

NEW YORK CITY CONFLICTS OF INTEREST BOARD
Proposed Charter Amendment on Independent Budget
June 2013

New York City Charter
Chapter 68 (Conflicts of Interest)

§ 2602(i). The appropriations available to pay for the expenses of the board during each fiscal year shall not be less than four thousandths of one percent of the net total expense budget of the city. Not later than three months after the close of each fiscal year, the board shall submit to the mayor and the council a public detailed accounting of the board's expenditures during such fiscal year.

Commentary: While the Mayor and the Council have historically respected the Board's independence, that independence should be made explicit in the Charter. As an independent ethics agency, moreover, the COIB has no natural constituency and no source of revenue. Furthermore, it regulates the very people who set its budget. Indeed, invariably the Board has before it matters involving high-level officials at the same time those officials are passing on the Board's budget, an unseemly situation. Lack of a source of assured funding also significantly undercuts the perception of the Board's independence. That circumstance should finally be rectified through a Charter amendment removing the Board's budget from the discretion of the public officials subject to the Board's jurisdiction.

The proposed amendment is virtually identical to the budgetary provision for the Independent Budget Office, whose budget must be at least 10% of the budget of the Office of Management and Budget, except that the Board's budget would be tied to the total City expense budget. See Charter § 259(b) ("The appropriations available to pay for the expenses of the independent budget office during each fiscal year shall not be less than ten per centum of the appropriations available to pay for the expenses of the office of management and budget during such fiscal year.") See also Mich. Const. art. xi, § 5 (requiring that the legislature appropriate to the Michigan Civil Service Commission "a sum not less than one percent of the aggregate payroll of the classified service for the preceding fiscal year"); New Orleans Home Rule Charter § 9-401(3) (requiring that the Office of Inspector General, in conjunction with the Ethics Review Board, receive an annual appropriation

from the Council, not subject to mayoral veto, in an amount not less than .75% of the General Fund operating budget), enacted in October 2008 by a citywide vote with a margin of nearly 80%. Cf. Calif. Gov't Code § 83122 (guaranteeing a budget of \$1,000,000 for fiscal year 1975-1976, adjusted for cost-of-living changes during each fiscal year thereafter, for the California Fair Political Practices Commission); Phil. Home Rule Charter § 2-300(4)(e) (providing for minimum guaranteed budget of \$1,000,000 for first two fiscal years of Philadelphia Board of Ethics and authorizing Board of Ethics to sue the Council if it thereafter fails to provide an amount adequate for the Board of Ethics to meet its Charter mandates). Under the Board's proposal, every billion-dollar decrease in the City's budget would decrease the Board's budget by \$40,000; the City's Fiscal Year 2013 Executive Expense Budget of \$69.8 billion would yield a COIB budget of \$2.8 million.

The proposed amendment would provide only the general budget allocation for the Board, leaving to the agency the authority to allocate those funds between personnel services and other than personnel services. In addition, while the Board would not be subject to mid-year agency budget reductions (PEGs) per se, as the Board's budget would be tied to the City's total budget, mid-year reductions in that total budget would likewise reduce the budget of the Board. Although the proposed amendment sets a floor for the Board's budget, one must assume that the floor would become the ceiling as well, and that no funds beyond that floor would be allocated by the City to the Board. Thus, the proposed percentage of 4/1000 of 1% (.00004) of the City's net total expense budget would yield a COIB budget sufficient for the operations of the Board, including the additional duties imposed upon the Board by recent amendments to Chapter 68, in particular, mandatory ethics training and education and online ethics training (Charter § 2603(b)). An independent budget, however, imposes a heavy burden upon the Board to use its funds prudently. For that reason, the proposal would also require the Board to provide a public, detailed public accounting of its expenditures. Just as public financial disclosure works to discourage conflicts of interest by individual public servants, such a detailed public disclosure of COIB expenses would discourage inappropriate expenditures.

This proposal is identical to that submitted by the Board to the Mayor and the Speaker in August 2009, except that the percentage has been reduced from 7/1000ths of one percent to 4/1000ths of one percent to reflect the absence of a proposal for investigative authority for the Board.

[Budget: FY2014: Charter Budget Amendment]