Recommendation to Amend the Erie County Charter

Erie County Charter Revision Commission of 2016

Motion to Amend adopt

Amendment to Recommendation Intro. No.101A

Recommendation No. 4

Oppose McDuffie Robinson-Moses Vinal Perry Cihak Kibler Nair Meyers-Buth

10-8 pass

The text of Recommendation Into No. 101 is striken and replaced with the following:

Introduced on the Report of the Special Committee on Consolidation and Conformity.

Sponsored by Commission Member _____

The Erie County Charter Revision Commission of 2016 does hereby recommend that a new Article 1A be added to read as follows:

Article 1A - Ethics - Charter

Section

1-A-01.	Ethical Governance.
1-A-02.	Erie County Code of Ethics Continued, in part.
1-A-03.	Definitions.
1-A-04.	Erie County Board of Ethics.
1-A-05.	Penalties.
1-A-06.	Limits on Political Donations.
1-A-07.	Fair and Equal Treatment.

1-A-08. Resignation upon Conviction.

1-A-09. Interest in Appointments.

1-A-01. Ethical Governance. The proper operation of the County requires that public officials and employees be independent, impartial, and responsible to the people; that public offices not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, this Article applies to all officials and employees, whether elected or appointed, paid or unpaid. The purpose of this Article is to establish ethical standards of conduct for all such officials and employees by setting forth those facts or actions that are incompatible with the best interests of the County.

1-A-02. Erie County Code of Ethics Continued, in part. The Erie County Code of Ethics as established by Local Law number ten of nineteen hundred eight-nine is continued in its entirety except for Sections 9 and 10, which are repealed thirty days after this Article takes effect. The Legislature may only amend the Erie County Code of Ethics (a) by passing a local law in reaction to a recommendation from the Board of Ethics to amend the Code of Ethics as provided for in this Article; or (b) by passing a local law subject to referendum.

1-A-03. Definitions.

"Board of Ethics" as it is used within this Article, in the Erie County Code of Ethics, and in any other Local Law means the Erie County Board of Ethics established pursuant to Section 4 of this Article. The Board of Ethics established by this Article succeeds the Board of Ethics established by Local Law number ten of nineteen hundred eight-nine.

"Reporting individual" means any individual required to report an annual statement of financial disclosure under the Erie County Code of Ethics.

"Business entity" means any partnership, corporation, LLC or other legal entity that is organized with the purpose of profit.

1-A-04. Erie County Board of Ethics. There shall be an Erie County Board of Ethics as established in this Section.

a. Board of Ethics to Have Eighteen Members; Terms of Office. The Board of Ethics shall consist of eighteen members who shall serve six-year terms of office, three such terms expiring each year; provided that of the initial eighteen members appointed to the Board of Ethics three shall be appointed to one year terms; three shall be appointed to two year terms; three shall be appointed to three year terms; three shall be appointed to four year terms; three shall be appointed to five year terms; and three shall be appointed to six year terms. The lengths of the terms of the eighteen initial members of the Board of Ethics shall be determined by drawing lots. No member shall be an elected official, a political party officer, a member of a political party committee, or have substantial business interests with the County of Erie. All members shall reside in Erie County. All members shall serve without compensation, but may be reimbursed for reasonable and necessary expenses approved by the County Legislature.

b. Initial Appointment of Board Members. The Board of Ethics shall consist of eighteen members appointed as follows:

i) One member appointed by each of the eleven county legislators.
ii) One member appointed by the Comptroller
iii) One member appointed by the Sheriff
iv) One member appointed by the County Clerk
v) Four members appointed by the County Executive

c. Subsequent Appointments due to Vacancy. In the event that a vacancy arises with respect to a member of the Board of Ethics, whether by expiration of term or for any other reason, the vacancy shall be filled in the same manner as the original appointment.

d. Chair. The members shall elect a chair from among themselves. The chair shall serve a two-year term.

e. Repository of Financial Disclosure Statements. The board shall be the repository for completed annual statements of financial disclosure required under the Erie County Code of Ethics.

f. Powers and Duties. The Board of Ethics shall have all the powers and duties ascribed to a board of ethics by article eighteen of the General Municipal Law. In addition, the Board of Ethics shall have the following powers and duties:

i) To render advisory opinions. Any county officer or employee may make written request to the board to render an advisory opinion as to any question concerning the application of the Erie County Code of Ethics or article eighteen of the General Municipal Law to his or her own affairs, or if he be the head of a county department, administrative unit, or other agency of the county, the affairs of any of his or her subordinates. The board shall disclose its opinion only to the person who has requested it or in relation to whose affairs the opinion has been requested. To the extent that it can do so without disclosing the identity of the person who has requested the opinion or in relation to whose affairs the opinion has been requested, and subject to such omissions as may be appropriate to protect personal privacy, the board shall make its opinions a matter of public record.

ii) To adopt and amend such rules of procedure as are appropriate.

iii) To propose recommendations of amendments to the Erie County Code of Ethics. The Legislature shall adopt, amend, or reject each recommendation received from the Board of Ethics within ninety days of receipt.

iv) To request and receive legal, administrative, or other assistance from other officers of county government. The County Executive, the County Attorney, the District Attorney, and the County Legislature will make available any support staff necessary for the Board of Ethics to carry out its duties and functions.

v) To perform such functions as may from time to time be prescribed by the County Legislature.

g. Establishment. The Board of Ethics shall be established thirty days after this Article takes effect.

1-A-05. Penalties.

a. Civil Penalties for Failure to File. Any person required to file an annual financial disclosure statement pursuant to the Erie County Code of Ethics who has not so filed at the end of one week after the required filing date shall be subject to a fine of not less than two hundred fifty dollars and not to exceed one thousand dollars. In determining the amount of the fine, the Board of Ethics shall consider factors, including, but not limited to, the person's failure in prior years to file a report in a timely manner, and the length of the delay in filing. The Board of Ethics may waive a fine entirely if a person establishes that the failure to file a report in a timely manner was due to illness, injury, or other hardship. Assessment of a civil penalty hereunder shall be made by the board of ethics.

b. Referral for Prosecution. An individual who knowingly and intentionally makes a false statement or gives information which such individual knows or should have known to be false on an annual statement of financial disclosure filed pursuant to the Erie County Code of Ethics shall be referred to the District Attorney's Office for prosecution.

c. Violations Other than Failure to File. A reporting individual who files an annual statement of financial disclosure which results in a violation of the Code of Ethics, other than a violation of subsection (a) or (b) of this section, or who otherwise violates the Code of Ethics or this Article shall be assessed a civil penalty in an amount not less than five hundred dollars but not to exceed two thousand dollars in addition to the value of any gift, compensation, or benefit received in connection with such violation. Assessment of a civil penalty hereunder shall be made by the Erie County Board of Ethics.

d. Limits on Penalties. A civil penalty for false filing may not be imposed hereunder in the event a category of "value" or "amount" reported hereunder is incorrect unless such reported information is knowingly understated. No other civil penalty may be imposed for failure to file or for false filing of such statement, except that the appointing authority may impose disciplinary action as otherwise provided by law. The Erie County Board of Ethics shall adopt rules governing the conduct of adjudicatory proceedings and appeals relating to the assessment of the civil penalties herein authorized. Such rules shall provide for due process procedural mechanisms substantially similar to those set forth in article three of the State Administrative Procedure Act but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty shall be final unless modified, suspended or

vacated within thirty days of imposition. Upon becoming final the assessment shall be subject to review at the instance of the affected reporting individual in a proceeding commenced against the Erie County Board of Ethics, pursuant to article seventy-eight of the Civil Practice Law and Rules.

1-A-06. Limits on Political Donations.

a) Limits on Political Donations from Partnerships, Corporations, LLCs, or Other Business Entities. No candidate for an elective county office shall knowingly solicit or accept political donations in excess of five thousand dollars from any partnership, corporation, LLC, or other business entity during the course of a single calendar year. No partnership, corporation, LLC, or other business entity shall knowingly offer or make political donations in excess of five thousand dollars to candidates for elective county offices during the course of a single calendar year. If a partnership, corporation, LLC, or other business entity makes political donations in excess of five thousand dollars to candidates for elective county offices during the course of a single calendar year, such partnership, corporation, LLC, or other business entity shall request pro-rata refunds from such candidates for elective county offices so that net contributions by such partnership, corporation, LLC, or other business entity does not exceed five thousand dollars within one calendar year. Candidates who receive a valid request for a pro-rata refund shall refund the requested amount within fourteen days provided a refund may be made later than fourteen days if there are insufficient funds in the candidate's account. However, if this is the case, all subsequently received donations from partnerships, corporations, LLCs, or other business entities shall be allocated solely to the issuance of such refunds until all valid refund requests are fully discharged.

b) Refunds and Penalties. Any donation knowingly received in violation of (a) or (b) must be refunded so as to ensure compliance with this Section without undue delay. Notwithstanding subsection 5(d) of this Article, any person who knowingly fails to comply with this Section shall be liable for a civil penalty not to exceed one thousand dollars or treble the amount donated or accepted over and above the amounts authorized by this Section, whichever is greater. In addition to any other penalty contained in any other provision of law, any person who shall knowingly and intentionally violate this Section may be fired, suspended or removed from office or employment in a manner provided by law.

c) Not Retroactive. The limits established in this Section and the associated penalties and requirement to issue refunds only apply to political donations solicited, accepted, offered, or made after this Article takes effect.

1-A-07. Fair and Equal Treatment. No county official or employee shall be terminated, appointed, promoted, reduced, or in any way favored or discriminated against because of sex, race, national origin, sexual orientation, gender identity, or religious affiliation or opinions. This section shall not be interpreted to prohibit the county from operating a bona fide affirmative action program.

1-A-08. Resignation upon Conviction. Any official appointed by the Executive or the Legislature convicted of a felony or crime of moral turpitude, related or unrelated to his or her position, is deemed to resign his or her position effective immediately upon conviction.

1-A-09. Interest in Appointments. No county official or employee shall, either directly or indirectly, pay, render, or give any money, service, or other valuable thing to any person for, or on account of, any test, appointment, promotion, or removal for which he or she may be considered. No elected county official shall, either directly or indirectly, solicit or receive any money, service, or other valuable thing, including political donations to such an elected official's election or reelection, from any person that he or she has appointed and has the power to remove from office or employment, at will. This section shall not be construed to prohibit gifts associated with birthdays, anniversaries, weddings, engagements, baby showers, Christmas, Hanukkah, or other similar events or holidays that are traditionally celebrated with the giving of gifts; provided, however, that the gifts given on such occasions are reasonable; and, provided further, that the giving of gifts on such occasions may not be pretext for avoiding the prohibitions of this subsection.

Introducer's Memorandum to

Recommendation Intro. No. 101

Sponsored by Commission Member _____

The intent and purpose of this recommendation is to provide for ethical governance in Erie County. The Erie County Code of Ethics is continued, as amended. The Erie County Board as proposed will be composed of a more broad spectrum of appointees, instead of solely appointees by one elected official, as is currently the case. This new Board is given specific powers to impose penalties and to suggest changes to the Code of Ethics, so that elected officials are not solely responsible for designing their own guidelines for ethical governance. The LLC loophole is closed. Fair and equal treatment of employees free of discrimination is provided for. Appointees are required to resign upon conviction of a serious crime. Provisions are included to ensure that appointers do not demand money or political contributions from their appointees.

Recommendation to Amend the Erie County Charter
Erie County Charter Revision Commission of 2016

Recommendation Intro. No. 101A

Recommendation No. 4

	YES	NO	NOT PRESENT	ABSTAIN
Todd J. Aldinger	✓			
Joseph T. Burns	✓			
Tara Cadmus	✓			
Diana K. Cihak		✓		
Keith E. Dash	✓			
Kenneth J. Farrell	✓			
Peter J. Galie	✓			
Christina G. Holdsworth	✓			
Timothy M. Hudson	✓			
Matthew J. Kibler		✓		
Peter M. Kooshoian			✓	
Rashied McDuffie		✓		
Cheryl Meyers-Buth		✓		
Sibu S. Nair		✓		
Tiffany R. Perry		✓		
David Pollack	✓			
Myra E. Robinson-Moses		✓		
Mary A. Stang-Cooke	✓			
Jeanne M. Vinal		✓		

Aldinger

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