

3698

2009-2010 Regular Sessions

I N S E N A T E

March 27, 2009

Introduced by Sen. PERKINS -- (at request of the Department of State) --  
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 the  
classification of type C not-for-profit corporations

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

1 Section 1. Subparagraphs 7, 8 and 9 of paragraph (a) of section 112 of  
2 the not-for-profit corporation law, subparagraphs 7 and 9 as amended by  
3 chapter 1058 of the laws of 1971, are amended to read as follows:

4 (7) To enforce any right given under this chapter to members, a  
5 director or an officer of a Type B [or Type C] corporation. The attor-  
6 ney-general shall have the same status as such members, director or  
7 officer.

8 (8) [To compel the directors and officers, or any of them, of a Type B  
9 or Type C corporation which has been dissolved under section 1011  
10 (Dissolution for failure to file certificate of type of Not-for-Profit  
11 Corporation Law under section 113) to account for the assets of the  
12 dissolved corporation.

13 (9)] Upon application, ex parte, for an order to the supreme court at  
14 a special term held within the judicial district where the office of the  
15 corporation is located, and if the court so orders, to enforce any right  
16 given under this chapter to members, a director or an officer of a Type  
17 A corporation. For such purpose, the attorney-general shall have the  
18 same status as such members, director or officer.

19 S 2. Subparagraph 4 of paragraph (a) of section 113 of the not-for-  
20 profit corporation law, as amended by chapter 415 of the laws of 1974,  
21 is amended to read as follows:

22 (4) That under section 201 (Purposes) it is a Type ..... (insert A,  
23 B[, C] or D) not-for-profit corporation as defined in this chapter.

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

LBD08283-01-9

1 S 3. Section 114 of the not-for-profit corporation law, as added by  
2 chapter 847 of the laws of 1970, is amended to read as follows:

3 S 114. Visitation of supreme court.

4 Type B [and Type C] corporations, whether formed under general or  
5 special laws, with their books and vouchers, shall be subject to the  
6 visitation and inspection of a justice of the supreme court, or of any  
7 person appointed by the court for that purpose. If it appears by the  
8 verified petition of a member or creditor of any such corporation, that  
9 it, or its directors, officers or agents, have misappropriated any of  
10 the funds or property of the corporation, or diverted them from the  
11 purpose of its incorporation, or that the corporation has acquired prop-  
12 erty in excess of the amount which it is authorized by law to hold, or  
13 has engaged in any business other than that stated in its certificate of  
14 incorporation, the court may order that notice of at least eight days,  
15 with a copy of the petition, be served on the corporation and the  
16 persons charged with misconduct, requiring them to show cause at a time  
17 and place specified, why they should not be required to make and file an  
18 inventory and account of the property, effects and liabilities of such  
19 corporation with a detailed statement of its transactions during the  
20 twelve months next preceding the granting of such order. On the hearing  
21 of such application, the court may make an order requiring such invento-  
22 ry, account and statement to be filed, and proceed to take and state an  
23 account of the property and liabilities of the corporation, or may  
24 appoint a referee for that purpose. When such account is taken and  
25 stated, after hearing all the parties to the application, the court may  
26 enter a final order determining the amount of property so held by the  
27 corporation, its annual income, whether any of the property or funds of  
28 the corporation have been misappropriated or diverted to any other  
29 purpose than that for which such corporation was incorporated, and  
30 whether such corporation has been engaged in any activity not covered by  
31 its certificate of incorporation. An appeal may be taken from the order  
32 by any party aggrieved to the appellate division of the supreme court,  
33 and to the court of appeals, as in a civil action. No corporation shall  
34 be required to make and file more than one inventory and account in any  
35 one year, nor to make a second account and inventory, while proceedings  
36 are pending for the statement of an account under this section.

37 S 4. Paragraphs (b) and (c) of section 201 of the not-for-profit  
38 corporation law, paragraph (b) as amended by chapter 847 of the laws of  
39 1970 and paragraph (c) as amended by chapter 1058 of the laws of 1971,  
40 are amended and a new paragraph (d) is added to read as follows:

41 (b) A corporation, of a type and for a purpose or purposes as follows,  
42 may be formed under this chapter, provided consents required under any  
43 other statute of this state have been obtained:

44 Type A - A not-for-profit corporation of this type may be formed for  
45 any lawful non-business purpose or purposes including, but not limited  
46 to, any one or more of the following non-pecuniary purposes: civic,  
47 patriotic, political, social, fraternal, athletic, agricultural, horti-  
48 cultural, animal husbandry, and for a professional, commercial, indus-  
49 trial, trade or service association.

50 Type B - A not-for-profit corporation of this type may be formed for  
51 any one or more of the following non-business purposes: charitable,  
52 educational, religious, scientific, literary, cultural or for the  
53 prevention of cruelty to children or animals. [Type C - A] ADDI-  
54 TIONALLY, A not-for-profit corporation of this type may be formed for  
55 any lawful business purpose to achieve a lawful public or quasi-public  
56 objective.

1 Type D - A not-for-profit corporation of this type may be formed under  
2 this chapter when such formation is authorized by any other corporate  
3 law of this state for any business or non-business, or pecuniary or  
4 non-pecuniary, purpose or purposes specified by such other law, whether  
5 such purpose or purposes are also within types A[, ] OR B[, C] above or  
6 otherwise.

7 (c) If a corporation is formed for purposes which are within both type  
8 A and type B above, it is a type B corporation. [If a corporation has  
9 among its purposes any purpose which is within type C, such corporation  
10 is a type C corporation.] A type D corporation is subject to all  
11 provisions of this chapter which are applicable to a type B corporation  
12 under this chapter unless provided to the contrary in, and subject to  
13 the contrary provisions of, the other corporate law authorizing forma-  
14 tion under this chapter of the type D corporation.

15 (D) NOTWITHSTANDING THE PROVISIONS OF ANY LAW TO THE CONTRARY OR ANY  
16 CORPORATION'S CURRENT DESIGNATION AS A TYPE C CORPORATION, ANY SUCH  
17 CORPORATION DESIGNATED AS TYPE C SHALL BE A TYPE B CORPORATION SUBJECT  
18 TO ALL PROVISIONS OF THIS CHAPTER WHICH ARE APPLICABLE TO A TYPE B  
19 CORPORATION UNDER THIS CHAPTER.

20 S 5. Subparagraphs 2 and 4 of paragraph (a) of section 402 of the  
21 not-for-profit corporation law, subparagraph 2 as amended by chapter 847  
22 of the laws of 1970 and subparagraph 4 as amended by chapter 679 of the  
23 laws of 1985, are amended to read as follows:

24 (2) That the corporation is a corporation as defined in subparagraph  
25 (a) (5) of section 102 (Definitions); the purpose or purposes for which  
26 it is formed and the type of corporation it shall be under section 201  
27 (Purposes); and in the case of a Type [C] B corporation FORMED FOR ANY  
28 LAWFUL BUSINESS PURPOSE OR PURPOSES, the lawful public or quasi-public  
29 objective which each business purpose will achieve.

30 (4) In the case of a Type A[, ] OR Type B[, or Type C] corporation, the  
31 names and addresses of the initial directors. In the case of a Type D  
32 corporation, the names and addresses of the initial directors, if any,  
33 may but need not be set forth.

34 S 6. Subparagraph 3 of paragraph (a) of section 510 of the not-for-  
35 profit corporation law, as amended by chapter 847 of the laws of 1970,  
36 is amended to read as follows:

37 (3) If the corporation is, or would be if formed under this chapter,  
38 classified as a Type B [or Type C] corporation under section 201,  
39 (Purposes) such sale, lease, exchange or other disposition shall in  
40 addition require leave of the supreme court in the judicial district or  
41 of the county court of the county in which the corporation has its  
42 office or principal place of carrying out the purposes for which it was  
43 formed.

44 S 7. Subparagraph (ii) of paragraph (a) of section 804 of the not-for-  
45 profit corporation law, as amended by chapter 139 of the laws of 1993,  
46 is amended to read as follows:

47 (ii) Every certificate of amendment of a corporation classified as  
48 type B [or type C] under section 201 (Purposes) which seeks to change or  
49 eliminate a purpose or power enumerated in the corporation's certificate  
50 of incorporation, or to add a power or purpose not enumerated therein,  
51 shall have endorsed thereon or annexed thereto the approval of a justice  
52 of the supreme court of the judicial district in which the office of the  
53 corporation is located. Ten days' written notice of the application for  
54 such approval shall be given to the attorney-general.

55 S 8. Paragraph (a) of section 907 of the not-for-profit corporation  
56 law is amended to read as follows:

1 (a) Where any constituent corporation or the consolidated corporation  
2 is, or would be if formed under this chapter, a Type B [or a Type C]  
3 corporation under section 201 (Purposes) of this chapter, no certificate  
4 shall be filed pursuant to section 904 (Certificate of merger or consol-  
5 idation; contents) or section 906 (Merger or consolidation of domestic  
6 and foreign corporations) until an order approving the plan of merger or  
7 consolidation and authorizing the filing of the certificate has been  
8 made by the supreme court, as provided in this section. A certified copy  
9 of such order shall be annexed to the certificate of merger or consol-  
10 idation. Application for the order may be made in the judicial district  
11 in which the principal office of the surviving or consolidated corpo-  
12 ration is to be located, or in which the office of one of the domestic  
13 constituent corporations is located. The application shall be made by  
14 all the constituent corporations jointly and shall set forth by affida-  
15 vit (1) the plan of merger or consolidation, (2) the approval required  
16 by section 903 (Approval of plan) or paragraph (b) of section 906 (Merg-  
17 er or consolidation of domestic and foreign corporations) for each  
18 constituent corporation, (3) the objects and purposes of each such  
19 corporation to be promoted by the consolidation, (4) a statement of all  
20 property, and the manner in which it is held, and of all liabilities and  
21 of the amount and sources of the annual income of each such corporation,  
22 (5) whether any votes against adoption of the resolution approving the  
23 plan of merger or consolidation were cast at the meeting at which the  
24 resolution as adopted by each constituent corporation, and (6) facts  
25 showing that the consolidation is authorized by the laws of the juris-  
26 dictions under which each of the constituent corporations is incorpo-  
27 rated.

28 S 9. Paragraphs (a) and (f) of section 908 of the not-for-profit  
29 corporation law are amended to read as follows:

30 (a) One or more domestic or foreign corporations which is, or would be  
31 if formed under this chapter, a type A or type [C] B corporation under  
32 section 201 (Purposes) may be merged or consolidated into a domestic or  
33 foreign corporation which is, or would be if formed under the laws of  
34 this state, a corporation formed under the business corporation law of  
35 this state if such merger or consolidation is not contrary to the law of  
36 the state of incorporation of any constituent corporation. With respect  
37 to such merger or consolidation, any reference in paragraph (b) of  
38 section 901 [of this article] (POWER OF MERGER OR CONSOLIDATION) or  
39 paragraph (b) of section 901 of the business corporation law to a corpo-  
40 ration shall, unless the context otherwise requires, include both domes-  
41 tic and foreign corporations.

42 (f) Where any constituent corporation is, or would be if formed under  
43 this chapter, a Type [C] B corporation under section 201 (Purposes), no  
44 certificate shall be filed pursuant to this section until an order  
45 approving the plan of merger or consolidation and authorizing the filing  
46 of the certificate has been made by the supreme court, as provided in  
47 section 907 (Approval by the supreme court).

48 S 10. Paragraphs (b) and (c) of section 1001 of the not-for-profit  
49 corporation law, as amended by chapter 434 of the laws of 2006, are  
50 amended to read as follows:

51 (b) If the corporation is a Type B[, C] or D corporation and has no  
52 assets to distribute and no liabilities at the time of dissolution, the  
53 plan of dissolution shall include a statement to that effect.

54 (c) If the corporation is a Type B[, C] or D corporation and has no  
55 assets to distribute, other than a reserve not to exceed twenty-five  
56 thousand dollars for the purpose of paying ordinary and necessary

1 expenses of winding up its affairs including attorney and accountant  
2 fees, and liabilities not in excess of ten thousand dollars at the time  
3 of adoption of the plan of dissolution, the plan of dissolution shall  
4 include a statement to that effect.

5 S 11. Paragraphs (a) and (d) of section 1002 of the not-for-profit  
6 corporation law, as amended by chapter 434 of the laws of 2006, are  
7 amended to read as follows:

8 (a) Upon adopting a plan of dissolution and distribution of assets,  
9 the board shall submit it to a vote of the members, if any, and such  
10 plan shall be approved at a meeting of members by two-thirds vote as  
11 provided in paragraph (c) of section 613 (Vote of members); provided,  
12 however, that if the corporation is a Type B[, C] or D corporation,  
13 other than a corporation incorporated pursuant to article 15 (Public  
14 cemetery corporations), and has no assets to distribute, other than a  
15 reserve not to exceed twenty-five thousand dollars for the purpose of  
16 paying ordinary and necessary expenses of winding up its affairs includ-  
17 ing attorney and accountant fees, and liabilities not in excess of ten  
18 thousand dollars at the time of adoption of the plan of dissolution, the  
19 vote required by the corporation's board of directors for adoption of  
20 the plan of dissolution of such a corporation or by the corporation's  
21 members for the authorization thereof shall be:

22 (1) In the case of a vote by the board of directors: (i) the number of  
23 directors required under the certificate of incorporation, by-laws, this  
24 chapter and any other applicable law; or

25 (ii) if the number of directors actually holding office as such at the  
26 time of the vote to adopt the plan is less than the number required to  
27 constitute a quorum of directors under the certificate of incorporation,  
28 the by-laws, this chapter or any other applicable law, the remaining  
29 directors unanimously;

30 (2) In the case of a vote by the members, (i) the number of members  
31 required under the certificate of incorporation, by-laws, this chapter  
32 and any other applicable law; or (ii) by the vote of members authorized  
33 by an order of the supreme court pursuant to section 608 of this chapter  
34 permitting the corporation to dispense with the applicable quorum  
35 requirement.

36 Notice of a special or regular meeting of the board of directors or of  
37 the members entitled to vote on adoption and authorization or approval  
38 of the plan of dissolution shall be sent to all the directors and  
39 members of record entitled to vote. Unless otherwise directed by order  
40 of the supreme court pursuant to section 608 [of this chapter] (QUORUM  
41 AT MEETING OF MEMBERS), the notice shall be sent by certified mail,  
42 return receipt requested, to the last known address of record of each  
43 director and member not fewer than thirty, and not more than sixty days  
44 before the date of each meeting provided, however, that if the last  
45 known address of record of any director or member is not within the  
46 United States, the notice to such director shall be sent by any other  
47 reasonable means.

48 (d) The plan of dissolution and distribution of assets shall have  
49 annexed thereto the approval of a justice of the supreme court in the  
50 judicial district in which the office of the corporation is located in  
51 the case of a Type B[, C] or D corporation, and in the case of any other  
52 corporation which holds assets at the time of dissolution legally  
53 required to be used for a particular purpose, except that no such  
54 approval shall be required with respect to the plan of dissolution of a  
55 corporation, other than a corporation incorporated pursuant to article  
56 15 (Public cemetery corporations), which has no assets to distribute at

1 the time of dissolution, other than a reserve not to exceed twenty-five  
2 thousand dollars for the purpose of paying ordinary and necessary  
3 expenses of winding up its affairs including attorney and accountant  
4 fees, and liabilities not in excess of ten thousand dollars, and which  
5 has complied with the requirements of section 1001 (Plan of dissolution  
6 and distribution of assets) and this section applicable to such a corpo-  
7 ration. Application to the supreme court for an order for such approval  
8 shall be by verified petition, with the plan of dissolution and distrib-  
9 ution of assets and certified copies of the consents prescribed by this  
10 section annexed thereto, and upon ten days written notice to the attor-  
11 ney general accompanied by copies of such petition, plan and consents.  
12 In such case where approval of a justice of the supreme court is not  
13 required for a Type B[, C] or D corporation, a copy of such plan certi-  
14 fied under penalties of perjury shall be filed with the attorney general  
15 within ten days after its authorization.

16 S 12. Subparagraph 2 of paragraph (b) of section 1003 of the not-for-  
17 profit corporation law, as amended by chapter 434 of the laws of 2006,  
18 is amended to read as follows:

19 (2) By the attorney general in the case of a Type B[, C] or D corpo-  
20 ration, or any other corporation that holds assets at the time of  
21 dissolution legally required to be used for a particular purpose.

22 S 13. Subparagraph 6 of paragraph (a) of section 1012 of the not-for-  
23 profit corporation law, as amended by chapter 726 of the laws of 2005,  
24 is amended to read as follows:

25 (6) That, under section 201 (Purposes), it is a Type .....  
26 (Insert A, B[, C] or D) not-for-profit corporation.

27 S 14. Subparagraph 4 of paragraph (a) of section 1304 of the not-for-  
28 profit corporation law, as amended by chapter 847 of the laws of 1970  
29 and as renumbered by chapter 590 of the laws of 1982, is amended to read  
30 as follows:

31 (4) That the corporation is a foreign corporation as defined in  
32 subparagraph (a) (7) of section 102 (Definitions); the type of corpo-  
33 ration it shall be under section 201 (Purposes); a statement of its  
34 purposes to be pursued in this state and of the activities which it  
35 proposes to conduct in this state; a statement that it is authorized to  
36 conduct those activities in the jurisdiction of its incorporation; and  
37 in the case of a Type [C] B corporation THAT WILL PURSUE ANY LAWFUL  
38 BUSINESS PURPOSE OR PURPOSES IN THIS STATE, the lawful public or quasi-  
39 public objective which each business purpose will achieve.

40 S 15. Subparagraph 3 of paragraph (a) of section 1321 of the not-for-  
41 profit corporation law, as amended by chapter 847 of the laws of 1970,  
42 is amended to read as follows:

43 (3) [The] NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (A)(2) OF  
44 THIS SECTION, THE corporation is a Type [C] B corporation under this  
45 chapter AUTHORIZED TO PURSUE ANY LAWFUL BUSINESS PURPOSE OR PURPOSES IN  
46 THIS STATE; its principal activities are conducted outside this state;  
47 the greater part of its property is located outside this state; and less  
48 than one half of its revenues for the preceding three fiscal years, or  
49 such portion thereof as the foreign corporation was in existence, was  
50 derived from sources within this state.

51 S 16. Paragraph (b) of section 1411 of the not-for-profit corporation  
52 law is amended to read as follows:

53 (b) Type of corporation. A local development corporation is a Type  
54 [C] B corporation under this chapter.

55 S 17. This act shall take effect immediately.