

NYS Commission on Ethic and Lobbying in Government

March 29, 2023 Annual Public Hearing Recommendations and Comments Digest

ADMINISTRATION COMMITTEE

Blair Horner - New York Public Interest Research Group (NYPIRG)

- Perhaps have funding for the commission be a percentage of the net total expense budget of the State or as a fixed amount with an inflation adjustment.

Reinvent Albany – Rachel Fauss

- Recommend changes to the state’s ethics, lobbying, and election laws to both improve transparency and allow for better government.
 - ~~Support staggering the terms of Commissioners as proposed in 2023-24 Executive Budget.~~ [REFERRAL TO LEGAL]
 - Draft a proposal for its own budget, as suggested by Commissioner Edwards. [REFERRAL TO LEGAL]

EDUCATION – TRAINING COMMITTEE

Empire State Society of Association Executives (ESSAE)

- Provide authority to associations and other organizations registered to lobby to manage the process of training, certifying, and registering its members throughout their tenure on the association’s governing board. [REFERRAL FROM LOBBYING]
 - Launching a Train-the-Trainer program, whereby trained and certified professional association staff would be authorized to provide the Lobbying Ethics Training Course to members of their respective boards.
 - Allowing associations to provide the training and manage internal compliance would eliminate the need for volunteers to create their own profile on the Statewide Learning Management System and reduce the amount of duplicate and/or unused login credentials; alleviating many of the complaints and time spent by the Commission in troubleshooting problems.
 - The process of signing-up and logging on to the SLMS is a common complaint among association volunteers and it is onerous for associations to manage the process when they do not have access to these individual login credentials.

NYS Board of Elections – Written and Oral Testimony of Nicholas Cartagena, Ethics Officer and Counsel for New York State Public Campaign Finance Board

- **Grant Ethics Officers greater flexibility in editing the model training to suit the needs of their specific agency.**
 - The current training appears mainly adapted to FDS filers, and keeping track of new hires, and tracking their attendance at trainings is time consuming.
 - currently, EOs are only permitted to add to the presentation--not cut anything out—which limits their ability to tailor the training to their agency’s needs.
 - Exec. L. 94(10)(a) eliminated the requirement that the Commission design a two-hour training.
- **Design a streamlined training, preferably under one hour, specifically for general employees [not FDS filers].**
 - Make some slides optional, where the EO could have discretion in swapping out certain slides for agency-specific slides. Agency could add its own examples and slides, making the training more engaging and relevant for staff.
 - Providing greater flexibility to agencies will result in greater comprehension of the ethics rules and practical application.
- **Amend the law to allow for online training in addition to live training for general employees.**
 - Online training, if correctly designed, can be just as effective as live training and would be a helpful addition to the current requirements.

Blair Horner - New York Public Interest Research Group (NYPIRG)

- **Make ethics training recertification every four years, coinciding with same cycle as the two-year registration process (which starts with an odd year).** [REFERRAL FROM LOBBYING]
 - If training has to be recertified on an individual basis, instead of by employer/firm/client.
- **Offer live trainings with Q&A sessions.** [REFERRAL FROM LOBBYING]
 - In person as well as online; **allow participants to do so anonymously.**

Evan A. Davis – Committee to Reform the State Constitution

- **Commissioners should participate personally in ethics training by making on-site visits to underscore the importance of ethical compliance to effective State government.**

COMMUNICATIONS COMMITTEE

Blair Horner - New York Public Interest Research Group (NYPIRG)

- **Candidates’ filings—not just incumbents’—should be made publicly available on the Commission website.** [REFERRAL TO LEGAL]

Citizens Union of the City of New York – Ben Weinberg

- **Support legislation requiring that the due process hearing** afforded the respondent once the Commission, after an investigation and staff report, determines that there is credible evidence of a violation of the laws under its jurisdiction, and that a settlement cannot be reached (as with the NYC COIB) **be public.** [REFERRAL TO LEGAL]
 - In spite of the importance of maintaining privacy prior to the issuance of such a finding, the balance shifts, once a finding is made to have a hearing, toward having this quasi-judicial process open to public viewing, subject to appropriate exceptions, as in a judicial proceeding.
 - Under NYC’s ethics enforcement system, once the New York City Conflicts of Interest Board believes a violation was committed and a settlement cannot be reached, the case proceeds to a public hearing at the Office of Administrative Trials and Hearings.
- **Develop clear rules to regulate when and in what ways the Commission discloses the existence and progress of an investigation.** [See 19 NYCRR Part 941, § 941.16.] [REFERRAL TO LEGAL]
 - Such rules should balance between protecting the privacy concerns of those involved in the case and the public’s (and in some cases the complainant’s) right to know
 - The Commission must walk the fine line between protecting the privacy of complainants and respondents during the pendency of an investigation and demonstrating that the Commission is aggressively doing its job.

Reinvent Albany – Rachel Fauss

- **Increase transparency and access to public information through use of open data** for financial disclosure reports, improving the lobbying database, collaborating with the Attorney General’s New York Open Governmental portal, and **develop clear guidelines regarding disclosing the status of investigations.** [See 19 NYCRR Part 941, § 941.16] [REFERRAL TO ETHICS; REFERRAL TO LEGAL]
 - Fully comply with Executive Order 95 of 2013, the State’s Open Data Executive Order.
 - Review recommendations from the Campaign Legal Center which showcases best practices of other state ethics commissions regarding transparency and use of public data in its *Top 10 Transparency Upgrades* report.

Evan A. Davis – Committee to Reform the State Constitution

- **Adopt a procedure for communications with appointing authorities that would bind all Commissioners, Commission staff, and appointing authorities.**
 - **Bar all one-on-one communication about the Commission’s work with their appointing authority or anyone acting on their behalf. Communications with an appointing authority should be directed to the entire Commission.**
 - A complete bar is needed so that no Commissioner will even appear to be an appendage of their appointing authority. [See proposed *Commissioner Code of Conduct*] [REFERRAL

TO LEGAL]

- **Commissioners should address the reporting of misconduct.** [See Commission website revisions, social media outreach] [REFERRAL TO ETHICS]
 - Make clear that the Commission actually wants people to use the 1-800-87-ETHICS Hotline; callers will be protected by the Commission if their call is made in good faith.
 - The Commission website should be improved so that those seeking to report misconduct are encouraged to do so and not redirected to other entities

ETHICS COMMITTEE

Cheryl Pahaham

- **Amend the Public Officers Law to give COELIG the authority to regulate the outside activity review process used by public employers.** [REFERRAL TO LEGAL]
 - Current law appears to give employers unchecked discretion over employees, including imposing harsh conditions and ignoring proposed mitigations, while cannot challenge a decision without unduly burdening themselves. Unchecked discretion creates the potential for questionable or even punitive denials of outside activity requests, which seems in conflict with the purpose of the law.
- **Periodically audit or evaluate public employers' internal reviews of requests for outside activity.**
 - This could identify risks associated with discrimination, litigation, employee dissatisfaction, or other work-related adverse effects.
- **Develop regulations for public employer to apply in the handling of outside activity requests so that information is protected and not directly or inadvertently shared with people who are not involved in reviewing requests.**
 - These internal agency reviews are essentially a personnel matter and the information should be treated as private.

Blair Horner - New York Public Interest Research Group (NYPIRG)

- **Amend the State Constitution to establish a code of ethics enforced by an independently appointed commission (same for LEC and BOE Enforcement Counsel); modeled after the NYS Commission on Judicial Conduct.** [REFERRAL TO LEGAL]
- **Prohibit outside income for statewide elected officials.** [REFERRAL TO LEGAL]

Citizens Union of the City of New York – Ben Weinberg

- **CU had expressed concern about appointment authority still left with regulated officials. COELIG should adopt a resolution to prohibit, by regulation, *ex parte* communication between Commission members and those who appoint the commission, or their representatives, with**

limited exceptions (e.g., if the person the commissioner is speaking with is a target of, or witness in, an investigation). [See proposed *Commissioner Code of Conduct*] [REFERRAL TO LEGAL]

- An *ex parte* communication ban would help make clear both to government employers and the public that appointees have no special access or sway over the Commission.
- **Consider approaches to curb individuals and entities doing business, or seeking to do business, with the State from making sizeable campaign contributions to officials involved in decision-making regarding the business opportunity.** [Campaign Finance matter] [REFERRAL TO LEGAL]
 - Decisions involving hundreds of millions of dollars in State funding have been tainted by such contributions, leading a skeptical public to question whether the decisions to spend taxpayer funds are made solely on the basis of merit.
 - **One approach: sharply limit the amount of contribution that those having business dealings with the State can make.**
 - NYC model: A \$400 contribution cap to campaigns for citywide elected officials exists.
 - **Another approach: bar individuals or entities that have contributed to campaigns in the recent past from undertaking or seeking contracts from an official for whose campaign the contributions were made.**
 - Examples of such systems can be found in New Jersey and Connecticut.

Reinvent Albany – Rachel Fauss

- **Increase transparency and access to public information through use of open data** for financial disclosure reports, improving the lobbying database, collaborating with the Attorney General’s New York Open Governmental portal, and **develop clear guidelines regarding disclosing the status of investigations.** [REFERRAL TO LEGAL]
 - Fully comply with Executive Order 95 of 2013, the State’s Open Data Executive Order.
 - Review recommendations from the Campaign Legal Center which showcases best practices of other state ethics commissions regarding transparency and use of public data in its *Top 10 Transparency Upgrades* report.
- **Firewall Commissioners from the elected officials (or their representatives) who appointed them (prohibit *ex parte* communications).** [See proposed *Commissioner Code of Conduct*] [REFERRAL TO LEGAL]
 - By Commission resolution. [See proposed *Commissioner Code of Conduct*]
- **Recommend changes to the state’s ethics, lobbying, and election laws** to both improve transparency and allow for better government.
 - Require filers to report the employer of campaign contributors (S.2362). [Campaign Finance matter] [REFERRAL TO LEGAL]

- Require electronic filing of disclosure statements (A.1560/S.3544). [REFERRAL TO LEGAL]
- Require legislators and candidates for legislature to post financial disclosure statements on campaign websites (A.1609/S.2833). [Campaign Finance matter] [REFERRAL TO LEGAL]
- Require financial disclosure statements from candidates for statewide office or the legislature be posted on the COELIG website (A.2507/S.3574). [Campaign Finance matter] [REFERRAL TO LEGAL]
- Amend the FDS to include disclosure of cryptocurrency holdings. [NB: See S5621-B, passed by both houses of the legislature] [REFERRAL TO LEGAL]
- Require members of Regional Economic Development Councils to file disclosure statements (S.3507). [REFERRAL TO LEGAL]
- Require members of REDCs to file disclosure statements and subject such statements to the Freedom of Information Law and Open Meetings Law (S.1883). [REFERRAL TO LEGAL]
- Require online publication of NYS judges' financial disclosure statements (S.1571). [Outside of COELIG jurisdiction.] [NB: Passed Senate] [REFERRAL TO LEGAL]
- **Add penalties for violations of additional provisions in the State code of ethics, POL § 74.** [REFERRAL TO LEGAL]
- **Amend the State ethics code to include a duty to report misconduct.** [See Executive Law § 55(1) – mandatory reporting to Inspector General] [REFERRAL TO LEGAL]
- **Amend the State ethics code to prohibit harassment and discrimination explicitly.** [REFERRAL TO LEGAL]
- **Support amendment to Executive Law § 94 expanding disqualifications to be a Commissioner to include:** [REFERRAL TO LEGAL]
 - **Major campaign contributors**
 - **Those with major financial interests in State business (contractors and/or vendors)**
 - **Extend disqualification to apply to spouses/domestic partners and unemancipated children**
- **Add accessory liability for violations of the code of ethics, lobbying laws, or financial disclosure law.** [REFERRAL TO LOBBYING]

Evan A. Davis – Committee to Reform the State Constitution

- **At least a majority of Commissioners should be appointed by persons the Commission does not regulate.** [REFERRAL TO LEGAL]
- **The Commission staff—not the Legislative Ethics Commission—must be the entity that directly**

inquires of a legislator whenever a filing discloses interests that appear to be conflicting or appear to compromise independent judgment in the public interest.

- **Commissioners should address the reporting of misconduct.** [REFERRAL FROM COMMUNICATIONS]
 - Make clear that the Commission actually wants people to use the 1-800-87-ETHICS Hotline; callers will be protected by the Commission if their call is made in good faith. [See Commission’s revised website and social media initiatives]
 - The Commission website should be improved so that those seeking to report misconduct are encouraged to do so and not redirected to other entities [See Commission’s revised website and social media initiatives.]

LEGAL COMMITTEE

Cheryl Pahaham

- **Amend the Public Officers Law to give COELIG the authority to regulate the outside activity review process used by public employers.** [REFERRAL FROM ETHICS]
 - Current law appears to give employers unchecked discretion over employees, including imposing harsh conditions and ignoring proposed mitigations, while cannot challenge a decision without unduly burdening themselves. Unchecked discretion creates the potential for questionable or even punitive denials of outside activity requests, which seems in conflict with the purpose of the law.

Blair Horner - New York Public Interest Research Group (NYPIRG)

- **Amend the State Constitution to establish a code of ethics enforced by an independently appointed commission (same for LEC and BOE Enforcement Counsel); modeled after the NYS Commission on Judicial Conduct.** [REFERRAL FROM ETHICS]
- **Prohibit any elected official from being appointed to the Commission.**
- **Prohibit outside income for statewide elected officials.** [REFERRAL FROM ETHICS]
- **Improve the financial disclosure statement filing so that entries are readable, and the location of disclosures is easy to find.**
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- **Candidates’ filings—not just incumbents’—should be made publicly available on the Commission website.** [REFERRAL FROM COMMUNICATIONS]
- **Raise the reporting threshold.** [REFERRAL FROM LOBBYING]
 - The current sophisticated enforcement structure, coupled with a more expansive definition of lobbying and reporting requirements has a negative effect on smaller

entities seeking to impact policymaking. Nonprofits today spend more time and resources producing lobby reports—creating a chilling effect on those entities’ constitutional right to petition the government.

- **Consider legislation that narrowly focuses on the impacts on the not-for-profit community.** Pursue an even more targeted approach by **focusing on charities that are already heavily regulated by the IRS and the state Attorney General** to ensure that adequate oversight is continued. [REFERRAL FROM LOBBYING]

- **Require lobbyists to disclose their campaign activities, consistent with New York City Administrative Code, Title 3.** [REFERRAL FROM LOBBYING]
 - The NYC Office of the City Clerk, with which COELIG shares jurisdiction, imposes some disclosure obligations that are not required under state law, specifically, requiring that lobbyists disclose their participation in political fundraising and consulting activities.

- **Require lobbying clients and lobbyists to report if they lobbied in support or in opposition to a matter.** [REFERRAL FROM LOBBYING]
 - This would provide a better idea to the public of how lobbyists and lobbying resources were being used to promote or oppose legislation or other government decisions covered by the law.

Citizens Union of the City of New York – Ben Weinberg

- **CU had expressed concern about appointment authority still left with regulated officials. COELIG should adopt a resolution to prohibit, by regulation, *ex parte* communication between Commission members and those who appoint the commission, or their representatives, with limited exceptions (e.g., if the person the commissioner is speaking with is a target of, or witness in, an investigation).** [See proposed Commissioner Code of Conduct.] [REFERRAL FROM ETHICS]
 - An *ex parte* communication ban would help make clear both to government employers and the public that appointers have no special access or sway over the Commission.

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 - The Commission must walk the fine line between protecting the privacy of complainants and respondents during the pendency of an investigation and demonstrating that the Commission is aggressively doing its job. *See Part 941, § 941.16*
- **The Commission should consider setting expeditious timelines for its procedures.** [See Part 941)
- **Support legislation requiring clients and lobbyists to report if they lobbied in support or in opposition to a matter.** [REFERRAL FROM LOBBYING]
 - This would provide a better idea to the public of how lobbyists and lobbying resources were being used to promote or oppose legislation or other government decisions covered by the law.
- **Support legislation (S.4152/A.5786) requiring registration and the disclosure of information relating to lobbying for the nomination or confirmation of persons to State office.** [NB: Passed both houses of the legislature.] [REFERRAL FROM LOBBYING]
- **Require lobbyists to disclose their fundraising or political consulting activities in semi-annual lobbying reports.** [Campaign Finance matter.] [REFERRAL FROM LOBBYING]
 - Such disclosures could include the names of candidates or elected officials to whom lobbyists provided such services and the amount of money raised in fundraising events organized by lobbyists.
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- **Firewall Commissioners from the elected officials (or their representatives) who appointed them (prohibit *ex parte* communications)**. [REFERRAL FROM ETHICS]
 - By Commission resolution.
- **Require trauma-informed harassment training for all Commissioners and senior staff**.
 - The new law requires only the Deputy Director for Investigations and Enforcement to receive at least four hours in training in “trauma-informed approaches to investigations and enforcement.” All Commissioners, all senior staff and any other staff communicating with victims and/or involved in investigations and enforcement cases should have this training. [NB: Already staff policy.]
- **Recommend changes to the state’s ethics, lobbying, and election laws** to both improve transparency and allow for better government.
 - **Add more specificity to lobbying reporting, including whether lobbying is in support/opposition to item, section of budget bill targeted, etc.** [REFERRAL FROM LOBBYING]
 - **Require reporting of lobbying on nominations subject to Senate confirmation** (S.4152/A.5786). [REFERRAL FROM LOBBYING]
 - **Require lobbyists to report political contributions and fundraising activity** (NYC model) (S.2130/A.1391). REFERRAL FROM LOBBYING]
 - **Clarify that political parties are covered within the definition of clients.** [REFERRAL FROM LOBBYING]
 - **Permit filers who spend between \$5-\$10K on lobbying to report only semi-annually, rather than bimonthly.** [REFERRAL FROM LOBBYING]
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- ~~**Support staggering the terms of Commissioners as proposed in 2023-24 Executive Budget.** [REFERRAL FROM ADMINISTRATION]~~
- **Add accessorial liability for violations of the code of ethics, lobbying laws, or financial disclosure law.** [REFERRAL FROM LOBBYING]
- **Draft a proposal for its own budget, as suggested by Commissioner Edwards.** [REFERRAL FROM ADMINISTRATION]
- **Support an independent evaluation of the technological, staffing, and other funding needs of the agency.**
 - Conducted by a management consultant.

- Examination of best practices in other large states and cities; with recommendation on what IT systems are needed to improve lobbying and financial disclosure reporting—in terms of both filings and the public-facing website for the disclosure databases.

Evan A. Davis – Committee to Reform the State Constitution

- **At least a majority of Commissioners should be appointed by persons the Commission does not regulate.** [REFFERAL FROM ETHICS]
- **Adopt a procedure for communications with appointing authorities that would bind all Commissioners, Commission staff, and appointing authorities.** [REFFERAL FROM COMMUNICATIONS]
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 - A complete bar is needed so that no Commissioner will even appear to be an appendage of their appointing authority.

Center for Judicial Accountability – Elena Sassower

- **Letters “closing” complaints by vote of the Commission should indicate 30 days in which a complainant may seek reconsideration of the closing of a matter, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance committee procedures.**
- **The statute creating the Commission should be voided**
- **Commissioners are conflicted, both those who are former judges who benefited from unlawful judicial salary increases and those who will now be receiving per diem allowances that are measured according to the unlawfully raised salaries of Supreme Court justices.**

LOBBYING COMMITTEE

Empire State Society of Association Executives (ESSAE)

- **Provide authority to associations and other organizations registered to lobby to manage the process of training, certifying, and registering its members throughout their tenure on the association’s governing board.** [REFERRAL TO EDUCATION-TRAINING]
 - Launching a Train-the-Trainer program, whereby trained and certified professional association staff would be authorized to provide the Lobbying Ethics Training Course to members of their respective boards.
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- The process of signing-up and logging on to the SLMS is a common complaint among association volunteers and it is onerous for associations to manage the process when they do not have access to these individual login credentials.

Blair Horner - New York Public Interest Research Group (NYPIRG)

- **Expand the definition of lobbying to include efforts to influence the nomination or confirmation process for positions requiring State Senate approval.** [REFERRAL TO LEGAL]
- **Raise the reporting threshold.** [REFERRAL TO LEGAL]
 - The current sophisticated enforcement structure, coupled with a more expansive definition of lobbying and reporting requirements has a negative effect on smaller entities seeking to impact policymaking. Nonprofits today spend more time and resources producing lobby reports—creating a chilling effect on those entities’ constitutional right to petition the government.
- **Consider legislation that narrowly focuses on the impacts on the not-for-profit community.** Pursue an even more targeted approach by **focusing on charities that are already heavily regulated by the IRS and the state Attorney General** to ensure that adequate oversight is continued. [REFERRAL TO LEGAL]
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- **Require lobbying clients and lobbyists to report if they lobbied in support or in opposition to a matter.** [REFERRAL TO LEGAL]
 - This would provide a better idea to the public of how lobbyists and lobbying resources were being used to promote or oppose legislation or other government decisions covered by the law.
- **Revamp and upgrade the Lobbying Application reporting system and streamline certain aspects.**
 - Reduces time spent on compliance documentation and frees up staff from time spent addressing user problems.
 - **Create an auto populate feature that would allow all state legislators or NYC Councilmembers and their staffs to load**
 - **Remove legislators who have been out of office for years**
 - **List public officials by last name—or have option for displaying the Parties who are the target of lobbying activities**
 - **Upgrade the platform to make it more stable and reliable**

- **Lobbyist employers and lobby firms should be able to train their own staff and certify that all their staff has gone through ethics training covering the topics in the current COELIG presentation.**
 - Eliminates the need to go through the NY Government ID portal and the separate certification step. **Lobbyists and clients should be required to keep records of the training for three years. (Compare ESSAE proposal, *supra*.)**
- **Make ethics training recertification every four years, coinciding with same cycle as the two-year registration process (which starts with an odd year).** [REFERRAL TO EDUCATION-TRAINING]
 - If training has to be recertified on an individual basis, instead of by employer/firm/client.
- **Offer live trainings with Q&A sessions.** [REFERRAL TO EDUCATION-TRAINING]
 - In person as well as online; **allow participants to do so anonymously.**

Citizens Union of the City of New York – Ben Weinberg

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 - **Require reporting of lobbying on nominations subject to Senate confirmation (S.4152/A.5786).** [REFERRAL TO LEGAL]
 - **Require lobbyists to report political contributions and fundraising activity (NYC model) (S.2130/A.1391).** [REFERRAL TO LEGAL]
 - **Clarify that political parties are covered within the definition of clients.** [REFERRAL TO

LEGAL]

- **Permit filers who spend between \$5-\$10K on lobbying to report only semi-annually, rather than bimonthly.** [REFERRAL TO LEGAL]
- **Add accessorial liability for violations of the code of ethics, lobbying laws, or financial disclosure law.** [REFERRAL TO LEGAL]

SPECIAL COMMITTEE ON GUIDANCE PROCEDURES

Citizens Union of the City of New York – Ben Weinberg

- **Reexamine the process of rendering advisory opinions and retain authority over the procedure for providing advice to elected officials and high-ranking executive and legislative officials.**
 - Commissioners cannot leave decisions involving elected officials and high-ranking officials solely to the staff.

Reinvent Albany – Rachel Fauss

- **Require Commission approval of all advisory opinion requests regarding agency heads and statewide elected officials.**
 - Formally adopt a resolution limiting advice and guidance authority delegated to staff with respect to statewide elected officials and agency heads. Opinions regarding agency heads and statewide officials should always be approved by Commissioners.