement during the course of your official duties should be directed to the Commission, for determination on a case-by-case basis.

- ***Special Rules for the Casino Industry and for Lawyers***

Additional, and more stringent, rules will apply to your post-employment activities if you file a

Financial Disclosure Statement pursuant to law or executive order, or have responsibility for matters affecting casino activity, or are engaged in the practice of law. Questions concerning post-employment casino-related activities should be directed to the Commission. Lawyers may request advice on the application of the Rules of Professional Conduct from the Supreme Court Advisory Committee on Professional Ethics.

- ***Contracting with your Former Agency***

Nothing in the Ethics Laws prevents an agency from contracting directly with a former employee.

- ***Other Resources***

For a more complete discussion of this subject, see “*Post-Employment Restrictions for State Employees*,” at www.nj.gov/lps/ethics/pemcode.htm. See “*Advisory Opinions*,” below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

NEPOTISM

The Commission staff frequently receives inquiries concerning the propriety of State officials interacting in the course of their official duties with family members. The majority of inquiries concern relatives employed by the same State agency, or interactions with family members employed in the private sector. The Conflicts Law now specifically addresses nepotism (it previously covered certain casino-related provisions, discussed at the end of this section). The Commission has dealt with the nepotism issue over the years by applying other relevant statutory provisions.

- ***Family Members Working for the Same Agency***

In the case of spouses who work for the same agency, the Commission has determined that supervisor/subordinate relationships are not permitted because one spouse has a direct financial interest in the salary and continued employment of the other spouse, and therefore should not directly supervise or take personnel actions in regard to the spouse.

In the case of other family members working for the same State agency, each case is fact-sensitive. The Commission considers such factors as whether the individuals reside in the same household, the degree of the relationship, whether there is financial interdependence, the size of the work unit in question, whether there is direct supervision, and whether one family member is responsible for taking personnel actions that affect the other family member.

- ***Hiring Family Members***

With respect to the hiring of family members, the Commission looks at the totality of circumstances surrounding the hire to determine whether any unwarranted privilege has been afforded the family member.

- ***Interacting with Family Members in the Private Sector***

With respect to interactions with family members or their private sector employers, the Commission generally recommends recusal from matters involving the relative and/or the relative's employer, in order to eliminate any appearance of impropriety.

- ***Dating and Other Relationships***

The Commission's policy concerning spouses who work in the same agency is also applicable to non-related individuals who share the same household with the same financial interdependence that the Commission views as creating a conflict in spousal situations. In the case of individuals involved in a dating relationship, the Commission has found violations of the unwarranted privilege and appearance sections of the statute in situations where the State employee had official involvement in a matter affecting the individual with whom he/she had a dating relationship.

- ***Casino-Related Conflict Issues***

Only the casino-related provisions of the Conflicts Law contain prohibitions that specifically apply to a State official's immediate family members (defined as the person's spouse, child, parent, or sibling residing in the same household). Waivers of these prohibitions may be requested by contacting the Commission. Waivers will be granted if, in the Commission's judgment, the employment will not interfere with the responsibilities of the State officer or employee and will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest.

- ***Other Resources***

For a more complete discussion of this subject, see "*Official Interactions with Family Members/Cohabitants and Dating Relationships*," at www.nj.gov/lps/ethics/famcode.htm. See "*Advisory Opinions*," below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

RECUSAL

Sometimes, conflicts situations occur because of your personal relationships or financial circumstances. For example, you may be involved in reviewing vendor qualifications for a contract your agency is preparing to issue, and discover that your sibling's company has submitted a proposal. To avoid that inherent conflict of interest, you must formally recuse yourself from the review by assigning another individual to handle the matter (or advising your supervisor of the need to do so), and by ensuring that you are screened from any communications about the review. See the Commission's rule on recusal, at www.nj.gov/lps/ethics/ecesrules.pdf, for more information about when and how to recuse yourself.

THE COMMISSION

The Commission is responsible for providing advice and investigating matters pertaining to ethics and related rules governing the official conduct of State officers and employees and special State officers and employees. You are encouraged to seek guidance from the Commission or your ELO whenever you have questions about what you should do.

COMPLAINTS AND INVESTIGATIONS

Allegations come to the Commission from various sources and can be made orally or in writing. The complainant may remain anonymous. If the complainant does identify him/herself, that information remains confidential.

Allegations may also be filed with the State agency employing the State officer or employee, in accordance with the procedures established by the agency. Upon receipt of an allegation, the State agency is required to file a copy with the Commission. It is within the discretion of the Commission to direct the State agency to transfer the matter to it.

When the Commission receives an allegation, the staff first reviews it for an initial determination as to whether the alleged conduct falls within the jurisdiction of the Commission. Once it has been determined that the Commission has jurisdiction, the staff initiates a preliminary investigation which may include interviews of the complainant, the State officer or employee involved, and any other individuals who possess knowledge of the circumstances surrounding the alleged conduct. Interviews are conducted under oath and are tape-recorded. An attorney or a union representative may accompany the interviewee, if he/she so desires, but such representation is not required. A copy of the taped interview will be provided to the interviewee upon his/her request, after the Commission has reviewed the matter. Interviews are occasionally conducted via telephone. Investigations also frequently involve the review of documents.

If the Commission determines that the testimony of any person is required, and that person refuses to appear, a subpoena may be issued.

During the course of a preliminary investigation, no information concerning an allegation is made public. Upon the conclusion of the preliminary investigation, a written report is presented to the entire Commission. The Commission's meeting is not a formal hearing. No witnesses appear. A full due-process hearing is held at the Office of Administrative Law ("OAL"), if and when the Commission determines that indications of a violation exist. The Commission meeting dates are posted on the Commission's website, at www.nj.gov/lps/ethics. Its meetings are open to the public. Reports of the Commission's preliminary investigations are privileged communications between the staff and Commission members, and are considered in closed session.

If the Commission finds that there has been no violation of the Conflicts Law or the relevant department's code of ethics, as alleged, it will dismiss the allegation. This occurs in an open public session. If the Commission determines that there are indications of a violation warranting further proceedings, a complaint is issued for a hearing at the OAL, pursuant to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure

Rules, N.J.A.C. 1:1. Although the Commission is also authorized hold hearings, that is not normally done, due to time constraints. Prior to an OAL hearing, witnesses may be interviewed by the investigative staff. After the OAL hearing is concluded, a decision is issued in accordance with the time frame set forth in the Administrative Procedure Act.

In the past, the Commission has permitted individuals to enter into consent agreements with the Commission, either prior to or after the issuance of a complaint. Consent orders are included in the individual's personnel file. Consent orders and complaints are public records.

- ***Other Resources***

For a more complete discussion of this subject, see "*Investigative Process*," at www.nj.gov/lps/ethics/process.htm. See "*Advisory Opinions*," below, for information on advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.

PENALTIES

When a person is found to have violated the Conflicts Law or a particular agency's code of ethics, the Commission can levy fines ranging from \$500 to \$10,000. The Commission is also authorized to order that the violator be suspended or dismissed from office or employment. If the person willfully and continuously disregarded the provisions of the Conflicts Law or a particular agency's code of ethics, the Commission may order that the person be barred from holding any public office or employment in this State, in any capacity whatsoever, for a period of up to five years.

ADVISORY OPINIONS

Most of us working for the public will, at some point, find ourselves facing an ethics dilemma. It might concern whether we can accept a favor or gift from an agency contractor or vendor. Perhaps it will arise in connection with a second job or volunteer work. Maybe a spouse's business will want to do business with your agency.

One of the primary functions of the Commission is to respond to questions from State employees and others concerning how a particular situation might be analyzed under State ethics rules — and to offer advice.

This can happen in a number of ways, ranging from very informal advice, to official written opinions. In many cases, questions can be answered with a telephone call or a visit with Commission staff. In other cases, employees might want to get a written opinion from the staff that is "unofficial," but documents the advice sought and received.

An "official" advisory opinion is one that is presented to the full Commission at a public meeting. Such an opinion is given in situations that are less clear, or for which there is little precedent. If you receive formal advice and guidance from the Commission, you will be immune from charges of

violations of the provisions of the Conflict Law. You cannot gain immunity from the provisions of the Code of Criminal Justice, governing crimes such as bribery.

- ***If You Want to Request an Advisory Opinion Concerning Your Situation***

To obtain an official advisory opinion from the Commission, you should write to the Executive Director of the Commission. You should provide as much information as possible concerning the request, and include any relevant documentation. In the event that additional information is required, a Commission investigator will contact the appropriate individuals or organizations. Requests for advisory opinions and replies to requests for advisory opinions may be made available to the public, after consideration by the Commission at a public meeting. For further information, see “*Requests for Advice*,” at www.nj.gov/lps/ethics/advisory.htm.

If you are unsure which level of response is most appropriate in your situation, give the Commission a call at (609) 292-1892. The most important thing is that you seek advice, before engaging in a potentially questionable activity.

- ***If You Want to Review Existing Advisory Opinions***

To review official advisory opinions issued in the past by the Commission, contact the Commission staff at (609) 292-1892, or visit the Commission offices between 9:00 a.m. and 4:00 p.m. on business days. While a review of prior opinions may be useful, bear in mind that every situation is unique, and that responses to one person may not necessarily apply to another, due to subtle factual differences between situations or to subsequent changes in the applicable laws or rules. Also, bear in mind that advisory opinions are only binding with respect to the facts and circumstances reviewed and considered in the specific request. Summaries of many of the Commission’s opinions are available in the Commission’s newsletters, at www.nj.gov/lps/ethics/newsltrs.htm.

FINANCIAL DISCLOSURE

Some State officers and employees and special State officers and employees are required by statute, executive order, or other law to file annual financial disclosure statements with the Commission. Information about financial disclosure requirements, forms, and instructions are available on the Commission’s webpage, at www.nj.gov/lps/ethics.

State officers and employees who must file financial disclosures, and their immediate family members and new employers, are subject to a two-year casino-related post-employment restriction. See N.J.S.A. 52:13D-17.2(c). This restriction does not apply to most of the special State officers and employees who file financial disclosures.

INFORMATION ON RELATED OFFICES

- ***Legislative Ethics***

Joint Legislative Committee on Ethical Standards
Office of Legislative Services
P.O. Box 068
Trenton, NJ 08625-0068
Phone: (609) 292-4840
Toll Free: (800) 792-8630
TDD: (609) 777-2744
Toll Free: (800) 257-7490
Fax: (609) 777-2440

- ***Local Government Ethics***

Local Finance Board
Department of Community Affairs
P.O. Box 803
Trenton, NJ 08625-0803
Phone: (609) 292-6613
Fax: (609) 292-9073

- ***School Ethics***

School Ethics Commission
P.O. Box 500
Trenton, NJ 08625-0500
Phone: (609) 984-6941

- ***Lobbyist Registration and Disclosure***

Election Law Enforcement Commission
P.O. Box 185
Trenton, NJ 08625-0185
Phone: (609) 292-8700
Fax: (609) 633-9854

EXHIBIT C

PROPOSED BUSINESS ETHICS GUIDE

BUSINESS ETHICS GUIDE

A Plain Language Guide to Ethical Business Conduct for Companies Transacting Business with the State of New Jersey, its Institutions, and Agencies¹

INTRODUCTION AND GUIDING PRINCIPLES

This Plain Language Guide to Ethical Business Conduct (“Guide”) covers a wide range of business practices and procedures. It does not cover every issue that may arise, but it does set out basic principles to guide all employees, officers, and directors of companies transacting business with the State of New Jersey. Obeying the law, both in letter and spirit, is the foundation on which a company’s ethical standards are built. All company employees, officers, and directors must respect and obey the laws and regulations of the agencies with which they operate. Contracting parties will be required to certify that they have complied with all applicable laws and regulations governing the provision of State services, including the Conflicts of Interest Law, N.J.S.A. 52:13D-12 to -28.

Although the applicable provisions of law are detailed, you will have no difficulty following them, if you follow these simple, guiding principles:

- You may not profit from a conflict of interest on the part of a State employee.
- You may not “wine and dine” State employees.
- You may not pay a State employee anything for the performance of his or her official duties.
- You may not make illegal political contributions.
- You may not profit, directly or indirectly, from the use of any secret or confidential knowledge or data of the State that a State employee has illicitly disclosed.
- You should report any illegal or unethical behavior or any violation of the State’s ethics and business codes to the State Ethics Commission, by calling the anonymous “Hot Line” established for this purpose.

¹ This Guide reflects current Conflicts Law. It should be supplemented appropriately to reflect subsequent legislative changes.

OVERVIEW AND RULES OF CONDUCT

This Guide is designed to help private sector vendors and other entities familiarize themselves with some key parts of the New Jersey ethics standards as they apply to employees of the Executive Branch of State Government. If you do business with the Executive Branch, are regulated or licensed by, receive grants from, or lobby State agencies, or if you are considering hiring current and former State employees, this Guide is for you.

This Guide is not meant to serve as formal advice or as a substitute for legal counsel. It provides general information only and does not have the force and effect of law. It does not replace any actual laws or rules, and it does not address every ethical restriction contained in the laws and rules it summarizes. It does not cover the requirements contained in any particular agency's ethics code. Ethical issues may also be addressed in procurement, personnel, and travel rules, as well as in open meetings, open records, and criminal laws. In addition, members of particular professions (e.g., lawyers and accountants) are subject to their own codes of professional responsibility.

In this Guide, we use the term “*State employee*” to refer to State officers and employees and special State officers and employees who are subject to the ethics laws and rules discussed in this Guide. As a practical matter, virtually all employees and appointees in the Executive Branch of New Jersey State Government are “State employees.”

GENERAL STANDARDS

As a private sector entity dealing with State agencies, you must not:

- induce or attempt to induce any State employee to violate the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 to -28, or any code of ethics promulgated thereunder;
- influence, or attempt to influence or cause to be influenced, any State employee in his or her official capacity in any manner which might tend to impair his or her objectivity or independence of judgment;
- cause or influence, or attempt to cause or influence, any State employee to use, or to attempt to use, his or her official position to secure unwarranted privileges or advantages for you or any other person or entity; or
- undertake, directly or indirectly, any private business or commercial or entrepreneurial relationship with, or sell any interest in your business to:
 - a State employee who has any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to any State agency; or

- any person, firm, or entity with which that State employee is employed or associated, or in which he or she has an interest.

A State employee may apply to the Commission for a waiver of this particular restriction, and the Commission may grant the waiver if it finds that the relationship does not present a potential, actual, or appearance of a conflict of interest. If you enter into a business relationship that contravenes this rule, you must promptly report it in writing to the Commission.

GIFTS, FAVORS, SERVICES AND OTHER THINGS OF VALUE

Do not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, honorarium or other thing of value of any kind to:

- any State employee or any member of his or her immediate family (i.e., a spouse, child, parent, or sibling residing in the same household as the employee); or
- any partnership, firm, or corporation with which the State employee is employed or associated, or in which he or she has an interest. Some things of value are obvious, such as money, stock, debt forgiveness, real estate, or automobiles. But less obvious things also have value, including offers of employment, loans, labor, rebates, price discounts, entertainment, or meals.

The effect of this standard is that you must not send holiday gifts, office-warming gifts, tokens of appreciation, or other things of value to State employees or State agencies. In addition, it is improper to invite State employees to meals, parties, sporting events, theatrical performances, and similar social functions.

A State employee can accept a gift from you or contract with you under the same terms and conditions that you offer or make available to members of the general public or to a large class of recipients, provided that the gift or contract does not violate any other Commission guidelines or a particular agency's ethics code. For example, State employees can take advantage of cell phone rate packages offered to "all public employees" and government rates offered by hotel chains. State employees can also accept nonalcoholic beverages and snack items (e.g., coffee, doughnuts, and cookies) at meetings or site visits, but they cannot accept meals.

If any State employee solicits you for a fee, commission, compensation, gift, gratuity, or other thing of value, you are required to report the occurrence promptly, in writing, to the Attorney General and to the Commission.

State employees may accept payment or reimbursement for travel expenses from a private sector entity under very limited circumstances. In each case, the employee must secure prior approval from his or her agency. The rules governing travel expenses, N.J.A.C. 19:61-6.1 et seq., are available at www.nj.gov/lps/ethics/ecesrules.pdf.

EMPLOYMENT OFFERS

- ***Current State Employees***

If you offer a job to a State employee, be aware that job negotiations create a financial interest for that employee. As such, the employee will no longer be able to act in the State's interest concerning your company. Please also note that State employees must secure prior approval for secondary employment. Depending on your relationship with the employee's agency, your employment offer may be disapproved, and the State employee could be screened from taking any official action with respect to your contracts, applications, or matters in the future.

- ***Former State Employees***

After leaving State service, State employees are under a lifetime ban against the use or provision of information not generally available to the public acquired during their State employment. Further, former State employees are prohibited from representing or assisting a person concerning a particular matter if they were substantially and directly involved in that particular matter while in State employment. For more information, see "*Post-Employment Restrictions for State Employees*," at www.nj.gov/lps/ethics/pempcode.htm.

- ***Casino-Related Restrictions***

The Casino Control Act and the Conflicts of Interest Law contain restrictions on the employment of current State employees, their immediate family members, and former State employees and their immediate family members, by holders of and applicants for casino licenses. However, there are statutory provisions that permit waivers of some of these restrictions by the State Ethics Commission. In addition, there are restrictions on benefits that can be passed to State employees by holders of and applicants for casino licenses. Questions about these restrictions should be addressed to the Commission, at P.O. Box 082, Trenton, New Jersey, 08625-0082, or at ethics@eces.state.nj.us.

PENALTIES

The State Ethics Commission has the authority to impose penalties on private sector entities and individuals, and it can refer such cases to appropriate agencies when a violation is punishable by law. Violations of some of the above-described standards can result in the violator's criminal prosecution, and/or suspension, disqualification, or debarment from doing business with any State agency.