

THOMAS P. DiNAPOLI  
STATE COMPTROLLER



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STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**

**NYS Senate Public Hearing: To Discuss New York State's System of  
Ethics Oversight and Enforcement, December 9, 2021**

**Testimony of State Comptroller Thomas P. DiNapoli**

**New York Senate Standing Committee on Ethics and Internal Governance**

Chair Senator Alessandra Biaggi, Senator Liz Krueger, and distinguished Committee members:

Thank you for providing me with the opportunity to testify today on behalf of New York State Comptroller Thomas P. DiNapoli. My name is Nelson Sheingold. I am counsel to Comptroller DiNapoli and I am joined today by Executive Deputy Comptroller Terri Crowley, who heads our Division of Operations.

New Yorkers have seen too many scandals involving public officials in recent years. The activities of those who abuse their office compel us to take all possible measures to restore public confidence in government. This can only be accomplished through enhanced transparency and accountability.

Under our State constitution and State law, the New York State Comptroller's Office is the independent watchdog of taxpayer funds and an integral component in the fight against public corruption, fraud, waste, and abuse. Comptroller DiNapoli has been and continues to be committed to maximizing the authority and resources of his Office to combat corruption and eliminate waste, fraud and abuse of public funds. In the fight against corruption, we have worked with law enforcement at all levels of government - in every county of the State, all four United States Attorneys' offices, the Attorney General, the State Police, the FBI and numerous other federal, State and local agencies to aggressively root out fraud. This work has resulted in over 250 arrests and the ordered recovery of over \$78 million since the inception of Comptroller DiNapoli's anti-corruption initiative. But fraud detection is not enough. Through the hundreds of audits of State and local governments and public authorities we conduct every year we proactively identify deficiencies and internal control gaps and make recommendations to improve efficiency and prevent fraud before it occurs.

The Comptroller's duty to audit State payments and the authority to review and approve State contracts before they take effect are core functions of the Comptroller's Office and vital checks on waste, fraud and abuse. For 2021, cumulatively through October 2021, the Comptroller's Office has already approved over 14,000 contracts valued at over \$163 billion and has approved nearly 171.1 million payments worth more than \$174.5 billion. The Office has rejected over 1,300 contracts and related transactions valued at \$5.4 billion and nearly 217,700 payments valued at nearly \$262.2 million primarily due to errors, improprieties or lack of documentation.

Our independent oversight of State contracts is an essential check and balance and critical in providing assurance that public funds are being properly spent. Unfortunately, over the last decade, through the State budget and legislation, our contract approval authority has been chipped away. A common justification for avoiding our review rests on supposed delay in the procurement process. This is unpersuasive. On average, our review of contracts takes less than a week. When it takes us additional time to examine the proposed contract and ask appropriate questions, it is for a good reason: namely, to fulfill our job to ensure public monies are appropriately spent. We urge the Legislature to eliminate any further circumventions of our approval authority, whether it be in the budget or through other legislative action, and to restore what authority has been taken away. On this note, Senator Reichlin-Melnick recently introduced a bill which would restore much of our contract approval authority.

Comptroller DiNapoli also believes that transparency is critical and has taken action to back that up. The Comptroller's Open Book New York website contains information on over 190,000 State contracts; the ability to search State payments dating back to 2012; detailed revenue, spending, debt, tax limits, balance sheets, and property tax cap information for 3,100 local governments dating back to 2007; financial information for more than 500 State and local public authorities dating back to 2007; and other information related to the budgetary activities of State agencies. In October, we launched a publicly accessible dashboard to track certain federal COVID funding and State relief programs so New Yorkers can monitor spending of these funds in the State, including funds for excluded workers, childcare services, emergency rental and homeowner assistance, and small business recovery. Additionally, our fiscal stress monitoring system provides an early warning to local governments and their citizens regarding the financial state of their government. And our audit reports are posted on our website for citizens to review and use in making informed decisions about their government.

In closing, Comptroller DiNapoli is committed to using his Office and partnering with the Legislature and Executive to promote accountability and transparency in government at every level. I look forward to answering any questions you may have.



**Testimony of Reinvent Albany to Senate Standing Committee  
on Ethics and Internal Governance**

***Re: Role of Other Oversight Bodies Including Comptroller and Attorney  
General in Anti-Corruption and Ethics Enforcement***

December 9, 2021

Good afternoon Senator Biaggi and members of the Senate Ethics and Internal Governance Committee. My name is Rachael Fauss, and I am the Senior Research Analyst for Reinvent Albany. We advocate for open and accountable New York government. Thank you for holding this important, timely hearing and inviting us to testify.

We appreciate that you are continuing the conversation from the August 2021 hearing to ensure that your committee is taking a comprehensive look at ethics oversight by inviting other branches of government to testify like the State Comptroller.

First, we reiterate our point from our August testimony<sup>1</sup> that New York State has a serious and ongoing corruption problem, and that the Joint Commission on Public Ethics (JCOPE) is worse than useless and must be replaced. However, today we will focus on what other bodies of state government can and should do to increase government accountability.

In particular, we encourage the Senate to look at ways to empower the Attorney General and Comptroller. These statewide elected officials have the staffing, mission and expertise to conduct independent oversight of the activities of state government mandated by the executive and legislative branches. We underline the word “independent.”

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<sup>1</sup> Reinvent Albany testimony to Senate Standing Committee on Ethics and Internal Governance, August 25, 2021. <https://reinventalbany.org/2021/08/watchdog-testimony-at-senate-ethics-hearing-jcope-has-to-go/>

Below are our recommendations to improve the ethics enforcement and corruption-fighting powers of these offices and state oversight bodies other than the state's ethics commission.

### **Attorney General (AG)**

1. **The Senate should consider amending Section 63 of the Executive Law to:**
  - a. **remove the requirement that the AG report to the Governor after the Governor makes a referral asking the AG to investigate the Executive Chamber; and**
  - b. **broaden the Comptroller's referral authority.**

Currently, under Section 63(8), after the Governor makes "public peace, public safety and public justice" referrals to the AG, the Governor is provided weekly reports from the Attorney General. While this was waived by former Governor Cuomo for the recent investigation by the AG's office, the law should specifically address this conflict but not require reports where the Governor and possibly Executive Chamber are under investigation. Additionally, the Comptroller only can make referrals directly related to matters that they "execute." We believe the Comptroller's authority should be expanded.

2. **The Senate should seek more information about the use and limitations of the standing agreement between the AG and Comptroller** to grant the AG powers to criminally prosecute corruption involving taxpayer money. This will help inform discussions around the expansion of referral powers under Section 63 of the Executive Law.
3. **The Attorney General's office should prioritize and be provided additional budgetary resources, if necessary, to improve internal and external databases**, including the [New York Open Government](#) (NYOG) website and the Charities Bureau Registry. These databases are important for the public, legislature, journalists and investigators to connect the dots on the flow of money in state government. NYOG in particular is a crucial tool to connect disparate databases regarding lobbying, campaign finance, charities, corporations, state contracts, and more.
4. **The legislature should conduct an oversight hearing on the AG Charities Bureau** to determine whether it has adequate funding and technology infrastructure to effectively regulate and oversee entities that employ

18% of the state's private workforce.<sup>2</sup> The hearing should also determine how well the AG is equipped to oversee state-chartered charities like SUNY Research Foundation and the many SUNY affiliated charities that own the public property for state campuses like SUNY Buffalo and nonprofit entities created by the Empire State Development Corporation. We view these dozens of state-chartered entities as having among the highest corruption risk of any part of New York State government.

5. **The Senate should hold a hearing assessing the role of the AG's Public Integrity Bureau**, which at our last count had only a dozen attorneys fighting corruption across the vast array of state and local governments and myriad public authorities.

### **Office of the State Comptroller (OSC)**

1. **The pre-audit authority of the Comptroller should be restored in law for state contracts.** Under the Cuomo administration, the Comptroller's ability to "pre-audit" contracts was eroded through the FY 2011 budget for agencies like SUNY and CUNY, which later proved to be disastrous due to the Buffalo Billion bid rigging scandal. The pre-audit authority [has also been removed for individual appropriations in the budget](#), and through various emergency orders including the MTA State of Emergency Order (EO 168) and the Gun Violence Order (EO 211), as well as COVID emergency orders. While the Comptroller and former Governor signed an MOU restoring some of these powers, this agreement is limited and the law needs to be changed. The Comptroller's review of contracts adds minimal time to the length of contract review, and is important to flag potential corruption risks. Legislation to restore these power include:
  - a. [The Procurement Integrity Act of 2018](#) (not reintroduced)
  - b. [S6809 \(Reichlin-Melnick\)/A7925 \(Zebrowski\)](#)
2. **The Comptroller should be given oversight of more public authority contracts**, including the MTA's, as recommended in our [Open MTA report](#).
3. **The Senate should ask OSC how it determines the scope of activities and resources it budgets for its Investigations and State and Local Accountability Divisions** as part of its review of the entities fighting corruption in the state.
4. **The Senate should look at the OSC's potential oversight of the use of forfeiture funds** by law enforcement agencies – DAs and local police

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<sup>2</sup> Office of the State Comptroller, "Nonprofit Organizations in New York State: Profile of Employment and Wages." July 2019.  
<https://www.osc.state.ny.us/files/reports/special-topics/pdf/economic-nonprofits-2019.pdf>

departments – given the concern around corruption risk around the seizure of assets. New York State should require localities to report the seizure and use of these funds, and provide machine-readable, tabular open data about these funds.

- 5. The Senate should look into national best practices around transparency of settlements that are approved by OSC, including for sexual harassment cases.**

### **Inspector General (IG)**

- 1. The Legislature should consider requiring additional qualifications** for the position to create more independence, such as bars on current state government officials, lobbyists, vendors, etc from serving as IG, as well as those with such positions in the last 3 years, or a similar blackout period.
- 2. The Legislature should also consider requiring Senate confirmation of the Inspector General.**

### **Authorities Budget Office (ABO)**

- 1. The ABO's budget should be increased to \$5 million**, allowing it to expand its staff beyond 12 to better fulfill its mandate to oversee more than 600 state and local public authorities. Reinvent Albany, Citizens Budget Commission, Citizens Union, Common Cause/NY, the League of Women Voters of NYS, NYPIRG, and Strong Economy for All [sent a letter in October](#) making this request to the Governor and Legislative leaders. Part of ABO's oversight includes administering the [fiduciary duty requirements](#) for board members of authorities, and recommending [model codes](#) of ethics and conflicts of interest policies. With more resources, the ABO will be better able to oversee ethics compliance at state public authorities, and investigate potential corruption.

### **Doing Business Database**

- 1. The Legislature should pass a law creating a NYS “doing business database” as maintained in NYC for its campaign finance system.** Ideally, this is implemented as part of doing business restrictions on campaign contributions from lobbyists and vendors. However, this could be done as a stand-alone item. Creating this database would allow for better tracking of those seeking contracts to influence state government. Several bills would accomplish this in different forms as part of campaign finance reform, including [S4135 \(Gounardes\)](#).

Thank you for your consideration. I am available to answer any questions you might have.



**CITIZENS UNION OF THE CITY OF NEW YORK**  
**Testimony before the Senate Ethics Committee**  
**New York State's system of ethics oversight and enforcement**

250 Broadway  
December 9, 2021

Dear Chair Biaggi and members of the Senate Ethics Committee. My Name is Ben Weinberg, and I am the Director of Public Policy at Citizens Union. We thank you for giving Citizens Union the opportunity to present testimony on New York State's system of ethics oversight and enforcement. Citizens Union is a nonpartisan good government group dedicated to making democracy work for all New Yorkers. Citizens Union serves as a civic watchdog, combating corruption and fighting for political reform.

In our previous testimony before this committee (August 2021), we highlighted the major flaws of JCOPE, the agency charged with enforcing state laws regarding ethics, and the need to replace it with a constitutionally established, independent ethics agency. We noted the political dependency of commissioners on the elected officials who appointed them, which allows the governor or a political party in the legislature to block an ethics investigation. These issues are even more critical today, after former Governor Cuomo resigned following an ethics investigation and as more evidence surfaces about the influence the former governor had on JCOPE decisions. We are encouraged to see that Governor Hochul has promised to make ethics reform her priority. We hope the legislature would push to replace JCOPE with a far more independent agency and make other structural and operational improvements to enforcement.

Today we would like to recommend several other measures that could improve the system of ethics oversight in New York. JCOPE is not the only agency tasked with keeping our government clean. Other relevant enforcement agencies include the Attorney General, the Legislative Ethics Commission, the Inspector General, as well as the Board of Elections, including its Chief Enforcement Officer. Our testimony deals with some of those.

**1. Empower the Attorney General to independently initiate investigations and prosecute cases involving public corruption and ethics violations**

Current state law does not permit the Attorney General to initiate investigations into public corruption or ethics violations without the direction, request, or permission of the governor or state

agency head. Under Exec. Law § 63(8), the AG may, (1) with approval of the governor or (2) by direction of the governor, “inquire into matters concerning the public peace, public safety and public justice.” The administration of laws, including violations of the Penal Law or the Public Officers Law, is within the meaning of “public justice.” In such inquiries, the AG, or an appointed deputy, has the power to subpoena witnesses to compel examination under oath and any records that are relevant to an inquiry. Under Exec. Law § 63(3), the AG may, similar to public justice inquiries, investigate and prosecute indictable offenses of a state department, authority, division, or state agency by request of the governor or the head of any state body. Under Exec. Law § 70, when the governor has “reason to doubt whether in any county the law relating to crimes against the elective franchise is properly enforced,” the AG may be directed to investigate and prosecute violations of the Election Law.

Citizens Union, good government groups, former Attorney Generals, and Attorney General candidates have been stressing for years that those structural flaws prevent the enforcement of the laws that are on the books, and allow for the troubling and seemingly unending ethical and criminal scandals that have rocked Albany for decades.

In fact, Attorney General Tisch’s investigation into former Governor Cuomo, which has exposed disturbing details on harassment, retaliation, and other ethics violations in the executive chamber, would not have been conducted if it wasn’t for a referral made by the former governor. This referral to the AG, made according to Section 63(8), came only after months of media attention and pressure from other public officials. If it weren’t for this unique political situation that “forced” the former governor into making this referral, the public would not have known about the scope of misconduct exposed in the investigation.

This case only stresses the need for the Attorney General to be able to begin investigations on their own accord. Expanding the authority of the Attorney General in this regard would help to create a more ethical environment with greater accountability in Albany.

## **2. Restore the State Comptroller’s authority to review state contracts before they are executed**

Over the last ten years, the New York State Comptroller Office's powers to independently review state contracts have been slowly eroded. Through a series of budget laws and executive orders, critical procurement audits were lost for SUNY, CUNY, centralized contracts of the OGS, including construction contracts, specific programs related to health services, gun prevention, public transportation, and other areas. Some of these powers have been restored, but only under an MOU between the executive chamber and the comptroller’s office, which can be easily pulled out of in the future.

The oversight of the State Comptroller prevents corruption, saves the state millions of dollars, and does not slow down critical procurement. Its powers must be codified in state law to maintain this critical function. This would require amending relevant sections of the Finance Law and the Education Law.



### **3. Replace the Legislative Ethics Commission with an independent body**

The Legislative Ethics Commission (LEC) suffers from the same problem as JCOPE – its leaders are appointed by the people it is meant to oversee. Legislative leaders appoint all nine members of the LEC, and four of them are sitting legislators. It would be difficult to argue that this quasi-agency can issue independent penalties for unethical actions made by legislators and legislative employees when the people who adjudicate such issues are the colleagues, bosses, or opponents of the subjects of investigations. The structural lack of independence discourages lawmakers and staffers from seeking opinions or filing complaints for fear of breaches of confidentiality and retaliation.

Any effective ethics agency must be able to operate independently of those it has been tasked with regulating. Because of legal challenges, an independent state ethics watchdog with the power to address ethical issues in the legislature seems like it can only be established by amending the state constitution. This newly formed body should replace both JCOPE and the LEC. The constitutional amendment (S.855/A.1929) sponsored by Senator Krueger and Assembly Member Carroll accomplishes that, and we applaud them for their leadership on this issue.

#### Close the legal gaps that increase the chances for ethics violations and prevent oversight

Establishing effective and independent enforcement bodies that are empowered to investigate possible ethics violations is essential. But a robust system of ethics oversight also requires having laws and rules that limit the opportunities of such violations from occurring. Citizens Union recommends implementing the following solutions to strengthen the prevention of misconduct.

### **4. Improve the public accountability of state spending and reduce nonspecific funding in the budget**

A significant portion of funds set out in every annual budget has no real criteria for spending, no indication of who controls funding decisions, and little reporting requirements to tell whether money has been well spent or spent at all. This nonspecific funding invites misuse and corruption, raises serious concerns about the integrity of state spending, and makes it hard for oversight and enforcement bodies to identify and investigate misconduct. Notably, former legislative leaders Dean Skelos and Sheldon Silver were both indicted on corruption charges related to their control over opaque state funds. Joseph Percoco's conviction was also related to his involvement in state spending decisions. An analysis of the 2019 proposed budget by Citizens Union found at least \$11.7 billion in these nonspecific, opaque funds.

To improve the public accountability of state spending, the budget process should be reformed to

- a. publicly post comprehensive information regarding the distribution of nonspecific lump sum funds, including detailed purposes, criteria for spending decisions, and who requested the spending;

- b. require that elected officials who seek to make awards from lump sum appropriations or reappropriations affirm that the contract or grant is for a lawful public purpose, there are no conflicts of interest and the elected official has not and will not receive any financial benefits, and that the elected official is in compliance with all disclosure requirements; and
- c. require comprehensive online disclosure of all grants and contracts awarded under nonspecific lump sum appropriations and reappropriations.

#### **5. Create a Doing Business Database to track entities involved in economic agreements with the state, and limit contributions from people on the database**

Regulations incorporated in New York City's system, which set very low contribution limits for those "doing business with the city," as well as establish a Doing Business Database to track entities involved in economic agreements with the city, has proven to be a useful tool for reducing cases of pay-to-play. New York State should establish a similar system for entities doing business with the state. It would not only reduce the possible influence of campaign contributions on procurement decisions, and the real or perceived conflicts of interest, but it would also allow lawmakers and the press to track the thousands of contracts, franchises, and subsidies provided by the state. The new public campaign finance system provides another incentive to incorporate such provisions.

Lobbyists should be part of this database and under similar contribution limits, like in the city's system. Donation bundling by lobbyists and other fundraising intermediates should also be restricted.

Even former Governor Cuomo proposed a first step in that direction, proposing that the campaign finance reform include certain contribution bans individuals or entities that are in the process of bidding for or that have been awarded a contract with a state governmental entity. There are several bills that address different parts of this problem, including S483 (Myrie)/A5839 (Galef) that passed the Senate and is co-sponsored by Chair Biaggi and other members of the Ethics Committee. Other relevant bills include S1671 (Skoufis)/A7081 (Paulin), S940 (Krueger)/A2437 (Aubry), S4135 (Gounardes), and S6932 (Rath).

#### **6. Significantly limit outside compensation earned by state legislators, and eliminate their stipends**

The 2018 special compensation commission recommended adopting the congressional model: a cap of 15% of the legislative base salary on income earned from employment outside of legislature and a complete prohibition on outside income from employment where the legislative member has a fiduciary relationship to the employer or client. It also recommended eliminating most of the stipends given to lawmakers today, effectively folding stipends into an increased base salary. Currently, New York pays out 160 special stipends based on legislators' positions and roles, the

highest number in the country. However, the compensation commission decision was invalidated by a 2019 New York state Supreme Court decision, which held that the Commission did not have the power to limit legislators' outside income.

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Outside income limitations are standard ethics practices, and they help maintain a clean and transparent government and improve the public's trust in public officials. Eliminating stipends reduces the impact of a significant financial benefit, which is given by legislative leaders at an almost complete discretion. Enacting such provisions would also make the job easier for enforcement bodies, which currently must track disclosure of outside income and possible conflicts of interest caused by the lax rules. The legislature should adopt the 2018 recommendations.

**7. End the use of campaign funds to pay for the costs of defending against civil and criminal investigations or prosecutions alleging violations of state or federal law**

Although it is illegal for candidates to use campaign funds to pay for fines or penalties imposed by JCOPE, they can still use those funds to pay for attorney's fees, litigation costs, or settlement fees. Campaign funds are not raised for the legal defense of an elected official investigated for ethics violations (unless the expenditure is exclusively related to the candidate's campaign). This loophole hurts the public's trust in the system of ethics and discourages participation. Several bills attempt to close that loophole, including S4458 (Krueger)/A8329 (Simon); S682 (Hoylman)/A4174 (Lavine), S741 (Biaggi)/A53 (Quart), and they should be explored by lawmakers.

Citizens Union commends Senator Biaggi for convening today's hearing – as well as the August one – and for inviting public input as to how to improve ethics oversight. It is unfortunate that many oversight and enforcement agencies refused to come before this committee. We look forward to exploring the next steps to achieve real ethics reform in New York.



# LEGISLATIVE ETHICS COMMISSION

## STATE OF NEW YORK

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SENATOR NEIL D. BRESLIN  
SENATE CO-CHAIR

ASSEMBLYMEMBER JO ANNE SIMON  
ASSEMBLY CO-CHAIR

LISA P. REID  
EXECUTIVE DIRECTOR/COUNSEL

To: New York Senate Standing Committee on Ethics and Internal Governance

From: Lisa P. Reid, Executive Director/Counsel

Re: Information regarding the Legislative Ethics Commission

Date: December 3, 2021

As discussed in the letter from the LEC Commissioners dated November 24, 2021 in response to your invitation to provide testimony at the hearing on New York State's system of ethics oversight and enforcement, attached please find information regarding the Legislative Ethics Commission.

In addition, please note that the Legislative Ethics Commission website, [legethics.ny.gov](http://legethics.ny.gov) contains substantive information including, for example, the By-laws of the Legislative Ethics Commission, generic opinions, dispositions of Substantial Basis Investigation Reports received from the Joint Commission on Public Ethics and Settlement Agreements.

If you have any questions regarding this information, please contact me at your convenience.





# LEGISLATIVE ETHICS COMMISSION

## STATE OF NEW YORK

MAIL: LEGISLATIVE OFFICE BUILDING • BOX 75 • ALBANY, NY 12247  
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### STRUCTURE, AUTHORITY AND OPERATIONS OF THE LEGISLATIVE ETHICS COMMISSION

#### LEGISLATIVE HISTORY AND STRUCTURE

The Legislative Ethics Commission (LEC) was created by the Public Employees Ethics Reform Act of 2007 that was signed into law on March 26, 2007. This legislation replaced the Legislative Ethics Committee (which consisted entirely of legislators) with the LEC and revised the provisions of the Legislative Law and Public Officers Law relating to the Commission's powers, duties and jurisdiction. Pursuant to Legislative Law §80, the Commission is comprised of nine members. Each of the four legislative leaders appoints one legislative and one non-legislative member. Legislative Law §80 provides for the fifth non-legislative member to be appointed jointly by the Assembly Speaker and the Senate Majority Leader.

There are currently eight members of the LEC:

Senator Neil D. Breslin, co-chair  
Assemblymember Jo Anne Simon, co-chair  
Senator Andrew J. Lanza  
Assemblymember Michael Montesano  
John M. Brickman, Esq.  
Peter V. Coffey, Esq.  
Ellen B. Holtzman, Esq.  
Mr. John J. Nigro

The LEC's jurisdiction is Public Officers Law §§ 73, 73-a and 74 and the applicability of those statutes to members and employees of the legislature, and the provisions of § 73-a to candidates for state legislative office. The duties of the LEC prior to 2012 included the issuance of advisory opinions; review of Annual Statements of Financial Disclosure filed by legislative members, legislative employees and candidates for legislative office; providing those statements to the public upon request; and ethics training at the request of the legislature. The LEC was also responsible for the receipt of sworn complaints filed against legislators and legislative staff, the investigation of violations and the assessment of penalties for violations of Public Officers Law Sections 73, 73-a or 74. When the Legislative Ethics Commission was created, the Commission on Public Integrity (COPI) was also established with similar oversight and investigative powers over the Executive Branch, state employees and lobbyists.

The powers and duties of the LEC were significantly amended by Chapter 399 of the Laws of 2011, which was signed into law on August 15, 2011. Chapter 399 (also known as the Public



Integrity Reform Act) eliminated the Commission on Public Integrity and replaced it with the Joint Commission on Public Ethics (JCOPE) which was required to be fully operational by December 13, 2011 (120 days after the effective date of Chapter 399).

JCOPE retained all of the powers and duties of COPI and, in addition, Chapter 399 provided that investigations of violations of Public Officers Law §§ 73, 73-a and 74 by legislators and legislative employees would be conducted by the Joint Commission on Public Ethics. An additional change under Chapter 399 of the Laws of 2011 made financial disclosure statements of legislators, legislative staff and candidates for legislative office be filed with JCOPE after they have been received and reviewed by the Legislative Ethics Commission.

#### Current Statutory Provisions Governing the Filing and Investigation of Complaints Against Legislators and Legislative Employees

The LEC's authority is now limited to the Public Officers Law as it pertains to the Legislative branch and does not enforce ethics laws or rules in connection with alleged violations by the Executive or Judicial branches. The LEC does not have authority to investigate complaints for violations of the Public Officers Law. In the event that a complaint against a member of the Legislative branch is misdirected to the LEC, it is referred to the appropriate investigatory body.

If a complaint is filed against a legislator or legislative staff member, the current process, enacted into law in 2011 is as follows:

All complaints alleging violations of Public Officers Law sections 73, 73-a and 74 by legislative members or staff must be filed with the Joint Commission on Public Ethics. As noted above, if a complaint against a member of the Legislative branch is misdirected to the LEC, it is referred to the appropriate investigatory body; which may be JCOPE.

If JCOPE receives a complaint or decides upon its own initiative to investigate a possible violation, JCOPE must vote, within 60 days, on whether to commence a full investigation of the matter to determine whether a substantial basis exists to conclude that a violation of law has occurred.

If JCOPE concludes that a substantial basis exists to conclude that a legislator or legislative staff member has violated any provisions of Public Officers Law, it must present a written report to the LEC. (Executive Law § 94(14-a.))

Once the LEC has received a written Substantial Basis Investigation Report (SBIR) from JCOPE, it must make public the entire report within 45 calendar days of receipt. That time period may be extended if a law enforcement agency asks for a delay due to a criminal investigation, or if the LEC sends the report back to JCOPE for additional investigation or an additional 45 days is required for disposition to be completed. (Legislative Law §80(9)(b)).

Within 90 days of receiving a Substantial Basis Investigation Report, the LEC, must dispose of the matter by concurring or disagreeing with JCOPE's conclusions of law and the reasons therefor; stating whether any penalties have been assessed and the reasons therefor and whether

further actions have been taken by the LEC to punish or deter the misconduct at issue.  
(Legislative Law §80(10))

The LEC's written disposition must be posted on its website within ten days after it is made.

All of the LEC's dispositions of SBIRs received from JCOPE and settlement agreements reached between legislators, legislative employees or candidates and the LEC with JCOPE are published on the LEC's website: [legethics.ny.gov](http://legethics.ny.gov).

## **RESPONSIBILITIES AND OPERATIONS**

### **Review of Substantial Basis Investigation Reports and Penalty Assessments**

As noted above, if the LEC receives a Substantial Basis Investigation Report from JCOPE one of the following actions must be taken:

- The report may be sent back to JCOPE once for additional investigation;
- The LEC may concur with the findings of the report and assess appropriate penalties;
- The LEC may disagree with the report and publically state its reasons for disagreement.

All dispositions of SBIRs are public and must be posted on the LEC website.

If a settlement agreement is reached between an individual and JCOPE/LEC, the LEC commissioners must vote to approve any penalty and the settlement agreement must be posted on the LEC website.

### **Financial Disclosure**

The LEC is responsible for sending filing materials and collecting Annual Statements of Financial Disclosure ("long form"), from legislators, legislative employees and candidates for legislative office (Public Officers Law §73-a). In addition, the LEC receives all Statements of Financial and Other Interests ("short form") filed by legislative employees (Public Officers Law §73(6)). Forms are reviewed by the LEC and forwarded to JCOPE where they are public information and available upon request to JCOPE. Legislators' Annual Statements of Financial Disclosure are posted online. (<https://jcope.ny.gov/financial-disclosure-statements-elected-officials>)

In 2020 the number of Annual Statements of Financial Disclosure (long forms) filed with the LEC was:

Legislative members:	209*
File rate Employees:	242
Policymaker Employees:	238
Candidates (non-incumbents)	<u>325</u>
 Total	 1,014

\*All members timely filed; 4 less than total number of legislators were received due to vacancies.

Approximately 25% to 33% of legislators file amendments every year. Amendment forms are attached to the back of the original, initially filed statements and posted by JCOPE.

In 2020, the number of Statements of Financial and Other Interests (short forms) filed was 2,872.

### **Training**

The legislature is required to provide training pursuant to statute and the LEC provides that training with, and at the direction of, the legislature. Legislative Law § 80(7)(k) directs the LEC to develop educational materials, an online ethics orientation course and training materials in relation to a comprehensive ethics training as requested by the senate or the assembly.

Executive Law §94(10) requires comprehensive training of individuals required to file an Annual Statement of Financial Disclosure (long form filers) within two years of employment and additional ethics training seminars every three years. The statute further directs that an ethics orientation course is required for all individuals newly subject to the long form filer requirements within three months of becoming subject to those requirements. The legislature has chosen stricter training requirements. All employees (both long form and short form filers) are required to take the online orientation course. In addition, comprehensive training is required at least every two years for legislators and all employees.

In addition to training legislators and legislative employees (including the Legislative Bill Drafting Commission and the Independent Redistricting Commission), the LEC also trains interns and fellows and provides training or seminars on specific topics to individual offices.

In 2020, over 300 employees completed the online ethics orientation. Even with COVID restrictions, LEC staff participated in or conducted 22 training sessions. Thus far, in 2021 the LEC has completed 19 training sessions.

Training required by the legislature and assisted by the LEC, has resulted in all legislators being current on their ethics training and between ninety and ninety five percent of legislative employees being in compliance with the legislative training requirements over the last two years.

### **ADVICE and GUIDANCE**

The LEC Commissioners and staff spend the most time, by far, in providing advice and guidance to members of the legislature, legislative staff and candidates for state legislative office (regarding financial disclosure).

The LEC provides advice and guidance regarding compliance with:



## Public Officers Law § 73

Section 73 sets forth guidelines and restrictions on business and professional activities, including gifts, relationships with state agencies, state contracts, honoraria, post-employment restrictions, and the hiring of relatives.

## Public Officers Law §73-a

Section 73-a sets out the Annual Statement of Financial Disclosure and filing requirements for legislators, candidates for legislative office and certain legislative employees.

## Public Officers Law §74

Section 74, entitled “Code of Ethics” establishes the rule with respect to conflicts of interest and related standards.

Advice and Guidance is provided in a number of ways.

### **Generic Opinions**

The Commission approves generic advice on questions that are raised frequently and lend themselves to general advice. These opinions are posted on the LEC website, [legethics.ny.gov](http://legethics.ny.gov).

### **Formal Advisory Opinions**

Formal advisory opinions may be requested by legislators or legislative staff regarding the applicability to particular, specific facts of any statutes within the jurisdiction of the Commission. Pursuant to Joint Rule V of the Legislature, members must request a formal advisory opinion from the LEC regarding any outside employment for which they will earn \$5,000 or more per calendar year.

Formal advisory opinions are reviewed and voted upon by the Commission and are confidential. Individuals who have received formal opinions may release those opinions if they choose to do so.

Pursuant to Legislative Law §80(7)(i), a formal written opinion rendered by the Legislative Ethics Commission, provided that no material facts were omitted or misstated by the person requesting the opinion, may be relied upon by the person requesting the opinion and it may be introduced and shall be a defense in any criminal or civil action. Additionally, JCOPE may not investigate an individual for violations of law based upon conduct approved and covered in its entirety by an approved formal opinion other than to ascertain whether the person accurately and fully represented to the LEC the relevant facts and followed the advice given.

The Commission, on average, issues approximately thirty formal advisory opinions annually.

### **Informal Advice**

LEC staff will provide informal advice regarding compliance with statutes within the jurisdiction of the Commission on a regular basis. Although advice will sometimes be given verbally, it is most frequently given and requested in writing via e-mail.

If a question is raised that is unique or not well settled, staff will not respond informally. The requestor will be advised to request a formal opinion from the Commission. Additionally, if someone disagrees with the advice given to them by staff they may always ask for advice or a determination from the Commission as a whole.

Although the volume of requests for informal advice varies, we estimate that in most years it is approximately 1,000 annually, including questions regarding financial disclosure.



**LUCY LANG**  
Inspector General

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**TESTIMONY OF NEW YORK STATE INSPECTOR GENERAL LUCY LANG TO THE NEW  
YORK STATE SENATE'S ETHICS & INTERNAL GOVERNANCE COMMITTEE  
December 9, 2021**

Thank you, Chair Biaggi, Ranking Member Palumbo, and the distinguished members of this Committee for the opportunity to provide this testimony. I am unable to participate in this hearing in person, having just started my position as Inspector General last week and hitting the ground running traveling the state and introducing myself to the Office's staff and learning first-hand about their work. Please know that I appreciate the work of this Committee and welcome the opportunity to speak with Chair Biaggi soon.

As I have recently taken office as New York State's 11<sup>th</sup> Inspector General, please allow me to introduce myself. I am a lifelong New Yorker, attorney, and educator. I served as Director of the Institute for Innovation in Prosecution, and as an Assistant District Attorney and Special Counsel for Policy and Projects in the Manhattan District Attorney's Office. I serve on two task forces for the New York State Bar Association - Racial Injustice and Police Reform; and Racism, Social Equity, and the Law. I am also Vice Chair of the American Bar Association Criminal Justice Section, a member of the Council on Criminal Justice, and a Term Member of the Council on Foreign Relations.

As you are likely aware, New York State Executive Law Article 4-A grants the Inspector General jurisdiction over all executive branch agencies, departments, divisions, officers, boards, commissions, and most public authorities and benefit corporations, and our functions and responsibilities include investigating complaints of corruption, fraud, criminal activity, conflicts of interest, or abuse. Our Office also reviews the policies and procedures of covered agencies regarding the prevention of misconduct and oversees State agencies involved in prominent infrastructure projects. As one of my first official acts, I reminded the leaders of agencies and authorities under our Office's jurisdiction of their legal responsibility to report fraud, corruption, criminal activity, or abuse to our Office. I also offered to make myself and my staff available to conduct training sessions for their employees to ensure they know where and how to file a complaint.

I am proud to announce that – in addition to the great work already being done by the Office – we have taken unprecedented steps to usher in an era of enhanced transparency and accountability in New York State government – all while maintaining the confidentiality and integrity inherent in the Office's operation. This comprehensive transparency initiative is and will continue to be a hallmark of our Office. On November 29, we published nearly 60 advisory letters to agencies from the past two years outlining investigative findings on a variety of matters. I am committed to this effort, and we will continue to publish future advisory letters and work to retroactively make historical materials available to the public.

We are also making an overdue foray into social media as we offer the public another way to reach our Office, build our team with talented professionals, and highlight the efforts of the Inspector General's Office. We are preparing additional transparency measures as well, including publishing complaint statistics online as well as our Freedom of Information Law log, which will show the public the number of FOIL requests we receive and the time in which records are provided to the public. Our Office is also reviewing materials to ensure that we provide improved access to people with limited English proficiency, in addition to reviewing our current records retention policies to ensure timely transfer of official records to the State Archives.

Our full transparency plan is on our website – [www.ig.ny.gov](http://www.ig.ny.gov) – and reflects my commitment to ushering in a new era of transparency and accountability to all New Yorkers.

My work is very much just beginning, but I am proud of the positive steps our Office has taken in such a short time. I am honored to work with you and your colleagues and look forward to moving towards a bright future for New York State together. I offer you all my warmest wishes for the holiday season and thank you all for inviting me to testify.