



**REPORT ON LEGISLATION BY THE
GOVERNMENT ETHICS AND STATE AFFAIRS COMMITTEE**

S.6964-A

Sen. Biaggi

AN ACT to amend the executive law, in relation to the joint commission on public ethics

THIS BILL IS APPROVED

The Government Ethics and State Affairs Committee of the New York City Bar Association supports the enactment of S.6964-A, which would modify the voting rules and appointment method for the Joint Commission on Public Ethics (JCOPE).

JCOPE comprises 14 commissioners, six of whom are appointed by the Governor and eight of whom are appointed by the four legislative leaders. With respect to the legislative appointments, the Republican Senate leader has three appointments and the Democratic Senate leader has one appointment, regardless of which party controls the chamber. The Democratic Assembly leader has three appointments and the Republican Assembly leader has one appointment, regardless of which party controls the chamber.¹

The appointment method was designed to work hand in glove with JCOPE's unique voting rules, whereby three legislative appointees can block any enforcement action against a legislative member or employee affiliated with their political party, even if the remaining eleven JCOPE commissioners are in favor of such action.² The combination of the appointment method and special voting rule thus ensured that the Republican Senate leader and Democratic Assembly leader, both of whom controlled their respective chambers at the time JCOPE's governing law was enacted in 2011, had enough votes to block enforcement actions involving their members and staff.

Since JCOPE was created in 2011, the City Bar has issued a series of reports regarding the commission's structure and the manner in which it hinders effective administration of the state's

¹ Exec. Law § 94(2), (5).

² Exec. Law § 94(13)(a).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

ethics laws.³ As detailed in these reports, a central flaw is the special voting rule relating to enforcement actions. Indeed, it is well recognized that political party protection measures impede effective enforcement. In 2013, for example, the Moreland Commission to Investigate Public Corruption singled out the political party protection mechanism found in the membership structure of the New York State Board of Elections as a cause of the poor enforcement record of that body.⁴

The bill removes the political party veto and brings JCOPE's voting rules into line with other agencies that act by simple majority vote, including the Commission on Judicial Conduct,⁵ the state Public Campaign Finance Board,⁶ the New York City Conflicts of Interest Board,⁷ and the New York City Campaign Finance Board.

The bill also amends the appointment method so that the eight appointments designated to the four legislative leaders are apportioned equally among the leaders. The elimination of the political party veto removes the primary, if not sole, reason for the unequal distribution of appointments among the legislative leaders. Moreover, the amendment, while maintaining party balance, also reflects the fact that party control changes in the Legislature and that a minority leader should not have more appointments than a majority leader.

Finally, the bill replaces the requirement that JCOPE's executive director be approved by at least one Republican and Democratic appointee of both the Governor and the Legislature with a requirement that the executive director be approved by a simple majority vote.⁸ Although JCOPE recently appointed an executive director who appears to have been a consensus candidate for the JCOPE commissioners, the executive director position has long been a source of controversy between JCOPE's gubernatorial and legislative appointees, namely, over the degree to which the executive director should be independent.⁹

For all of these reasons, and for the reasons illustrated in our aforementioned reports, the City Bar supports the enactment of S.6964-A.

While the City Bar believes that the promise of an independent monitor with the necessary safeguards to protect against political interference can only be realized by abolishing JCOPE and

³ "Hope for JCOPE," Report of the New York City Bar Association and Common Cause/New, March 14, 2014, <https://www2.nycbar.org/pdf/report/uploads/Hope-for-JCOPE-Report.pdf>; "Ten Years In, Is There Still Hope for JCOPE?," Report of the Government Ethics and State Affairs Committee of the New York City Bar Association, Feb. 16, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/ten-years-in-is-there-still-hope-for-jcope>.

⁴ Hope for JCOPE, at 26.

⁵ Judiciary Law § 41(6).

⁶ Election Law § 14-207(1).

⁷ N.Y.C. Charter § 2602(h).

⁸ Exec. Law § 94(9)(a).

⁹ Chris Bragg, *After Shift, State Ethics Panel Hires New Executive Director*, Albany Times-Union (April 29, 2021), <https://www.timesunion.com/news/article/After-shift-JCOPE-hires-new-executive-director-16136111.php>; Chris Bragg, *New York Ethics' Panel Renews Search For A Leader*, Albany Times-Union (Sept. 18, 2020), <https://www.timesunion.com/news/article/No-end-in-sight-for-JCOPE-job-search-15578360.php>.

replacing it with an entity to be established by constitutional amendment,¹⁰ the changes set forth in the bill provide a needed short-term solution until a constitutional amendment can be adopted.

Government Ethics & State Affairs Committee
Edward L. Murray, Chair

June 2021

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¹⁰ Report on A.1929/S.855 by the New York City Bar Association Committee on Government Ethics and State Affairs, Reissued March 8, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-the-creation-of-a-nys-government-integrity-commission>.