

5115--A

2013-2014 Regular Sessions

I N S E N A T E

May 10, 2013

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 17 to read as follows:
3 17. 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 (COMPENSATION OF EXECUTIVES).
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:

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

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1 (C) AN EMPLOYEE OR A SPOUSE, DOMESTIC PARTNER, SIBLING (BY WHOLE OR
2 HALF BLOOD), SPOUSE OR DOMESTIC PARTNER OF A SIBLING (BY WHOLE OR HALF
3 BLOOD), CHILD, GRANDCHILD, GREAT-GRANDCHILD, AND SPOUSE OR DOMESTIC
4 PARTNER OF A CHILD, GRANDCHILD, AND GREAT-GRANDCHILD OF THE EMPLOYEE AT
5 A PUBLIC CHARITY, AS THAT TERM MAY BE DEFINED BY THE INTERNAL REVENUE
6 SERVICE FROM TIME-TO-TIME, MAY NOT QUALIFY TO SIT ON THE BOARD OF DIREC-
7 TORS OF THE CORPORATION WHERE THEY ARE EMPLOYED REGARDLESS OF ANY STATE-
8 MENT TO THE CONTRARY IN THE CERTIFICATE OF INCORPORATION OR BYLAWS OF
9 THE CORPORATION. THE CERTIFICATE OF INCORPORATION OR THE BYLAWS MAY,
10 HOWEVER, PROVIDE FOR AN EMPLOYEE AT A PUBLIC CHARITY, AS THAT TERM MAY
11 BE DEFINED BY THE INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, TO BE
12 EX-OFFICIO, A NON-VOTING MEMBER OF THE BOARD OF DIRECTORS.

13 S 4. Paragraph (a) of section 702 of the not-for-profit corporation
14 law, as amended by chapter 549 of the laws 2013, is amended to read as
15 follows:

16 (a) [The] FOR NOT-FOR-PROFIT CORPORATIONS WITH ANNUAL GROSS RECEIPTS
17 IN AN AMOUNT THAT WOULD TRIGGER AN AUDIT BY A CERTIFIED PUBLIC ACCOUNT-
18 ANT, THE number of directors constituting the entire board shall be not
19 less than FIVE, OTHERWISE THE ENTIRE BOARD SHALL NOT BE LESS THAN three.
20 Subject to such limitation, such number may be fixed by the by-laws or
21 by action of the members or of the board under the specific provisions
22 of a by-law allowing such action, or by any number within a range set
23 forth in the by-laws. [If] FOR NOT-FOR-PROFIT CORPORATIONS WITH ANNUAL
24 GROSS RECEIPTS EQUAL TO OR ABOVE TWO HUNDRED FIFTY THOUSAND DOLLARS, IF
25 not otherwise fixed under this paragraph, the number shall be FIVE,
26 OTHERWISE IT SHALL BE three.

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

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

37 S 6. Paragraph (b) of section 708 of the not-for-profit corporation
38 law, as amended by chapter 549 of the laws of 2013, is amended to read
39 as follows:

40 (b) Unless otherwise restricted by the certificate of incorporation or
41 the by-laws, any action required or permitted to be taken by the board
42 or any committee thereof may be taken without a meeting if all members
43 of the board or the committee consent to the adoption of a resolution
44 authorizing the action, WHERE SAID WRITING, OR UNANIMOUS CONSENT IN LIEU
45 OF A MEETING, IS DELIVERED, SUBMITTED AND SIGNED SEPARATELY BY ALL
46 MEMBERS OF THE BOARD OR THE COMMITTEE AND SUBMITTED BY ELECTRONIC-MAIL,
47 OR OTHER ELECTRONIC MEANS WITH AN ELECTRONIC RETURNED RECEIPT, OR SIMI-
48 LAR MESSAGE ATTACHED, DEMONSTRATING THAT THE UNANIMOUS CONSENT IN LIEU
49 OF A MEETING WAS INDEED DELIVERED PROPERLY. Such consent may be written
50 or electronic. If written, the consent must be executed by the director
51 by signing such consent or causing his or her signature to be affixed to
52 such consent by any reasonable means including, but not limited to,
53 facsimile signature. If electronic, the transmission of the consent
54 must be sent by electronic mail and set forth, or be submitted with,
55 information from which it can reasonably be determined that the trans-
56 mission was authorized by the director. 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, need not specify the purpose of any regular or special meeting of the board, unless required by the by-laws.

(d) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the by-laws so provide, notice of any adjournment of a meeting of the board to another time or place shall be given to the directors who were not present at the time of the adjournment, AND MAY BE DONE BY 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, and, unless such time and place are announced at the meeting, to the other directors.

S 8. Subparagraph 3 of paragraph (a) of section 712 of the not-for-profit corporation law, as amended by chapter 549 of the laws of 2013, is amended to read as follows:

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

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

(a) The board may elect or appoint a president, one or more vice-presidents, a secretary and a treasurer, and such other officers as it may determine, or as may be provided in the by-laws. These officers may be designated by such alternate titles as may be provided in the certificate of incorporation or the by-laws. [Any] NO two or more offices may be held by the same person[, except the offices of president and secretary, or the offices corresponding thereto].

S 10. Paragraph (a) of section 713 of the not-for-profit corporation law, as amended by chapter 549 of the laws of 2013, is amended to read as follows:

(a) The board may elect or appoint a chair or president, or both, one or more vice-presidents, a secretary and a treasurer, and such other officers as it may determine, or as may be provided in the by-laws. These officers may be designated by such alternate titles as may be provided in the certificate of incorporation or the by-laws. [Any] NO two or more offices may be held by the same person[, except the offices of president and secretary, or the offices corresponding thereto].

S 11. Section 713 of the not-for-profit corporation law is amended by adding a new paragraph (g) to read as follows:

(G) AN OFFICER OR A SPOUSE, DOMESTIC PARTNER, SIBLING (BY WHOLE OR HALF BLOOD), SPOUSE OR DOMESTIC PARTNER OF A SIBLING (BY WHOLE OR HALF BLOOD), CHILD, GRANDCHILD, GREAT-GRANDCHILD, AND SPOUSE OR DOMESTIC PARTNER OF A CHILD, GRANDCHILD, AND GREAT-GRANDCHILD OF THE OFFICER AT A PUBLIC CHARITY, AS THAT TERM MAY BE DEFINED BY THE INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, MAY NOT RECEIVE COMPENSATION OR REMUNERATION OF ANY KIND WHATSOEVER, EXCEPT TO BE REIMBURSED FOR REASONABLE EXPENSES

1 IN THE FULFILLMENT OF THEIR DUTIES TOWARD THE CORPORATION, WHERE SAID
2 PROHIBITION CANNOT BE CONTRAVENED IN THE CERTIFICATE OF INCORPORATION OR
3 BY-LAWS OF THE CORPORATION.

4 S 12. Paragraph (d) of section 715 of the not-for-profit corporation
5 law, as amended by chapter 549 of the laws of 2013, is amended to read
6 as follows:

7 (d) Unless otherwise provided in the certificate of incorporation or
8 the by-laws, the board shall have authority to fix the compensation of
9 directors OF A PRIVATE FOUNDATION, AS THAT TERM MAY BE DEFINED BY THE
10 INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, for services in any capaci-
11 ty. AT NO TIME MAY THE DIRECTORS OF A PUBLIC CHARITY, AS THAT TERM MAY
12 BE DEFINED BY THE INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, RECEIVE
13 COMPENSATION OR REMUNERATION OF ANY KIND WHATSOEVER, EXCEPT TO BE REIM-
14 BURSED FOR REASONABLE EXPENSES IN THE FULFILLMENT OF THEIR DUTIES TOWARD
15 THE CORPORATION, WHERE SAID PROHIBITION CANNOT BE CONTRAVENED IN THE
16 CERTIFICATE OF INCORPORATION OR BY-LAWS OF THE CORPORATION.

17 S 13. Paragraph (e) of section 715 of the not-for-profit corporation
18 law, as amended by chapter 549 of the laws of 2013, is amended to read
19 as follows:

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

26 S 14. Paragraph (a) of section 717 of the not-for-profit corporation
27 law, as amended by chapter 490 of the laws of 2010, is amended to read
28 as follows:

29 (a) Directors and officers shall discharge the duties of their respec-
30 tive positions in good faith and with the care an ordinarily prudent
31 person in a like position would exercise under similar circumstances.
32 The factors set forth in subparagraph one of paragraph (e) of section
33 552 (Standard of conduct in managing and investing an institutional
34 fund), if relevant, must be considered by a governing board delegating
35 investment management of institutional funds pursuant to section 514
36 (Delegation of investment management). For purposes of this paragraph,
37 the term institutional fund is defined in section 551 (Definitions).
38 FURTHERMORE, ANY COMPENSATION PROVIDED TO DIRECTORS, OFFICERS, EMPLOYEES
39 AND OTHER AGENTS OF THE CORPORATION MUST BE REASONABLE AND, WHERE APPLI-
40 CABLE, IS SUBJECT TO SECTION SEVEN HUNDRED TWENTY-SEVEN (COMPENSATION OF
41 EXECUTIVES).

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

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

49 S 16. Paragraph (d) of section 719 of the not-for-profit corporation
50 law is amended by adding a new subparagraph 6 to read as follows:

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

1 S 17. Clauses (A) and (B) of subparagraph 1 of paragraph (a) of
2 section 720 of the not-for-profit corporation law, as amended by chapter
3 549 of the laws of 2013, is amended to read as follows:

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

7 (B) The acquisition by himself OR HERSELF, transfer to others, loss or
8 waste of corporate assets due to any neglect of, [or] THE failure to
9 perform, or ANY other violation of his OR HER duties, INCLUDING
10 VIOLATIONS OF SECTION SEVEN HUNDRED TWENTY-SEVEN (COMPENSATION OF EXECU-
11 TIVES), PURSUANT TO SECTION SEVEN HUNDRED SEVENTEEN (DUTY OF DIRECTORS
12 AND OFFICERS).

13 S 18. The not-for-profit corporation law is amended by adding a new
14 section 727 to read as follows:

15 S 727. COMPENSATION OF EXECUTIVES.

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

18 (1) "COMPENSATION" MEANS THE AGGREGATE VALUE OF ECONOMIC BENEFITS
19 CONFERRED IN EXCHANGE FOR THE PERFORMANCE OF SERVICES THAT ARE INCLUDED
20 FOR PURPOSES OF DETERMINING REASONABLENESS UNDER SECTION 26 U.S.C. 4958,
21 AS FURTHER SPECIFIED IN 26 CFR S53.4958-4(B)(II)(B), OR SUCCEEDING
22 PROVISIONS.

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

28 (3) "FAMILY MEMBER" MEANS A SPOUSE, DOMESTIC PARTNER, SIBLING (BY
29 WHOLE OR HALF BLOOD), SPOUSE OR DOMESTIC PARTNER OF A SIBLING (BY WHOLE
30 OR HALF BLOOD), CHILD, GRANDCHILD, GREAT-GRANDCHILD, AND SPOUSE OR
31 DOMESTIC PARTNER OF A CHILD, GRANDCHILD, AND GREAT-GRANDCHILD.

32 (B) COMPENSATION EXCHANGED BY A NOT-FOR-PROFIT CORPORATION FOR THE
33 PERFORMANCE OF SERVICES BY AN EXECUTIVE MUST NOT BE EXCESSIVE AND THE
34 GOVERNING BODY (I.E., THE BOARD OF DIRECTORS, BOARD OF TRUSTEES, OR
35 EQUIVALENT CONTROLLING BODY) SHALL CONSIDER FACTORS INCLUDING, BUT NOT
36 LIMITED TO: COMPENSATION LEVELS PAID BY SIMILARLY SITUATED NOT-FOR-PRO-
37 FIT CORPORATIONS AS DEFINED IN SECTION ONE HUNDRED TWO (DEFINITIONS);
38 THE AVAILABILITY OF SIMILAR SERVICES IN THE GEOGRAPHIC AREA OF THE
39 APPLICABLE PROVIDER OF SERVICES; CURRENT COMPENSATION SURVEYS COMPILED
40 BY INDEPENDENT FIRMS; AND ACTUAL WRITTEN OFFERS FROM SIMILAR INSTI-
41 TUTIONS COMPETING FOR THE SERVICES OF THE APPLICABLE EXECUTIVE.

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

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

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

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

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

(B) A MEMBER OF THE GOVERNING BODY DOES NOT HAVE A CONFLICT OF INTEREST WITH RESPECT TO A COMPENSATION ARRANGEMENT ONLY IF THE MEMBER:

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

(II) IS NOT IN AN EMPLOYMENT RELATIONSHIP SUBJECT TO THE DIRECTION OR CONTROL OF ANY EXECUTIVE, OR THE FAMILY MEMBER OF ANY EXECUTIVE, PARTICIPATING IN OR ECONOMICALLY BENEFITING FROM THE COMPENSATION ARRANGEMENT;

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

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

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

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

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

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

(II) IN THE CASE OF A PARTNERSHIP, OWNERSHIP OF MORE THAN FIFTY PERCENT OF THE PROFITS INTERESTS OR CAPITAL INTERESTS IN THE PARTNERSHIP;

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

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

(3) THE GOVERNING BODY ADEQUATELY DOCUMENTED THE BASIS FOR ITS DETERMINATION CONCURRENTLY WITH MAKING THAT DETERMINATION.

(A) FOR A DECISION TO BE DOCUMENTED ADEQUATELY, THE WRITTEN OR ELECTRONIC RECORDS OF THE GOVERNING BODY MUST NOTE:

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

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

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

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

(B) IF THE GOVERNING BODY DETERMINES THAT THE EXECUTIVE'S COMPENSATION FOR A SPECIFIC ARRANGEMENT IS HIGHER OR LOWER THAN THE RANGE OF COMPARABILITY DATA OBTAINED, THE GOVERNING BODY MUST RECORD THE BASIS FOR ITS DETERMINATION. FOR A DECISION TO BE DOCUMENTED CONCURRENTLY RECORDS MUST BE PREPARED BEFORE THE LATER OF THE NEXT MEETING OF THE GOVERNING BODY OR SIXTY DAYS AFTER THE FINAL ACTION OR ACTIONS OF THE GOVERNING BODY ARE TAKEN. RECORDS MUST BE REVIEWED AND APPROVED BY THE GOVERNING BODY AS REASONABLE, ACCURATE AND COMPLETE WITHIN A REASONABLE TIME PERIOD THEREAFTER.

(4) THE COMPENSATION PROVIDED TO THE EXECUTIVE BY THE GOVERNING BODY DOES NOT EXCEED THE HIGHEST COMPENSATION PROVIDED BY A SIMILARLY SITUATED ORGANIZATION FOR SIMILAR SERVICES, AS IDENTIFIED IN THE COMPARABILITY DATA, BY MORE THAN TWENTY PERCENT.

(E) IF THE FOUR CONDITIONS OF PARAGRAPH (D) OF THIS SECTION ARE SATISFIED, THEN THE PERSON OR ENTITY BRINGING AN ACTION FOR RELIEF PURSUANT TO THIS SECTION MAY REBUT THE PRESUMPTION THAT ARISES UNDER PARAGRAPH (D) OF THIS SECTION ONLY IF IT DEVELOPS SUFFICIENT CONTRARY EVIDENCE TO REBUT THE PROBATIVE VALUE OF THE COMPARABILITY DATA RELIED UPON BY THE GOVERNING BODY. WITH RESPECT TO ANY FIXED PAYMENT, REBUTTAL EVIDENCE IS LIMITED TO EVIDENCE RELATING TO FACTS AND CIRCUMSTANCES EXISTING ON THE DATE THE PARTIES ENTER INTO THE CONTRACT PURSUANT TO WHICH THE PAYMENT IS MADE (EXCEPT IN THE EVENT OF SUBSTANTIAL NONPERFORMANCE). WITH RESPECT TO ALL OTHER PAYMENTS, REBUTTAL EVIDENCE MAY INCLUDE FACTS AND CIRCUMSTANCES UP TO AND INCLUDING THE DATE OF PAYMENT.

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

S 19. Section 104-A of the not-for-profit corporation law, as added by chapter 591 of the laws of 1982, paragraphs (a), (c), (d), (e), (g), (l), (m), (n) and (p) as amended by chapter 166 of the laws of 1991 and paragraph (r) as amended by chapter 198 of the laws of 1984, is amended to read as follows:

S 104-A. Fees.

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

1 (a) For filing a certificate of type of not-for-profit corporation
2 pursuant to section one hundred thirteen of this [chapter] ARTICLE,
3 thirty dollars.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (r) For filing a statement of the termination of existence of a
46 foreign corporation pursuant to section thirteen hundred twelve of this
47 chapter, thirty dollars. There shall be no fee for the filing by an
48 authorized officer of the jurisdiction of incorporation of a foreign
49 corporation of a certificate that the foreign corporation has been
50 dissolved or its authority or existence has been otherwise terminated or
51 cancelled in the jurisdiction of its incorporation.

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

53 S 20. The not-for-profit corporation law is amended by adding a new
54 section 116 to read as follows:

55 S 116. STATE BOARD TRAINING CONSORTIUM.

1 (A) NOT-FOR-PROFIT BOARD MEMBERS ARE ENTRUSTED WITH THE OVERALL
2 MANAGEMENT AND OVERSIGHT OF NON-PROFITS AND HAVE LEGAL AND ETHICAL OBLI-
3 GATIONS TO KEEP THEMSELVES FULLY INFORMED REGARDING THEIR ORGANIZATION,
4 ITS FINANCES AND ITS OVERALL OPERATION AND IN ASSURING THAT PROGRAM
5 STAFF AND ADMINISTRATION EFFECTIVELY CARRY OUT THE ORGANIZATION'S
6 MISSION. THE STATE BOARD TRAINING CONSORTIUM IS INTENDED TO EMPOWER
7 BOARD MEMBERS OF NOT-FOR-PROFIT ORGANIZATIONS WHO CONTRACT WITH THE
8 STATE OF NEW YORK WITH THE INFORMATION AND TOOLS NECESSARY TO CARRY OUT
9 THEIR VERY IMPORTANT RESPONSIBILITIES, ROLES AND OBLIGATIONS. THE STATE
10 BOARD TRAINING CONSORTIUM WILL BE A COMPREHENSIVE STATE-WIDE TRAINING
11 EFFORT, DELIVERED REGIONALLY, IN-PERSON, TOGETHER WITH A NUMBER OF
12 TAILORED AGENCY SPECIFIC ONSITE TRAININGS, SOME VIRTUAL WEBINARS, AND
13 THE LIKE, AND STATE WORKFORCE TRAININGS ON THE SAME OR SIMILAR SUBJECTS.
14 ANY TRAINING CONDUCTED UNDER THE AUSPICES OF THE STATE BOARD TRAINING
15 CONSORTIUM WILL BE FREE TO VERIFIED MEMBERS OF NOT-FOR-PROFIT BOARDS OF
16 DIRECTORS WHO CONTRACT WITH THE STATE OF NEW YORK.

17 (1) FEES GENERATED FROM THE TEN DOLLAR INCREASE IN THE FILING FEES
18 ASSOCIATED WITH CERTIFICATES OF INCORPORATION, AMENDMENT, CHANGE, MERGER
19 OR CONSOLIDATION, ANNULMENT OF DISSOLUTION, AUTHORITY BY A FOREIGN
20 CORPORATION, AN AMENDMENT OF SAME OR A CHANGE IN THE AUTHORITY OF A
21 FOREIGN CORPORATION, SHALL BE USED TO FUND THE STATE BOARD TRAINING
22 CONSORTIUM.

23 (2) SAID FEES SHALL BE MAINTAINED IN THE STATE BOARD TRAINING CONSOR-
24 TIUM FUND, AS ESTABLISHED BY SECTION NINETY-SEVEN-J OF THE STATE FINANCE
25 LAW, TO SUPPORT THE STATE BOARD TRAINING CONSORTIUM ESTABLISHED BY THIS
26 SECTION.

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

37 (1) THE COMMISSIONERS OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL
38 DISABILITIES, OFFICE OF MENTAL HEALTH, OFFICE OF ALCOHOLISM AND
39 SUBSTANCE ABUSE SERVICES, OFFICE OF CHILDREN AND FAMILY SERVICES, AND
40 DEPARTMENT OF HEALTH, HAVING PRIOR EXPERIENCE IN THE STATE BOARD TRAIN-
41 ING CONSORTIUM AS ADMINISTERED BY OFFICE OF ALCOHOLISM AND SUBSTANCE
42 ABUSE SERVICES, AND THE DEPARTMENT OF HEALTH, AIDS INSTITUTE, SHALL
43 JOINTLY:

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

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

49 (2) THE COMMISSIONERS OF OTHER AGENCIES, INCLUDING BUT NOT LIMITED TO
50 THE OFFICE FOR THE AGING, DEPARTMENT OF AGRICULTURE AND MARKETS, COUNCIL
51 ON THE ARTS, OFFICE OF COURT ADMINISTRATION, DIVISION OF CRIMINAL
52 JUSTICE SERVICES, EMPIRE STATE DEVELOPMENT, DEPARTMENT OF ENVIRONMENTAL
53 CONSERVATION, OFFICE OF GENERAL SERVICES, NEW YORK STATE CANAL CORPO-
54 RATION AND THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL
55 ESTABLISH PROCEDURES TO MONITOR ATTENDANCE AT TRAININGS CONDUCTED UNDER

1 THE STATE BOARD TRAINING CONSORTIUM AND IN REPORTING THE SAME TO THE
2 ATTENDING BOARDS OF DIRECTORS.

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

6 S 21. The state finance law is amended by adding a new section 97-j to
7 read as follows:

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

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

22 3. MONEYS IN THE STATE BOARD TRAINING CONSORTIUM FUND SHALL BE KEPT
23 SEPARATE AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTO-
24 DY OF THE STATE COMPTROLLER. MONEYS IN THE FUND MAY BE INVESTED BY THE
25 COMPTROLLER PURSUANT TO THE PROVISIONS OF SECTION NINETY-EIGHT-A OF THIS
26 ARTICLE AND ANY INCOME RECEIVED BY THE COMPTROLLER FROM SUCH INVESTMENTS
27 SHALL BE ADDED TO AND BECOME PART OF, AND SHALL BE USED FOR THE PURPOSES
28 OF SUCH FUND. ALL DEPOSITS OF SUCH MONEY SHALL, IF REQUIRED BY THE COMP-
29 TROLLER, BE SECURED BY OBLIGATIONS OF THE UNITED STATES OR OF THE STATE
30 OF MARKET VALUE EQUAL AT ALL TIMES TO THE AMOUNT OF THE DEPOSIT AND ALL
31 BANKS AND TRUST COMPANIES ARE AUTHORIZED TO GIVE SUCH SECURITIES FOR
32 SUCH DEPOSITS.

33 4. MONEYS IN THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE,
34 SHALL BE ALLOCATED UPON A CERTIFICATE OF APPROVAL OF AVAILABILITY BY THE
35 DIRECTOR OF THE BUDGET SOLELY FOR THE PURPOSES SET FORTH IN THIS
36 SECTION.

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

41 S 22. Absent explicit language expressly and unequivocally stating a
42 legislative intent to the contrary, all provisions of this act are irre-
43 futably presumed to operate in a wholly prospective manner. Provisions
44 shall be considered to operate retroactively, and therefore in violation
45 of this act, if applied in such a manner as to alter, change, affect,
46 impair or defeat any rights, obligations, duties or interests accrued,
47 incurred or conferred prior to the effective date of this act. Further-
48 more, the provisions of this act shall neither apply to, nor be applied
49 based upon the occasion of, acts occurring prior to it becoming law.

50 S 23. This act shall take effect on the one hundred eightieth day
51 after it shall have become a law; provided that:

52 (a) the amendments to sections 702, 708, 712, 715 and 720 of the not-
53 for-profit corporation law made by sections four, six, eight, twelve,
54 thirteen and seventeen of this act shall take effect on the same date
55 and in the same manner as sections 67, 68, 70, 74 and 78, respectively,
56 of chapter 549 of the laws of 2013, take effect;

1 (b) the amendments to section 713 of the not-for-profit corporation
2 law made by section ten of this act shall take effect on the same date
3 and in the same manner as section 73 of chapter 549 of the laws of 2013,
4 takes effect; and
5 (c) the amendments to paragraph (a) of section 104-A of the not-for-
6 profit corporation law made by section nineteen of this act shall not
7 affect the repeal of such paragraph and shall be deemed repealed there-
8 with.