

5312

2015-2016 Regular Sessions

I N   S E N A T E

May 13, 2015

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Introduced by Sen. MARCELLINO -- read twice and ordered printed, and  
when printed to be committed to the Committee on Investigations and  
Government Operations

AN ACT to amend the executive law and not-for-profit corporation law, in  
relation to prohibiting certain individuals from receiving compen-  
sation 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 ASSEM-  
BLY, 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:  
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

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

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1 PARTNER OF A CHILD, GRANDCHILD, AND GREAT-GRANDCHILD OF THE EMPLOYEE AT  
2 A PUBLIC CHARITY, AS THAT TERM MAY BE DEFINED BY THE INTERNAL REVENUE  
3 SERVICE FROM TIME-TO-TIME, MAY NOT QUALIFY TO SIT ON THE BOARD OF DIREC-  
4 TORS OF THE CORPORATION WHERE THEY ARE EMPLOYED REGARDLESS OF ANY STATE-  
5 MENT TO THE CONTRARY IN THE CERTIFICATE OF INCORPORATION OR BYLAWS OF  
6 THE CORPORATION. THE CERTIFICATE OF INCORPORATION OR THE BYLAWS MAY,  
7 HOWEVER, PROVIDE FOR AN EMPLOYEE AT A PUBLIC CHARITY, AS THAT TERM MAY  
8 BE DEFINED BY THE INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, TO BE  
9 EX-OFFICIO, A NON-VOTING MEMBER OF THE BOARD OF DIRECTORS. NOTWITH-  
10 STANDING ANY PROVISION TO THE CONTRARY, THE PROVISIONS OF THIS PARAGRAPH  
11 SHALL NOT APPLY TO CEMETERY CORPORATIONS THAT MUST COMPLY WITH ARTICLE  
12 FIFTEEN OF THIS CHAPTER.

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, 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 10. 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 IN THE FULFILLMENT OF THEIR DUTIES TOWARD THE CORPORATION, WHERE SAID PROHIBITION CANNOT BE CONTRAVENED IN THE CERTIFICATE OF INCORPORATION OR BY-LAWS OF THE CORPORATION. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO CEMETERY CORPORATIONS THAT MUST COMPLY WITH ARTICLE FIFTEEN OF THIS CHAPTER.

S 11. Paragraph (d) of section 715 of the not-for-profit corporation law, as amended by chapter 549 of the laws of 2013, is amended to read as follows:

1 (d) Unless otherwise provided in the certificate of incorporation or  
2 the by-laws, the board shall have authority to fix the compensation of  
3 directors OF A PRIVATE FOUNDATION, AS THAT TERM MAY BE DEFINED BY THE  
4 INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, for services in any capaci-  
5 ty. AT NO TIME MAY THE DIRECTORS OF A PUBLIC CHARITY, AS THAT TERM MAY  
6 BE DEFINED BY THE INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, RECEIVE  
7 COMPENSATION OR REMUNERATION OF ANY KIND WHATSOEVER, EXCEPT TO BE REIM-  
8 BURED FOR REASONABLE EXPENSES IN THE FULFILLMENT OF THEIR DUTIES TOWARD  
9 THE CORPORATION, WHERE SAID PROHIBITION CANNOT BE CONTRAVENED IN THE  
10 CERTIFICATE OF INCORPORATION OR BY-LAWS OF THE CORPORATION. NOTWITH-  
11 STANDING ANY PROVISION TO THE CONTRARY, THE PROVISIONS OF THIS PARAGRAPH  
12 SHALL NOT APPLY TO CEMETERY CORPORATIONS THAT MUST COMPLY WITH ARTICLE  
13 FIFTEEN OF THIS CHAPTER.

14 S 12. Paragraph (e) of section 715 of the not-for-profit corporation  
15 law, as amended by chapter 549 of the laws of 2013, is amended to read  
16 as follows:

17 (e) The fixing of salaries of officers[, if not done in or pursuant to  
18 the by-laws, shall require the affirmative vote of a majority of the  
19 entire board unless a higher proportion is set by the certificate of  
20 incorporation or by-laws] IN PUBLIC CHARITIES, AS THAT TERM MAY BE  
21 DEFINED BY THE INTERNAL REVENUE SERVICE FROM TIME-TO-TIME, IS STRICTLY  
22 PROHIBITED. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE  
23 PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO CEMETERY CORPORATIONS  
24 THAT MUST COMPLY WITH ARTICLE FIFTEEN OF THIS CHAPTER.

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

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

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

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

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

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

1 S 16. 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, are 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 17. 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 18. Section 104-A of the not-for-profit corporation law, as added by chapter 591 of the laws of 1982, paragraphs (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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 S 116. STATE BOARD TRAINING CONSORTIUM.

51 (A) NOT-FOR-PROFIT BOARD MEMBERS ARE ENTRUSTED WITH THE OVERALL  
52 MANAGEMENT AND OVERSIGHT OF NON-PROFITS AND HAVE LEGAL AND ETHICAL OBLI-  
53 GATIONS TO KEEP THEMSELVES FULLY INFORMED REGARDING THEIR ORGANIZATION,  
54 ITS FINANCES AND ITS OVERALL OPERATION AND IN ASSURING THAT PROGRAM  
55 STAFF AND ADMINISTRATION EFFECTIVELY CARRY OUT THE ORGANIZATION'S  
56 MISSION. THE STATE BOARD TRAINING CONSORTIUM IS INTENDED TO EMPOWER



1 BOARD MEMBERS OF NOT-FOR-PROFIT ORGANIZATIONS WHO CONTRACT WITH THE  
2 STATE OF NEW YORK WITH THE INFORMATION AND TOOLS NECESSARY TO CARRY OUT  
3 THEIR VERY IMPORTANT RESPONSIBILITIES, ROLES AND OBLIGATIONS. THE STATE  
4 BOARD TRAINING CONSORTIUM WILL BE A COMPREHENSIVE STATE-WIDE TRAINING  
5 EFFORT, DELIVERED REGIONALLY, IN-PERSON, TOGETHER WITH A NUMBER OF  
6 TAILORED AGENCY SPECIFIC ONSITE TRAININGS, SOME VIRTUAL WEBINARS, AND  
7 THE LIKE, AND STATE WORKFORCE TRAININGS ON THE SAME OR SIMILAR SUBJECTS.  
8 ANY TRAINING CONDUCTED UNDER THE AUSPICES OF THE STATE BOARD TRAINING  
9 CONSORTIUM WILL BE FREE TO VERIFIED MEMBERS OF NOT-FOR-PROFIT BOARDS OF  
10 DIRECTORS WHO CONTRACT WITH THE STATE OF NEW YORK.

11 (1) FEES GENERATED FROM THE TEN DOLLAR INCREASE IN THE FILING FEES  
12 ASSOCIATED WITH CERTIFICATES OF INCORPORATION, AMENDMENT, CHANGE, MERGER  
13 OR CONSOLIDATION, ANNULMENT OF DISSOLUTION, AUTHORITY BY A FOREIGN  
14 CORPORATION, AN AMENDMENT OF SAME OR A CHANGE IN THE AUTHORITY OF A  
15 FOREIGN CORPORATION, SHALL BE USED TO FUND THE STATE BOARD TRAINING  
16 CONSORTIUM.

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

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

31 (1) THE COMMISSIONERS OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL  
32 DISABILITIES, OFFICE OF MENTAL HEALTH, OFFICE OF ALCOHOLISM AND  
33 SUBSTANCE ABUSE SERVICES, OFFICE OF CHILDREN AND FAMILY SERVICES, AND  
34 DEPARTMENT OF HEALTH, HAVING PRIOR EXPERIENCE IN THE STATE BOARD TRAIN-  
35 ING CONSORTIUM AS ADMINISTERED BY OFFICE OF ALCOHOLISM AND SUBSTANCE  
36 ABUSE SERVICES, AND THE DEPARTMENT OF HEALTH, AIDS INSTITUTE, SHALL  
37 JOINTLY:

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

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

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

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

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

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

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

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

26 4. MONEYS IN THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE,  
27 SHALL BE ALLOCATED UPON A CERTIFICATE OF APPROVAL OF AVAILABILITY BY THE  
28 DIRECTOR OF THE BUDGET SOLELY FOR THE PURPOSES SET FORTH IN THIS  
29 SECTION.

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

34 S 21. 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.

43 S 22. This act shall take effect on the one hundred eightieth day  
44 after it shall have become a law.