

NEW YORK CITY CONFLICTS OF INTEREST BOARD  
Proposed Charter Amendments  
March 2014

New York City Charter  
Chapter 68 (Conflicts of Interest)  
Section 2602

*Note: The final sentence of proposed § 2602(b) and accompanying commentary have not been approved by the Conflicts of Interest Board. Section 2602 may be amended only by referendum or state legislation. See Charter § 38(18).*

**§ 2602. Conflicts of interest board.**

a. There shall be a conflicts of interest board, **which shall be an independent agency**, consisting of five members, **The members shall be appointed by the mayor with the advice and consent of the council. The mayor shall designate a chair. No more than one member of the board may be a non-resident of the city of New York, provided that such non-resident member has at the time of appointment previously demonstrated expertise in ethics.**

*Commentary: While the Mayor and the Council have historically respected the Board's independence, that independence should be made explicit in the Charter. Authorizing one member of the Board to be a non-resident of the City would better enable the appointment of a Board member who has significant experience in the field of ethics.*

b. Members shall be chosen for their independence, integrity, civic commitment and high ethical standards. No person while a member shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, hold any political party office, or appear **[as a lobbyist] directly before the city, except on his or her own behalf or on behalf of his or her own business or employer. No person while a member of the board shall participate in a political campaign, as defined in subparagraph (b) of paragraph 9 of section 2604 of this chapter, or directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office.**

*Commentary: Board members should not be permitted to appear in a representative capacity before any City agency, as virtually every agency*

*has matters pending before the Board at one time or another. Board members should be able to appear on their own behalf or on behalf of their business or employer before an agency other than the COIB (appearances before the COIB are prohibited by § 2604(b)(6)), for example, before the Tax Commission seeking a reduction in the assessment on their home; to provide otherwise would appear unfair and may severely prejudice Board members who work for smaller firms or who are sole practitioners. So, too, Board members should be able to work “behind the scenes” on a client’s matter pending before an agency other than the COIB, provided that someone else in their firm appears in a representative capacity before that agency, as such appearances would be considered only “indirect” appearances by the COIB Board member (even indirect appearances by the Board member before the COIB are prohibited by § 2604(b)(6)).*

***To avoid even the appearance of partisanship, Board members should be prohibited from engaging in any political activity or soliciting any political contributions, although they themselves may make such contributions. The proposed language on the restriction on political activity is derived from § 2604(b)(9)(b) (prohibiting a superior from requesting a subordinate to participate in a political campaign). The proposed language on the restriction on political fundraising is derived from § 2604(b)(12) (prohibiting certain high-ranking City officials from soliciting contributions to the campaign of anyone running for elective City office or of a City elected official running for any elective office). Employing the language of those Charter sections will help ensure uniformity of interpretation.***

c. Each member shall serve for a term of six years; provided, however, that of the three members first appointed, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-four, and of the remaining members, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-four. If the mayor has not submitted to the council a nomination for appointment of a successor at least sixty days prior to the expiration of the term of the member whose term is expiring, the term of the member in office shall be extended for an additional year and the term of the successor to such member shall be shortened by an equal amount of time. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed. No member shall

serve for more than two consecutive six-year terms. [~~The three initial nominations by the mayor shall be made by the first day of February, nineteen hundred eighty-nine and both later nominations by the mayor shall be made by the first day of March, nineteen hundred ninety.~~]

*Commentary: This transitional provision is no longer necessary. The proviso in the first sentence of the subdivision cannot be deleted because it establishes and maintains the staggered terms of Board members.*

d. Members shall receive a per diem compensation, no less than the highest amount paid to an official appointed to a board or commission with the advice and consent of the council and compensated on a per diem basis, for each calendar day when performing the work of the board, and may be reimbursed for expenses reasonably incurred in the performance of their duties.

*Commentary: This amendment merely clarifies and codifies current practice. The language is taken from Charter § 626 (Board of Correction).*

e. Members of the board shall serve until their successors have been confirmed. Any vacancy occurring other than by expiration of a term shall be filled by nomination by the mayor made to the council within sixty days of the creation of the vacancy, for the unexpired portion of the term of the member succeeded. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed.

f. Members may be removed by the mayor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

g. The board shall appoint [~~a counsel~~] an executive director to serve at its pleasure and shall employ or retain such other officers, employees and consultants as are necessary to exercise its powers and fulfill its obligations. The authority of the [~~counsel~~] executive director shall be defined in writing, provided that neither the [~~counsel~~] executive director, nor any other officer, employee or consultant of the board shall be authorized to issue advisory letters and opinions, promulgate rules, issue subpoenas, issue final determinations of violations of this chapter, or make final recommendations of or impose penalties. The board may delegate its authority to issue advisory letters and opinions to the chair.

*Commentary:* The term "counsel" was carried over to the Conflicts Board from its predecessor, the Board of Ethics. Two reasons support the replacement of "counsel" with "executive director." First, the amendment reflects that the size and mission of the Conflicts of Interest Board are larger than those of the Board of Ethics. Second, it gives the Board the freedom to hire a qualified non-lawyer for the position of executive director. In regard to the addition of "letters," see Commentary to § 2603(c).

h. The board shall meet at least once a month and at such other times as the chair may deem necessary. Two members of the board shall constitute a quorum and all acts of the board shall be by the affirmative vote of at least two members of the board.

**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.*

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