

**MINUTES OF THE PUBLIC SESSION
DECEMBER 16, 2022
MEETING OF THE NYS COMMISSION
ON ETHICS AND LOBBYING IN GOVERNMENT**

**540 BROADWAY
ALBANY, NEW YORK 12207**

**25 BEAVER STREET, 5TH FLOOR
NEW YORK, NEW YORK 10004**

**1800 AXA TOWER I, 100 MADISON STREET
SYRACUSE, NY 13202
CONFERENCE ROOM 19B – 19TH FLOOR**

Interim Chair: Frederick A. Davie (Albany)

Interim Vice-Chair: Leonard B. Austin (Albany)

Members: Michael A. Cardozo (NYC)
Edward D. Carni (Syracuse)
Claudia L. Edwards (Albany)
Nancy G. Groenwegen (Albany)
Seymour W. James, Jr. (NYC)

Staff: Sanford N. Berland, Interim Executive Director (Albany)
Carol Quinn, Co-Acting General Counsel and Deputy Director of
Lobbying (Albany)
Keith C. St. John, Co-Acting General Counsel and Director of Ethics
(Albany)
Meghann E. Hennigan, Deputy Director of Education (Webex)
Kavita Bhatt, Associate Counsel (NYC)
Peter Smith, Chief Investigative Officer (Webex)
Marlena Diaz, Assistant Director of Communications (Webex)
Lori Donadio, Principal Investigative Analyst (Albany)
Mariana Cadiz, Deputy Director of Administration (Albany)
Kelly McCready, Confidential Assistant (Albany)
Michelle Merola, Confidential Assistant (Albany)

I. CALL TO ORDER

Interim Chair Davie called the meeting to order and announced that a quorum was present with seven commissioners in the Albany and New York City office locations, and at a meeting location open to the public in Syracuse.

II. APPROVAL OF PUBLIC SESSION MINUTES

A motion was made by Commissioner Edwards, seconded by Commissioner Groenwegen, to approve the minutes of the November 15, 2022 meeting. The motion carried by unanimous vote.

III. REPORT FROM STAFF

Operations Update

Interim Executive Director Berland stated that pursuant to, and in accordance with, the provisions of the state's Open Meetings Law, the Commission meeting was being held at locations open to the public in Albany, New York City, and Syracuse.

Interim Executive Director Berland presented the Operations Update. He noted that the Operations Report, under Tab B, included the figures for the current period, the year to date, and a comparison of the staff operations from the inception of the Commission (July 8, 2022 - November 30, 2022) against the Joint Commission on Public Ethics (JCOPE) corresponding period in 2021. Interim Executive Director Berland added that staff is ably performing – notwithstanding the staff vacancies, and he anticipates that the numbers will improve as vacancies are filled.

Recruiting Update

Interim Executive Director Berland stated that interviews have been conducted to fill vacancies under the staffing plan, including positions within the Investigations, Communications, Lobbying, Ethics, and Financial Disclosure Units, and that he expects the recruiting process to be completed if not by the end of the year, then by mid-January 2023.

Budget Update

Interim Executive Director Berland reported that the Commission is continuing to run significantly under budget on the personal services side and over budget for non-personal services. Being over budget on non-personal services is a result of outside counsel legal fees that were incurred for defense of the lawsuit that had been brought by the former Governor against JCOPE and the internal review. Interim Executive Director Berland further stated that if the staffing plan is expanded as proposed, an additional two hundred thousand dollars of expenses would be added to the Commission's personal services costs through the end of the year. Including the additional costs, the Commission would have a surplus of roughly \$1.6 million. He noted that surplus funds are not carried over into the next fiscal year.

A question was raised by commissioners regarding the potential to have state appropriations that had been previously allocated to the Commission reduced due to being under budget for the current fiscal year. Interim Executive Director Berland stated that Commission staff has been in contact with the Division of the Budget and, based upon feedback received, is optimistic that the current fiscal year budget will remain intact.

Some commissioners expressed concerns regarding legal expenses, Interim Chair Davie responded that in most of the Commission's litigation, the Commission is represented by the Attorney General and outside legal fees are only incurred due to exceptional circumstances as were presented to the predecessor agency.

Proposed Meeting Schedule

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Cardozo, to approve the proposed meeting schedule, as modified, for January through June of 2023. The motion carried by unanimous vote.

Implementing the Executive Law § 94(8) ethics and lobbying training, tracking and reporting requirements – Update and proposed interim implementation plan

Interim Executive Director Berland reported that over four hundred state agencies are impacted by the expanded training requirements and are being surveyed by staff. He further stated that the new legislation requires that the Commission develop and administer a program to provide in-person or live online comprehensive ethics training to all state employees biennially - with intervening refresher training - which is currently beyond the capabilities of existing agency resources. The number of state employees that require ethics training every three years increased from approximately 30,000 to over 270,000 biennially. Commission and agency staff will continue to provide live comprehensive ethics training conducted in-person and online to FDS filers and new hires. In addition, Commission staff is proposing an interim plan that for the expanded portion of the workforce would provide the comprehensive course online in a recorded format and develop a system for monitoring and verifying compliance until the necessary resources and budgetary support are available. Interim Executive Director Berland outlined plans to provide in-person or live online training to the expanded contingent, potentially by moving to a centralized training facility model and/or by increasing training capabilities at the agency level. Interim Chair Davie concluded that if the Commission were to factor in new staff to increase the training, the Commission can project that it will have a system to train about 90% of the workforce by the Fiscal Year 2024-2025.

Some Commissioners had concerns over trainee participation and attendance for the online training course method. Deputy Director of Education Meghann Hennigan stated that currently, trainees are required to verify their participation by periodically acknowledging codes throughout the training as evidence of their attendance.

Interim Executive Director Berland requested a motion to support the interim plan for training. A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Groenwegen, to approve the proposed interim plan for implementation of the Executive Law § 94(8) ethics and lobbying training, tracking, and reporting requirements. The motion carried by unanimous vote.

Communications Update

Interim Executive Director Berland reported that a contract had been signed on November 28, 2022, for communication services with Marathon Strategies, which will run through no later than February 28, 2023.

Ethics Reminder

Co-Acting General Counsel and Director of Ethics St. John announced that the Commission has released and distributed a new Ethics Reminder to all agency ethics officers, in addition to being posted on the Commission's website.

IV. PROPOSED REGULATION AUTHORIZING THE ISSUANCE OF SUBPOENAS AND OTHER PROCESS BY THE EXECUTIVE DIRECTOR AS DELEGATED BY THE COMMISSION

Extension of the Emergency Adoption of Proposed Regulation amending Adjudicatory Proceedings and Appeals Process Regulations (19 NYCRR Part 941)

Interim Executive Director Berland reported that the Commission's emergency adoption of this rulemaking will expire on January 8, 2023, and, therefore, staff was requesting the re-adoption of the rulemaking on an emergency basis to continue its effectiveness. Interim Chair Davie advised that the appropriate subcommittee should further review these as part of the process to establish permanent regulations.

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Edwards, to adopt the Extension of the Emergency Adoption of Proposed Regulation amending Adjudicatory Proceedings and Appeals Process Regulations (19 NYCRR Part 941). The motion carried by unanimous vote.

V. PROPOSED FURTHER AMENDED PART 941 REGULATIONS

Extension of the Emergency Adoption of the Proposed Further Conforming Amendments to the Adjudicatory Proceedings and Appeals Process Regulations (19 NYCRR Part 941)

Interim Executive Director Berland reported that the Commission’s emergency adoption of this rulemaking will expire on January 22, 2023, and, therefore, staff was requesting the re-adoption of the rulemaking on an emergency basis to continue its effectiveness.

A motion was made by Commissioner Groenwegen, seconded by Interim Vice-Chair Austin, to adopt the Extension of the Emergency Adoption of the Proposed Further Conforming Amendments to the Adjudicatory Proceedings and Appeals Process Regulations (19 NYCRR Part 941). The motion carried by unanimous vote.

VI. PROPOSED AMENDMENTS TO THE COMMISSION’S REGULATION AT 19 NYCRR PART 943 RELATING TO ETHICS TRAINING FOR LOBBYISTS AND CLIENTS, AND THE EMERGENCY ADOPTION THEREOF

Co-Acting General Counsel and Deputy Director of Lobbying Quinn stated that the Proposed Amendments relating to Ethics Training for Lobbyists and Clients will conform with the lobbyist training and add compliance for client training. The commissioners discussed the reporting by the Chief Administrative Officer and whether that should be changed to include a designee. A decision was reached to adopt the regulations as proposed.

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Cardozo, to adopt the Proposed Amendments to the Commission’s Regulation at 19 NYCRR Part 943 Relating to Ethics Training for Lobbyists and Clients, and the Emergency Adoption thereof. The motion carried by unanimous vote.

VII. IMPLEMENTING HOGAN LOVELLS RECOMMENDATIONS

Interim Executive Director Berland reported that Commission staff has a number of suggestions for implementation of the recommendations by Hogan Lovells and suggested that the matter be referred to the Legal Committee for further review and consideration. Commissioner Groenwegen stated that outside activity approval requests from statewide office holders should be shared with commissioners before informal guidance is rendered by Commission staff. After further discussion, the subject was referred to the Legal Committee.

VIII. COMMITTEE ASSIGNMENTS

Interim Vice-Chair Austin announced preliminary Committee Assignments:

Administration Committee: Interim Chair Davie as Chair, with Commissioner Edwards, Groenwegen, and Cardozo.

Ethics Committee: Commissioner James as Chair, with Interim Chair Davie, Interim Vice-Chair Austin, and Commissioners Edwards and Carni.

Lobbying Committee: Commissioner Carni as Chair, with Interim Chair Davie and Commissioners Edwards and Cardozo.

Legal Committee: Interim Vice-Chair Austin as Chair, with Commissioners James, Cardozo, Carni, and Groenwegen.

Communications Committee: Commissioner Cardozo as Chair, with Interim Chair Davie and Commissioners Edwards, and James.

Education/Training Committee: Commissioner Edwards as Chair, with Interim Vice-Chair Austin and Commissioners Groenwegen, and Carni.

Interim Vice-Chair Austin noted that the commissioners will form a Budget Subcommittee of the Administration Committee and will report back with the assignments.

Interim Chair Davie stated that the committees should operate in accordance with the Open Meetings Law. He noted that he would like to see public involvement by conducting the committee meetings virtually and will be looking at whether proposals to so adjust the law are being sought. Some commissioners stated that they would like to see smaller

committees once a full Commission is established and would like staff members assigned to each committee.

IX. SCHEDULING THE ANNUAL PUBLIC HEARING

Interim Executive Director Berland stated that the Commission plans to schedule the annual public hearing which is required to be held once per calendar year. He proposed that it be conducted early next year and would like involvement by the committees. He will report back at the January meeting with the expected public hearing date.

X. APPLICATION FOR EXEMPTION FROM REVOLVING DOOR RESTRICTIONS, PURSUANT TO PUBLIC OFFICERS LAW § 73(8-b)

Co-Acting General Counsel and Director of Ethics St. John stated that the Homes and Community Renewal matter was deferred to the December meeting for further review of the proposed compensation for the former employee, particularly the proposed hourly rate of pay and expected work schedule. A revised exemption certification from the agency head detailing the specific pay rate and hours of work per week was behind Attachment I. Staff recommended Commission approval of the agency head's exemption certification.

A motion was made by Commissioner Edwards, seconded by Interim Vice-Chair Austin, to approve the Application for Exemption from Revolving Door Restrictions, Pursuant to Public Officers Law § 73(8-b). The motion carried by unanimous vote.

XI. AGENCY ACRONYM

Interim Chair Davie proposed, and the Commissioners approved by acclamation, that COELIG be the acronym for the Commission on Ethics in Lobbying in Government.

XII. NEW AND OTHER BUSINESS

None.

XIII. MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO PUBLIC OFFICERS LAW § 105 AND EXECUTIVE LAW § 94(11) TO ADDRESS MATTERS CONCERNING EMPLOYMENT OF PERSONNEL, PENDING LITIGATION, AND INVESTIGATIVE AND ENFORCEMENT MATTER THAT IS CONFIDENTIAL PURSUANT TO SECTION 94 OF THE EXECUTIVE LAW*

A motion was made by Interim Vice-Chair Austin, seconded by Commissioner Cardozo, to enter into Executive Session, pursuant to Public Officers Law § 105 and Executive Law § 94(11), to address matters concerning employment of personnel, pending litigation, and investigative and enforcement matter that is confidential pursuant to section 94 of the Executive Law. The motion carried by unanimous vote.

XIV. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Interim Executive Director Berland announced that during the Executive Session, the Commission discussed matters related to litigation and legal matters, the Commission authorized steps in several investigative matters, the Commission closed six matters and it discussed several other investigative matters and litigation. In addition, it referred several matters to committees, and approved informal guidance rendered by staff under the lobbying regulations and discussed several personnel matters.

Commissioner Cardozo announced that the Commission has reached a decision on a personnel matter regarding the appointment of an Executive Director for the Commission on Ethics and Lobbying in Government for a four-year term as required by statute. After careful consideration and a thorough investigation, Commissioner Cardozo, on behalf of the Commissioners, nominated Sandford N. Berland as Executive Director.

WHEREAS, this Commission on Ethics and Lobbying in Government (the "Commission") was created to provide rigorous ethics and lobbying education, compliance and oversight for New York State government and to ensure that New Yorkers have the responsible and ethical government they need and deserve; and

WHEREAS, the work of the Commission is both time-sensitive and significant, with many outstanding matters needing immediate attention due to the protracted, but crucial, appointment process for the members of this Commission; and

WHEREAS, the Commission requires a permanent executive director in order to promptly move forward with its important work, including hiring additional staff; and

WHEREAS, the Commission considered the possibility of a national search, but were cognizant of the fact that it took two nationwide searches, conducted over a period of nearly two years, to find an individual capable of leading the state's ethics and lobby agency—Sanford Berland; and

WHEREAS, this Commission needs an executive director immediately, given the substantial number of issues with which it must deal and the number of staff vacancies that presently exist and the new positions that need to be created; and

WHEREAS, based upon its dealings to date with Mr. Berland, the Commission has been more than satisfied with his performance; and

WHEREAS, based on a comprehensive review, including reviewing Mr. Berland's financial filings and interviewing people who dealt with Mr. Berland, the Commission has determined that Mr. Berland, who currently is serving as the Commission's interim executive director, performed well in his previous role and thus far has well and successfully managed the transition from the former ethics Commission to this Commission; and

WHEREAS, the governing statute that created the Commission provides that the executive director should be appointed by the Commission to serve a four-year term; it is hereby

RESOLVED, that the Commission appoints Sanford Berland as Executive Director to a term appointment of four years in accordance with Executive Law section 94 at a salary of \$220,000.

A motion was made by Commissioner Cardozo, seconded by Interim Vice-Chair Austin, to appoint Sandford N. Berland as Executive Director to a term appointment of four years at a salary of two hundred twenty thousand dollars, in accordance with Executive Law § 94(5)(a)(i). The motion was approved by unanimous vote.

Executive Director Berland accepted the appointment and stated his gratitude to the Commission and for its expression of confidence in him and, by extension, all Commission staff. He further stated that he would do everything in his power to fulfill the Commission's trust.

XV. APPLICATION FOR EXEMPTION FROM REVOLVING DOOR RESTRICTIONS, PURSUANT TO PUBLIC OFFICERS LAW § 73(8-b)

This matter was previously discussed and voted upon prior to Executive Session and was not addressed again.

XVI. MOTION TO ADJOURN THE PUBLIC MEETING

A motion was made by Commissioner Edwards, seconded by Commissioner Groenwegen, to adjourn the public meeting. The motion carried by unanimous vote.