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**WRITTEN TESTIMONY OF SANFORD N. BERLAND, EXECUTIVE DIRECTOR
COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT**

**NEW YORK STATE JOINT LEGISLATIVE BUDGET HEARING
2024-2025 EXECUTIVE BUDGET PROPOSAL**

PUBLIC PROTECTION

January 25, 2024

Thank you for the opportunity to submit this testimony on behalf of the Commission on Ethics and Lobbying in Government (COELIG, or “the Commission”) and thank you for supporting COELIG in the 2023-2024 Enacted Budget. Our testimony emphasizes the necessity of providing the Commission with a budgetary appropriation for Fiscal Year 2024-2025 that will enable the Commission to perform its critical governmental functions and to fulfill its salutary and essential legislative mandate: to restore public confidence that our state’s government is, indeed, working in the public’s interest. We believe the appropriation set forth in the Executive Budget for the Commission – \$8,066,000 – is the least amount needed to enable us to do so.

The Commission is the product of the Ethics Commission Reform Act of 2022 (ECRA) (L. 2022, Ch. 56, Part QQ) and replaced the former Joint Commission on Public Ethics (JCOPE). The Commission statutorily came into being on July 8, 2022 but did not have a quorum of formally approved and appointed Commissioners for several months, holding its first meeting on September 12, 2022. Since that time, Commissioners and staff have worked assiduously to build an agency within the framework dictated by ECRA, with the robust capabilities essential to meeting the ambitious goals and objectives established by that statute.

Restoring public trust in state government

Among other things, those goals and objectives include not only substantially strengthening the Commission's capacity and capabilities in its most crucial areas of jurisdiction – including investigations and enforcement; lobbying regulation and oversight; and state official, workforce and lobbying guidance and supervision – but also overseeing and administering an unprecedented and nationally unique program of mandatory annual ethics training for the state's entire executive branch workforce – encompassing some over 330,000 individuals – as well as providing triennial¹ ethics training for virtually all lobbyists and lobbying clients in the state. This expanded training mandate alone, which is dictated by Section 94(8) of the Executive Law, represents a more than ten-fold increase in the number of affected state officers and employees, and more than 30 times as many individual trainings, over the triennial ethics training program administered by JCOPE for policymakers and those meeting the salary threshold. Moreover, unique among the state's venerable lineage of ethics and lobbying regulatory agencies, under ECRA, COELIG is explicitly subject to the state's Freedom of Information Law ("FOIL," Article 6 of the Executive Law), a transparency innovation we welcome, but one that is costly from an agency resource perspective.

Adequate funding of the Commission's varied and complex operations is essential if we are to perform our duties with the thoroughness and zeal our mission demands and avoid the delays, limitations, backlogs and systemic frustrations that bedeviled our predecessor, not only in the handling of investigative and enforcement matters, but also in the processing and review of the many tens of thousands – collectively, more than 100,000 – financial disclosure statements and lobbying registrations, reports and amendments that the Public Officers Law and the Lobbying Act require that we review every year and which are indispensable to our state's system of ethical transparency and compliance. In recognition of the need to ensure adequate funding and to supply COELIG with the means to meet its substantially expanded responsibilities, ECRA called for a substantial, and necessary, increase in the Commission's funding over that of its predecessor in its first partial fiscal year, FY2021-2022, and the Governor and Legislature followed suit last year. While these increases are appreciated, they have not been lavish or excessive. Rather, they represent the base amounts the Commission requires on an annual basis to fulfill its many

¹ COELIG is proposing that the frequency of ethics training for lobbyists and lobbying clients be increased to every two years, to coincide with the biennial lobbyist registration cycle. *See* footnote 3, below.

responsibilities, conduct its varied and demanding functions and fulfill its ambitious but essential mission: to restore the public's trust in government through education, compliance, and vigorous enforcement of the state's ethics and lobbying laws, holding every person who works for that government, regardless of rank or position, and everyone who seeks to influence them, to the highest levels of ethical conduct and accountability. In short, such funding is absolutely necessary to the agency's operation going forward.

COELIG's Operations. The Commission performs its statutory duties across five principal divisions and two shared units, pursuant to an organizational structure that is primarily dictated by the express requirements of Executive Law Section 94². The Commission's advisory and financial disclosure functions are within the Ethics Division. The Commission's lobbying guidance and filings programs constitute the Lobbying Division. The Commission's education and auditing programs and training functions are shared between the Ethics and Lobbying Divisions in, respectively, the Education Unit and the Compliance Audit and Review Unit. The Communications and Public Information Division coordinates the Commission's external communications, oversees the release of public information, provides and manages content on the Commission's website, receives requests for public records and handles the Commission's media relations, as well as providing technical coordination of the logistics for the Commission's public meetings, which are livestreamed and recorded for subsequent viewing. Staff is assigned accordingly throughout the agency, and many employees have joint responsibilities, so as to afford necessary flexibility in the performance of critical functions and in meeting the Commission's broad and varied mandates. Underlying the Commission's Fiscal Year 2024-2025 budget is a robust staffing plan that is indispensable if the Commission is to avoid backlogs and delays and perform its mandated functions in a timely, efficient, comprehensive and effective manner, as follows:

Ethics Division – Guidance and Ethics Training. ECRA has not only vastly increased the number of individuals – from over 30,000, to as many, by our latest calculation, as 330,000 – for whom live/live-online comprehensive ethics training and intervening ethics refresher training is to be

² See Executive Law §94(6)(c). For the most part, the organizational structure set forth in this section emulates the divisional structure employed by the predecessor agency.

administered by COELIG (in conjunction with agency ethics officers), but also the frequency of mandatory comprehensive live/live-online training – from every third year to every two years.³ The markedly expanded training requirement has posed equally marked staffing challenges, not only for our agency, but for every one of the nearly 400 agencies encompassed by the new ethics training requirement. To help meet that challenge, we recently introduced a newly designed comprehensive online course to supplement existing live/live-online training capabilities. To address the expanded overall training requirements and to meet the expanded needs within our own agency, we created and staffed a new executive-level position – Deputy Director of Learning Innovation – and added two additional trainers. To expand and improve training tracking and communication modalities and to keep up with exponentially increased administrative and reporting obligations⁴, we created two additional training associate positions and have been working with a team from the Office of Information Technology Services on a two-phase project to provide us and the entire network of agency ethics officers, trainers and support staff with the technological support needed to manage ECRA’s ethics training mandate. We also added two associate counsel positions in the Ethics Division, to respond to growing demands for guidance⁵ stimulated by the increased reach and frequency of mandatory ethics training.

To date, over 166,000 executive branch officers and employees have received live-in-person or live-online comprehensive ethics training and an additional 11,653 have taken the on-demand iteration of the comprehensive ethics training course. The Commission’s comprehensive workforce ethics training implementation plan calls for all executive branch officials and

³ In addition, the Commission is required to provide an online live question and answer course for agency ethics officers, and it also provides a program of ethics trainer trainings, expanded to meet the increased need for agency-level ethics trainers. ECRA has also extended the mandatory triennial online lobbying ethics training requirement, previously applicable only to registered lobbyists, to now apply to lobbying clients (who last year numbered over 4,000), which has required both a modification of the online course and our method of providing it, and an expansion of our compliance capturing and monitoring capabilities. It should be noted that the Commission will pursue, in the current legislative session, an amendment to Section 1-d(h) of the Legislative Law to increase the required frequency of mandatory ethics training for lobbyists and clients to once every two years, rather than three years, to coincide with the biennial registration requirement of Legislative Law § 1-e(a).

⁴ See Executive Law § 94(8)(f), which requires quarterly and annual reporting of the status of training compliance to the Governor and the Legislature.

⁵ See Executive Law §94(7). In 2023, Ethics Division attorneys responded to nearly 700 guidance requests, issuing hundreds of informal letter opinions and answering hundreds of telephone inquiries, including requests for state employee approval to engage in remunerative outside activities (governed by Public Officers Law §74 and 19 NYCRR Part 932) and guidance concerning permissible post-separation private-sector employment (governed by Public Officers Law §73).

employees to receive at least one ethics training by the end of the current calendar year and to complete a full ethics training cycle – i.e., one live (in person or online) comprehensive training and one refresher training – on or before December 31, 2025. In addition, more than 8,600 lobbyists and lobbying clients received online lobbying ethics training in the current biennial lobbying cycle.

Compliance Audit and Review Unit/FDS Unit. The Compliance Audit and Review Unit is also a shared unit, jointly supporting both the Lobbying Division and the FDS unit, which is housed in the Ethics Division. Under our expanded staffing plan, we will fill positions for an additional Compliance Auditor and an additional Compliance Analyst. (It should be noted that these were not new positions per se but represented the filling of critical vacancies that persisted in the former agency's staffing plan because of insufficient funding.) As processing backlogs are being addressed in the Lobbying Division, and throughput has become more closely commensurate with filing rates, the need for these positions is critical in preventing downstream processing delays and backlogs and in ensuring that our audits and reviews are performed in a timely, thorough and comprehensive manner. For like reasons, we filled vacancies in the positions of Assistant Director of FDS and Assistant Filings Specialist (Filings Examiner) in our FDS unit.

Lobbying Division. As was noted in our budget submissions, lobbying activity remains at historically high levels. Lobbying industry spending reached an all-time record of \$331.5 million in 2022, and we expect the number for 2023, when all of the data has been assessed, to be at least as high. The Commission anticipates that lobbying registrations, reports and amendments will continue to be filed, and lobbying guidance and filing assistance will be sought, at historically high rates. To eliminate the ongoing backlog in processing and reviewing registrations and other lobbying filings, and to remain current, as well as to ensure that the Division always has a sufficient number of trained staff to respond to lobbying guidance requests and requests for filing assistance, we filled vacancies in three Assistant Filing Specialist/Filings Examiner positions. Again, filling these vacancies was essential to achieving our overall compliance goals.

Investigations and Enforcement Division. Under the predecessor agency's staffing plan, this was nominally an eight-person unit, but fiscal limitations meant that only six positions were filled. The

Commission's approved staffing plan calls for expanding the division to at least nine FTEs, both to expedite the disposition of the significant number of open and pending investigative and enforcement matters carried over from JCOPE and to accommodate the expeditious handling of new matters, as well as to meet the demands of the series of significant and complex investigative and enforcement matters that the Division is handling. During the past year, we successfully recruited highly capable new leadership for the Division, including both a new Director of Investigations and Enforcement and a Deputy Director of the division (a newly created position), both of whom have extensive experience investigating and pursuing public integrity matters. In addition, we hired a team of seasoned investigators with diverse backgrounds that include public integrity and sex crimes investigation. We also created, and filled, a Senior Investigative Counsel position and are in the process of filling another investigative counsel position (the incumbent will also serve as a liaison for investigation and enforcement purposes to the agency's Lobbying Division).

Administrative Division, Executive Staff, Communications/Public Information and Freedom of Information Law Administration. In the past year, we filled the vacant key Executive Staff positions of General Counsel and Deputy General Counsel and the vacant Administrative Division position of Administrative Assistant/Executive Assistant for our New York City office (this last is the sole administrative support position situated in our New York City office). In the Communications/Public Information Division, we created the core, and demanding, position of Director of Communications and Public Affairs and Public Information Officer and successfully recruited an exceptionally well qualified and highly skilled communications expert for the position, who is also serving as our Freedom of Information Law Records Access Officer; created and filled the position of Assistant Director; and filled the vacant position of Communications Assistant. These positions are each essential and indispensable to the efficient and effective operation of our agency and to achieving our goal of maximizing, to the full extent possible within statutory and practical bounds, the transparency of our operations and our openness to public scrutiny. Indeed, the Commission is now fully exploiting social media to extend the reach of its communications and messaging cost-effectively and far beyond anything attempted by its predecessors; its website is new, accessible and content-rich; and its two filing applications – FDS and lobbying – have been improved to afford greater public access to information and to streamline

the reporting processes for filers and staff. In addition, we have made the entire lobbying database publicly available on the OpenNY data platform, where it is by far the largest dataset hosted on that platform, and we are proactively providing ever-increasing amounts of data, information and instructional materials through our website and frequent training and educational sessions for our varied constituencies. The maintenance, expansion and upgrading of these systems, both to meet new statutory requirements and to address heightened security concerns – particularly in the wake of a systems attack last year – requires significant staff and technological resources, and we have created the new position of Business Analyst to ensure that the needs and demands associated with these systems are fully and efficiently met.

Commissioner Per Diems. These are also part of the personal services component of our budget and are statutorily intended to encourage and facilitate recruitment and active engagement by Commission members in oversight of the agency’s overall operations. (*See Executive Law §94(4)(f).*)

Non-Personal Services. This component of our budget is comprised of lease costs for the Commission’s offices in Albany, New York City, and Buffalo; office equipment and information technology costs; professional services; and related items.

As before, the Commission acknowledges that the state’s fiscal resources are not unlimited must be minded and prudently managed – indeed, that is a key element in the Commission’s *raison d’être* – and Commission members remain committed to doing their part to address that challenge. To that end, Commission staff members continue to identify measures to improve the Commission’s efficiency and accountability to New Yorkers, as well as to demonstrate its leadership with respect to ethics and lobbying compliance. At the same time, the Commission is, and must be, emphatic that its ability to meet its mandates is entirely dependent upon having funding sufficient to maintain the requisite levels of appropriately trained and qualified staff in all positions. The vastly increased mandatory ethics training requirements – which equate to a more than thirty-fold increase in the number of individuals to whom ethics training must be provided annually by the Commission and employing agencies, as well as the ever-increasing demand for greater accountability and disclosure by public officers, state employees and those seeking to

influence government decisions, mean the Commission must have the resources dictated by its mandate and statutory mission and commensurate with its needs. Without the requisite funding, the Commission cannot succeed in providing the training, guidance and compliance monitoring called for by the state's ethics and lobbying laws, adequately enforce the ethical standards mandated by those statutes or ensure the unambiguous transparency that is critical to rebuilding trust in our state's government. As we have previously noted, the central importance of our mission and of assuring adequate and protected funding of our agency is expressed in the same section of ECRA that created the Commission:

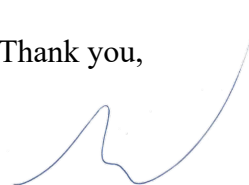
The annual budget submitted by the governor shall separately state the recommended appropriations for the commission on ethics and lobbying in government. Upon enactment, these separately stated appropriations for the commission on ethics and lobbying in government shall not be decreased by interchange with any other appropriation, notwithstanding section fifty-one of the state finance law.

Executive Law §94(1)(f).

I trust the foregoing sufficiently communicates why adequate budgetary support at the level appropriated in the Executive Budget Proposal for Fiscal Year 2024-2025 is indispensable if the Commission on Ethics and Lobbying in Government is to perform its statutory functions and to fulfill its mandate in the coming fiscal year.

Please do not hesitate to let me know if you have any questions about our agency and its budgetary needs or if there is any additional information that would be helpful to you, the Committees and Legislature at large in the budgetary process or otherwise.

Thank you,



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