

5197

2013-2014 Regular Sessions

I N S E N A T E

May 14, 2013

Introduced by Sens. MARCELLINO, RANZENHOFER -- (at request of the Attorney General) -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to executive compensation oversight; and to amend the estates, powers and trusts law, in relation to trust governance

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subparagraph 6 of paragraph (a) of section 102 of the not-
2 for-profit corporation law is amended, and five new subparagraphs 19,
3 20, 21, 22 and 23, are added to read as follows:
4 (6) "Director" means any member of the governing board of a corpo-
5 ration, whether designated as director, trustee, manager, governor, or
6 by any other title. The term "board" means "board of directors" OR ANY
7 OTHER BODY CONSTITUTING A "GOVERNING BOARD" AS DEFINED IN THIS SECTION.
8 (19) AN "AFFILIATE" OF A CORPORATION MEANS ANY ENTITY CONTROLLED BY,
9 IN CONTROL OF, OR UNDER COMMON CONTROL WITH SUCH CORPORATION.
10 (20) "INDEPENDENT DIRECTOR" MEANS A DIRECTOR WHO: (I) IS NOT, AND HAS
11 NOT BEEN WITHIN THE LAST THREE YEARS, AN EMPLOYEE OF THE CORPORATION OR
12 AN AFFILIATE OF THE CORPORATION, AND DOES NOT HAVE A RELATIVE WHO IS, OR
13 HAS BEEN WITHIN THE LAST THREE YEARS, A KEY EMPLOYEE OF THE CORPORATION
14 OR AN AFFILIATE OF THE CORPORATION; (II) HAS NOT RECEIVED, AND DOES NOT
15 HAVE A RELATIVE WHO HAS RECEIVED, IN ANY OF THE LAST THREE FISCAL YEARS,
16 MORE THAN TEN THOUSAND DOLLARS IN DIRECT COMPENSATION FROM THE CORPO-
17 RATION OR AN AFFILIATE OF THE CORPORATION (OTHER THAN REIMBURSEMENT FOR
18 EXPENSES REASONABLY INCURRED AS A DIRECTOR OR REASONABLE COMPENSATION
19 FOR SERVICE AS A DIRECTOR AS PERMITTED BY PARAGRAPH (A) OF SECTION 202
20 (GENERAL AND SPECIAL POWERS)); AND (III) IS NOT A CURRENT EMPLOYEE OF OR
21 HAVE A SUBSTANTIAL FINANCIAL INTEREST IN, AND DOES NOT HAVE A RELATIVE
22 WHO IS A CURRENT OFFICER OF OR HAS A SUBSTANTIAL FINANCIAL INTEREST IN,

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 ANY ENTITY THAT HAS MADE PAYMENTS TO, OR RECEIVED PAYMENTS FROM, THE
2 CORPORATION OR AN AFFILIATE OF THE CORPORATION FOR PROPERTY OR SERVICES
3 IN AN AMOUNT WHICH, IN ANY OF THE LAST THREE FISCAL YEARS, EXCEEDS THE
4 LESSER OF TWENTY-FIVE THOUSAND DOLLARS OR TWO PERCENT OF SUCH ENTITY'S
5 CONSOLIDATED GROSS REVENUES. FOR PURPOSES OF THIS SUBPARAGRAPH,
6 "PAYMENT" DOES NOT INCLUDE CHARITABLE CONTRIBUTIONS.

7 (21) "RELATIVE" OF AN INDIVIDUAL MEANS THE (I) SPOUSE, DOMESTIC PART-
8 NER AS DEFINED BY SECTION TWENTY-EIGHT HUNDRED FIVE-Q OF THE PUBLIC
9 HEALTH LAW, CHILD, GRANDCHILD, BROTHER OR SISTER (WHETHER BY THE WHOLE-
10 OR HALF-BLOOD) OF THE INDIVIDUAL; AND (II) THE SPOUSE OR DOMESTIC PART-
11 NER OF A CHILD, GRANDCHILD, BROTHER OR SISTER (WHETHER BY THE WHOLE- OR
12 HALF-BLOOD) OF THE INDIVIDUAL.

13 (22) "KEY EMPLOYEE" MEANS ANY PERSON WHO IS IN A POSITION TO EXERCISE
14 SUBSTANTIAL INFLUENCE OVER THE AFFAIRS OF THE CORPORATION, AS REFERENCED
15 IN 26 U.S.C. §4958(F)(1)(A) AND FURTHER SPECIFIED IN 26 CFR S
16 53.4958-3(C) AND (D), OR SUCCEEDING PROVISIONS.

17 (23) "TOTAL COMPENSATION" MEANS: (I) ANY COMPENSATION, WHETHER PAID OR
18 ACCRUED, BY OR ON BEHALF OF THE CORPORATION OR ANY AFFILIATE OF THE
19 CORPORATION FOR SERVICES RENDERED TO, ON BEHALF OF, OR AT THE REQUEST OF
20 THE CORPORATION, INCLUDING BUT NOT LIMITED TO SALARY, BONUS, AND
21 DEFERRED COMPENSATION; AND (II) ANY BENEFIT HAVING MONETARY VALUE
22 PROVIDED BY OR ON BEHALF OF THE CORPORATION OR ANY AFFILIATE OF THE
23 CORPORATION, INCLUDING BUT NOT LIMITED TO HOUSING ALLOWANCES, LIVING
24 EXPENSES, PERQUISITES, FRINGE BENEFITS, EMPLOYER CONTRIBUTIONS TO
25 DEFINED CONTRIBUTION RETIREMENT PLANS AND OTHER RETIREMENT BENEFITS.

26 S 2. The not-for-profit corporation law is amended by adding a new
27 section 712-a to read as follows:

28 S 712-A. EXECUTIVE COMPENSATION OVERSIGHT.

29 (A) NO CORPORATION SHALL PAY TOTAL COMPENSATION TO ANY EMPLOYEE IN
30 EXCESS OF THAT WHICH IS FAIR, REASONABLE AND COMMENSURATE WITH SERVICES
31 PROVIDED TO THE CORPORATION.

32 (B) THE BOARD OR A DESIGNATED COMPENSATION COMMITTEE OF THE BOARD
33 COMPRISED SOLELY OF INDEPENDENT DIRECTORS OF ANY CORPORATION THAT IS
34 REQUIRED TO REGISTER WITH THE ATTORNEY GENERAL UNDER ARTICLE SEVEN-A OF
35 THE EXECUTIVE LAW SHALL REVIEW AND APPROVE THE TOTAL COMPENSATION PAID
36 TO THE PRINCIPAL EXECUTIVE OFFICER OF THE CORPORATION, AND DETERMINE
37 THAT SUCH COMPENSATION IS NOT IN EXCESS OF THAT WHICH IS FAIR, REASON-
38 ABLE AND COMMENSURATE WITH SERVICES PROVIDED TO THE CORPORATION.

39 (C) IF, IN THE PRIOR FISCAL YEAR, ANY CORPORATION THAT IS REQUIRED TO
40 REGISTER WITH THE ATTORNEY GENERAL UNDER ARTICLE SEVEN-A OF THE EXECU-
41 TIVE LAW HAD, OR IN THE CURRENT FISCAL YEAR REASONABLY EXPECTS TO HAVE,
42 ANNUAL REVENUES IN EXCESS OF TWO MILLION DOLLARS, THE BOARD OR DESIG-
43 NATED COMPENSATION COMMITTEE OF THE BOARD COMPRISED SOLELY OF INDEPEND-
44 ENT DIRECTORS SHALL, IN ADDITION TO THOSE DUTIES SET FORTH IN PARAGRAPH
45 (B) OF THIS SECTION:

46 (1) REVIEW THE TOTAL COMPENSATION PAID TO THE CORPORATION'S TOP FIVE
47 HIGHEST COMPENSATED EMPLOYEES WHO ARE OFFICERS OR KEY EMPLOYEES AND
48 WHOSE COMPENSATION EXCEEDS ONE HUNDRED FIFTY THOUSAND DOLLARS, OR SUCH
49 GREATER AMOUNT AS THE ATTORNEY GENERAL MAY SET BY REGULATION;

50 (2) DETERMINE THAT THE TOTAL COMPENSATION PAID TO ANY SUCH EMPLOYEE IS
51 NOT IN EXCESS OF THAT WHICH IS FAIR, REASONABLE AND COMMENSURATE WITH
52 SERVICES PROVIDED TO THE CORPORATION. IN MAKING THIS DETERMINATION, THE
53 BOARD, OR COMPENSATION COMMITTEE, SHALL AT A MINIMUM CONSIDER THE
54 FOLLOWING FACTORS: (I) THE TOTAL COMPENSATION PROVIDED TO THE EMPLOYEE
55 BY THE CORPORATION AND ALL AFFILIATES OF THE CORPORATION; (II) RELEVANT
56 DATA ON THE TOTAL COMPENSATION PAID TO INDIVIDUALS SERVING IN SIMILAR

1 POSITIONS AT CORPORATIONS OF SIMILAR SIZE, TYPE, PURPOSE, AND SCOPE;
2 (III) THE EMPLOYEE'S QUALIFICATIONS AND PERFORMANCE; AND (IV) THE OVER-
3 ALL FINANCIAL CONDITION OF THE CORPORATION;

4 (3) MAKE AND KEEP A CONTEMPORANEOUS WRITTEN RECORD DESCRIBING THE
5 BASIS FOR SUCH DETERMINATION; AND

6 (4) APPROVE BY NOT LESS THAN A MAJORITY VOTE THE TOTAL COMPENSATION
7 PAID TO EACH SUCH EMPLOYEE.

8 (D) ANY REVIEW AND APPROVAL REQUIRED BY PARAGRAPHS (B) AND (C) OF THIS
9 SECTION SHALL OCCUR WHENEVER THE TERM OF EMPLOYMENT, IF ANY, OF THE
10 EMPLOYEE IS RENEWED OR EXTENDED, AND WHENEVER SUCH COMPENSATION IS MATE-
11 Rially CHANGED. IF A CORPORATION CONTROLS ONE OR MORE CORPORATIONS, THE
12 BOARD OR COMPENSATION COMMITTEE OF THE CONTROLLING CORPORATION MAY
13 CONDUCT SUCH REVIEW AND APPROVAL ON BEHALF OF ANY CONTROLLED CORPO-
14 RATION.

15 (E) IF THE BOARD OR COMPENSATION COMMITTEE RETAINS A COMPENSATION
16 CONSULTANT TO ASSIST IN THE PERFORMANCE OF ITS RESPONSIBILITIES, SUCH
17 CONSULTANT SHALL REPORT DIRECTLY TO THE BOARD OR COMPENSATION COMMITTEE.
18 THE BOARD OR COMPENSATION COMMITTEE SHALL BE DIRECTLY RESPONSIBLE FOR
19 THE APPOINTMENT, COMPENSATION AND OVERSIGHT OF THE WORK OF SUCH CONSULT-
20 ANT, AND SHALL APPROVE THE COMPENSATION PEER GROUP THAT THE COMPENSATION
21 CONSULTANT RECOMMENDS BE USED TO DEVELOP COMPARABLE DATA.

22 (1) PRIOR TO RETAINING ANY SUCH CONSULTANT, THE BOARD OR COMPENSATION
23 COMMITTEE SHALL DETERMINE THAT THE CONSULTANT IS INDEPENDENT AND QUALI-
24 FIED TO RENDER ADVICE CONCERNING COMPENSATION; PROVIDED THAT NO CONSULT-
25 ANT MAY BE DETERMINED INDEPENDENT IF SUCH CONSULTANT OR ANY FIRM THAT
26 EMPLOYS SUCH CONSULTANT HAS (A) RECEIVED DIRECTLY OR INDIRECTLY ANY
27 PAYMENT, FEE OR OTHER COMPENSATION FROM THE CORPORATION OR ANY AFFILIATE
28 OF THE CORPORATION WITHIN THE PRECEDING TWO YEARS, OTHER THAN REASONABLE
29 AMOUNTS PAID FOR COMPENSATION CONSULTING SERVICES, OR (B) ANY BUSINESS
30 OR PERSONAL RELATIONSHIP WITH THE CORPORATION OR ANY AFFILIATE OF THE
31 CORPORATION, OR ANY OF THEIR OFFICERS, DIRECTORS, TRUSTEES, OR EMPLOY-
32 EES, THAT MAY INTERFERE WITH THE ABILITY OF THE CONSULTANT TO PROVIDE
33 OBJECTIVE ADVICE TO THE BOARD OR COMPENSATION COMMITTEE.

34 (2) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO REQUIRE THE BOARD
35 OR COMPENSATION COMMITTEE TO IMPLEMENT OR ACT CONSISTENTLY WITH ANY
36 RECOMMENDATIONS PROVIDED BY THE COMPENSATION CONSULTANT; OR AFFECT THE
37 ABILITY OR OBLIGATION OF MEMBERS OF THE BOARD OR COMPENSATION COMMITTEE
38 TO EXERCISE THEIR OWN JUDGMENT IN FULFILLMENT OF THEIR DUTIES TO THE
39 CORPORATION, INCLUDING THOSE DUTIES PRESCRIBED BY SECTION 717 (DUTY OF
40 DIRECTORS AND OFFICERS).

41 (F) ONLY INDEPENDENT DIRECTORS MAY PARTICIPATE IN DELIBERATIONS OR
42 VOTING RELATING TO MATTERS SET FORTH IN THIS SECTION.

43 S 3. The estates, powers and trusts law is amended by adding a new
44 section 8-1.9 to read as follows:

45 S 8-1.9 TRUST GOVERNANCE

46 (A) FOR PURPOSES OF THIS SECTION:

47 (1) A "TRUST" MEANS A TRUST CREATED SOLELY FOR CHARITABLE PURPOSES, OR
48 A TRUST THAT CONTINUES SOLELY FOR SUCH PURPOSES AFTER ALL NON-CHARITABLE
49 INTERESTS HAVE TERMINATED.

50 (2) "CHARITABLE PURPOSE" MEANS ANY RELIGIOUS, CHARITABLE, EDUCATIONAL
51 OR BENEVOLENT PURPOSE.

52 (3) "KEY EMPLOYEE" MEANS ANY PERSON WHO HAS RESPONSIBILITIES, POWERS
53 OR INFLUENCE OVER THE TRUST SIMILAR TO THOSE OF AN OFFICER OF A
54 NOT-FOR-PROFIT CORPORATION, OR IS OTHERWISE IN A POSITION TO EXERCISE
55 SUBSTANTIAL INFLUENCE OVER THE AFFAIRS OF THE TRUST, AS REFERENCED IN 26

1 U.S.C. S4958(F)(1)(A) AND FURTHER SPECIFIED IN 26 CFR S53.4958-3(C) AND
2 (D), OR SUCCEEDING PROVISIONS.

3 (4) AN "AFFILIATE" OF A TRUST MEANS ANY ENTITY CONTROLLED BY, IN
4 CONTROL OF, OR UNDER COMMON CONTROL WITH SUCH TRUST.

5 (5) "INDEPENDENT TRUSTEE" MEANS A TRUSTEE WHO: (I) IS NOT, AND HAS NOT
6 BEEN WITHIN THE LAST THREE YEARS, AN EMPLOYEE OF THE TRUST OR AN AFFIL-
7 IATE OF THE TRUST, AND DOES NOT HAVE A RELATIVE WHO IS, OR HAS BEEN
8 WITHIN THE LAST THREE YEARS, A KEY EMPLOYEE OF THE TRUST OR AN AFFILIATE
9 OF THE TRUST; (II) HAS NOT RECEIVED, AND DOES NOT HAVE A RELATIVE WHO
10 HAS RECEIVED, IN ANY OF THE LAST THREE FISCAL YEARS, MORE THAN TEN THOU-
11 SAND DOLLARS IN DIRECT COMPENSATION FROM THE TRUST OR AN AFFILIATE OF
12 THE TRUST (OTHER THAN REIMBURSEMENT FOR EXPENSES OR THE PAYMENT OF TRUS-
13 TEE COMMISSIONS AS PERMITTED BY LAW AND THE GOVERNING INSTRUMENT); AND
14 (III) IS NOT A CURRENT EMPLOYEE OF OR HAVE A SUBSTANTIAL FINANCIAL
15 INTEREST IN, AND DOES NOT HAVE A RELATIVE WHO IS A CURRENT OFFICER OF OR
16 HAVE A SUBSTANTIAL FINANCIAL INTEREST IN, ANY ENTITY THAT HAS MADE
17 PAYMENTS TO, OR RECEIVED PAYMENTS FROM, THE TRUST OR AN AFFILIATE OF THE
18 TRUST FOR PROPERTY OR SERVICES IN AN AMOUNT WHICH, IN ANY OF THE LAST
19 THREE FISCAL YEARS, EXCEEDS THE LESSER OF TWENTY-FIVE THOUSAND DOLLARS
20 OR TWO PERCENT OF SUCH ENTITY'S CONSOLIDATED GROSS REVENUES. FOR
21 PURPOSES OF THIS SUBPARAGRAPH, "PAYMENT" DOES NOT INCLUDE CHARITABLE
22 CONTRIBUTIONS.

23 (B)(1) FOR PURPOSES OF THIS PARAGRAPH, "TOTAL COMPENSATION" MEANS:
24 (A) ANY COMPENSATION, WHETHER PAID OR ACCRUED, BY OR ON BEHALF OF THE
25 TRUST OR ANY AFFILIATE OF THE TRUST FOR SERVICES RENDERED TO, ON BEHALF
26 OF, OR AT THE REQUEST OF THE TRUST OR AN AFFILIATE OF THE TRUST, INCLUD-
27 ING BUT NOT LIMITED TO SALARY, BONUS, AND DEFERRED COMPENSATION; AND (B)
28 ANY BENEFIT HAVING MONETARY VALUE PROVIDED BY OR ON BEHALF OF THE TRUST
29 OR ANY AFFILIATE OF THE TRUST, INCLUDING BUT NOT LIMITED TO HOUSING OR
30 VEHICLE ALLOWANCES, LIVING EXPENSES, PERQUISITES, FRINGE BENEFITS,
31 EMPLOYER CONTRIBUTIONS TO DEFINED CONTRIBUTION RETIREMENT PLANS AND
32 OTHER RETIREMENT BENEFITS.

33 (2) NO TRUST SHALL PAY TOTAL COMPENSATION TO ANY EMPLOYEE IN EXCESS OF
34 THAT WHICH IS FAIR, REASONABLE AND COMMENSURATE WITH SERVICES PROVIDED
35 TO THE TRUST.

36 (3) THE TRUSTEES OR A DESIGNATED COMPENSATION COMMITTEE CONSISTING OF
37 ONE OR MORE INDEPENDENT TRUSTEES OF ANY TRUST THAT IS REQUIRED TO REGIS-
38 TER WITH THE ATTORNEY GENERAL UNDER ARTICLE SEVEN-A OF THE EXECUTIVE LAW
39 SHALL REVIEW AND APPROVE THE TOTAL COMPENSATION PAID TO THE PRINCIPAL
40 EXECUTIVE OFFICER OF THE TRUST, AND DETERMINE THAT SUCH COMPENSATION IS
41 NOT IN EXCESS OF THAT WHICH IS FAIR, REASONABLE AND COMMENSURATE WITH
42 SERVICES PROVIDED TO THE TRUST.

43 (4) IF, IN THE PRIOR FISCAL YEAR, ANY TRUST THAT IS REQUIRED TO REGIS-
44 TER WITH THE ATTORNEY GENERAL UNDER ARTICLE SEVEN-A OF THE EXECUTIVE LAW
45 HAD, OR IN THE CURRENT FISCAL YEAR REASONABLY EXPECTS TO HAVE, ANNUAL
46 REVENUES IN EXCESS OF TWO MILLION DOLLARS, THE TRUSTEES OR DESIGNATED
47 COMPENSATION COMMITTEE CONSISTING OF ONE OR MORE INDEPENDENT TRUSTEES
48 SHALL, IN ADDITION TO THOSE DUTIES SET FORTH IN SUBPARAGRAPH THREE OF
49 THIS PARAGRAPH:

50 (A) REVIEW THE TOTAL COMPENSATION PAID TO THE TRUST'S TOP FIVE HIGHEST
51 COMPENSATED EMPLOYEES WHO ARE OFFICERS OR KEY EMPLOYEES AND WHOSE
52 COMPENSATION EXCEEDS ONE HUNDRED FIFTY THOUSAND DOLLARS, OR SUCH GREATER
53 AMOUNT AS THE ATTORNEY GENERAL MAY SET BY REGULATION;

54 (B) DETERMINE THAT THE TOTAL COMPENSATION PAID TO ANY SUCH EMPLOYEE IS
55 NOT IN EXCESS OF THAT WHICH IS FAIR, REASONABLE AND COMMENSURATE WITH
56 SERVICES PROVIDED TO THE TRUST. IN MAKING THIS DETERMINATION, THE TRUS-

1 TEES OR COMPENSATION COMMITTEE SHALL AT A MINIMUM CONSIDER THE FOLLOWING
2 FACTORS: (I) THE TOTAL COMPENSATION PROVIDED TO THE EMPLOYEE BY THE
3 TRUST AND ALL AFFILIATES OF THE TRUST; (II) RELEVANT DATA ON THE TOTAL
4 COMPENSATION PAID TO INDIVIDUALS SERVING IN SIMILAR POSITIONS AT TRUSTS
5 OR CORPORATIONS OF SIMILAR SIZE, TYPE, PURPOSE AND SCOPE; (III) THE
6 EMPLOYEE'S QUALIFICATIONS AND PERFORMANCE; AND (IV) THE OVERALL FINAN-
7 CIAL CONDITION OF THE TRUST;

8 (C) MAKE AND KEEP A CONTEMPORANEOUS WRITTEN RECORD DESCRIBING THE
9 BASIS FOR SUCH DETERMINATION; AND

10 (D) APPROVE BY NOT LESS THAN A MAJORITY VOTE THE TOTAL COMPENSATION
11 PAID TO EACH SUCH EMPLOYEE.

12 (5) ANY REVIEW AND APPROVAL REQUIRED BY SUBPARAGRAPHS THREE AND FOUR
13 OF THIS PARAGRAPH SHALL OCCUR WHENEVER THE TERM OF EMPLOYMENT, IF ANY,
14 OF THE EMPLOYEE IS RENEWED OR EXTENDED, AND WHENEVER SUCH COMPENSATION
15 IS MATERIALLY CHANGED. IF A TRUST IS UNDER THE CONTROL OF ANOTHER TRUST
16 OR A CORPORATION, THE TRUSTEES OR COMPENSATION COMMITTEE OF THE CONTROL-
17 LING TRUST, OR THE BOARD OR DESIGNATED COMPENSATION COMMITTEE OF THE
18 BOARD OF THE CONTROLLING CORPORATION, MAY PERFORM THE DUTIES REQUIRED BY
19 THIS PARAGRAPH.

20 (6) IF A COMPENSATION CONSULTANT IS RETAINED BY THE TRUSTEES OR
21 COMPENSATION COMMITTEE TO ASSIST IN THE PERFORMANCE OF THEIR RESPONSI-
22 BILITIES, SUCH CONSULTANT SHALL REPORT DIRECTLY TO THE TRUSTEES OR
23 COMPENSATION COMMITTEE. THE TRUSTEES OR COMPENSATION COMMITTEE SHALL BE
24 DIRECTLY RESPONSIBLE FOR THE APPOINTMENT, COMPENSATION AND OVERSIGHT OF
25 THE WORK OF SUCH CONSULTANT, AND SHALL APPROVE THE COMPENSATION PEER
26 GROUP THAT THE COMPENSATION CONSULTANT RECOMMENDS BE USED TO DEVELOP
27 COMPARABLE DATA.

28 (A) PRIOR TO RETAINING ANY SUCH CONSULTANT, THE TRUSTEES OR COMPEN-
29 SATION COMMITTEE SHALL DETERMINE THAT THE CONSULTANT IS INDEPENDENT AND
30 QUALIFIED TO RENDER ADVICE CONCERNING COMPENSATION; PROVIDED THAT NO
31 CONSULTANT MAY BE DETERMINED INDEPENDENT IF SUCH CONSULTANT OR ANY FIRM
32 THAT EMPLOYS SUCH CONSULTANT HAS (I) RECEIVED DIRECTLY OR INDIRECTLY ANY
33 PAYMENT, FEE OR OTHER COMPENSATION FROM THE TRUST OR ANY AFFILIATE OF
34 THE TRUST WITHIN THE PRECEDING TWO YEARS, OTHER THAN REASONABLE AMOUNTS
35 PAID FOR COMPENSATION CONSULTING SERVICES, OR (II) ANY BUSINESS OR
36 PERSONAL RELATIONSHIP WITH THE TRUST OR ANY AFFILIATE OF THE TRUST, OR
37 ANY OF THEIR OFFICERS, DIRECTORS, TRUSTEES OR EMPLOYEES, THAT MAY INTER-
38 FERE WITH THE ABILITY OF THE CONSULTANT TO PROVIDE OBJECTIVE ADVICE TO
39 THE TRUSTEES OR COMPENSATION COMMITTEE.

40 (B) NOTHING IN THIS SUBPARAGRAPH SHALL BE CONSTRUED TO REQUIRE THE
41 TRUSTEES OR COMPENSATION COMMITTEE TO IMPLEMENT OR ACT CONSISTENTLY WITH
42 ANY RECOMMENDATIONS PROVIDED BY THE COMPENSATION CONSULTANT; OR AFFECT
43 THE ABILITY OR OBLIGATION OF THE TRUSTEES TO EXERCISE THEIR OWN JUDGMENT
44 IN FULFILLMENT OF THEIR DUTIES TO THE TRUST AND ITS BENEFICIARIES.

45 (7) ONLY INDEPENDENT TRUSTEES MAY PARTICIPATE IN DELIBERATIONS OR
46 VOTING RELATING TO MATTERS SET FORTH IN THIS SECTION.

47 S 4. This act shall take effect January 1, 2014, provided that section
48 two of this act and paragraph (b) of section 8-1.9 of the estates,
49 powers and trusts law as added by section three of this act shall not be
50 applicable until January 1, 2015 for any corporation or trust that had
51 annual revenues of less than 10,000,000 dollars in the last fiscal year
52 ending prior to January 1, 2014.