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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
2023-2024 EXECUTIVE BUDGET PROPOSAL

PUBLIC PROTECTION

FEBRUARY 7, 2023

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 to emphasize the necessity of providing the Commission with a budgetary appropriation for Fiscal Year 2023-2024 sufficient to 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 that the appropriation set forth in the Executive Budget for the Commission – \$7,787,000 – is the minimum 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). Although the Commission statutorily came into being on July 8, 2022, a quorum of Commissioners was not formally approved and appointed until this past September, and the Commission held its first meeting on September 12, 2022. In that short time, Commissioners and staff have been working diligently to build an agency within the framework dictated by ECRA and with the robust capabilities essential to meeting the ambitious goals and objectives established by that statute. 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 a program of comprehensive ethics training for the state's entire executive branch workforce – encompassing over 300,000 individuals – and for virtually all lobbyists and lobbying clients in the state. It should be particularly noted that 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 over the ethics training program administered under prior law by JCOPE. In addition, ECRA, for the first time in the history of the state's ethics and lobbying regulatory structures, has made COELIG explicitly subject to the state's Freedom of Information Law ("FOIL," Article 6 of the Executive Law), a welcome innovation for purposes of agency transparency, but, nonetheless, one that is costly from an agency resource perspective.

It is difficult to dispute that the state's prior ethics and lobbying agency, the Joint Commission on Public Ethics – JCOPE – was insufficiently funded. That insufficient funding contributed to delays, limitations and, in some instances, backlogs 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 a hundred thousand – financial disclosure statements and lobbying registrations, reports and amendments that the Public officers Law and the Lobbying Act require the state's ethics and lobbying agency to review every year and which play a critical role in our state's regime of ethical transparency and compliance. In recognition of the need to correct that underfunding and to supply the new agency, COELIG, with the means, as well, to meet its added and expanded responsibilities, ECRA called for a substantial, and indispensable, increase of \$2,000,000 over the funding JCOPE had received in Fiscal Year 2021-2022. While substantial, that increase was not lavish and represented the bare minimum amount the new agency requires on an annual basis both to enable it to implement a staffing plan that fills positions that JCOPE needed but could not fund and that will also enable it to meet its new and expanded mandates. While there was insufficient time remaining from the first convening of the new Commission in September for that funding to be fully utilized in the ending fiscal year, that funding is absolutely necessary to the agency's operation going forward.

The Commission performs its statutory operations across five principal divisions and one shared unit, pursuant to an organizational structure that is primarily dictated by the express requirements of Executive Law Section 94¹. 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 its Training 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 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 2023-2024 budget is a robust staffing plan that is indispensable if the Commission is to overcome backlogs and delays and perform its mandated functions in a timely, efficient, comprehensive and effective manner, as follows:

Ethics Division – Guidance, Ethics Training and Freedom of Information Law Administration. ECRA has not only vastly increased the number of individuals – from over 30,000, to as many, by our latest calculation, as 300,000 – for whom live/live-online comprehensive ethics training and intervening ethics refresher training is to be 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.² The markedly expanded training requirement poses equally marked staffing challenges, not only for our agency, but for every one of the nearly four hundred agencies encompassed by the new ethics training requirement. To

¹ 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.

² 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, which will be 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 4,400), which has required both a modification of the online course and our method of providing it and an expansion of our compliance monitoring capabilities.

meet that challenge in the immediate term, we are working to develop a system that will, in the interim, provide and monitor a comprehensive online course to supplement existing live/live-online training capabilities – which will be used for FDS filers and new hires and any state employees who can be live-/live-online-trained within existing capabilities – until a fully expanded live-/live-online program can be sufficiently funded at the agency level. To meet the needs within our own agency, our staffing plan calls for adding two additional trainers and two additional training associates to the staff of our Education unit and two additional ethics attorneys who will also have training responsibilities.

Two other factors impact the Ethics Division’s staffing needs. First, the increased reach and frequency of mandatory ethics training will stimulate a corresponding increase in both the formal and the informal guidance requests and inquiries to which our Guidance unit is required by law to respond³. Second, as a matter of organizational efficiency, the consequential and time-consuming FOIL-mandated position of Records Access Officer has been sited in the Ethics Division. Hence the additional necessity for adding, as noted above, two Associate Counsel to our Ethics Division.

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 going-forward staffing plan, we will be hiring an additional Compliance Auditor and an additional Compliance Analyst in the Compliance Audit and Review unit. It should be noted that these are not new positions per se but represent the filling of critical vacancies that persisted in the former agency’s staffing plan because of insufficient funding. As processing backlogs are addressed in the Lobbying Division, and throughput becomes commensurate with filing rates, the need for these positions will become even more critical in preventing downstream processing delays and backlogs and in ensuring that our audits and reviews are always performed in a timely, thorough and comprehensive manner. For like

³ See Executive Law §94(7). In 2021, the last full year of JCOPE’s operation, Ethics Division attorneys issued over 400 written guidance letters and responded to many hundreds more 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).

reasons, we are also filling 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 – the lobbying industry spending exceeded \$292 million in 2021, and we expect the number for 2022, when all of the data has been assessed, to be at least as high – and 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. In order, first, to eliminate the ongoing backlog in the processing and review of registrations and other lobbying filings, and, then, to remain current and 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 are filling vacancies in three Assistant Filing Specialist/Filings Examiner positions. Again, filling these vacancies is 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 (although fiscal limitations meant that only six positions were filled), which we will be expanding to ten 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 currently handling. Both because of previous underfunding and the attrition that ensued as a consequence of the protracted transition from JCOPE to COELIG, in addition to filling two new positions – Deputy Director of the Division and Electronic Discovery Specialist – we are also filling vacancies in three investigator positions, including Senior Investigator, and two investigative counsel positions (one of whom will also serve as a liaison for investigation and enforcement purposes to the agency's Lobbying Division), as well as in the position of Director of Investigations and Enforcement.

Administrative Division, Executive Staff and Communications/Public Information. We are filling 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 are filling vacancies in the positions of Director of the Division and 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.

Commissioner Per Diems. These are also part of the personal services component of our budget and are statutorily intended to encourage and facilitate 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.

The Commission acknowledges that the state fisc is not unlimited and that state resources must be minded and prudently managed – indeed, that is a key element in its *raison d'être* – and it remains committed to doing its part to address that challenge. At the same time, the Commission is, and must be, emphatic that its ability to meet its mandates is entirely dependent upon it 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 ten-fold increase in the number of individuals for whom comprehensive live 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 together mean that the Commission must have the resources dictated by its mandate and its 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. Indeed, 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 2023-2024 is absolutely necessary for the Commission on Ethics and Lobbying in Government 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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