

10508

I N A S S E M B L Y

May 29, 2012

Introduced by M. of A. PAULIN, COLTON, P. RIVERA, ROBERTS -- Multi-Sponsored by -- M. of A. JACOBS, McENENY, ROBINSON, SKARTADOS, THIELE, WRIGHT -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law and not-for-profit corporation law, in relation to prohibiting certain individuals from receiving compensation from public charities; requires reasonable compensation when allowed; establishes the state board training consortium; and to amend the state finance law, in relation to establishing the state board training consortium fund

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

1 Section 1. Section 63 of the executive law is amended by adding a new
2 subdivision 16 to read as follows:

3 16. MAKE INQUIRY INTO ANY DOCUMENTS PREPARED UNDER SECTION SEVEN
4 HUNDRED TWENTY-SEVEN OF THE NOT-FOR-PROFIT CORPORATION LAW FOR COMPLI-
5 ANCE WITH THAT SECTION, BUT NOT MORE THAN ANNUALLY, AND RESPOND TO ANY
6 INQUIRY REFERRED TO UNDER SUCH SECTION SEVEN HUNDRED TWENTY-SEVEN OFFI-
7 Cially WITHIN NINETY DAYS OF RECEIPT.

8 S 2. Subparagraph 12 of paragraph (a) of section 202 of the not-for-
9 profit corporation law is amended to read as follows:

10 (12) To elect or appoint officers, employees and other agents of the
11 corporation, define their duties, fix their reasonable compensation and
12 the reasonable compensation of directors, and to indemnify corporate
13 personnel. Such compensation shall be commensurate with services
14 performed AND SUBJECT, WHERE APPLICABLE, TO SECTION SEVEN HUNDRED TWEN-
15 TY-SEVEN OF THIS CHAPTER.

16 S 3. Section 701 of the not-for-profit corporation law is amended by
17 adding a new paragraph (c) to read as follows:

18 (C) AN EMPLOYEE OR A SPOUSE, DOMESTIC PARTNER, SIBLING (BY WHOLE OR
19 HALF BLOOD), SPOUSE OR DOMESTIC PARTNER OF A SIBLING (BY WHOLE OR HALF
20 BLOOD), CHILD, GRANDCHILD, GREAT-GRANDCHILD, AND SPOUSE OR DOMESTIC
21 PARTNER OF A CHILD, GRANDCHILD, AND GREAT-GRANDCHILD OF THE EMPLOYEE AT
22 A PUBLIC CHARITY, AS THAT TERM MAY BE DEFINED BY THE INTERNAL REVENUE

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

LBD15839-02-2

SERVICE FROM TIME-TO-TIME, MAY NOT QUALIFY TO SIT ON THE BOARD OF DIRECTORS OF THE CORPORATION WHERE THEY ARE EMPLOYED REGARDLESS OF ANY STATEMENT TO THE CONTRARY IN THE CERTIFICATE OF INCORPORATION OR BYLAWS OF THE CORPORATION. THE CERTIFICATE OF INCORPORATION OR THE BYLAWS MAY, HOWEVER, PROVIDE FOR AN EMPLOYEE AT A PUBLIC CHARITY, AS THAT TERM MAY BE DEFINED BY THE INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, TO BE EX-OFFICIO, A NON-VOTING MEMBER OF THE BOARD OF DIRECTORS.

S 4. Paragraph (a) of section 702 of the not-for-profit corporation law is amended to read as follows:

(a) [The] FOR NOT-FOR-PROFIT CORPORATIONS WITH ANNUAL GROSS RECEIPTS IN AN AMOUNT THAT WOULD TRIGGER AN AUDIT BY A CERTIFIED PUBLIC ACCOUNTANT, THE number of directors constituting the entire board shall be not less than FIVE, OTHERWISE THE ENTIRE BOARD SHALL NOT BE LESS THAN three. Subject to such limitation, such number may be fixed by the by-laws or, in the case of a corporation having members, by action of the members or of the board under the specific provisions of a by-law adopted by the members. [If] FOR NOT-FOR-PROFIT CORPORATIONS WITH ANNUAL GROSS RECEIPTS EQUAL TO OR ABOVE TWO HUNDRED FIFTY THOUSAND DOLLARS, IF not otherwise fixed under this paragraph, the number shall be FIVE, OTHERWISE IT SHALL BE three. As used in this article, "entire board" means the total number of directors entitled to vote which the corporation would have if there were no vacancies.

S 5. Paragraph (a) of section 706 of the not-for-profit corporation law is amended to read as follows:

(a) Except as limited in paragraph (c) OF THIS SECTION, any or all of the directors may be removed for cause, WHICH IS EITHER A VIOLATION OF THE BYLAWS, THE DUTY OF DIRECTORS AND OFFICERS OF SECTION SEVEN HUNDRED SEVENTEEN OF THIS ARTICLE, OR AS OTHERWISE DEFINED IN THE BYLAWS IN THE WRITTEN CONFLICT OF INTEREST POLICY OF THE CORPORATION, by vote of the members, or by vote of the directors provided there is a quorum of not less than a majority present at the meeting of directors at which such action is taken.

S 6. Paragraph (b) of section 708 of the not-for-profit corporation law, as amended by chapter 92 of the laws of 1983, is amended to read as follows:

(b) Unless otherwise restricted by the certificate of incorporation or the by-laws, any action required or permitted to be taken by the board or any committee thereof may be taken without a meeting if all members of the board or the committee consent in writing to the adoption of a resolution authorizing the action, WHERE SAID WRITING, OR UNANIMOUS CONSENT IN LIEU OF A MEETING, IS DELIVERED, SUBMITTED AND SIGNED SEPARATELY BY ALL MEMBERS OF THE BOARD OR THE COMMITTEE AND SUBMITTED BY ELECTRONIC-MAIL, OR OTHER ELECTRONIC MEANS WITH AN ELECTRONIC RETURNED RECEIPT, OR SIMILAR MESSAGE ATTACHED, DEMONSTRATING THAT THE UNANIMOUS CONSENT IN LIEU OF A MEETING WAS INDEED DELIVERED PROPERLY. The resolution and the written consents thereto by the members of the board or committee shall be filed with the minutes of the proceedings of the board or committee.

S 7. Paragraphs (b) and (d) of section 711 of the not-for-profit corporation law are amended to read as follows:

(b) The by-laws may prescribe what shall constitute notice of meeting of the board, OR WAIVER OF NOTICE, AND MAY BE DELIVERED VIA ELECTRONIC-MAIL, OR OTHER ELECTRONIC MEANS WITH AN ELECTRONIC RETURNED RECEIPT, OR SIMILAR MESSAGE ATTACHED, DEMONSTRATING THAT THE NOTICE, OR WAIVER OF NOTICE, WAS INDEED DELIVERED PROPERLY. A notice, or waiver of notice,

1 need not specify the purpose of any regular or special meeting of the
2 board, unless required by the by-laws.

3 (d) A majority of the directors present, whether or not a quorum is
4 present, may adjourn any meeting to another time and place. If the
5 by-laws so provide, notice of any adjournment of a meeting of the board
6 to another time or place shall be given to the directors who were not
7 present at the time of the adjournment, AND MAY BE DONE BY
8 ELECTRONIC-MAIL, OR OTHER ELECTRONIC MEANS WITH AN ELECTRONIC RETURNED
9 RECEIPT, OR SIMILAR MESSAGE ATTACHED, DEMONSTRATING THAT THE NOTICE, OR
10 WAIVER OF NOTICE, WAS INDEED DELIVERED PROPERLY, and, unless such time
11 and place are announced at the meeting, to the other directors.

12 S 8. Subparagraph 3 of paragraph (a) of section 712 of the not-for-
13 profit corporation law is amended to read as follows:

14 (3) The fixing of compensation of the directors OR OFFICERS for serv-
15 ing on the board or on any committee, AND THE FIXING OF COMPENSATION FOR
16 KEY EMPLOYEES, AS THAT TERM MAY BE DEFINED BY THE INTERNAL REVENUE
17 SERVICE FROM TIME-TO-TIME, OR OTHER AGENTS OF THE CORPORATION AT ANY
18 TIME.

19 S 9. Paragraph (a) of section 713 of the not-for-profit corporation
20 law is amended to read as follows:

21 (a) The board may elect or appoint a president, one or more vice-pre-
22 sidents, a secretary and a treasurer, and such other officers as it may
23 determine, or as may be provided in the by-laws. These officers may be
24 designated by such alternate titles as may be provided in the certif-
25 icate of incorporation or the by-laws. [Any] NO two or more offices may
26 be held by the same person[, except the offices of president and secre-
27 tary, or the offices corresponding thereto].

28 S 10. Section 713 of the not-for-profit corporation law is amended by
29 adding a new paragraph (f) to read as follows:

30 (F) AN OFFICER OR A SPOUSE, DOMESTIC PARTNER, SIBLING (BY WHOLE OR
31 HALF BLOOD), SPOUSE OR DOMESTIC PARTNER OF A SIBLING (BY WHOLE OR HALF
32 BLOOD), CHILD, GRANDCHILD, GREAT-GRANDCHILD, AND SPOUSE OR DOMESTIC
33 PARTNER OF A CHILD, GRANDCHILD, AND GREAT-GRANDCHILD OF THE OFFICER AT A
34 PUBLIC CHARITY, AS THAT TERM MAY BE DEFINED BY THE INTERNAL REVENUE
35 SERVICE FROM TIME-TO-TIME, MAY NOT RECEIVE COMPENSATION OR REMUNERATION
36 OF ANY KIND WHATSOEVER, EXCEPT TO BE REIMBURSED FOR REASONABLE EXPENSES
37 IN THE FULFILLMENT OF THEIR DUTIES TOWARD THE CORPORATION, WHERE SAID
38 PROHIBITION CANNOT BE CONTRAVENED IN THE CERTIFICATE OF INCORPORATION OR
39 BY-LAWS OF THE CORPORATION.

40 S 11. Paragraph (e) of section 715 of the not-for-profit corporation
41 law, as amended by chapter 847 of the laws of 1970, is amended to read
42 as follows:

43 (e) Unless otherwise provided in the certificate of incorporation or
44 the by-laws, the board shall have authority to fix the compensation of
45 directors OF A PRIVATE FOUNDATION, AS THAT TERM MAY BE DEFINED BY THE
46 INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, for services in any capaci-
47 ty. AT NO TIME MAY THE DIRECTORS OF A PUBLIC CHARITY, AS THAT TERM MAY
48 BE DEFINED BY THE INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, RECEIVE
49 COMPENSATION OR REMUNERATION OF ANY KIND WHATSOEVER, EXCEPT TO BE REIM-
50 BURSED FOR REASONABLE EXPENSES IN THE FULFILLMENT OF THEIR DUTIES TOWARD
51 THE CORPORATION, WHERE SAID PROHIBITION CANNOT BE CONTRAVENED IN THE
52 CERTIFICATE OF INCORPORATION OR BY-LAWS OF THE CORPORATION.

53 S 12. Paragraph (f) of section 715 of the not-for-profit corporation
54 law, as amended by chapter 1057 of the laws of 1971, is amended to read
55 as follows:

(f) The fixing of salaries of officers, [if not done in or pursuant to the by-laws, shall require the affirmative vote of a majority of the entire board unless a higher proportion is set by the certificate of incorporation or by-laws] IN PUBLIC CHARITIES, AS THAT TERM MAY BE DEFINED BY THE INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, IS STRICTLY PROHIBITED.

S 13. Paragraph (a) of section 717 of the not-for-profit corporation law, as amended by chapter 490 of the laws of 2010, is amended to read as follows:

(a) Directors and officers shall discharge the duties of their respective positions in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. The factors set forth in subparagraph one of paragraph (e) of section 552 (Standard of conduct in managing and investing an institutional fund), if relevant, must be considered by a governing board delegating investment management of institutional funds pursuant to section 514 (Delegation of investment management). For purposes of this paragraph, the term institutional fund is defined in section 551 (Definitions). FURTHERMORE, ANY COMPENSATION PROVIDED TO DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS OF THE CORPORATION MUST BE REASONABLE AND, WHERE APPLICABLE, IS SUBJECT TO SECTION SEVEN HUNDRED TWENTY-SEVEN (COMPENSATION OF EXECUTIVES).

S 14. Paragraph (a) of section 719 of the not-for-profit corporation law is amended by adding a new subparagraph 6 to read as follows:

(6) THE PROVISION OF EXCESSIVE COMPENSATION TO DIRECTORS, OFFICERS, KEY EMPLOYEES, AS THAT TERM MAY BE DEFINED BY THE INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, AND OTHER AGENTS OF THE CORPORATION IN VIOLATION OF SECTION SEVEN HUNDRED TWENTY-SEVEN (COMPENSATION OF EXECUTIVES), WHERE APPLICABLE.

S 15. Paragraph (d) of section 719 of the not-for-profit corporation law is amended by adding a new subparagraph 6 to read as follows:

(6) UPON REIMBURSEMENT TO THE CORPORATION OF THE AMOUNT OF ANY EXCESSIVE COMPENSATION PROVIDED IN VIOLATION OF SECTION SEVEN HUNDRED TWENTY-SEVEN (COMPENSATION OF EXECUTIVES), TO BE SUBROGATED TO THE RIGHTS OF THE CORPORATION AGAINST A DIRECTOR, OFFICER, KEY EMPLOYEE, AS THAT TERM MAY BE DEFINED BY THE INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, OR OTHER AGENT WHO RECEIVED THE EXCESSIVE COMPENSATION.

S 16. Clauses (A) and (B) of subparagraph 1 of paragraph (a) of section 720 of the not-for-profit corporation law are amended to read as follows:

(A) The neglect of, [or] THE failure to perform, or ANY other violation of his OR HER duties in the management and disposition of corporate assets committed to his charge.

(B) The acquisition by himself OR HERSELF, transfer to others, loss or waste of corporate assets due to any neglect of, [or] THE failure to perform, or ANY other violation of his duties, INCLUDING VIOLATIONS OF SECTION SEVEN HUNDRED TWENTY-SEVEN OF THIS ARTICLE, PURSUANT TO SECTION SEVEN HUNDRED SEVENTEEN OF THIS ARTICLE.

S 17. The not-for-profit corporation law is amended by adding a new section 727 to read as follows:

S 727. COMPENSATION OF EXECUTIVES.

(A) DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, UNLESS OTHERWISE EXPRESSLY STATED OR CONTEXT CLEARLY REQUIRES:

(1) "COMPENSATION" MEANS THE AGGREGATE VALUE OF ECONOMIC BENEFITS CONFERRED IN EXCHANGE FOR THE PERFORMANCE OF SERVICES THAT ARE INCLUDED FOR PURPOSES OF DETERMINING REASONABLENESS UNDER SECTION 26 U.S.C. 4958,

1 AS FURTHER SPECIFIED IN 26 CFR S53.4958-4(B)(II)(B), OR SUCCEEDING
2 PROVISIONS.

3 (2) "EXECUTIVE" MEANS ANY PERSON IN A POSITION TO EXERCISE SUBSTANTIAL
4 INFLUENCE OVER THE AFFAIRS OF A PROVIDER OF SERVICES, THAT DOES NOT SIT
5 ON THE GOVERNING BODY OF THE TAX-EXEMPT ORGANIZATION AS REFERENCED IN 26
6 U.S.C. S4958(F)(1)(A) AND FURTHER SPECIFIED IN 26 CFR S53.4958-3(C), OR
7 SUCCEEDING PROVISIONS.

8 (3) "FAMILY MEMBER" MEANS A SPOUSE, DOMESTIC PARTNER, SIBLING (BY
9 WHOLE OR HALF BLOOD), SPOUSE OR DOMESTIC PARTNER OF A SIBLING (BY WHOLE
10 OR HALF BLOOD), CHILD, GRANDCHILD, GREAT-GRANDCHILD, AND SPOUSE OR
11 DOMESTIC PARTNER OF A CHILD, GRANDCHILD, AND GREAT-GRANDCHILD.

12 (B) COMPENSATION EXCHANGED BY A NOT-FOR-PROFIT CORPORATION FOR THE
13 PERFORMANCE OF SERVICES BY AN EXECUTIVE MUST NOT BE EXCESSIVE AND THE
14 GOVERNING BODY (I.E., THE BOARD OF DIRECTORS, BOARD OF TRUSTEES, OR
15 EQUIVALENT CONTROLLING BODY) SHALL CONSIDER FACTORS INCLUDING, BUT NOT
16 LIMITED TO: COMPENSATION LEVELS PAID BY SIMILARLY SITUATED NOT-FOR-PRO-
17 FIT CORPORATIONS AS DEFINED IN SECTION ONE HUNDRED TWO OF THIS CHAPTER;
18 THE AVAILABILITY OF SIMILAR SERVICES IN THE GEOGRAPHIC AREA OF THE
19 APPLICABLE PROVIDER OF SERVICES; CURRENT COMPENSATION SURVEYS COMPILED
20 BY INDEPENDENT FIRMS; AND ACTUAL WRITTEN OFFERS FROM SIMILAR INSTI-
21 TUTIONS COMPETING FOR THE SERVICES OF THE APPLICABLE EXECUTIVE.

22 FOR THE PURPOSES OF THIS SECTION, WHETHER AN ORGANIZATION IS SIMILARLY
23 SITUATED SHALL BE DETERMINED BASED ON FACTORS INCLUDING, BUT NOT LIMITED
24 TO: GROSS ANNUAL REVENUE; GEOGRAPHIC LOCATION; AND THE DIVERSITY AND
25 COMPLEXITY OF PROGRAMS.

26 (C) ANNUAL COMPENSATION EXCHANGED BY A NOT-FOR-PROFIT CORPORATION FOR
27 THE PERFORMANCE OF SERVICES BY AN EXECUTIVE SHALL BE CONSIDERED REASON-
28 ABLE IF IT FALLS AT OR BELOW THE LEVEL I OF THE FEDERAL GOVERNMENT'S
29 RATES OF BASIC PAY FOR THE EXECUTIVE SCHEDULE PROMULGATED BY THE UNITED
30 STATES OFFICE OF PERSONNEL MANAGEMENT AND NO OTHER ACTION UNDER THIS
31 SECTION NEEDS TO BE TAKEN.

32 (D) ANNUAL COMPENSATION EXCHANGED BY A NOT-FOR-PROFIT CORPORATION FOR
33 THE PERFORMANCE OF SERVICES BY AN EXECUTIVE THAT DOES EXCEED LEVEL I OF
34 THE FEDERAL GOVERNMENT'S RATES OF BASIC PAY FOR THE EXECUTIVE SCHEDULE
35 SHALL BE PRESUMED TO NOT BE EXCESSIVE IF EACH OF THE FOLLOWING FOUR
36 CONDITIONS OCCUR:

37 (1) THE COMPENSATION IS APPROVED IN ADVANCE BY THE GOVERNING BODY
38 (I.E., THE BOARD OF DIRECTORS, BOARD OF TRUSTEES, OR EQUIVALENT CONTROL-
39 LING BODY) OF THE NOT-FOR-PROFIT CORPORATION THAT IS COMPOSED ENTIRELY
40 OF INDIVIDUALS WHO DO NOT HAVE A CONFLICT OF INTEREST WITH RESPECT TO
41 THE COMPENSATION ARRANGEMENT.

42 (A) FOR THE PURPOSES OF DETERMINING WHETHER THE REQUIREMENTS OF THIS
43 PARAGRAPH HAVE BEEN MET WITH RESPECT TO A SPECIFIC COMPENSATION ARRANGE-
44 MENT, AN INDIVIDUAL IS NOT INCLUDED IN THE GOVERNING BODY WHEN IT IS
45 REVIEWING A TRANSACTION IF THAT INDIVIDUAL MEETS WITH OTHER MEMBERS ONLY
46 TO ANSWER QUESTIONS, AND OTHERWISE RECUSES HIMSELF OR HERSELF FROM THE
47 MEETING AND IS NOT PRESENT DURING DEBATE AND VOTING ON THE COMPENSATION
48 ARRANGEMENT.

49 (B) A MEMBER OF THE GOVERNING BODY DOES NOT HAVE A CONFLICT OF INTER-
50 EST WITH RESPECT TO A COMPENSATION ARRANGEMENT ONLY IF THE MEMBER:

51 (I) IS NOT AN EXECUTIVE PARTICIPATING IN, OR ECONOMICALLY BENEFITING
52 FROM, THE COMPENSATION ARRANGEMENT;

53 (II) IS NOT IN AN EMPLOYMENT RELATIONSHIP SUBJECT TO THE DIRECTION OR
54 CONTROL OF ANY EXECUTIVE, OR THE FAMILY MEMBER OF ANY EXECUTIVE, PARTIC-
55 IPATING IN OR ECONOMICALLY BENEFITING FROM THE COMPENSATION ARRANGEMENT;

1 (III) DOES NOT RECEIVE COMPENSATION OR OTHER PAYMENT SUBJECT TO
2 APPROVAL BY ANY EXECUTIVE, OR THE FAMILY MEMBER OF ANY EXECUTIVE,
3 PARTICIPATING IN OR ECONOMICALLY BENEFITING FROM THE COMPENSATION
4 ARRANGEMENT;

5 (IV) HAS NO MATERIAL FINANCIAL INTEREST AFFECTED BY THE COMPENSATION
6 ARRANGEMENT; AND

7 (V) DOES NOT APPROVE A TRANSACTION PROVIDING ECONOMIC BENEFITS TO ANY
8 EXECUTIVE, OR THE FAMILY MEMBER OF ANY EXECUTIVE, PARTICIPATING IN THE
9 COMPENSATION ARRANGEMENT, WHO IN TURN HAS APPROVED OR WILL APPROVE A
10 TRANSACTION PROVIDING ECONOMIC BENEFITS TO THE MEMBER.

11 (2) THE GOVERNING BODY OBTAINED AND RELIED UPON APPROPRIATE DATA AS TO
12 COMPARABILITY PRIOR TO MAKING ITS DETERMINATION AND GIVEN THE KNOWLEDGE
13 AND EXPERTISE OF ITS MEMBERS, IT HAS INFORMATION SUFFICIENT TO DETERMINE
14 WHETHER THE COMPENSATION ARRANGEMENT IN ITS ENTIRETY IS REASONABLE.
15 RELEVANT INFORMATION INCLUDES, BUT IS NOT LIMITED TO: COMPENSATION
16 LEVELS PAID BY SIMILARLY SITUATED NOT-FOR-PROFIT CORPORATIONS AS DEFINED
17 IN SECTION ONE HUNDRED TWO OF THIS CHAPTER; THE AVAILABILITY OF SIMILAR
18 SERVICES IN THE GEOGRAPHIC AREA OF THE APPLICABLE PROVIDER OF SERVICES;
19 CURRENT COMPENSATION SURVEYS COMPILED BY INDEPENDENT FIRMS; AND ACTUAL
20 WRITTEN OFFERS FROM SIMILAR INSTITUTIONS COMPETING FOR THE SERVICES OF
21 THE APPLICABLE EXECUTIVE.

22 (A) FOR PURPOSES OF THIS PARAGRAPH, CONTROL BY AN APPLICABLE NOT-FOR-
23 PROFIT CORPORATION MEANS:

24 (I) IN THE CASE OF A STOCK CORPORATION, OWNERSHIP (BY VOTE OR VALUE)
25 OF MORE THAN FIFTY PERCENT OF THE STOCK IN SUCH CORPORATION;

26 (II) IN THE CASE OF A PARTNERSHIP, OWNERSHIP OF MORE THAN FIFTY
27 PERCENT OF THE PROFITS INTERESTS OR CAPITAL INTERESTS IN THE PARTNER-
28 SHIP;

29 (III) IN THE CASE OF A NONSTOCK ORGANIZATION (I.E., AN ENTITY IN WHICH
30 NO PERSON HOLDS A PROPRIETARY INTEREST), THAT AT LEAST FIFTY PERCENT OF
31 THE DIRECTORS OR TRUSTEES OF THE NOT-FOR-PROFIT CORPORATION ARE EITHER
32 REPRESENTATIVES (INCLUDING TRUSTEES, DIRECTORS, AGENTS, OR EMPLOYEES)
33 OF, OR DIRECTLY OR INDIRECTLY CONTROLLED BY, AN APPLICABLE TAX-EXEMPT
34 ORGANIZATION; OR

35 (IV) IN THE CASE OF ANY OTHER ENTITY, OWNERSHIP OF MORE THAN FIFTY
36 PERCENT OF THE BENEFICIAL INTEREST IN THE ENTITY.

37 (3) THE GOVERNING BODY ADEQUATELY DOCUMENTED THE BASIS FOR ITS DETER-
38 MINATION CONCURRENTLY WITH MAKING THAT DETERMINATION.

39 (A) FOR A DECISION TO BE DOCUMENTED ADEQUATELY, THE WRITTEN OR ELEC-
40 TRONIC RECORDS OF THE GOVERNING BODY MUST NOTE:

41 (I) THE TERMS OF THE TRANSACTION THAT WAS APPROVED, AND THE DATE IT
42 WAS APPROVED;

43 (II) THE MEMBERS OF THE GOVERNING BODY WHO WERE PRESENT DURING DEBATE
44 ON THE TRANSACTION THAT WAS APPROVED, AND THOSE WHO VOTED ON IT;

45 (III) THE COMPARABILITY DATA OBTAINED AND RELIED UPON BY THE GOVERNING
46 BODY, AND HOW THE DATA WAS OBTAINED; AND

47 (IV) ANY ACTIONS TAKEN WITH RESPECT TO CONSIDERATION OF THE TRANS-
48 ACTION BY ANYONE WHO IS OTHERWISE A MEMBER OF THE GOVERNING BODY BUT WHO
49 HAD A CONFLICT OF INTEREST WITH RESPECT TO THE TRANSACTION.

50 (B) IF THE GOVERNING BODY DETERMINES THAT THE EXECUTIVE'S COMPENSATION
51 FOR A SPECIFIC ARRANGEMENT IS HIGHER OR LOWER THAN THE RANGE OF COMPAR-
52 ABILITY DATA OBTAINED, THE GOVERNING BODY MUST RECORD THE BASIS FOR ITS
53 DETERMINATION. FOR A DECISION TO BE DOCUMENTED CONCURRENTLY RECORDS MUST
54 BE PREPARED BEFORE THE LATER OF THE NEXT MEETING OF THE GOVERNING BODY
55 OR SIXTY DAYS AFTER THE FINAL ACTION OR ACTIONS OF THE GOVERNING BODY
56 ARE TAKEN. RECORDS MUST BE REVIEWED AND APPROVED BY THE GOVERNING BODY

1 AS REASONABLE, ACCURATE AND COMPLETE WITHIN A REASONABLE TIME PERIOD
2 THEREAFTER.

3 (4) THE COMPENSATION PROVIDED TO THE EXECUTIVE BY THE GOVERNING BODY
4 DOES NOT EXCEED THE HIGHEST COMPENSATION PROVIDED BY A SIMILARLY SITU-
5 ATED ORGANIZATION FOR SIMILAR SERVICES, AS IDENTIFIED IN THE COMPARABIL-
6 ITY DATA, BY MORE THAN TWENTY PERCENT.

7 (E) IF THE FOUR CONDITIONS OF PARAGRAPH (D) OF THIS SECTION ARE SATIS-
8 FIED, THEN THE PERSON OR ENTITY BRINGING AN ACTION FOR RELIEF PURSUANT
9 TO SECTION SEVEN HUNDRED TWENTY-SEVEN OF THIS ARTICLE MAY REBUT THE
10 PRESUMPTION THAT ARISES UNDER PARAGRAPH (D) OF THIS SECTION ONLY IF IT
11 DEVELOPS SUFFICIENT CONTRARY EVIDENCE TO REBUT THE PROBATIVE VALUE OF
12 THE COMPARABILITY DATA RELIED UPON BY THE GOVERNING BODY. WITH RESPECT
13 TO ANY FIXED PAYMENT, REBUTTAL EVIDENCE IS LIMITED TO EVIDENCE RELATING
14 TO FACTS AND CIRCUMSTANCES EXISTING ON THE DATE THE PARTIES ENTER INTO
15 THE CONTRACT PURSUANT TO WHICH THE PAYMENT IS MADE (EXCEPT IN THE EVENT
16 OF SUBSTANTIAL NONPERFORMANCE). WITH RESPECT TO ALL OTHER PAYMENTS,
17 REBUTTAL EVIDENCE MAY INCLUDE FACTS AND CIRCUMSTANCES UP TO AND INCLUD-
18 ING THE DATE OF PAYMENT.

19 (F) A NOT-FOR-PROFIT IS PROHIBITED FROM, AND MAY THUS BE REFERRED TO
20 THE ATTORNEY GENERAL FOR FURTHER INQUIRY TO BE OFFICIALLY RESPONDED TO
21 WITHIN NINETY DAYS OF RECEIPT, BY THE PERSON OR ENTITY BRINGING AN
22 ACTION FOR RELIEF PURSUANT TO SECTION SEVEN HUNDRED TWENTY-SEVEN OF THIS
23 ARTICLE: (1) ENGAGING IN ANY ACT THAT THE INTERNAL REVENUE SERVICE
24 DETERMINES CONSTITUTES AN "EXCESS BENEFIT TRANSACTION" UNDER SECTION
25 4958 OF THE INTERNAL REVENUE CODE; OR (2) ENGAGING IN ANY ACT THAT WOULD
26 CONSTITUTE AN "EXCESS BENEFIT TRANSACTION" UNDER THE STANDARDS OF
27 SECTION 4958 OF THE INTERNAL REVENUE CODE.

28 S 18. Section 104-A of the not-for-profit corporation law, as added by
29 chapter 591 of the laws of 1982, paragraphs (a), (c), (d), (e), (g),
30 (l), (m), (n) and (p) as amended by chapter 166 of the laws of 1991 and
31 paragraph (r) as amended by chapter 198 of the laws of 1984, is amended
32 to read as follows:

33 S 104-A. Fees.

34 Except as otherwise provided, the department of state shall collect
35 the following fees pursuant to this chapter:

36 (a) For filing a certificate of type of not-for-profit corporation
37 pursuant to section one hundred thirteen of this chapter, thirty
38 dollars.

39 (b) For the reservation of a corporate name pursuant to section three
40 hundred three of this chapter, ten dollars.

41 (c) For the resignation of a registered agent for service of process
42 pursuant to section three hundred five of this chapter, thirty dollars.

43 (d) For service of process on the secretary of state pursuant to
44 section three hundred six or three hundred seven of this chapter, forty
45 dollars. If the service is in an action brought solely to recover a sum
46 of money not in excess of two hundred dollars and the process is so
47 endorsed, or the process is served on behalf of a county, city, town or
48 village or other subdivision of the state, ten dollars.

49 (e) For filing a certificate of incorporation pursuant to section four
50 hundred two of this chapter, [seventy-five] EIGHTY-FIVE dollars.

51 (f) For filing a certificate of amendment pursuant to section eight
52 hundred three of this chapter, [thirty] FORTY dollars.

53 (g) For filing a certificate of change pursuant to section eight
54 hundred three-A of this chapter, [twenty] THIRTY dollars.

55 (h) For filing a restated certificate of incorporation pursuant to
56 section eight hundred five of this chapter, [thirty] FORTY dollars.

1 (i) For filing a certificate of merger or consolidation pursuant to
2 section nine hundred four of this chapter, [thirty] FORTY dollars.

3 (j) For filing a certificate of merger or consolidation of domestic
4 and foreign corporations pursuant to section nine hundred six of this
5 chapter, [thirty] FORTY dollars.

6 (k) For filing a certified copy of an order of approval of the
7 supreme court pursuant to section nine hundred seven of this chapter,
8 thirty dollars.

9 (l) For filing a certificate of dissolution pursuant to section one
10 thousand three of this chapter, thirty dollars.

11 (m) For filing a certificate of annulment of dissolution pursuant to
12 section one thousand twelve of this chapter, [thirty] FORTY dollars.

13 (n) For filing an application by a foreign corporation for authority
14 to do business in New York state pursuant to section thirteen hundred
15 four of this chapter, one hundred [thirty-five] FORTY-FIVE dollars.

16 (o) For filing a certificate of amendment of an application for
17 authority by a foreign corporation pursuant to section thirteen hundred
18 nine of this chapter, [thirty] FORTY dollars.

19 (p) For filing a certificate of change of application for authority by
20 a foreign corporation pursuant to section thirteen hundred ten of this
21 chapter, [twenty] THIRTY dollars.

22 (q) For filing a certificate of surrender of authority pursuant to
23 section thirteen hundred eleven of this chapter, thirty dollars.

24 (r) For filing a statement of the termination of existence of a
25 foreign corporation pursuant to section thirteen hundred twelve of this
26 chapter, thirty dollars. There shall be no fee for the filing by an
27 authorized officer of the jurisdiction of incorporation of a foreign
28 corporation of a certificate that the foreign corporation has been
29 dissolved or its authority or existence has been otherwise terminated or
30 cancelled in the jurisdiction of its incorporation.

31 (s) For filing any other certificate or instrument, thirty dollars.

32 S 19. The not-for-profit corporation law is amended by adding a new
33 section 116 to read as follows:

34 S 116. STATE BOARD TRAINING CONSORTIUM.

35 (A) NOT-FOR-PROFIT BOARD MEMBERS ARE ENTRUSTED WITH THE OVERALL
36 MANAGEMENT AND OVERSIGHT OF NON-PROFITS AND HAVE LEGAL AND ETHICAL OBLI-
37 GATIONS TO KEEP THEMSELVES FULLY INFORMED REGARDING THEIR ORGANIZATION,
38 ITS FINANCES AND ITS OVERALL OPERATION AND IN ASSURING THAT PROGRAM
39 STAFF AND ADMINISTRATION EFFECTIVELY CARRY OUT THE ORGANIZATION'S
40 MISSION. THE STATE BOARD TRAINING CONSORTIUM IS INTENDED TO EMPOWER
41 BOARD MEMBERS OF NOT-FOR-PROFIT ORGANIZATIONS WHO CONTRACT WITH THE
42 STATE OF NEW YORK WITH THE INFORMATION AND TOOLS NECESSARY TO CARRY OUT
43 THEIR VERY IMPORTANT RESPONSIBILITIES, ROLES AND OBLIGATIONS. THE STATE
44 BOARD TRAINING CONSORTIUM WILL BE A COMPREHENSIVE STATE-WIDE TRAINING
45 EFFORT, DELIVERED REGIONALLY, IN-PERSON, TOGETHER WITH A NUMBER OF
46 TAILORED AGENCY SPECIFIC ONSITE TRAININGS, SOME VIRTUAL WEBINARS, AND
47 THE LIKE, AND STATE WORKFORCE TRAININGS ON THE SAME OR SIMILAR SUBJECTS.
48 ANY TRAINING CONDUCTED UNDER THE AUSPICES OF THE STATE BOARD TRAINING
49 CONSORTIUM WILL BE FREE TO VERIFIED MEMBERS OF NOT-FOR-PROFIT BOARDS OF
50 DIRECTORS WHO CONTRACT WITH THE STATE OF NEW YORK.

51 1. FEES GENERATED FROM THE TEN DOLLAR INCREASE IN THE FILING FEES
52 ASSOCIATED WITH CERTIFICATES OF INCORPORATION, AMENDMENT, CHANGE, MERGER
53 OR CONSOLIDATION, ANNULMENT OF DISSOLUTION, AUTHORITY BY A FOREIGN
54 CORPORATION, AN AMENDMENT OF SAME OR A CHANGE IN THE AUTHORITY OF A
55 FOREIGN CORPORATION PROMULGATED BY A CHAPTER OF THE LAWS OF 2012, SHALL
56 BE USED TO FUND THE STATE BOARD TRAINING CONSORTIUM.

2. SAID FEES SHALL BE MAINTAINED IN THE STATE BOARD TRAINING CONSORTIUM FUND, AS ESTABLISHED BY SECTION NINETY-SEVEN-J OF THE STATE FINANCE LAW, TO SUPPORT THE STATE BOARD TRAINING CONSORTIUM ESTABLISHED BY THIS SECTION.

(B) THE STATE BOARD TRAINING CONSORTIUM SHALL BE ADMINISTERED BY THE DEPARTMENT OF STATE THROUGH A CONTRACT UNDER COUNSEL'S OFFICE. A QUALIFIED NOT-FOR-PROFIT CORPORATION WILL BE CONTRACTED WITH BY THE DEPARTMENT OF STATE TO PROVIDE THE TRAINING AND ASSOCIATED SERVICES DELIVERED UNDER THE STATE BOARD TRAINING CONSORTIUM, TOGETHER WITH MANAGING ALL DAY-TO-DAY OPERATIONS, MARKETING EFFORTS, CURRICULUM UPDATES, PRINTING AND RECORD-KEEPING. THE CONTRACT SHALL HAVE A FIVE YEAR TERM, RENEWABLE FOR THREE ADDITIONAL YEARS, AND A STANDARD REQUEST FOR PROPOSALS/REQUEST FOR QUALIFICATIONS PROCESS WILL BE UTILIZED AT THE INCEPTION OF EACH CONTRACT.

(1) THE COMMISSIONERS OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, OFFICE OF MENTAL HEALTH, OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, OFFICE OF CHILDREN AND FAMILY SERVICES, AND DEPARTMENT OF HEALTH, HAVING PRIOR EXPERIENCE IN THE STATE BOARD TRAINING CONSORTIUM AS ADMINISTERED BY OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, AND THE DEPARTMENT OF HEALTH, AIDS INSTITUTE, SHALL JOINTLY:

(I) DEVELOP A CONTRACT FOR THE STATE BOARD TRAINING CONSORTIUM ALONG THE LINES ALREADY PROMULGATED BY THEIR AGENCIES;

(II) ESTABLISH UNIFORM PROCEDURES TO MONITOR ATTENDANCE AT TRAININGS CONDUCTED UNDER THE STATE BOARD TRAINING CONSORTIUM AND IN REPORTING THE SAME TO THE ATTENDING BOARDS OF DIRECTORS.

(2) THE COMMISSIONERS OF OTHER AGENCIES, INCLUDING BUT NOT LIMITED TO THE OFFICE FOR AGING, DEPARTMENT OF AGRICULTURE AND MARKETS, COUNCIL ON ARTS, OFFICE OF COURT ADMINISTRATION, DIVISION OF CRIMINAL JUSTICE SERVICES, EMPIRE STATE DEVELOPMENT, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OFFICE OF GENERAL SERVICES, NEW YORK STATE CANAL CORPORATION AND THE OFFICE OF TEMPORARY DISABILITY ASSISTANCE SHALL ESTABLISH PROCEDURES TO MONITOR ATTENDANCE AT TRAININGS CONDUCTED UNDER THE STATE BOARD TRAINING CONSORTIUM AND IN REPORTING THE SAME TO THE ATTENDING BOARDS OF DIRECTORS.

(C) ALL NOT-FOR-PROFIT CORPORATIONS THAT CONTRACT WITH THE STATE OF NEW YORK MAY ATTEND THE STATE BOARD TRAINING CONSORTIUM TRAININGS FREE OF CHARGE.

S 20. The state finance law is amended by adding a new section 97-j to read as follows:

S 97-J. STATE BOARD TRAINING CONSORTIUM FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMMISSIONER OF TAXATION AND FINANCE AND THE COMPTROLLER A FUND TO BE KNOWN AS THE "STATE BOARD TRAINING CONSORTIUM FUND."

2. SUCH FUND SHALL CONSIST OF FEES GENERATED FROM THE TEN DOLLAR INCREASE IN FILING FEES IN PARAGRAPHS (E), (F), (G), (H), (I), (J), (M), (N), (O) AND (P) OF SECTION ONE HUNDRED FOUR-A OF THE NOT-FOR-PROFIT CORPORATION LAW, ASSOCIATED WITH CERTIFICATES OF INCORPORATION, AMENDMENT, CHANGE, MERGER OR CONSOLIDATION, ANNULMENT OF DISSOLUTION, AUTHORITY BY A FOREIGN CORPORATION, AN AMENDMENT OF SAME OR A CHANGE IN THE AUTHORITY OF A FOREIGN CORPORATION, PROMULGATED BY THE CHAPTER OF THE LAWS OF TWO THOUSAND TWELVE THAT ADDED THIS SECTION, AND ALL OTHER MONEYS CREDITED OR APPROPRIATED FOR TRANSFER THERETO FROM ANY OTHER FUND OR SOURCE ACCORDING TO LAW.

3. MONEYS IN THE STATE BOARD TRAINING CONSORTIUM FUND SHALL BE KEPT SEPARATE AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTO-

1 DY OF THE STATE COMPTROLLER. MONEYS IN THE FUND MAY BE INVESTED BY THE
2 COMPTROLLER PURSUANT TO THE PROVISIONS OF SECTION NINETY-EIGHT-A OF THIS
3 ARTICLE AND ANY INCOME RECEIVED BY THE COMPTROLLER FROM SUCH INVESTMENTS
4 SHALL BE ADDED TO AND BECOME PART OF, AND SHALL BE USED FOR THE PURPOSES
5 OF SUCH FUND. ALL DEPOSITS OF SUCH MONEY SHALL, IF REQUIRED BY THE COMP-
6 TROLLER, BE SECURED BY OBLIGATIONS OF THE UNITED STATES OR OF THE STATE
7 OF MARKET VALUE EQUAL AT ALL TIMES TO THE AMOUNT OF THE DEPOSIT AND ALL
8 BANKS AND TRUST COMPANIES ARE AUTHORIZED TO GIVE SUCH SECURITIES FOR
9 SUCH DEPOSITS.

10 4. MONEYS IN THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE,
11 SHALL BE ALLOCATED UPON A CERTIFICATE OF APPROVAL OF AVAILABILITY BY THE
12 DIRECTOR OF THE BUDGET SOLELY FOR THE PURPOSES SET FORTH IN THIS
13 SECTION.

14 5. ALL MONEYS IN THE FUND SHALL BE MADE AVAILABLE PURSUANT TO APPRO-
15 PRIATION FOR USE IN FUNDING THE STATE BOARD TRAINING CONSORTIUM ESTAB-
16 LISHED PURSUANT TO SECTION ONE HUNDRED SIXTEEN OF THE NOT-FOR-PROFIT
17 CORPORATION LAW.

18 S 21. (a) This act shall take effect on the one hundred eightieth day
19 after it shall have become law.

20 (b) The commissioners of the office for people with developmental
21 disabilities, office of mental health, office of alcoholism and
22 substance abuse services, office of children and family services,
23 department of health, office for the aging, and the division of criminal
24 justice services shall immediately take the necessary actions to ensure
25 that forms and regulations required by section nine of this act are in
26 place on such effective date. Further, whereas the authority to promul-
27 gate regulations and make rules is derived from an express or implicit
28 statutory grant provided by the legislature, all agencies, divisions and
29 departments of the state are hereby prohibited from promulgating regu-
30 lations and making rules pursuant to 9 NYCRR 8.38, or that otherwise
31 address the extent and nature of a provider's administrative costs and
32 executive compensation, except as required and necessary to implement
33 the provisions of section six of this act.

34 (c) Absent explicit language expressly and unequivocally stating a
35 legislative intent to the contrary, all provisions of this act are irre-
36 futably presumed to operate in a wholly prospective manner. Provisions
37 shall be considered to operate retroactively, and therefore in violation
38 of this act, if applied in such a manner as to alter, change, affect,
39 impair or defeat any rights, obligations, duties or interests accrued,
40 incurred or conferred prior to the effective date of this act. Further-
41 more, the provisions of this act shall neither apply to, nor be applied
42 based upon the occasion of, acts occurring prior to it becoming law.