S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N S E N A T E

January 24, 2013

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

AN ACT to amend the business corporation 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:

Section 1. Section 1501 of the business corporation law, as amended by chapter 550 of the laws of 2011, is amended to read as follows:

[S 1501. Definitions.

As used in this article, unless the context otherwise requires, the term: (a) "licensing authority" means the regents of the university of the state of New York or the state education department, as the case may be, in the case of all professions licensed under title eight of the education law, and the appropriate appellate division of the supreme court in the case of the profession of law.

(b) "Profession" includes any practice as an attorney and counselor-at-law, or as a licensed physician, and those occupations designated in title eight of the education law.

(c) "Professional service" means any type of service to the public which may be lawfully rendered by a member of a profession within the purview of his profession.

(d) "Professional service corporation" means a corporation organized under this article.

(e) "Design professional service corporation" means a corporation organized under this article practicing professional engineering, architecture, landscape architecture, or land surveying, or practicing any combination of such professions, first organized on or after January first, two thousand twelve. The provisions of this article applicable to professional service corporations shall apply to design professional service corporations except to the extent that any provision is either

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

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inconsistent with a provision expressly applying to design professional service corporations or not relevant thereto.

(f) "Design professional" means an individual licensed and registered pursuant to title eight of the education law to practice professional engineering, architecture, landscape architecture or land surveying.

(g) "Employee stock ownership plan" (ESOP) means a defined contribution plan established pursuant to Section 4975(e)(7) of the Internal Revenue Code.

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

S 2. Section 1501 of the business corporation law, as amended by chapter 564 of the laws of 2011, is amended to read as follows:

S 1501. Definitions.

As used in this article, unless the context otherwise requires, the term: (a) "licensing authority" means the regents of the university of the state of New York or the state education department, as the case may be, in the case of all professions licensed under title eight of the education law, and the appropriate appellate division of the supreme court in the case of the profession of law.

(b) "Profession" includes any practice as an attorney and counselor-at-law, or as a licensed physician, and those occupations designated in title eight of the education law.

(c) "Professional service" means any type of service to the public which may be lawfully rendered by a member of a profession within the purview of his or her profession.

(d) "Professional service corporation" means a corporation organized under this article.

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

(f) "Other business entity" means any person other than a natural person, general partnership or a domestic or foreign business corporation, and includes a professional service limited liability company formed pursuant to the provisions of the New York limited liability company law.

(G) "DESIGN PROFESSIONAL SERVICE CORPORATION" MEANS A CORPORATION ORGANIZED UNDER THIS ARTICLE PRACTICING PROFESSIONAL ENGINEERING, ARCHITECTURE, LANDSCAPE ARCHITECTURE, OR LAND SURVEYING, OR PRACTICING ANY COMBINATION OF SUCH PROFESSIONS. THE PROVISIONS OF THIS ARTICLE APPLICABLE TO PROFESSIONAL SERVICE CORPORATIONS SHALL APPLY TO DESIGN PROFESSIONAL SERVICE CORPORATIONS EXCEPT TO THE EXTENT THAT ANY PROVISION IS EITHER INCONSISTENT WITH A PROVISION EXPRESSLY APPLYING TO DESIGN PROFESSIONAL SERVICE CORPORATIONS OR NOT RELEVANT THERETO.

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

(I) "EMPLOYEE STOCK OWNERSHIP PLAN" (ESOP) MEANS A DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT TO SECTION 4975(E)(7) OF THE INTERNAL REVENUE CODE.

S 3. Paragraph (b-5) of section 1503 of the business corporation law, as added by chapter 467 of the laws of 2012, is amended to read as follows:

(b-5) On or after January first, two thousand twelve, the state education department and the department of state shall allow an existing professional service corporation [in good standing] ORGANIZED UNDER THIS ARTICLE AND PRACTICING PROFESSIONAL ENGINEERING, ARCHITECTURE, LANDSCAPE ARCHITECTURE, OR LAND SURVEYING, OR PRACTICING ANY COMBINATION OF SUCH

PROFESSIONS to [convert to] BECOME a design professional service corporation as defined in this article, provided the [design] professional service corporation meets all of the requirements to become a design professional service corporation, including that its name shall end with the words "design professional corporation" or the abbreviation "D.P.C.", BY AMENDING ITS CERTIFICATE OF INCORPORATION SO THAT IT CONTAINS THE FOLLOWING STATEMENTS:

(1) THE NAMES AND RESIDENCE ADDRESSES OF ALL INDIVIDUALS OR ESOPS WHO WILL BE THE SHAREHOLDERS, DIRECTORS AND OFFICERS OF THE ORIGINAL DESIGN PROFESSIONAL SERVICE CORPORATION; AND

(2) THE PROFESSION OR PROFESSIONS OF EACH SHAREHOLDER, DIRECTOR AND OFFICER WHO IS A DESIGN PROFESSIONAL OF THE ORIGINAL DESIGN PROFESSIONAL SERVICE CORPORATION; AND

(3) THE OWNERSHIP INTEREST OF EACH SHAREHOLDER OF THE ORIGINAL DESIGN PROFESSIONAL SERVICE CORPORATION; AND

(4) THE NAMES OF THE OFFICERS AND DIRECTORS WHO WILL BE THE PRESIDENT, THE CHAIRPERSON OF THE BOARD OF DIRECTORS AND THE CHIEF EXECUTIVE OFFICER OR OFFICERS OF THE ORIGINAL DESIGN PROFESSIONAL SERVICE CORPORATION.

(I) THE CERTIFICATE OF AMENDMENT SHALL HAVE ATTACHED THERETO A CERTIFICATE OR CERTIFICATES ISSUED BY THE LICENSING AUTHORITY CERTIFYING THAT EACH OF THE PROPOSED SHAREHOLDERS, DIRECTORS AND OFFICERS WHO IS LISTED AS A DESIGN PROFESSIONAL IS AUTHORIZED BY LAW TO PRACTICE A PROFESSION WHICH THE CORPORATION IS ORGANIZED TO PRACTICE AND, IF APPLICABLE, THAT ONE OR MORE OF SUCH INDIVIDUALS IS AUTHORIZED TO PRACTICE EACH PROFESSION WHICH THE CORPORATION WILL BE AUTHORIZED TO PRACTICE. THE ATTACHED CERTIFICATE OR CERTIFICATES SHALL ALSO CERTIFY THAT THE PROPOSED PRESIDENT, THE CHAIRPERSON OF THE BOARD OF DIRECTORS AND THE CHIEF EXECUTIVE OFFICER OR OFFICERS ARE AUTHORIZED BY LAW TO PRACTICE A PROFESSION WHICH THE CORPORATION IS ORGANIZED TO PRACTICE.

(II) THE CERTIFICATE OF AMENDMENT SHALL ALSO HAVE ATTACHED THERETO A CERTIFICATE OR CERTIFICATES ISSUED BY THE LICENSING AUTHORITY CERTIFYING THAT EACH OF THE PROPOSED SHAREHOLDERS, OFFICERS, DIRECTORS AND OWNERS LISTED HAVE BEEN DEEMED TO HAVE BEEN OF GOOD MORAL CHARACTER AS MAY BE ESTABLISHED BY THE REGULATIONS OF THE COMMISSIONER OF EDUCATION.

(III) THE CERTIFICATE OF AMENDMENT SHALL ALSO HAVE ATTACHED THERETO: (A) A TAX CLEARANCE ISSUED BY THE DEPARTMENT OF TAXATION AND FINANCE CERTIFYING THAT THE EXISTING PROFESSIONAL SERVICE CORPORATION IS CURRENT WITH RESPECT TO PAYMENT OF ITS STATE TAX LIABILITIES AND (B) A CERTIFICATE OF GOOD STANDING FROM THE STATE EDUCATION DEPARTMENT CERTIFYING THAT THE EXISTING PROFESSIONAL SERVICE CORPORATION IS AUTHORIZED TO PROVIDE PROFESSIONAL SERVICES WITHOUT RESTRICTION.

S 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after October 3, 2012.