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Memoranda, Tables, and Index



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MEMORANDA

Ch. 549

**CHARITIES—NONPROFIT CORPORATIONS—
RULES AND REGULATIONS**

Legislative Memorandum relating to Ch. 549

Memorandum in Support, New York State Assembly

*Text of Law, see ch. 549***BILL NUMBER:** A8072**SPONSOR:** Brennan (MS)

TITLE OF BILL: An act to amend the executive law, the banking law, the benevolent orders law, the education law, the general business law, the insurance law, the mental hygiene law, the public authorities law, the private housing finance law, the public lands law, the racing, pari-mutuel wagering and breeding law, the religious corporations law, the surrogate's court procedure act, the Not-for-Profit corporation law, and the estates, powers and trusts law, in relation to reform of charitable organizations; and to repeal certain provisions of the Not-for-Profit corporation law relating thereto; and providing for the repeal of certain provisions upon expiration thereof

PURPOSE OR GENERAL IDEA OF BILL:

To amend the Not-for-Profit Corporation Law (N-PCL), the Estates, Powers and Trusts Law (EPTL), and Article 7-A of the Executive Law, to reduce unnecessary and outdated burdens on nonprofits and to enhance nonprofit governance and oversight to prevent fraud and improve public trust.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 of the bill establishes the title of the Act as the "Nonprofit Revitalization Act of 2013".

Section 2 amends section 171-a of the Executive Law to clarify that individuals who function solely as grant writers are not "fund raising counsel."

Sections 3, 3-a and 3-b amend section 172-b of the Executive Law to raise the gross revenue thresholds triggering the requirement to obtain an independent CPA's audit from \$250,000 to \$500,000 and an independent CPA's review from \$100,000 to \$250,000. The gross revenue threshold for an independent CPA's audit will escalate to \$750,000 on July 1, 2017 and \$1 million on July 1, 2021. The Attorney General will have authority to request an independent CPA's audit from nonprofits with gross revenue over \$250,000 after reviewing their annual filings. The intent of these amendments is to reduce costs and burdens on smaller nonprofits and bring New York's reporting requirements into line with those of other states.

Sections 4 and 129 amend section 177 of the Executive Law and section 8-1.4 of the Estates, Powers and Trusts Law to make clear in these statutes that the Attorney General may accept nonprofit registrations and other filings electronically.

Sections 5, 6, 8, 30, 34, 36, 39-41, 44, 50-52, 54, 57, 61, 76, 79, 81, 86, 93, 94, 102, 103 and 105-126 are amended to make conforming changes to the Not-for-Profit Corporation Law to facilitate the simplification of corporate "types" pursuant to section 38 of the bill.

Section 6-a amends section 216 of the Education Law to make clear that only schools, colleges, universities and entities providing post-secondary education may not be incorporated without the consent of the commissioner of the state education department.

Sections 7 and 9 amend sections 216-a and 223 of the Education Law to permit education corporations to enter into merger transactions in addition to consolidation transactions. The intent of these amendments is to simplify mergers and treat educational nonprofits more equitably.

THE LEGISLATURE

Ch. 549

Sections 10–23 make conforming changes to various statutes to effect the simplification of corporate “types” pursuant to sections 29 and 38 of the bill.

Sections 24–27 amend sections 13, 15–a, 208 and 209 of the Religious Corporations Law to permit religious corporations to enter into merger transactions in addition to consolidation transactions. The intent of these amendments is to simplify mergers and treat religious nonprofits more equitably.

Section 28 amends the Surrogate’s Court Procedure Act to effect the provisions of section 130 of the bill.

Section 29 adds new definitions to section 102 of the Not-for-Profit Corporation Law to implement provisions of the bill.

Section 31 repeals paragraph (a) of section 104–A of the Not-for-Profit Corporation Law.

Section 32 amends section 105 of the Not-for-Profit Corporation Law to allow the Department of State to correct non-material typographical errors in certificates of incorporation and other instruments upon written authorization from the incorporator.

Sections 33 and 74 amend sections 112 and 715 of the Not-for-Profit Corporation Law to create new requirements to protect against self-dealing. The amendments require that boards, or board committees, undertake an independent review of transactions between the nonprofit and related parties, and affirmatively determine that such transactions are in the nonprofit’s best interest. The amendments will also provide clearer authority for the Attorney General to remedy self-dealing.

Section 35 repeals section 113 of the Not-for-Profit Corporation Law.

Section 37 amends section 115 of the Not-for-Profit Corporation Law to provide that no corporation required to obtain approval from, or provide notice to, an administrative agency in the course of incorporating may solicit funds until it does so.

Section 38 amends section 201 of the Not-for-Profit Corporation Law to simplify corporate “types,” creating only two categories of corporations (“charitable corporations” and “non-charitable corporations”) instead of four (A, B, C and D). Corporations formed for both charitable and non-charitable purposes under the Not-for-Profit Corporation Law will be deemed charitable for purposes of this statute. The amended section will “grandfather” nonprofits that have already formed as a particular type so that they will not have to file new paperwork or amend contracts.

Sections 42, 87 and 104 make conforming changes to the Not-for-Profit Corporation Law to effect the purposes of section 48 of the bill.

Sections 43 and 45 amend sections 304 and 306 of the Not-for-Profit Corporation Law to correct technical errors.

Section 46 adds a new section 309 of the Not-for-Profit Corporation Law making clear that officers, directors, key employees, and agents of corporations are subject to personal jurisdiction of New York Courts and may be served with process in a suit by the Attorney General.

Section 47 amends section 402 of the Not-for-Profit Corporation Law to make clearer that nonprofits need only state their corporate purposes, and not specific activities they plan to undertake, when completing certificates of incorporation for delivery to the Department of State.

Section 48 amends section 404 of the Not-for-Profit Corporation Law to eliminate the requirement that certain types of nonprofits obtain pre-approval from the State Education Department prior to incorporation. Under these amendments, schools, libraries, museums and historical societies will continue to require the State Education Department’s approval, but other nonprofits may notify the State Education Department of their formation after incorporation. The intent of this amendment is to streamline the incorporation process without hampering oversight by the State Education Department.

Section 49 repeals and adds a new paragraph (w) of section 404 that permits a newly formed corporation to include language in its certificate of incorporation making clear to the Department of State that its purposes do not require agency notice or preapproval.

MEMORANDA

Ch. 549

Section 53 amends section 50 vote of the nonprofit’s board or entire board, to approve non-si the transaction, it must prompt maintained for transactions inv nonprofit’s assets. The intent associated with routine real es more significant transactions.

Sections 55 and 56 amend sec Corporation Law to allow nonpr all or substantially all of their (General approval) instead of a r Attorney General review). Th approval process and reduce le approval of the transaction at an

Section 58 amends section 5 individuals who may benefit from deliberations or voting on their o

Section 59 amends section 520 the Executive Law.

Section 60 amends section 55i continuing availability to the cour

Sections 62–66, 68 & 69 amend Profit Corporation Law to allow ship meeting notices, waivers c These amendments will also allow ence, Skype, and other forms of v utilize technology to allow for n attend meetings in person.

Section 67 amends section 70 definition of “entire board.” The the statute, the purpose of which

Sections 70 and 71 amend sectic classification of board committees committees.

Section 72 creates a new sectic that, in cases where nonprofits a CPA audits, boards or board co intent of this provision is to ensur identified by auditors. State a Authorities Law to perform subs compliance with this section.

Section 73 amends paragraph (e adds a new paragraph (f) to pr serving as chair of its board. ‘ accountability between manageme

Section 75 creates a new sectic that nonprofits adopt written co section 715–b of the Not-for-Profit more employees and annual rev Corporations that adopt conflict o law that are substantially similar new sections.

Section 77 amends section 718 of of nonprofit directors and officers.

MEMORANDA

Ch. 549

Section 53 amends section 509 of the Not-for-Profit Corporation Law to permit a majority vote of the nonprofit's board or a committee of the board, rather than a two-thirds vote of the entire board, to approve non-substantial real estate transactions. If a committee approves the transaction, it must promptly notify the board. The two-thirds voting requirement is maintained for transactions involving property that constitutes all or substantially all of the nonprofit's assets. The intent of this amendment is to reduce administrative burdens associated with routine real estate transactions while preserving stricter requirements for more significant transactions.

Sections 55 and 56 amend section 511 and create a new section 511-a of the Not-for-Profit Corporation Law to allow nonprofit corporations seeking to sell, lease, exchange or dispose of all or substantially all of their assets to go through a one-step approval process (Attorney General approval) instead of a more cumbersome two-step process (court approval following Attorney General review). The intent of this provision is to expedite the often-lengthy approval process and reduce legal costs. Nonprofits will retain the right to seek court approval of the transaction at any time.

Section 58 amends section 515 of the Not-for-Profit Corporation Law to clarify that individuals who may benefit from compensation paid by the corporation cannot participate in deliberations or voting on their own compensation.

Section 59 amends section 520 of the Not-for-Profit Corporation Law to add a reference to the Executive Law.

Section 60 amends section 555 of the Not-for-Profit Corporation Law to make clear the continuing availability to the courts of the doctrine of deviation.

Sections 62-66, 68 & 69 amend sections 605, 606, 609, 614, 621, 708, and 711 of the Not-for-Profit Corporation Law to allow facsimile and electronic transmission of board and membership meeting notices, waivers of notice and votes requiring unanimous written consent. These amendments will also allow board members to participate in meetings via videoconference, Skype, and other forms of video communication. The intent of these amendments is to utilize technology to allow for more effective participation by directors who are unable to attend meetings in person.

Section 67 amends section 702 of the Not-for-Profit Corporation Law to remove the definition of "entire board." The bill creates a new definition for this term in section 102 of the statute, the purpose of which is to correct ambiguities caused by the existing definition.

Sections 70 and 71 amend section 712 of the Not-for-Profit Corporation Law to simplify the classification of board committees by eliminating the distinction between standing and special committees.

Section 72 creates a new section 712-a of the Not-for-Profit Corporation Law to require that, in cases where nonprofits are required by the Executive Law to obtain independent CPA audits, boards or board committees perform certain oversight responsibilities. The intent of this provision is to ensure that boards are aware of, and respond to, issues and risks identified by auditors. State and local authorities, which are required by the Public Authorities Law to perform substantially similar audit oversight, will be deemed to be in compliance with this section.

Section 73 amends paragraph (a) of section 713 of the Not-for-Profit Corporation Law and adds a new paragraph (f) to prohibit any employee of a nonprofit corporation from also serving as chair of its board. The intent of this provision is to promote clear lines of accountability between management and the board and ensure independent board leadership.

Section 75 creates a new section 715-a of the Not-for-Profit Corporation Law to require that nonprofits adopt written conflict of interest policies. Section 75 also creates a new section 715-b of the Not-for-Profit Corporation Law to require that nonprofits with twenty or more employees and annual revenue exceeding \$1 million adopt whistleblower policies. Corporations that adopt conflict of interest and whistleblower policies pursuant to any other law that are substantially similar to those required will be deemed in compliance with these new sections.

Section 77 amends section 718 of the Not-for-Profit Corporation Law to protect the privacy of nonprofit directors and officers. Upon demand from a member of the corporation or a law

MEMORANDA

Ch. 550

New bill.

FISCAL IMPLICATIONS:

There is no fiscal impact on the state.

EFFECTIVE DATE:

This act shall take effect July 1, 2014, provided, however, that the amendments to section 172-b of the executive law made by section three of this act shall expire and be deemed repealed June 30, 2017; provided further that the amendments to section 172-b of the executive law made by section three-a of this act shall take effect July 1, 2017 and shall expire and be deemed repealed June 30, 2021; provided further that the amendments to section 172-b of the executive law made by section three-b of this act shall take effect July 1, 2021; provided further that section seventy-three of this act shall take effect January 1, 2015; provided further that section seventy-two of this act and paragraph (b) of section 8-1.9 of the estates, powers and trusts law as added by section one hundred thirty of this act shall not be applicable until January 1, 2015 for any corporation or trust that had annual revenues of less than 10,000,000 dollars in the last fiscal year ending prior to January 1, 2014.

MERCURY THERMOSTAT COLLECTION ACT**Legislative Memorandum relating to Ch. 550****Memorandum in Support, New York State Assembly***Text of Law, see ch. 550***BILL NUMBER:** A8084**SPONSOR:** Sweeney (MS)**TITLE OF BILL:** An act to amend the environmental conservation law, in relation to establishing the mercury thermostat collection act; and providing for the repeal of such provisions upon expiration thereof**PURPOSE OR GENERAL IDEA OF BILL:**

The purpose of this bill is to encourage the safe collection of mercury containing thermostats.

SUMMARY OF SPECIFIC PROVISIONS:

This bill would:

- * require thermostat manufacturers to:
- * establish a collection program for out-of-service thermostats: to be offered free of cost to consumers or participants of the program; and, with a collection goal of 15,500 mercury thermostats for calendar year 2015;
- * conduct education and outreach efforts directed at retailers, contractors and homeowners;
- * distribute and make available containers for the collection of mercury-containing thermostats;
- * require manufacturers, no later than April 1, 2015, to submit an annual report to the Department of Environmental Conservation (DEC) identifying:
 - * the number of thermostats collected;
 - * the estimated total amount of mercury in the thermostats;
 - * an evaluation of the program's effectiveness; and,
- * require DEC to: