

S. 2987

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2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

February 4, 2011

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

IN ASSEMBLY -- Introduced by M. of A. CANESTRARI, ENGLEBRIGHT, CALHOUN, CUSICK, JAFFEE -- Multi-Sponsored by -- M. of A. ABBATE, COOK, MAGEE, MAGNARELLI, MARKEY, McENENY, MORELLE, PRETLOW, TOBACCO -- read once and referred to the Committee on Higher Education

AN ACT to amend the business corporation law and the education law, in relation to design professional service corporations

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

- 1 Section 1. Section 1501 of the business corporation law, as added by
2 chapter 974 of the laws of 1970, is amended to read as follows:
3 S 1501. Definitions.
4 As used in this article, unless the context otherwise requires, the
5 term: (a) "licensing authority" means the regents of the university of
6 the state of New York or the state education department, as the case may
7 be, in the case of all professions licensed under title eight of the
8 education law, and the appropriate appellate division of the supreme
9 court in the case of the profession of law.
10 (b) "Profession" includes any practice as an attorney and counselor-
11 at-law, or as a licensed physician, and those occupations designated in
12 title eight of the education law.
13 (c) "Professional service" means any type of service to the public
14 which may be lawfully rendered by a member of a profession within the
15 purview of his profession.
16 (d) "Professional service corporation" means a corporation organized
17 under this article.
18 (e) "DESIGN PROFESSIONAL SERVICE CORPORATION" MEANS A CORPORATION
19 ORGANIZED UNDER THIS ARTICLE PRACTICING PROFESSIONAL ENGINEERING, ARCHI-

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

LBD06069-01-1

1 TECTURE, LANDSCAPE ARCHITECTURE, OR LAND SURVEYING, OR PRACTICING ANY
2 COMBINATION OF SUCH PROFESSIONS, FIRST ORGANIZED ON OR AFTER JANUARY
3 FIRST, TWO THOUSAND TWELVE. THE PROVISIONS OF THIS ARTICLE APPLICABLE
4 TO PROFESSIONAL SERVICE CORPORATIONS SHALL APPLY TO DESIGN PROFESSIONAL
5 SERVICE CORPORATIONS EXCEPT TO THE EXTENT THAT ANY PROVISION IS EITHER
6 INCONSISTENT WITH A PROVISION EXPRESSLY APPLYING TO DESIGN PROFESSIONAL
7 SERVICE CORPORATIONS OR NOT RELEVANT THERETO.

8 (F) "DESIGN PROFESSIONAL" MEANS AN INDIVIDUAL LICENSED AND REGISTERED
9 PURSUANT TO TITLE EIGHT OF THE EDUCATION LAW TO PRACTICE PROFESSIONAL
10 ENGINEERING, ARCHITECTURE, LANDSCAPE ARCHITECTURE OR LAND SURVEYING.

11 (G) "EMPLOYEE STOCK OWNERSHIP PLAN" (ESOP) MEANS A DEFINED CONTRIB-
12 UTION PLAN ESTABLISHED PURSUANT TO SECTION 4975(E)(7) OF THE INTERNAL
13 REVENUE CODE.

14 (H) "Officer" does not include the secretary or an assistant secretary
15 of a corporation having only one shareholder.

16 S 2. Paragraphs (a), (d) and (f) of section 1503 of the business
17 corporation law, paragraphs (a) and (f) as added by chapter 974 of the
18 laws of 1970 and paragraph (d) as amended by chapter 109 of the laws of
19 1975, are amended and four new paragraphs (b-1), (b-2), (b-3) and (b-4)
20 are added to read as follows:

21 (a) Notwithstanding any other provision of law, one or more individ-
22 uals duly authorized by law to render the same professional service
23 within the state may organize, or cause to be organized, a professional
24 service corporation for pecuniary profit under this article for the
25 purpose of rendering the same professional service, except that one or
26 more individuals duly authorized by law to practice professional engi-
27 neering, architecture, landscape architecture or land surveying within
28 the state may organize, or cause to be organized, a professional service
29 corporation OR A DESIGN PROFESSIONAL SERVICE CORPORATION for pecuniary
30 profit under this article for the purpose of rendering such professional
31 services as such individuals are authorized to practice.

32 (B-1) THE CERTIFICATE OF INCORPORATION OF A DESIGN PROFESSIONAL
33 SERVICE CORPORATION SHALL MEET THE REQUIREMENTS OF THIS CHAPTER,
34 PROVIDED THAT SHAREHOLDERS MAY INCLUDE EMPLOYEE STOCK OWNERSHIP PLANS
35 (ESOPS) AND EMPLOYEES OF THE CORPORATION NOT LICENSED AS DESIGN PROFES-
36 SIONALS, AND PROVIDED FURTHER HOWEVER THAT:

37 (I) GREATER THAN SEVENTY-FIVE PERCENT OF THE OUTSTANDING SHARES OF
38 STOCK OF THE CORPORATION ARE OWNED BY DESIGN PROFESSIONALS,

39 (II) AN ESOP, EITHER IN PART OR IN ITS ENTIRETY, SHALL NOT CONSTITUTE
40 PART OF THE GREATER THAN SEVENTY-FIVE PERCENT OWNED BY DESIGN PROFES-
41 SIONALS,

42 (III) GREATER THAN SEVENTY-FIVE PERCENT OF THE DIRECTORS ARE DESIGN
43 PROFESSIONALS,

44 (IV) GREATER THAN SEVENTY-FIVE PERCENT OF THE OFFICERS ARE DESIGN
45 PROFESSIONALS,

46 (V) THE PRESIDENT, THE CHAIRPERSON OF THE BOARD OF DIRECTORS AND THE
47 CHIEF EXECUTIVE OFFICER OR OFFICERS ARE DESIGN PROFESSIONALS, AND

48 (VI) THE SINGLE LARGEST SHAREHOLDER IS EITHER A DESIGN PROFESSIONAL OR
49 AN ESOP WITH GREATER THAN SEVENTY-FIVE PERCENT OF THE PLAN'S VOTING
50 TRUSTEES BEING DESIGN PROFESSIONALS AND GREATER THAN SEVENTY-FIVE
51 PERCENT OF THE PLAN'S COMMITTEE MEMBERS BEING DESIGN PROFESSIONALS.

52 (B-2) THE CERTIFICATE OF INCORPORATION OF A DESIGN PROFESSIONAL
53 SERVICE CORPORATION SHALL:

54 (I) STATE THE PROFESSION OR PROFESSIONS TO BE PRACTICED BY SUCH CORPO-
55 RATION,

1 (II) STATE THE NAMES AND RESIDENCE ADDRESSES OF ALL INDIVIDUALS OR
2 ESOPS WHO ARE TO BE THE ORIGINAL SHAREHOLDERS, DIRECTORS AND OFFICERS OF
3 SUCH CORPORATION,

4 (III) INDICATE THE PROFESSION OR PROFESSIONS OF EACH ORIGINAL SHARE-
5 HOLDER, DIRECTOR AND OFFICER WHO IS A DESIGN PROFESSIONAL,

6 (IV) STATE THE OWNERSHIP INTEREST OF EACH ORIGINAL SHAREHOLDER, AND

7 (V) INDICATE THE NAMES OF THE ORIGINAL OFFICERS AND DIRECTORS WHO ARE
8 THE PRESIDENT, THE CHAIRPERSON OF THE BOARD OF DIRECTORS AND THE CHIEF
9 EXECUTIVE OFFICER OR OFFICERS.

10 (B-3) THE CERTIFICATE OF INCORPORATION OF A DESIGN PROFESSIONAL
11 SERVICE CORPORATION SHALL HAVE ATTACHED THERETO A CERTIFICATE OR CERTIF-
12 ICATES ISSUED BY THE LICENSING AUTHORITY CERTIFYING THAT EACH OF THE
13 PROPOSED SHAREHOLDERS, DIRECTORS AND OFFICERS WHO IS LISTED AS A DESIGN
14 PROFESSIONAL IS AUTHORIZED BY LAW TO PRACTICE A PROFESSION WHICH THE
15 CORPORATION IS BEING ORGANIZED TO PRACTICE AND, IF APPLICABLE, THAT ONE
16 OR MORE OF SUCH INDIVIDUALS IS AUTHORIZED TO PRACTICE EACH PROFESSION
17 WHICH THE CORPORATION WILL BE AUTHORIZED TO PRACTICE. THE ATTACHED
18 CERTIFICATE OR CERTIFICATES SHALL ALSO CERTIFY THAT THE PRESIDENT, THE
19 CHAIRPERSON OF THE BOARD OF DIRECTORS AND THE CHIEF EXECUTIVE OFFICER OR
20 OFFICERS ARE AUTHORIZED BY LAW TO PRACTICE A PROFESSION WHICH THE CORPO-
21 RATION IS BEING ORGANIZED TO PRACTICE.

22 (B-4) THE CERTIFICATE OF INCORPORATION OF A DESIGN PROFESSIONAL
23 SERVICE CORPORATION SHALL ALSO HAVE ATTACHED THERETO A CERTIFICATE OR
24 CERTIFICATES ISSUED BY THE LICENSING AUTHORITY CERTIFYING THAT EACH OF
25 THE SHAREHOLDERS, OFFICERS, DIRECTORS AND OWNERS HAVE BEEN DEEMED TO
26 HAVE BEEN OF GOOD MORAL CHARACTER AS MAY BE ESTABLISHED BY THE REGU-
27 LATIONS OF THE COMMISSIONER OF EDUCATION.

28 (d) A professional service corporation, INCLUDING A DESIGN PROFES-
29 SIONAL SERVICE CORPORATION, other than a corporation authorized to prac-
30 tice law, shall be under the supervision of the regents of the universi-
31 ty of the state of New York and be subject to disciplinary proceedings
32 and penalties, and its certificate of incorporation shall be subject to
33 suspension, revocation or annulment for cause, in the same manner and to
34 the same extent as is provided with respect to individuals and their
35 licenses, certificates, and registrations in title eight of the educa-
36 tion law relating to the applicable profession. Notwithstanding the
37 provisions of this [subdivision] PARAGRAPH, a professional service
38 corporation authorized to practice medicine shall be subject to the
39 prehearing procedures and hearing procedures as is provided with respect
40 to individual physicians and their licenses in [Title] TITLE II-A of
41 article two of the public health law.

42 (f) The order of suspension, revocation or annulment of the certif-
43 icate of incorporation of a professional service corporation pursuant to
44 [subdivisions (e) and (f)] PARAGRAPHS (D) AND (E) of this section shall
45 be effective upon the filing of such order with the department of state.

46 S 3. Paragraphs (a) and (b) of section 1504 of the business corpo-
47 ration law, as added by chapter 974 of the laws of 1970, are amended to
48 read as follows:

49 (a) No professional service corporation, INCLUDING A DESIGN PROFES-
50 SIONAL SERVICE CORPORATION, may render professional services except
51 through individuals authorized by law to render such professional
52 services as individuals.

53 (b) Each final plan and report made or issued by a corporation prac-
54 ticing ONE OR MORE OF THE PROFESSIONS OF professional engineering,
55 architecture, landscape architecture or land surveying shall bear the
56 name and seal of one or more professional engineers, architects, land-

scape architects, or land surveyors, respectively, who are in responsible charge of such plan or report.

S 4. Sections 1505 and 1506 of the business corporation law, as added by chapter 974 of the laws of 1970, are amended to read as follows:

S 1505. Professional relationships and liabilities.

(a) Each shareholder, employee or agent of a professional service corporation AND A DESIGN PROFESSIONAL SERVICE CORPORATION shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or by any person under his direct supervision and control while rendering professional services on behalf of such corporation.

(b) The relationship of an individual to a professional service corporation OR A DESIGN PROFESSIONAL SERVICE CORPORATION with which such individual is associated, whether as shareholder, director, officer, employee or agent, shall not modify or diminish the jurisdiction over him of the licensing authority and in the case of an attorney and counsellor-at-law, the other courts of this state.

S 1506. Purposes of incorporation.

No professional service corporation OR DESIGN PROFESSIONAL SERVICE CORPORATION shall engage in any business other than the rendering of the professional services for which it was incorporated; provided that such corporation may invest its funds in real estate, mortgages, stocks, bonds or any other type of investments.

S 5. Section 1507 of the business corporation law, as amended by chapter 1022 of the laws of 1971, is amended to read as follows:

S 1507. Issuance of shares.

(A) A professional service corporation may issue shares only to individuals who are authorized by law to practice in this state a profession which such corporation is authorized to practice and who are or have been engaged in the practice of such profession in such corporation or a predecessor entity, or who will engage in the practice of such profession in such corporation within thirty days of the date such shares are issued. No shareholder of a professional service corporation shall enter into a voting trust agreement, proxy, or any other type agreement vesting in another person, other than another shareholder of the same corporation or a person who would be eligible to become a shareholder if employed by the corporation, the authority to exercise voting power of any or all of his shares. All shares issued, agreements made, or proxies granted in violation of this section shall be void.

(B) A DESIGN PROFESSIONAL SERVICE CORPORATION MAY ISSUE SHARES TO INDIVIDUALS WHO ARE AUTHORIZED BY LAW TO PRACTICE IN THIS STATE A PROFESSION WHICH SUCH CORPORATION IS AUTHORIZED TO PRACTICE AND WHO ARE OR HAVE BEEN ENGAGED IN THE PRACTICE OF SUCH PROFESSION IN SUCH CORPORATION OR A PREDECESSOR ENTITY, OR WHO WILL ENGAGE IN THE PRACTICE OF SUCH PROFESSION IN SUCH CORPORATION WITHIN THIRTY DAYS OF THE DATE SUCH SHARES ARE ISSUED. A DESIGN PROFESSIONAL SERVICE CORPORATION MAY ALSO ISSUE SHARES TO EMPLOYEE STOCK OWNERSHIP PLANS (ESOPS) AND EMPLOYEES OF THE CORPORATION NOT LICENSED AS DESIGN PROFESSIONALS, PROVIDED THAT:

(I) GREATER THAN SEVENTY-FIVE PERCENT OF THE OUTSTANDING SHARES OF STOCK OF THE CORPORATION ARE OWNED BY DESIGN PROFESSIONALS,

(II) AN ESOP, EITHER IN PART OR IN ITS ENTIRETY, SHALL NOT CONSTITUTE PART OF THE GREATER THAN SEVENTY-FIVE PERCENT OWNED BY DESIGN PROFESSIONALS,

(III) GREATER THAN SEVENTY-FIVE PERCENT OF THE DIRECTORS ARE DESIGN PROFESSIONALS,

1 (IV) GREATER THAN SEVENTY-FIVE PERCENT OF THE OFFICERS ARE DESIGN
2 PROFESSIONALS,

3 (V) THE PRESIDENT, THE CHAIRPERSON OF THE BOARD OF DIRECTORS AND THE
4 CHIEF EXECUTIVE OFFICER OR OFFICERS ARE DESIGN PROFESSIONALS, AND

5 (VI) THE SINGLE LARGEST SHAREHOLDER IS EITHER A DESIGN PROFESSIONAL OR
6 AN ESOP WITH GREATER THAN SEVENTY-FIVE PERCENT OF THE PLAN'S VOTING
7 TRUSTEES BEING DESIGN PROFESSIONALS AND GREATER THAN SEVENTY-FIVE
8 PERCENT OF THE PLAN'S COMMITTEE MEMBERS BEING DESIGN PROFESSIONALS.

9 NO SHAREHOLDER OF A DESIGN PROFESSIONAL SERVICE CORPORATION SHALL
10 ENTER INTO A VOTING TRUST AGREEMENT, PROXY OR ANY OTHER TYPE OF AGREE-
11 MENT VESTING IN ANOTHER PERSON, OTHER THAN ANOTHER SHAREHOLDER OF THE
12 SAME CORPORATION, THE AUTHORITY TO EXERCISE VOTING POWER OF ANY OR ALL
13 OF HIS OR HER SHARES. ALL SHARES ISSUED, AGREEMENTS MADE OR PROXIES
14 GRANTED IN VIOLATION OF THIS SECTION SHALL BE VOID.

15 S 6. Sections 1508 and 1509 of the business corporation law, as added
16 by chapter 974 of the laws of 1970, are amended to read as follows:
17 S 1508. Directors and officers.

18 (A) No individual may be a director or officer of a professional
19 service corporation unless he is authorized by law to practice in this
20 state a profession which such corporation is authorized to practice and
21 is either a shareholder of such corporation or engaged in the practice
22 of his profession in such corporation.

23 (B) THE DIRECTORS AND OFFICERS OF A DESIGN PROFESSIONAL SERVICE CORPO-
24 RATION MAY INCLUDE INDIVIDUALS WHO ARE NOT DESIGN PROFESSIONALS,
25 PROVIDED HOWEVER THAT GREATER THAN SEVENTY-FIVE PERCENT OF THE DIREC-
26 TORS, GREATER THAN SEVENTY-FIVE PERCENT OF THE OFFICERS AND THE PRESI-
27 DENT, THE CHAIRPERSON OF THE BOARD OF DIRECTORS AND THE CHIEF EXECUTIVE
28 OFFICER OR OFFICERS ARE AUTHORIZED BY LAW TO PRACTICE IN THIS STATE A
29 PROFESSION WHICH SUCH CORPORATION IS AUTHORIZED TO PRACTICE, AND ARE
30 EITHER SHAREHOLDERS OF SUCH CORPORATION OR ENGAGED IN THE PRACTICE OF
31 THEIR PROFESSIONS IN SUCH CORPORATION.

32 S 1509. Disqualification of shareholders, directors, officers and
33 employees.

34 If any shareholder, director, officer or employee of a professional
35 service corporation, INCLUDING A DESIGN PROFESSIONAL SERVICE CORPO-
36 RATION, who has been rendering professional service to the public
37 becomes legally disqualified to practice his profession within this
38 state, he shall sever all employment with, and financial interests
39 (other than interests as a creditor) in, such corporation forthwith or
40 as otherwise provided in section 1510 OF THIS ARTICLE. All provisions of
41 law regulating the rendering of professional services by a person
42 elected or appointed to a public office shall be applicable to a share-
43 holder, director, officer and employee of such corporation in the same
44 manner and to the same extent as if fully set forth herein. Such legal
45 disqualification to practice his profession within this state shall be
46 deemed to constitute an irrevocable offer by the disqualified sharehold-
47 er to sell his shares to the corporation, pursuant to the provisions of
48 section 1510 OF THIS ARTICLE or of the certificate of incorporation,
49 by-laws or agreement among the corporation and all shareholders, which-
50 ever is applicable. Compliance with the terms of such offer shall be
51 specifically enforceable in the courts of this state. A professional
52 service corporation's failure to enforce compliance with this provision
53 shall constitute a ground for forfeiture of its certificate of incorpo-
54 ration and its dissolution.

55 S 7. Section 1510 of the business corporation law, as amended by chap-
56 ter 1022 of the laws of 1971, is amended to read as follows:

1 S 1510. [(a)] Death or disqualification of shareholders.

2 (A) A professional service corporation, INCLUDING A DESIGN PROFES-
3 SIONAL SERVICE CORPORATION, shall purchase or redeem the shares of a
4 shareholder in case of his death or disqualification pursuant to the
5 provisions of section 1509 OF THIS ARTICLE, within six months after the
6 appointment of the executor or administrator or other legal represen-
7 tative of the estate of such deceased shareholder, or within six months
8 after such disqualification, at the book value of such shares as of the
9 end of the month immediately preceding the death or disqualification of
10 the shareholder as determined from the books and records of the corpo-
11 ration in accordance with its regular method of accounting. The certif-
12 icate of incorporation, the by-laws of the corporation or an agreement
13 among the corporation and all shareholders may modify this section by
14 providing for a shorter period of purchase or redemption, or an alter-
15 nate method of determining the price to be paid for the shares, or both.
16 If the corporation shall fail to purchase or redeem such shares within
17 the required period, a successful plaintiff in an action to recover the
18 purchase price of such shares shall also be awarded reasonable attor-
19 neys' fees and costs. Limitations on the purchase or redemption of
20 shares set forth in section [five hundred thirteen] 513 OF THIS CHAPTER
21 shall not apply to the purchase or redemption of shares pursuant to this
22 section. Nothing herein contained shall prevent a corporation from
23 paying pension benefits or other deferred compensation to or on behalf
24 of a former or deceased officer, director or employee thereof as other-
25 wise permitted by law. The provisions of this section shall not be
26 deemed to require the purchase of the shares of a disqualified share-
27 holder where the period of disqualification is for less than six months,
28 and the shareholder again becomes eligible to practice his profession
29 within six months from the date of disqualification.

30 (b) Notwithstanding the provisions of [subdivision] PARAGRAPH (a) OF
31 THIS SECTION, the corporation shall not be required to purchase or
32 redeem the shares of a deceased or disqualified shareholder if such
33 shares, within the time limit prescribed by [subdivision] PARAGRAPH (a)
34 OF THIS SECTION, are sold or transferred to another professional pursu-
35 ant to the provisions of section 1511 OF THIS ARTICLE.

36 S 8. Section 1511 of the business corporation law, as amended by chap-
37 ter 1022 of the laws of 1971, is amended to read as follows:

38 S 1511. Transfer of shares.

39 (A) No shareholder of a professional service corporation OR A DESIGN
40 PROFESSIONAL SERVICE CORPORATION may sell or transfer his shares in such
41 corporation except to another individual who is eligible to have shares
42 issued to him by such corporation or except in trust to another individ-
43 ual who would be eligible to receive shares if he were employed by the
44 corporation. Nothing herein contained shall be construed to prohibit the
45 transfer of shares by operation of law or by court decree. No transferee
46 of shares by operation of law or court decree may vote the shares for
47 any purpose whatsoever except with respect to corporate action under
48 [section nine hundred nine and section one thousand one] SECTIONS 909
49 AND 1001 OF THIS CHAPTER. The restriction in the preceding sentence
50 shall not apply, however, where such transferee would be eligible to
51 have shares issued to him if he were an employee of the corporation and,
52 if there are other shareholders, a majority of such other shareholders
53 shall fail to redeem the shares so transferred, pursuant to section 1510
54 OF THIS ARTICLE, within sixty days of receiving written notice of such
55 transfer. Any sale or transfer, except by operation of law or court
56 decree or except for a corporation having only one shareholder, may be

1 made only after the same shall have been approved by the board of direc-
2 tors, or at a shareholders' meeting specially called for such purpose by
3 such proportion, not less than a majority, of the outstanding shares as
4 may be provided in the certificate of incorporation or in the by-laws of
5 such professional service corporation. At such shareholders' meeting the
6 shares held by the shareholder proposing to sell or transfer his shares
7 may not be voted or counted for any purpose, unless all shareholders
8 consent that such shares be voted or counted. The certificate of incor-
9 poration or the by-laws of the professional service corporation, or the
10 professional service corporation and the shareholders by private agree-
11 ment, may provide, in lieu of or in addition to the foregoing
12 provisions, for the alienation of shares and may require the redemption
13 or purchase of such shares by such corporation at prices and in a manner
14 specifically set forth therein. The existence of the restrictions on
15 the sale or transfer of shares, as contained in this article and, if
16 applicable, in the certificate of incorporation, by-laws, stock purchase
17 or stock redemption agreement, shall be noted conspicuously on the face
18 or back of every certificate for shares issued by a professional service
19 corporation. Any sale or transfer in violation of such restrictions
20 shall be void.

21 (B) A DESIGN PROFESSIONAL SERVICE CORPORATION SHALL PURCHASE OR REDEEM
22 THE SHARES OF A NON-DESIGN PROFESSIONAL SHAREHOLDER IN THE CASE OF HIS
23 OR HER TERMINATION OF EMPLOYMENT WITHIN THIRTY DAYS AFTER SUCH TERMI-
24 NATION. A DESIGN PROFESSIONAL SERVICE CORPORATION SHALL NOT BE REQUIRED
25 TO PURCHASE OR REDEEM THE SHARES OF A TERMINATED NON-DESIGN PROFESSIONAL
26 SHAREHOLDER IF SUCH SHARES, WITHIN THIRTY DAYS AFTER SUCH TERMINATION,
27 ARE SOLD OR TRANSFERRED TO ANOTHER EMPLOYEE OF THE CORPORATION PURSUANT
28 TO THIS ARTICLE.

29 S 9. Section 1512 of the business corporation law, as added by chapter
30 974 of the laws of 1970, is amended to read as follows:

31 S 1512. Corporate name.

32 (a) Notwithstanding any other provision of law, the name of a profes-
33 sional service corporation, INCLUDING A DESIGN PROFESSIONAL SERVICE
34 CORPORATION, may contain any word which, at the time of incorporation,
35 could be used in the name of a partnership practicing a profession which
36 the corporation is authorized to practice, and may not contain any word
37 which could not be used by such a partnership. Provided, however, the
38 name of a professional service corporation may not contain the name of a
39 deceased person unless

40 (1) such person's name was part of the corporate name at the time of
41 such person's death; or

42 (2) such person's name was part of the name of an existing partnership
43 and at least two-thirds of such partnership's partners become sharehold-
44 ers of the corporation.

45 (b) [Such corporate] THE name OF A PROFESSIONAL SERVICE CORPORATION
46 shall end with the words "Professional Corporation" or the abbreviation
47 "P.C." THE NAME OF A DESIGN PROFESSIONAL SERVICE CORPORATION SHALL END
48 WITH THE WORDS "DESIGN PROFESSIONAL CORPORATION" OR THE ABBREVIATION
49 "D.P.C." The provisions of [paragraph] SUBPARAGRAPH one of [subdivision]
50 PARAGRAPH (a) of section [three hundred one] 301 OF THIS CHAPTER shall
51 not apply to a professional service corporation.

52 S 10. Section 1513 of the business corporation law, as amended by
53 chapter 576 of the laws of 1994, is amended to read as follows:

54 S 1513. Business corporation law applicable.

55 This chapter, except article [thirteen] 13 and article [fifteen-A]
56 15-A, shall be applicable to a professional service corporation, INCLUD-

1 ING A DESIGN PROFESSIONAL SERVICE CORPORATION, except to the extent that
2 the provisions thereof conflict with this article. A professional
3 service corporation, INCLUDING A DESIGN PROFESSIONAL SERVICE CORPO-
4 RATION, may consolidate or merge only with another corporation organized
5 under this article or authorized to do business in this state under
6 article [fifteen-A] 15-A of this chapter or authorized and registered to
7 practice the same profession, OR IN THE CASE OF A DESIGN PROFESSIONAL
8 SERVICE CORPORATION ONE OR MORE PROFESSIONS AS PROVIDED IN PARAGRAPH (E)
9 OF SECTION 1501 OF THIS ARTICLE, pursuant to the applicable provisions
10 of subdivision six of section seventy-two hundred nine of the education
11 law [or], subdivision four of section seventy-three hundred seven of the
12 education law OR SUBDIVISION FOUR OF SECTION SEVENTY-THREE HUNDRED TWEN-
13 TY-SEVEN OF THE EDUCATION LAW, or may be a member of a professional
14 service limited liability company, a foreign professional service limit-
15 ed liability company, a registered limited liability partnership or
16 foreign limited liability partnership, and only if all of the
17 professions practiced by such corporations, limited liability companies
18 or limited liability partnerships could be practiced by a single corpo-
19 ration organized under this article.

20 S 11. The opening paragraph of section 1514 of the business corpo-
21 ration law is designated paragraph (a) and a new paragraph (b) is added
22 to read as follows:

23 (B) EACH DESIGN PROFESSIONAL SERVICE CORPORATION SHALL, AT LEAST ONCE
24 EVERY THREE YEARS ON OR BEFORE THE DATE PRESCRIBED BY THE LICENSING
25 AUTHORITY, FURNISH A STATEMENT TO THE LICENSING AUTHORITY LISTING THE
26 NAMES AND RESIDENCE ADDRESSES OF EACH SHAREHOLDER, DIRECTOR AND OFFICER
27 OF SUCH CORPORATION AND CERTIFY AS THE DATE OF CERTIFICATION AND AT ALL
28 TIMES OVER THE ENTIRE THREE YEAR PERIOD THAT:

29 (I) GREATER THAN SEVENTY-FIVE PERCENT OF THE OUTSTANDING SHARES OF
30 STOCK OF THE CORPORATION ARE AND WERE OWNED BY DESIGN PROFESSIONALS,

31 (II) GREATER THAN SEVENTY-FIVE PERCENT OF THE DIRECTORS ARE AND WERE
32 DESIGN PROFESSIONALS,

33 (III) GREATER THAN SEVENTY-FIVE PERCENT OF THE OFFICERS ARE AND WERE
34 DESIGN PROFESSIONALS,

35 (IV) THE PRESIDENT, THE CHAIRPERSON OF THE BOARD OF DIRECTORS AND THE
36 CHIEF EXECUTIVE OFFICER OR OFFICERS ARE AND WERE DESIGN PROFESSIONALS,
37 AND

38 (V) THE SINGLE LARGEST SHAREHOLDER IS AND WAS EITHER A DESIGN PROFES-
39 SIONAL OR AN ESOP WITH GREATER THAN SEVENTY-FIVE PERCENT OF THE PLAN'S
40 VOTING TRUSTEES BEING DESIGN PROFESSIONALS AND GREATER THAN SEVENTY-FIVE
41 PERCENT OF THE PLAN'S COMMITTEE MEMBERS BEING DESIGN PROFESSIONALS.

42 THE STATEMENT SHALL BE SIGNED BY THE PRESIDENT OR ANY DESIGN PROFES-
43 SIONAL VICE-PRESIDENT AND ATTESTED TO BY THE SECRETARY OR ANY ASSISTANT
44 SECRETARY OF THE CORPORATION.

45 S 12. Section 1516 of the business corporation law, as amended by
46 chapter 851 of the laws of 1992, is amended to read as follows:

47 S 1516. Corporate mergers, consolidations and other reorganizations.

48 (A) Notwithstanding any inconsistent provision of this article, AND
49 SUBJECT TO THE LIMITATIONS IN PARAGRAPH (B) OF THIS SECTION, a profes-
50 sional service corporation, INCLUDING A DESIGN PROFESSIONAL SERVICE
51 CORPORATION, pursuant to the provisions of article [nine] 9 of this
52 chapter, may be merged or consolidated with another corporation formed
53 pursuant to the provisions of this chapter [or], with a corporation
54 authorized and registered to practice the same profession pursuant to
55 the applicable provisions of subdivision six of section seventy-two
56 hundred nine of the education law (engineer or land surveyor) [or],

1 subdivision four of section seventy-three hundred seven of the education
2 law (architect) OR SUBDIVISION FOUR OF SECTION SEVENTY-THREE HUNDRED
3 TWENTY-SEVEN OF THE EDUCATION LAW (LANDSCAPE ARCHITECT) of [article]
4 ARTICLES one hundred forty-five, ONE HUNDRED FORTY-SEVEN AND ONE HUNDRED
5 FORTY-EIGHT of the education law, or with a foreign corporation, or may
6 be otherwise reorganized, provided that the corporation OR ENTITY which
7 survives or which is formed pursuant thereto is a professional service
8 corporation, A DESIGN PROFESSION SERVICE CORPORATION or a foreign
9 professional service corporation practicing the same profession or
10 professions in this state or the state of incorporation or, if one of
11 the original corporations is authorized to practice pursuant to the
12 provisions of [either] subdivision six of section [seven thousand two]
13 SEVENTY-TWO hundred nine [or] OF THE EDUCATION LAW, subdivision four of
14 section [seven thousand three] SEVENTY-THREE hundred seven OF THE EDUCA-
15 TION LAW OR SUBDIVISION FOUR OF SECTION SEVENTY-THREE HUNDRED
16 TWENTY-SEVEN OF THE EDUCATION LAW, a corporation authorized and regis-
17 tered to practice the same profession pursuant to the applicable
18 provisions of subdivision six of section seventy-two hundred nine of the
19 education law (engineer or land surveyor) [or], subdivision four of
20 section seventy-three hundred seven of the education law (architect) of
21 [article] ARTICLES one hundred forty-five, ONE HUNDRED FORTY-SEVEN AND
22 ONE HUNDRED FORTY-EIGHT of the education law OR SUBDIVISION FOUR OF
23 SECTION SEVENTY-THREE HUNDRED TWENTY-SEVEN OF THE EDUCATION LAW (LAND-
24 SCAPE ARCHITECT). The restrictions on the issuance, transfer or sale of
25 shares of a professional service corporation OR A DESIGN PROFESSIONAL
26 SERVICE CORPORATION shall be suspended for a period not exceeding thirty
27 days with respect to any issuance, transfer or sale of shares made
28 pursuant to such merger, consolidation or reorganization, provided that
29 (i) no person who would not be eligible to be a shareholder in the
30 absence of this section shall vote the shares of or receive any distrib-
31 ution from such corporation; (ii) after such merger, consolidation or
32 reorganization, any professional service corporation OR DESIGN PROFES-
33 SIONAL SERVICE CORPORATION which survives or which is created thereby
34 shall be subject to all of the provisions of this article, and (iii)
35 shares thereafter only may be held by persons who are eligible to
36 receive shares of such professional service corporation, DESIGN PROFES-
37 SIONAL SERVICE CORPORATION or such other corporation authorized and
38 registered to practice the same profession pursuant to the applicable
39 provisions of subdivision six of section seventy-two hundred nine of the
40 education law (engineer or land surveyor) [or], subdivision four of
41 section seventy-three hundred seven of the education law (architect) OR
42 SUBDIVISION FOUR OF SECTION SEVENTY-THREE HUNDRED TWENTY-SEVEN OF THE
43 EDUCATION LAW (LANDSCAPE ARCHITECT) of [article] ARTICLES one hundred
44 forty-five, ONE HUNDRED FORTY-SEVEN AND ONE HUNDRED FORTY-EIGHT of the
45 education law, which survives. Nothing herein contained shall be
46 construed as permitting the practice of a profession in this state by a
47 corporation which is not incorporated pursuant to the provisions of this
48 article [or], authorized to do business in this state pursuant to the
49 provisions of article [fifteen-A] 15-A of this chapter, AUTHORIZED
50 PURSUANT TO SUBDIVISION SIX OF SECTION SEVENTY-TWO HUNDRED NINE OF THE
51 EDUCATION LAW, AUTHORIZED PURSUANT TO SUBDIVISION FOUR OF SECTION SEVEN-
52 TY-THREE HUNDRED SEVEN OF THE EDUCATION LAW, AUTHORIZED PURSUANT TO
53 SUBDIVISION FOUR OF SECTION SEVENTY-THREE HUNDRED TWENTY-SEVEN OF THE
54 EDUCATION LAW or authorized and registered to practice a profession
55 pursuant to the applicable provisions of article one hundred forty-five,
56 ARTICLE ONE HUNDRED FORTY-SEVEN OR ARTICLE ONE HUNDRED FORTY-EIGHT of

the education law. For the purposes of this section, other reorganizations shall be limited to those reorganizations defined in paragraph one of subsection (a) of section three hundred sixty-eight of the internal revenue code.

(B) NOTWITHSTANDING THE PROVISIONS CONTAINED IN PARAGRAPH (A) OF THIS SECTION, NO DESIGN PROFESSIONAL SERVICE CORPORATION SHALL BE MERGED OR CONSOLIDATED WITH ANY ENTITY UNLESS SUCH ENTITY IS A PROFESSIONAL BUSINESS ORGANIZATION LAWFULLY ORGANIZED TO PROVIDE PROFESSIONAL SERVICES PURSUANT TO ARTICLES ONE HUNDRED FORTY-FIVE, ONE HUNDRED FORTY-SEVEN AND ONE HUNDRED FORTY-EIGHT OF THE EDUCATION LAW.

S 13. Subdivision 4 of section 7209 of the education law, as added by chapter 987 of the laws of 1971, is amended to read as follows:

4. Engineers, land surveyors, architects, and landscape architects may join in the formation of a joint enterprise, or a partnership or a professional service corporation OR A DESIGN PROFESSIONAL SERVICE CORPORATION or may form any desired combination of such professions and may use in the name of such corporation the title of any of the professions which will be practiced. After the name of each member his OR HER profession shall be indicated.

S 14. Subdivision 1 of section 7210 of the education law, as amended by chapter 483 of the laws of 2001, is amended to read as follows:

1. Domestic or foreign professional service corporations, DESIGN PROFESSIONAL SERVICE CORPORATIONS, professional service limited liability companies, foreign professional service limited liability companies, registered limited liability partnerships, New York registered foreign limited liability partnerships, partnerships and joint enterprises specified in subdivision four of section seventy-two hundred nine of this article, provided each of the foregoing entities is authorized to provide professional engineering or land surveying services and general business corporations authorized to provide professional engineering or land surveying services pursuant to subdivision six of section seventy-two hundred nine of this article may offer to provide or provide professional engineering or land surveying services only after obtaining a certificate of authorization from the department. Except as otherwise authorized by statute, rule or regulation, other business entities are not authorized to offer or provide professional engineering or land surveying services and may not obtain certificates of authorization provided that nothing contained herein shall prohibit an individual who is licensed to practice professional engineering or land surveying under this article from obtaining a certificate of authorization upon application and payment of the appropriate fees provided for under this section.

S 15. Subdivision 2 of section 7307 of the education law, as added by chapter 987 of the laws of 1971, is amended to read as follows:

2. Engineers, land surveyors, architects and landscape architects may join in the formation of a joint enterprise, or a partnership or a professional service corporation OR A DESIGN PROFESSIONAL SERVICE CORPORATION or may form any desired combination of such professions and may use in the name of such corporation the title of any of the professions which will be practiced. After the name of each member his OR HER profession shall be indicated.

S 16. Subdivision 2 of section 7327 of the education law, as added by chapter 987 of the laws of 1971, is amended to read as follows:

2. Engineers, land surveyors, architects and landscape architects may join in the formation of a joint enterprise, or a partnership or a professional service corporation OR A DESIGN PROFESSIONAL SERVICE CORPO-

1 RATION or may form any desired combination of such professions and may
2 use in the name of such corporation the title of any of the professions
3 which will be practiced. After the name of each member his OR HER
4 profession shall be indicated.

5 S 17. This act shall take effect January 1, 2012. Provided, however,
6 that effective immediately, the addition, amendment and/or repeal of any
7 rule or regulation necessary for the implementation of this act on its
8 effective date are authorized and directed to be made and completed on
9 or before such effective date.