

**MINUTES OF THE PUBLIC SESSION OF THE
SEPTEMBER 12, 2022
COMMISSION MEETING
OF THE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT
540 BROADWAY
ALBANY, NEW YORK**

Members: Leonard B. Austin (WebEx)
Michael A. Cardozo (WebEx)
Edward D. Carni (WebEx)
Frederick A Davie (WebEx)
Claudia L. Edwards (Webex)
Nancy G. Groenwegen (Albany)
Seymour W. James, Jr (WebEx)

Staff: Sanford N. Berland (Albany)
Carol Quinn (Albany)
Keith C. St. John, (Albany)
Michael Sande (WebEx)
Meghan E. Hennigan (WebEx)
Kavita Bhatt (WebEx)
Jennifer Bliss (WebEx)
Peter Smith (WebEx)
Marlena Diaz (Albany)
Lori Donadio (Albany)
Kelly A. McCready (Albany)

I. CALL TO ORDER

Judge Berland was pleased to announce the newly appointed members of the Commission on Ethics and Lobbying in Government, Commissioner Leonard B. Austin, Commissioner Michael A. Cardozo, Commissioner Frederick A. Davie, Commissioner Edward D. Carni, Dr. Claudia L. Edwards, Commissioner Nancy G. Groenwegen, and Commissioner Seymour W. James Jr.

Judge Berland congratulated and thanked the newly appointed members for taking on the important and demanding roles of the Commission. The first meeting of the Commission was conducted in accordance with the provisions of Article 7 of the Public Officers Law as temporarily modified by an Executive Order permitting remote participation by Commission members. Pursuant to §94 (3)(h), the seven members constitute a quorum of the Commission.

II. **MOTION TO CONDUCT MEETING ON ABBREVIATED NOTICE**

Judge Berland asked for a motion to permit the meeting on abbreviated notice with the public notice being made on September 9, 2022.

A motion was made by Commissioner Austin, seconded by Commissioner James, to permit the meeting to be held on abbreviated notice. The motion was approved by unanimous vote.

III. **MOTION TO ELECT A CHAIRPERSON PURSUANT TO EXECUTIVE LAW §94(4)(B)**

A motion was made by Commissioner Cardozo, seconded by Commissioner James, to elect an Interim Chairperson. The motion was approved by unanimous vote. Judge Berland requested nominations for the position of Interim Chair.

A motion was made by Commissioner Cardozo, seconded by Commissioner Groenwegen, to elect Commissioner Davie as Interim Chair. The motion was approved by unanimous vote.

Interim Chair Davie thanked Judge Berland and the Commission members for their confidence. Interim Chair Davie recognized that it is an interim period, and the Commissioners will elect a permanent chair at a later date.

Interim Chair Davie requested a motion to establish an Interim position of Vice-Chair. A motion was made by Commissioner Groenwegen, seconded by Commissioner Edwards, to establish an Interim Vice-Chair. The motion was approved by unanimous vote.

Interim Chair Davie requested nominations for the position of Interim Vice-Chair.

A motion was made by Commissioner James, seconded by Commissioner Cardozo to elect Commissioner Austin as Interim Vice-Chair. The motion was approved by unanimous vote.

Interim Vice-Chair Austin thanked the Commission members for their vote of confidence and stated that he looks forward to working with his fellow Commissioners.

IV. **MOTION TO APPOINT AN INTERIM EXECUTIVE DIRECTOR PURSUANT TO EXECUTIVE LAW §94(6)(A)(I)**

Interim Chair Davie requested a motion to appoint an Interim/Acting Executive Director.

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Cardozo, to appoint an Interim/Acting Executive Director. The motion was approved by unanimous vote.

Interim Chair Davie requested nominations for the position of Interim/Acting Executive Director and stated that it is essential to the work of the Commission that they appoint Judge Berland to this position on an interim basis to allow the operations of the Commission to continue. Chair Davie stated it is an interim/acting position and that the Commission will conduct a search for a permanent Executive Director at a later date.

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Cardozo, to appoint Judge Berland as Interim Executive Director. The motion was approved by unanimous vote.

Interim Executive Director Berland thanked the Commissioners for their vote and for the Commission's expression of confidence in his ability to move the Commission forward.

V. **MOTION TO APPROVE AN INTERIM STAFFING PLAN PURSUANT TO EXECUTIVE LAW §94(6)(C)-(F)**

Interim Chair Davie requested discussion on the adoption of the Interim Staffing Plan. Interim Executive Director Sanford Berland stated that the Interim Staffing Plan was set forth at Attachment A and included organizational charts, descriptions, and qualifications for each position within the Commission for both management and operational staff. Executive Director Berland stated that the charts and the descriptions conform to the current structure of the agency and suggested that the Commissioners approve the current plan so that the Commission could continue operations.

Commissioner Cardozo asked if the statute required to make public the vacant positions and salaries in the staffing plan. Interim Executive Director Berland stated that the salaries

have been posted on the website, the vacancies will be discussed in Executive Session, and it is important to begin posting positions to solicit interest in filling those positions.

Interim Chair Davie requested a motion to approve the Interim Staffing Plan.

A motion was made by Commissioner Austin, seconded by Commissioner Cardozo, to approve the Interim Staffing Plan. The motion was approved by unanimous vote

VI. **MOTION TO APPROVE AN INTERIM DELEGATION RESOLUTION PURSUANT TO EXECUTIVE LAW §94(6)(B)**

Chair Davie requested a discussion regarding adopting of the Delegation of Authority to the Interim Executive Director Berland.

Interim Executive Director Berland stated that under Executive Law §94(6)(b), the Commission is authorized to delegate to the Executive Director the authority to act between meetings of the Commission with respect to matters that do not require a vote of the Commission. The resolution in Attachment B details the fundamental functions of staff in fulfilling the mandate of the Commission in the areas of investigations and enforcement, guidance, lobbying law compliance and regulation, education, and financial disclosure filings, as well as in the administration of the agency. Additionally, there will be full reporting on all matters to the Commissioners and it will be fully apprised of all activities conducted under the terms of the delegation.

A motion was made by Commissioner Cardozo, seconded by Commissioner Edwards, to adopt the Delegation of Authority Resolution.

Commission Groenwegen made a friendly amendment to the motion to appoint an Interim Executive Director to further modify the title to Acting in the Capacity of Interim Executive Director, seconded by Commissioner Cardozo. Interim Vice-Chair Austin made an additional friendly amendment to further modify the title to Executive Director of the Commission on an Interim Basis.

Chair Davie called the vote on the amendment to the motion. The motion was approved by unanimous vote.

Chair Davie called to vote on the full motion to adopt the resolution as amended. The motion was approved by unanimous vote.

VII. **PROPOSED COMMISSION MEETING DATES, SEPTEMBER THROUGH DECEMBER 2022**

Interim Chair Davie requested a discussion regarding the approval of the Commission Meeting dates.

Interim Executive Director Berland stated that under Attachment C was the proposed schedule dates through the end of 2022 and proposed that the originally scheduled meeting on September 20 be changed to October 6, to allow for opportunities to conduct orientations and educational sessions. Interim Executive Director Berland stated that if the Executive Order that allows remote participation was not further extended, then the meetings would take place in either Albany or New York at a location that is open to the public.

Interim Chair Davie requested a motion to approve the Commission Meeting dates with the change that the September 20 meeting be moved to October 6. The motion was approved by unanimous vote.

VIII. **PUBLIC OFFICERS LAW ARTICLES 6 AND 7 (FOIL AND THE OPEN MEETINGS LAW) – DISCUSSION**

Interim Chair Davie requested a discussion regarding rules and regulations required by the Freedom of Information Law.

Interim Executive Director Berland stated that under Attachment D were model rules for agencies under the Freedom of Information Law, Article 6 of the Public Officers Law, which are the model rules that have been promulgated by the Committee on Open Government. He suggested that while the Commission was in the process of promulgating its own FOIL regulations, it articulate that the model rules will guide the Commission until it has its own FOIL regulations and that it will generally abide by them to the extent they are applicable and consistent with the Commission's mandate and other restrictions. Currently, there is an interim Records Access Officer in place, and an interim Appeals Officer has been designated, but the matter would be further discussed in Executive Session.

Interim Chair Davie noted for the record the recommendation of the Interim Executive Director concerning interim procedures and the request that FOIL regulations be adopted by the Commission at a later date.

Interim Executive Director Berland stated that staff will begin formulating proposed FOIL regulations for the Commissioners' consideration and if the Commission is amenable to

them, they will be put out for public comment under the State Administrative Procedure Act at a future meeting.

Commissioner James raised a question on page thirty of the model regulations, concerning specifications to charge fees under FOIL. Interim Executive Director Berland stated that this will be clarified with the Committee on Open Government. It was noted that the prior commission generally applied fees that were consistent with or lower than those assessed by many agencies under FOIL.

IX. **MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO PUBLIC OFFICERS LAW §105**

A motion was made by Commissioner (unknown), seconded by Commissioner Austin, to enter Executive Session pursuant to Public Officers Law § 105.

X. **PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION**

Interim Executive Director Berland stated that during the Executive Session, the Commission discussed matters related to staffing for the Commission and litigation, authorized steps in an enforcement matter, and authorized steps in several investigative matters.

XI. **MOTION TO ADJOURN THE PUBLIC MEETING**

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner James, to adjourn the public meeting. The motion was approved by unanimous vote.