



SENATE STANDING COMMITTEE ON CORPORATIONS, AUTHORITIES AND COMMISSIONS
Senator Michael H. Ranzenhofer, Chairman

NOTICE OF PUBLIC HEARING
Oral Testimony by Invitation Only

Wednesday, May 22, 2013
Hearing Room B
Legislative Office Bldg.
Albany, NY 12247
10 a.m.- 12 noon

Friday, May 24, 2013
Senate Hearing Room
250 Broadway
New York, NY 10007
10 a.m.- 12 noon

Tuesday, May 28, 2013
Monroe County Office Bldg.
39 West Main St.
Rochester, NY 14614
10 a.m.- 12 noon

SUBJECT: To examine the amendment of the New York State Not-For-Profit Law

PURPOSE: The purpose of this hearing will be to examine comprehensive amendments of New York State's Not-For-Profit Corporation Law in an effort to reduce unnecessary burdens on nonprofits and to enhance nonprofit governance and oversight. The Corporations, Authorities and Commissions Committee will convene to discuss Senate Bill S.3755-A, which would undertake a comprehensive revision of the Not-For-Profit Law. The Committee will also be soliciting testimony on the shortcomings of the current Not-For-Profit Law, the benefits of proposed amendments of the current law and any suggestions for further revisions to the law.

The Not-For-Profit Law was enacted by Chapter 1066 of the Laws of 1969. Although there have been piecemeal amendments of the Law in the last forty plus years, there has not been a comprehensive review and update made.

The Not-For-Profit Law covers a diverse array of entities, including membership corporations, cemetery corporations, fire corporations, religious societies, medical societies, alumni corporations, historical societies, agricultural societies, trade organizations, as well as charitable organizations, hospitals and not-for profit nursing homes. Many of these entities are also regulated by other state departments, including The Department of Health, the Office of the Attorney General and the Education Department.

These entities play a vital role in the economy of our state, providing thousands of jobs and providing vital services on a daily basis. It is critical that the law remain up to date to ensure that those corporations falling under its aegis can operate as efficiently, in terms of both cost and time, as possible, and at the same time that oversight of their operations, often funded by donations, is effective.

Oral testimony will be accepted by invitation only and limited to 10 minutes in duration. A copy of the prepared testimony must be submitted by Friday, May 17, 2013. Written testimony will also be accepted and must be sent to the contact person listed below.

In order to meet the needs of those who may have a disability, the Legislature, in accordance with its policy of non-discrimination on the basis of disability, as well as the 1990 Americans with Disabilities Act (ADA), has made its facilities and services available to all individuals with disabilities. For individuals with disabilities, accommodations will be provided, upon reasonable request, to afford such individuals access and admission to Legislative facilities and activities.

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LBDC

M23:

NTFPRCLA

(Relates to the reform of charitable organizations in the state of New York; repealer)

N-PC L. non-profit reform

By

Amend SENATE BILL NO. 3755 as follows:

Strike out all after "AN ACT" and insert

to amend the not-for-profit corporation law, the estates, powers and trusts law, the surrogate's court procedure act, the racing, pari-mutuel wagering and breeding law, the executive law, the education law, the religious corporations law, the benevolent orders law, the public authorities law, the insurance law, the private housing finance law, the banking law, the general business law, the mental hygiene law and the public lands law, in relation to reform of charitable organizations; and to repeal certain provisions of the not-for-profit corporation law and the estates, powers and trusts law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph 6 of paragraph (a) of section 102 of the not-
2 for-profit corporation law is amended and ten new subparagraphs 3-a,
3 6-a, 9-a, 19, 20, 21, 22, 23, 24 and 25 are added to read as follows:

4 (3-a) "Charitable corporation" means corporations whose purposes as
5 contained in the certificate of incorporation or special law are exclu-
6 sively charitable, educational, religious, scientific, testing for
7 public safety and to foster national or international amateur sports
8 competition or for the prevention of cruelty to children or animals,
9 including without limitation, arts, cultural, environmental, health,
10 human services, literary, public benefit, society benefit corporations
11 and other publicly supported or private foundations recognized by the
12 United States Internal Revenue Service as exempt from federal income
13 taxation under section five hundred one (c)(3) of the internal revenue
14 code of 1986, as amended, or any successor law.

15 (6) "Director" means any member of the governing board of a corpo-
16 ration, whether designated as director, trustee, manager, governor, or
17 by any other title. The term "board" means "board of directors" or any
18 other body constituting a "governing board" as defined in this section.

19 (6-a) "Entire board" means the total number of directors entitled to
20 vote which the corporation would have if there were no vacancies. If the
21 by-laws of any corporation provide that the board may consist of a range

1 between a minimum and maximum number of directors, then the "entire
2 board" shall consist of the number of directors within such range that
3 were elected at the most recently held election of directors.

4 (9-a) "Beneficent corporation" means lawful non-business corporations,
5 including civic leagues, social welfare organizations, fraternal benefit
6 societies, business leagues, chambers of commerce, labor, agricultural
7 and horticultural organizations, social and recreational clubs, cemetery
8 corporations, certain credit unions, war veterans posts and organiza-
9 tions, patriotic and political organizations, certain insurance organ-
10 izations, and certain employee benefit organizations, recognized by the
11 Internal Revenue Service as federal income tax exempt under other
12 subsections of section 501 or under section 527 of the internal revenue
13 code of 1986, as amended, or any successor law, other than those organ-
14 izations exempt under section 501(c)(3) thereof.

15 (19) "Affiliate" of a corporation means any entity controlled by, in
16 control of, or under common control with such corporation.

17 (20) "Independent auditor" means any certified public accountant
18 performing an audit of the financial statements of a corporation
19 required by subdivision one of section one hundred seventy-two-b of the
20 executive law or envisioned by section five hundred nine of this chap-
21 ter.

22 (21) "Independent director" means a director who in the past three
23 years: (i) was not employed by, and did not have a relative who was
24 employed by, the corporation or an affiliate of the corporation; (ii)
25 was not employed by, and did not have a relative who was employed by,
26 any entity that made payments to, or received payments from, the corpo-
27 ration or any affiliate of the corporation for goods, property or
28 services exceeding ten thousand dollars; (iii) has not had, and does not
29 have a relative who has had, a material financial interest in any entity
30 that made payments to, or has received payments from, the corporation or
31 any affiliate of the corporation for goods, property or services equal-
32 ing the lesser of twenty-five thousand dollars or two percent of the
33 corporation's total revenue for the corporation's tax year; and (iv) has
34 not received, and does not have any relative who has received, any other
35 compensation, payment of benefit having monetary value from the corpo-
36 ration or any affiliate of the corporation, other than reimbursement for
37 expenses reasonably incurred as a director or reasonable compensation
38 for service as a director as permitted by paragraph (a) of section two
39 hundred two of this chapter. For purposes of this chapter, "payment"
40 does not include contributions to a not-for-profit corporation.

41 (22) "Relative" of an individual means the (i) spouse, ancestor, chil-
42 dren, grandchildren, great grandchildren, brother or sister (whether by
43 the whole- or half-blood) of the individual; and (ii) the spouses of
44 children, grandchildren, great grandchildren, brother or sister (whether
45 by the whole- or half-blood) of the individual.

46 (23) "Related party" means (i) any director, officer or key employee
47 of the corporation or any affiliate of the corporation; (ii) any rela-
48 tive of any director, officer or key employee of the corporation or any
49 affiliate of the corporation; or (iii) an entity in which any individual
50 described in clauses (i) and (ii) of this subparagraph has a thirty-five
51 percent or greater ownership or beneficial interest.

52 (24) "Related party transaction" means any transaction, agreement or
53 any other arrangement in which a related party has a financial interest
54 and in which the corporation or any affiliate of the corporation is a
55 participant.

1 (25) "Key employee" means any person who is in a position to exercise
2 substantial influence over the affairs of the corporation, as defined in
3 section 4958(f)(1)(A) of the internal revenue code of 1986, as amended,
4 and the regulations thereunder, and any successor law or regulation.

5 § 2. Paragraphs (a), (b) and (c) of section 103 of the not-for-profit
6 corporation law, paragraph (a) as amended by chapter 807 of the laws of
7 1973, paragraph (b) as amended by chapter 847 of the laws of 1970, and
8 paragraph (c) as amended by chapter 961 of the laws of 1972, are amended
9 to read as follows:

10 (a) Except as otherwise provided in this section, this chapter
11 applies to every domestic corporation as herein defined, and to every
12 foreign corporation as herein defined which is authorized to conduct or
13 which conducts any activities in this state. This chapter also applies
14 to any other domestic corporation or foreign corporation of any [type
15 or] kind to the extent, if any, provided under this chapter or any law
16 governing such corporation and, if no such provision for application is
17 made, to the extent, if any, that the membership corporations law
18 applied to such corporation as of the effective date of this chapter. A
19 corporation formed by a special act of this state which has as its prin-
20 cipal purpose an education purpose and which is a member of the univer-
21 sity of the state of New York, is an "education corporation" under
22 section two hundred sixteen-a of the education law.

23 To the extent that the membership corporations law or the general
24 corporation law applied to it as of the effective date of this chapter,
25 the corresponding provisions of this chapter apply to a corporation
26 heretofore formed by or pursuant to a special act of this state other
27 than a religious corporation or an "education corporation" under clause
28 (b) of subdivision one of section two hundred sixteen-a of the education
29 law, if (1) its principal purpose is a religious, charitable or educa-
30 tion purpose, and (2) it is operated, supervised or controlled by or in
31 connection with a religious organization. Any such corporation may
32 elect hereunder at any time after the effective date of this chapter and
33 before the effective date of the chapter of the laws of two thousand
34 thirteen which amended this paragraph to file a certificate of type
35 under section one hundred thirteen (Certificate of type of not-for-pro-
36 fit corporation). Upon the filing of such certificate [by] to the
37 department of state, this chapter shall apply in all respects to such
38 corporation.

39 This chapter also applies to any other corporation of any [type or]
40 kind, formed [not for profit] not-for-profit under any other chapter of
41 the laws of this state except a chapter of the consolidated laws, to the
42 extent that provisions of this chapter do not conflict with the
43 provisions of such unconsolidated law. If an applicable provision of
44 such unconsolidated law relates to a matter embraced in this chapter but
45 is not in conflict therewith, both provisions shall apply. Any corpo-
46 ration to which this chapter is made applicable by this paragraph shall
47 be treated as a "corporation" or "domestic corporation" as such terms
48 are used in this chapter, except that the purposes of any such corpo-
49 ration formed or formable under such unconsolidated law shall not there-
50 by be extended. For the purpose of this paragraph, the effective date
51 of this chapter as to corporations to which this chapter is made appli-
52 cable by this paragraph shall be September one, nineteen hundred seven-
53 ty-three.

54 (b) The general corporation law does not apply to a corporation of
55 any [type or] kind to which this chapter applies. A reference in any
56 statute of this state which makes a provision of the general corporation

1 law applicable to a corporation of any [type or] kind to which this
2 chapter is applicable or a reference in any [statute] law of this state,
3 other than the membership corporations law, which makes a provision of
4 the membership corporations law applicable to a corporation of any [type
5 or] kind shall be deemed and construed to refer to and make applicable
6 the corresponding provision, if any, of this chapter.

7 (c) If any provision in articles one to thirteen inclusive of this
8 chapter conflicts with a provision of any subsequent articles or of any
9 special act under which a corporation to which this chapter applies is
10 formed, the provision in such subsequent article or special act
11 prevails. A provision of any such subsequent article or special act
12 relating to a matter referred to in articles one to thirteen inclusive
13 and not in conflict therewith is supplemental and both shall apply.
14 Whenever the board of a [Type B] charitable corporation, formed under a
15 special act, reasonably makes an interpretation as to whether a
16 provision of the special act or this chapter prevails, or both apply,
17 such interpretation shall govern unless and until a court determines
18 otherwise, if such board has acted in good faith for a purpose which it
19 reasonably believes to be in the best interests of the corporation,
20 provided however, that such interpretation shall not bind any govern-
21 mental body or officer.

22 § 3. Paragraph (a) of section 104-a of the not-for-profit corporation
23 law is REPEALED and paragraphs (b) through (s) are relettered paragraphs
24 (a) through (r).

25 § 4. Section 105 of the not-for-profit corporation law, as amended by
26 chapter 172 of the laws of 1999, is amended to read as follows:

27 § 105. Certificates; corrections.

28 (a) Any certificate or other instrument relating to a domestic or
29 foreign corporation submitted to the department of state under this
30 chapter may be corrected with respect to any typographical, or similar
31 non-material error apparent on the face of the certificate or instru-
32 ment, prior to acceptance for the filing of such certificate or instru-
33 ment by the department of state. Such correction shall be effected by
34 the department of state upon authorization in writing or by electronic
35 mail by the incorporator, or following incorporation, by any person
36 authorized by the corporation.

37 (b) Any certificate or other instrument relating to a domestic or
38 foreign corporation filed by the department of state under this chapter
39 may be corrected with respect to any [informality] typographical or
40 similar non-material or error apparent on the face or defect in the
41 execution thereof including the deletion of any matter not permitted to
42 be stated therein. A certificate, entitled "Certificate of correction
43 of..... (correct title of certificate and name of corporation)"
44 shall be signed and delivered to the department of state. It shall set
45 forth the name of the corporation, the date the certificate to be
46 corrected was filed by the department of state, the provision in the
47 certificate as corrected or eliminated and if the execution was defec-
48 tive, the proper execution. The filing of the certificate by the depart-
49 ment of state shall not alter the effective time of the instrument being
50 corrected, which shall remain as its original effective time, and shall
51 not affect any right or liability accrued or incurred before such
52 filing. A corporate name may not be changed or corrected under this
53 section other than to correct any typographical or similar non-material
54 error.

55 § 5. Subparagraphs 7, 8 and 9 of paragraph (a) of section 112 of the
56 not-for-profit corporation law, subparagraphs 7 and 9 as amended by

1 chapter 1058 of the laws of 1971, are amended and two new subparagraphs
2 10 and 11 are added to read as follows:

3 (7) To enforce any right given under this chapter to members, a
4 director or an officer of a [Type B or Type C] not-for-profit corpo-
5 ration. The attorney-general shall have the same status as such
6 members, director or officer.

7 (8) To compel the directors and officers, or any of them, of a [Type
8 B or Type C] not-for-profit corporation which has been dissolved under
9 section 1011 (Dissolution for failure to file certificate of type of
10 Not-for-Profit Corporation Law under section 113) to account for the
11 assets of the dissolved corporation.

12 (9) Upon application, ex parte, for an order to the supreme court at
13 a special term held within the judicial district where the office of the
14 corporation is located, and if the court so orders, to enforce any right
15 given under this chapter to members, a director or an officer of [a Type
16 A corporation] a not-for-profit corporation. For such purpose, the
17 attorney-general shall have the same status as such members, director or
18 officer.

19 (10) To enjoin, void or rescind any related party transaction, or seek
20 additional damages or remedies pursuant to section 715 (Related party
21 transactions) of this chapter.

22 (11) To enforce the parens patriae power and any other common law
23 authority of the attorney general and any common-law causes of action
24 available to members, directors, officers, creditors and others against
25 a domestic or foreign corporation and its members, directors and offi-
26 cers which are not preempted by this chapter.

27 § 6. Subparagraph 1 of paragraph (b) of section 112 of the not-for-
28 profit corporation law is amended to read as follows:

29 (1) If an action, it is triable by jury as a matter of right as guar-
30 anteed by article I, section 2 of the constitution and provided by
31 section forty-one hundred one of the civil practice law and rules.

32 § 7. Subparagraph 1 of paragraph (c) of section 112 of the not-for-
33 profit corporation law is amended to read as follows:

34 (1) As used in this paragraph the term "resident" shall include indi-
35 viduals, domestic corporations of any [type or] kind and foreign corpo-
36 rations of any [type or] kind authorized to do business or carry on
37 activities in the state.

38 § 8. Section 112 of the not-for-profit corporation law is amended by
39 adding a new paragraph (e) to read as follows:

40 (e) No provisions of this chapter shall preempt well-pleaded common
41 law or equitable causes of action or proceedings brought by the attorney
42 general against corporations, directors, officers, key employees or
43 agents, if such causes of action are independent of causes of action, if
44 any, based on violations of this chapter.

45 § 9. Section 113 of the not-for-profit corporation law is REPEALED.

46 § 10. Section 114 of the not-for-profit corporation law, as added by
47 chapter 847 of the laws of 1970, is amended to read as follows:

48 § 114. Visitation of supreme court.

49 [Type B and Type C corporations] Corporations, whether formed under
50 general or special laws, with their books and vouchers, shall be subject
51 to the visitation and inspection of a justice of the supreme court, or
52 of any person appointed by the court for that purpose. If it appears by
53 the verified petition of a member, director, officer, or creditor of any
54 such corporation, that it, or its directors, officers, members, key
55 employees, or agents, have misappropriated any of the funds or property
56 of the corporation, or diverted them from the purpose of its incorpo-

1 ration, or that the corporation has acquired property in excess of the
2 amount which it is authorized by law to hold, or has engaged in any
3 business other than that stated in its certificate of incorporation, the
4 court may order that notice of at least eight days, with a copy of the
5 petition, be served on the corporation, the attorney general, and the
6 persons charged with misconduct, requiring them to show cause at a time
7 and place specified, why they should not be required to make and file an
8 inventory and account of the property, effects and liabilities of such
9 corporation with a detailed statement of its transactions during the
10 twelve months next preceding the granting of such order. On the hearing
11 of such application, the court may make an order requiring such invento-
12 ry, account and statement to be filed, and proceed to take and state an
13 account of the property and liabilities of the corporation, or may
14 appoint a referee for that purpose. When such account is taken and
15 stated, after hearing all the parties to the application, the court may
16 enter a final order determining the amount of property so held by the
17 corporation, its annual income, whether any of the property or funds of
18 the corporation have been misappropriated or diverted to any other
19 purpose than that for which such corporation was incorporated, and
20 whether such corporation has been engaged in any activity not covered by
21 its certificate of incorporation. An appeal may be taken from the order
22 by any party aggrieved to the appellate division of the supreme court,
23 and to the court of appeals, as in a civil action. No corporation shall
24 be required to make and file more than one inventory and account in any
25 one year, nor to make a second account and inventory, while proceedings
26 are pending for the statement of an account under this section.

27 § 11. Section 115 of the not-for-profit corporation law, as added by
28 chapter 669 of the laws of 1977, is amended to read as follows:

29 § 115. Power to solicit contributions [for charitable purposes].

30 No corporation having the power to solicit contributions [for charita-
31 ble purposes] may solicit contributions for any purpose [for which
32 approval of such solicitation is required under the provisions of
33 section four hundred four of this chapter] unless the certificate
34 specifically makes provision for such solicitation [and the required
35 written approval is endorsed on or annexed to such certificate or]
36 unless the corporation is among those referred to in section one hundred
37 seventy-two-a of the executive law. If [such approval is not obtained
38 and] the corporation continues to solicit or to receive contributions
39 for such purpose [or advertises that it has obtained such approval], the
40 attorney general[, at the request of the officer or body authorized to
41 grant such approval,] shall maintain an action or proceeding pursuant to
42 the provisions of subparagraph one of paragraph (a) of section one
43 hundred twelve of this chapter, of the executive law and the estates,
44 powers and trusts law or any other applicable law against the corpo-
45 ration, its directors, officers, key employees, or agents that solicits
46 contributions in violation of this chapter or those laws. Such an
47 action may also be maintained in relation to a corporation hereinafter
48 incorporated if the name, purposes, objects or the activities of such
49 corporation may, in any manner, lead to the belief that the corporation
50 possesses or may exercise any of such purposes. Otherwise, no corpo-
51 ration may solicit contributions for any purpose unless and until such
52 corporation is in compliance with this section and the applicable regis-
53 tration and reporting requirements of article seven-A of the executive
54 law and section 8-1.4 of the estates, powers and trusts law.

55 § 12. Section 201 of the not-for-profit corporation law, paragraph (b)
56 as amended by chapter 847 of the laws of 1970 and paragraph (c) as

1 amended by chapter 1058 of the laws of 1971, is amended to read as
2 follows:

3 § 201. Purposes.

4 (a) A corporation, as defined in subparagraph [(5)] (10), paragraph
5 (a) of § 102 (Definitions), may be formed under this chapter [as
6 provided in paragraph (b)] unless it may be formed under any other
7 corporate law of this state in which event it may not be formed under
8 this chapter unless such other corporate law expressly so provides.

9 (b) [A corporation, of a type and for a purpose or purposes as
10 follows, may be formed under this chapter, provided consents required
11 under any other statute of this state have been obtained: Type A -] A
12 corporation formed on or after January first, two thousand fourteen
13 shall be either a charitable corporation or a beneficent corporation. A
14 not-for-profit corporation [of this type may be formed for any lawful
15 non-business purpose or purposes including, but not limited to, any one
16 or more of the following non-pecuniary purposes: civic, patriotic,
17 political, social, fraternal, athletic, agricultural, horticultural,
18 animal husbandry, and for a professional, commercial, industrial, trade
19 or service association.

20 Type B - A not-for-profit corporation of this type may be formed for
21 any one or more of the following non-business purposes: charitable,
22 educational, religious, scientific, literary, cultural or for the
23 prevention of cruelty to children or animals.

24 Type C - A not-for-profit corporation of this type may be formed for
25 any lawful business purpose to achieve a lawful public or quasi-public
26 objective.

27 Type D - A not-for-profit corporation of this type may be formed under
28 this chapter when such formation is authorized by any other corporate
29 law of this state for any business or non-business, or pecuniary or
30 non-pecuniary, purpose or purposes specified by such other law, whether
31 such purpose or purposes are also within types A, B, C above or other-
32 wise.

33 (c) If a corporation is formed for purposes which are within both type
34 A and type B above, it is a type B corporation. If a corporation has
35 among its purposes any purpose which is within type C, such corporation
36 is a type C corporation. A type D corporation is subject to all
37 provisions of this chapter which are applicable to a type B corporation
38 under this chapter unless provided to the contrary in, and subject to
39 the contrary provisions of, the other corporate law authorizing forma-
40 tion under this chapter of the type D corporation.] formed prior to
41 January first, two thousand fourteen as a type A corporation under this
42 chapter shall be a beneficent corporation under this chapter. Any
43 submission or filing by such corporation to any person or entity shall
44 be deemed to have been submitted or filed by a beneficent corporation,
45 and any reference in any such filing or submission referring to the
46 status of such corporation as a type A corporation shall be deemed to
47 refer to a beneficent corporation.

48 (c) A type B not-for-profit corporation formed prior to January first,
49 two thousand fourteen shall be deemed a charitable corporation under
50 this chapter. Any submission or filing by such corporation to any person
51 or entity shall be deemed to have been submitted or filed by a charita-
52 ble corporation, and any reference in any such filing or submission
53 referring to the status of such corporation as a type B corporation
54 shall be deemed to refer to a charitable corporation.

55 (d) A type C or D not-for-profit corporation formed prior to January
56 first, two thousand fourteen shall be deemed a beneficent corporation.

1 Any submission or filing by such corporation to any person or entity
2 shall be deemed to have been submitted or filed by a beneficent corpo-
3 ration, and any reference in any such filing or submission referring to
4 the status of such corporation as a type C or D corporation shall be
5 deemed to refer to a beneficent corporation.

6 § 13. Section 204 of the not-for-profit corporation law is amended to
7 read as follows:

8 § 204. Limitation on activities.

9 Notwithstanding any other provision of this chapter or any other
10 general law, a corporation of any [type or] kind to which this chapter
11 applies shall conduct no activities for pecuniary profit or financial
12 gain, whether or not in furtherance of its corporate purposes, except to
13 the extent that such activity supports its other lawful activities then
14 being conducted.

15 § 14. Subparagraphs 1, 2 and 3 of paragraph (a) of section 301 of the
16 not-for-profit corporation law, subparagraph 1 as amended by section 78
17 of part A of chapter 58 of the laws of 2010, subparagraph 2 as amended
18 by chapter 344 of the laws of 2004, are amended to read as follows:

19 (1) Shall[, unless the corporation is formed for charitable or reli-
20 gious purposes, or for purposes for which the approval of the commis-
21 sioner of social services or the public health and health planning coun-
22 cil is required, or is a bar association,] contain the word
23 "corporation", "incorporated" or "limited" or an abbreviation of one of
24 such words; or, in the case of a foreign corporation, it shall, for use
25 in this state, add at the end of its name one of such words or an abbre-
26 viation thereof.

27 (2) (A) Shall be such as to distinguish it from the names of corpo-
28 rations of any [type or] kind, or a fictitious name of an authorized
29 foreign corporation filed pursuant to article thirteen of this chapter,
30 as such names appear on the index of names of existing domestic and
31 authorized foreign corporations of any [type or] kind, including ficti-
32 tious names of authorized foreign corporations filed pursuant to article
33 thirteen of this chapter, in the department of state, division of corpo-
34 rations, or a name the right to which is reserved.

35 (B) Shall be such as to distinguish it from (i) the names of domestic
36 limited liability companies, (ii) the names of authorized foreign limit-
37 ed liability companies, (iii) the fictitious names of authorized foreign
38 limited liability companies, (iv) the names of domestic limited partner-
39 ships, (v) the names of authorized foreign limited partnerships, or (vi)
40 the fictitious names of authorized foreign limited partnerships, in each
41 case, as such names appear on the index of names of existing domestic
42 and authorized foreign limited liability companies, including fictitious
43 names of authorized foreign limited liability companies, in the depart-
44 ment of state, or on the index of names of existing domestic or author-
45 ized foreign limited partnerships, including fictitious names of author-
46 ized foreign limited partnerships, in the department of state, or names
47 the rights to which are reserved; provided, however, that no corporation
48 that was formed prior to the effective date of this clause and no
49 foreign corporation that was qualified to conduct activities in this
50 state prior to such effective date shall be required to change the name
51 or fictitious name it had on such effective date solely by reason of
52 such name or fictitious name being indistinguishable from the name or
53 fictitious name of any domestic or authorized foreign limited liability
54 company or limited partnership or from any name the right to which is
55 reserved by or on behalf of any domestic or foreign limited liability
56 company or limited partnership.

1 (3) Shall not contain any word or phrase, or any abbreviation or
2 derivative thereof, the use of which is prohibited or restricted by
3 section 404 [(Approvals) (Notices and consents) or any other statute of
4 this state, unless in the latter case the restrictions have been
5 complied with.

6 § 15. Subparagraph 3 of paragraph (b) of section 302 of the not-for
7 profit corporation law, as amended by chapter 847 of the laws of 1970,
8 is amended to read as follows:

9 (3) Shall not prevent a foreign corporation from being authorized
10 under a name which is similar to the name of a corporation of any [type
11 or] kind existing or authorized under any statute, if the department of
12 state finds, upon proof by affidavit or otherwise as it may determine,
13 that a difference between such names exists in the terms or abbrevi-
14 ations indicating corporate character or otherwise, that the applicant
15 has conducted activities as a corporation under its said name for not
16 less than ten consecutive years immediately prior to the date of its
17 application, that the activities to be conducted in this state are not
18 the same or similar to the business or activities conducted by the
19 corporation with whose name it may conflict and that the public is not
20 likely to be confused or deceived, and if the applicant shall agree in
21 its application for authority to use with its corporate name, in this
22 state, to be placed immediately under or following such name, the words
23 "a (name of jurisdiction of incorporation) corporation".

24 § 16. Section 304 of the not-for-profit corporation law, as amended by
25 chapter 168 of the laws of 1982, is amended to read as follows:

26 § 304. Statutory designation of secretary of state as agent of domestic
27 corporations [formed under article four of this chapter] and
28 authorized foreign corporations for service of process.

29 (a) The secretary of state shall be the agent of every domestic corpo-
30 ration [formed under article four of this chapter] and every authorized
31 foreign corporation upon whom process against the corporation may be
32 served.

33 (b) Any designation by a domestic corporation [formed under article
34 four of this chapter] or foreign corporation of the secretary of state
35 as such agent, which designation is in effect on the effective date of
36 this chapter, shall continue. Every domestic corporation [formed under
37 article four of this chapter] or foreign corporation, existing or
38 authorized on the effective date of this chapter, which has not desig-
39 nated the secretary of state as such agent, shall be deemed to have done
40 so.

41 (c) Any designation by a domestic corporation [formed under article
42 four of this chapter] or foreign corporation of an agent other than the
43 secretary of state which is in effect on the effective date of this
44 chapter shall continue in effect until changed or revoked as provided in
45 this chapter.

46 (d) Any designated post-office address to which the secretary of state
47 shall mail a copy of process served upon him or her as agent of a domes-
48 tic corporation [formed under article four of this chapter] or foreign
49 corporation, shall continue until the filing of a certificate under this
50 chapter directing the mailing to a different post-office address.

51 § 17. Paragraph (a) of section 305 of the not-for-profit corporation
52 law, as amended by chapter 131 of the laws of 1985, is amended to read
53 as follows:

54 (a) Every domestic corporation or authorized foreign corporation may
55 designate a registered agent in this state upon whom process against
56 such corporation may be served. The agent shall be a natural person who

1 is a resident of or has a business address in this state or a domestic
2 corporation or foreign corporation of any [type or] kind formed, or
3 authorized to do business in this state, under this chapter or under any
4 other statute of this state.

5 § 18. Paragraphs (b) and (c) of section 306 of the not-for-profit
6 corporation law, paragraph (b) as amended by chapter 168 of the laws of
7 1982 and paragraph (c) as amended by chapter 93 of the laws of 1984, are
8 amended to read as follows:

9 (b) Service of process on the secretary of state as agent of a domes-
10 tic corporation [formed under article four of this chapter] or an
11 authorized foreign corporation shall be made by personally delivering to
12 and leaving with [him or his] the deputy of the secretary of state, or
13 with any person authorized by the secretary of state to receive such
14 service, at the office of the department of state in the city of Albany,
15 duplicate copies of such process together with the statutory fee, which
16 fee shall be a taxable disbursement. Service of process on such corpo-
17 ration shall be complete when the secretary of state is so served. The
18 secretary of state shall promptly send one of such copies by certified
19 mail, return receipt requested, to such corporation, at the post office
20 address, on file in the department of state, specified for the purpose.
21 If a domestic corporation [formed under article four of this chapter] or
22 an authorized foreign corporation has no such address on file in the
23 department of state, the secretary of state shall so mail such copy to
24 such corporation at the address of its office within this state on file
25 in the department.

26 (c) If an action or special proceeding is instituted in a court of
27 limited jurisdiction, service of process may be made in the manner
28 provided in this section if the office of the domestic corporation
29 [formed under article four of this chapter] or foreign corporation is
30 within the territorial jurisdiction of the court.

31 § 19. The not-for-profit corporation law is amended by adding a new
32 section 309 to read as follows:

33 § 309. Personal jurisdiction and service of process on non-domiciliary
34 resident director, officer, key employee or agent.

35 A person, by becoming a director, officer, key employee or agent of a
36 corporation is subject to the personal jurisdiction of the supreme court
37 of the state of New York, and in an action or proceeding by the attorney
38 general under this chapter process may be served upon such person as
39 provided in section three hundred thirteen of the civil practice law and
40 rules.

41 § 20. Subparagraphs 2 and 4 of paragraph (a) of section 402 of the
42 not-for-profit corporation law, subparagraph 2 as amended by chapter 847
43 of the laws of 1970 and subparagraph 4 as amended by chapter 679 of the
44 laws of 1985, are amended to read as follows:

45 (2) That the corporation is a corporation as defined in subparagraph
46 (a) (5) of section 102 (Definitions)[;], the purpose or purposes for
47 which it is formed, and [the type of] whether it is a charitable corpo-
48 ration [it shall be] or a beneficent corporation under section 201
49 (Purposes)[; and in the case of a Type C corporation, the lawful public
50 or quasi-public objective which each business purpose will achieve]. Any
51 corporation may also set forth any activities that it intends to carry
52 out in furtherance of such purpose or purposes; provided, however, that
53 this subparagraph shall not be interpreted to require that such activ-
54 ities be set forth in the certificate of incorporation.

55 (4) [In the case of a Type A, Type B, or Type C corporation, the] The
56 names and addresses of the initial directors. [In the case of a Type D

1 corporation, the names and addresses of the initial directors, if any,
2 may but need not be set forth.]

3 § 21. The section heading and paragraphs (a), (b), (c), (d), (e),
4 (g), (h), (i), (t), (u), (v), and (w) of section 404 of the not-for-pro-
5 fit corporation law, the section heading, paragraphs (c), (d), (e), (h)
6 and (i) as amended and paragraph (a) as added by chapter 139 of the laws
7 of 1993, paragraph (c) as further amended by section 104 of part A of
8 chapter 62 of the laws of 2011 and paragraphs (a), (c), (d), (e), (g),
9 (h) and (i) as relettered by chapter 431 of the laws of 1993, paragraph
10 (b) as amended by section 4 of part D of chapter 58 of the laws of 2006,
11 paragraph (g) as separately amended by chapters 139 and 201 of the laws
12 of 1993, paragraph (t) as amended by section 79 of part A of chapter 58
13 of the laws of 2010, paragraph (u) as amended by chapter 558 of the laws
14 of 1999, paragraph (v) as added by chapter 598 of the laws of 2000 and
15 as further amended by section 104 of part A of chapter 62 of the laws of
16 2011 and paragraph (w) as added by chapter 316 of the laws of 2005, are
17 amended to read as follows:

18 [Approvals] Notices and consents.

19 (a) Every [certificate of incorporation] corporation which includes
20 among its purposes the formation of a trade or business association
21 shall [have endorsed thereon or annexed thereto the consent of] send by
22 certified mail, return receipt requested, a certified copy of its
23 certificate of incorporation to the attorney-general immediately after
24 the filing of such certificate by the secretary of state.

25 (b) (1) Every [certificate of incorporation] corporation which
26 includes among its purposes the care of destitute, delinquent, aban-
27 doned, neglected or dependent children; the establishment or operation
28 of any adult care facility, or the establishment or operation of a resi-
29 dential program for victims of domestic violence as defined in subdivi-
30 sion four of section four hundred fifty-nine-a of the social services
31 law, or the placing-out or boarding-out of children or a home or shelter
32 for unmarried mothers, excepting the establishment or maintenance of a
33 hospital or facility providing health-related services as those terms
34 are defined in article twenty-eight of the public health law and a
35 facility for which an operating certificate is required by articles
36 sixteen, nineteen, twenty-two and thirty-one of the mental hygiene law;
37 or the solicitation of contributions for any such purpose or purposes,
38 shall [have endorsed thereon or annexed thereto the approval of] send by
39 certified mail, return receipt requested, a certified copy of its
40 certificate of incorporation to the commissioner of the office of chil-
41 drren and family services immediately after the filing of such certif-
42 icate by the department of state or with respect to any adult care
43 facility, send by certified mail, return receipt requested, a certified
44 copy of its certificate of incorporation to the commissioner of health
45 immediately after the filing of such certificate by the department of
46 state.

47 (2) A corporation whose statement of purposes specifically includes
48 the establishment or operation of a child day care center, as that term
49 is defined in section three hundred ninety of the social services law,
50 shall [provide a certified copy of the certificate of incorporation]
51 send by certified mail, return receipt requested, a certified copy of
52 its certificate of incorporation, each amendment thereto, and any
53 certificate of merger, consolidation or dissolution involving such
54 corporation to the office of children and family services within thirty
55 days after the filing of such certificate, amendment, merger, consol-
56 idation or dissolution with the department of state. This requirement

1 shall also apply to any foreign corporation filing an application for
2 authority under section thirteen hundred four of this chapter, any
3 amendments thereto, and any surrender of authority or termination of
4 authority in this state of such corporation.

5 (c) Every [certificate of incorporation] corporation which includes
6 among [the] its purposes [of the corporation,] the establishment, main-
7 tenance and operation of a hospital service or a health service or a
8 medical expense indemnity plan or a dental expense indemnity plan as
9 permitted in article forty-three of the insurance law, shall [have
10 endorsed thereon or annexed thereto the approval of] send by certified
11 mail, return receipt requested, a certified copy of its certificate of
12 incorporation to the superintendent of financial services and the
13 commissioner of health immediately after the filing of such certificate
14 by the department of state.

15 (d) Every [certificate of incorporation] corporation which includes a
16 purpose for which a corporation [might] must be chartered by the regents
17 of the university of the State of New York shall [have endorsed thereon
18 or annexed thereto the consent of] apply to the regents for a charter.
19 Such corporations are those which carry out any of the activities for
20 which the consent of the commissioner of education is required by para-
21 graph (v) of this section. Otherwise a corporation which may have
22 educational purposes must send by certified mail, return receipt
23 requested, a certified copy of its certificate of incorporation to the
24 commissioner of education immediately after the filing of such certif-
25 icate by the department of state.

26 (e) Every [certificate of incorporation of a] cemetery corporation,
27 except those within the exclusionary provisions of section 1503 (Ceme-
28 tery corporations) shall [have endorsed thereon or annexed thereto the
29 approval of] send by certified mail, return receipt requested, a certi-
30 fied copy of its certificate of incorporation to the cemetery board
31 immediately after the filing of such certificate by the department of
32 state.

33 (g) Every [certificate of incorporation of a] corporation for
34 prevention of cruelty to animals shall [have endorsed thereon or annexed
35 thereto the approval of] send by certified mail, return receipt
36 requested, a certified copy of its certificate of incorporation to the
37 American Society for the Prevention of Cruelty to Animals[, or, if such
38 approval be withheld thirty days after application therefor, a certified
39 copy of an order of a justice of the supreme court of the judicial
40 district in which the office of the corporation is to be located,
41 dispensing with such approval, granted upon eight days' notice to such
42 society] immediately after the filing of such certificate by the depart-
43 ment of state.

44 (h) Every [certificate of incorporation of] corporation which has as
45 its purpose the establishment of a Young Men's Christian Association
46 shall [have endorsed thereon or annexed thereto the approval of] send by
47 certified mail, return receipt requested, a certified copy of its
48 certificate of incorporation to the chairman of the national board of
49 Young Men's Christian Associations immediately after the filing of such
50 certificate by the department of state.

51 (i) Every [certificate of incorporation] corporation which [indicates
52 that the proposed corporation is] has as its purpose to solicit funds
53 for or otherwise benefit the armed forces of the United States or of any
54 foreign country, or their auxiliaries, or of this or any other state or
55 any territory, shall [have endorsed thereon or annexed thereto the
56 approval of] send a certified copy, return receipt requested, of its

1 certificate of incorporation to the chief of staff immediately after the
2 filing of such certificate by the department of state.

3 [(t)] (s) Every certificate of incorporation which includes among its
4 purposes and powers the establishment or maintenance of a hospital or
5 facility providing health related services, as those terms are defined
6 in article twenty-eight of the public health law, or the solicitation of
7 contributions for any such purpose or two or more of such purposes,
8 shall have endorsed thereon the approval of the public health and health
9 planning council.

10 [(u)] (t) Every certificate of incorporation which includes among the
11 purposes of the corporation, the establishment or operation of a
12 substance abuse, substance dependence, alcohol abuse, alcoholism, or
13 chemical abuse or dependence program, or the solicitation of contrib-
14 utions for any such purpose, shall have endorsed thereon or annexed
15 thereto the consent of the commissioner of the office of alcoholism and
16 substance abuse services to its filing by the department of state.

17 [(v)] (u) Every certificate of incorporation which includes among the
18 purposes of the corporation, the establishment, maintenance and opera-
19 tion of a nonprofit property/casualty insurance company, pursuant to
20 article sixty-seven of the insurance law, shall have endorsed thereon or
21 annexed thereto the approval of the superintendent of financial
22 services.

23 [(w)] (v) Every certificate of incorporation in which the name of the
24 proposed corporation includes the terms: "school," "education," "elemen-
25 tary," "secondary," "kindergarten," "prekindergarten," "preschool,"
26 "nursery school," "museum," "history," "historical," "historical socie-
27 ty," "arboretum," "library," "college," "university," "public tele-
28 vision," "public radio station," or other term restricted by section two
29 hundred twenty-four of the education law; "conservatory," "academy," or
30 "institute," or any abbreviation or derivative of such terms, shall have
31 endorsed thereon or annexed thereto the consent of the commissioner of
32 education.

33 § 22. Section 404 of the not-for-profit corporation law is amended by
34 adding a new paragraph (w) to read as follows:

35 (w) Each agency, public officer, organization or person to whom a
36 notice of incorporation is to be sent or from whom a consent to incorpo-
37 ration must be obtained, as provided in this section, shall publish the
38 name and address of the representative it has designated to receive such
39 notice or request for consent. If any agency, public officer, organiza-
40 tion or person to whom a request for consent has been sent does not
41 consent or object, setting forth the reasons for such objection, within
42 forty-five days after the receipt of such request, the consent shall be
43 conclusively presumed to have been given and the secretary of state
44 shall file the certificate of incorporation.

45 § 23. Paragraph (b-1) of section 406 of the not-for-profit corporation
46 law is REPEALED.

47 § 24. Subdivision (d) of section 406 of the not-for-profit corporation
48 law, as added by chapter 331 of the laws of 1971, is amended to read as
49 follows:

50 (d) Nothing in this section shall impair the rights and powers of the
51 courts or the attorney-general of this state including the enforcement
52 of the provisions included in the certificates of incorporation to which
53 this section applies.

54 § 25. Paragraph (d) of section 502 of the not-for-profit corporation
55 law is amended to read as follows:

1 (d) A member's capital contribution shall be evidenced by a capital
2 certificate which shall be non-transferable, except that the certificate
3 of incorporation of a [Type A] beneficent corporation may provide that
4 its capital certificates, or some of them, may be transferable to other
5 members with the consent of the corporation upon specified terms and
6 conditions.

7 § 26. Paragraph (b) of section 503 of the not-for-profit corporation
8 law, subparagraph 1 as amended by chapter 847 of the laws of 1970, is
9 amended to read as follows:

10 (b) Each capital certificate shall when issued state upon the face
11 thereof:

12 (1) That the corporation is a [Type] charitable or beneficent
13 corporation under section 113 or section 402 of the New York Not-for-
14 Profit Corporation Law.

15 (2) The name of the member to whom issued.

16 (3) The amount of the member's capital contribution evidenced by such
17 certificate.

18 (4) If appropriate, that the corporation is a [Type A] beneficent
19 corporation, and that its certificate of incorporation provides that the
20 capital certificate is transferable to other members with the consent of
21 the corporation.

22 § 27. Subparagraph 1 of paragraph (b) of section 505 of the not-for-
23 profit corporation law, as amended by chapter 847 of the laws of 1970,
24 is amended to read as follows:

25 (1) That the corporation is a [Type] charitable or beneficent
26 corporation under section 113 or section 402 of the New York Not-for-
27 Profit Corporation Law.

28 § 28. Section 509 of the not-for-profit corporation law, as amended by
29 chapter 145 of the laws of 1991, is amended to read as follows:

30 § 509. Purchase, sale, mortgage and lease of real property.

31 (a) No corporation shall purchase [of] real property [shall be made by
32 a corporation and no corporation shall sell, mortgage or lease real
33 property, unless authorized by the vote of] unless authorized by the
34 vote of a majority of directors of the board or a committee authorized
35 by the board; provided, however, that if such property would, upon
36 purchase thereof, constitute all, or substantially all, of the assets of
37 the corporation, then the vote of two-thirds of the entire board[,
38 provided that if] shall be required, or, if there are twenty-one or more
39 directors, the vote of a majority of the entire board shall be suffi-
40 cient.

41 (b) No corporation shall sell, mortgage or lease its real property
42 unless authorized by the vote of a majority of directors of the board or
43 a committee authorized by the board; provided, however, that if such
44 property constitutes all, or substantially all, of the assets of the
45 corporation, then the vote of two-thirds of the entire board shall be
46 required, or, if there are twenty-one or more directors, the vote of a
47 majority of the entire board shall be sufficient.

48 § 29. Paragraph (a) of section 510 of the not-for-profit corporation
49 law, the opening paragraph as amended by chapter 961 of the laws of
50 1972, and subparagraph 3 as amended by chapter 847 of the laws of 1970,
51 is amended to read as follows:

52 (a) A sale, lease, exchange or other disposition of all, or substan-
53 tially all, the assets of a corporation may be made upon such terms and
54 conditions and for such consideration, which may consist in whole or in
55 part of cash or other property, real or personal, including shares,
56 bonds or other securities of any other domestic or foreign corporation

1 or corporations of any [type or] kind, as may be authorized in accord-
2 ance with the following procedure:

3 (1) If there are members entitled to vote thereon, the board shall
4 adopt a resolution recommending such sale, lease, exchange or other
5 disposition. The resolution shall specify the terms and conditions of
6 the proposed transaction, including the consideration to be received by
7 the corporation and the eventual disposition to be made of such consid-
8 eration, together with a statement that the dissolution of the corpo-
9 ration is or is not contemplated thereafter. The resolution shall be
10 submitted to a vote at a meeting of members entitled to vote thereon,
11 which may be either an annual or a special meeting. Notice of the meet-
12 ing shall be given to each member and each holder of subvention certifi-
13 cates or bonds of the corporation, whether or not entitled to vote. At
14 such meeting by two-thirds vote as provided in paragraph (c) of section
15 613 (Vote of members) the members may approve the proposed transaction
16 according to the terms of the resolution of the board, or may approve
17 such sale, lease, exchange or other disposition and may authorize the
18 board to modify the terms and conditions thereof.

19 (2) If there are no members entitled to vote thereon, such sale,
20 lease, exchange or other disposition shall be authorized by the vote of
21 at least two-thirds of the entire board, provided that if there are
22 twenty-one or more directors, the vote of a majority of the entire board
23 shall be sufficient.

24 (3) If the corporation is, or would be if formed under this chapter,
25 classified as a [Type B or Type C] charitable corporation under section
26 201, (Purposes) such sale, lease, exchange or other disposition shall in
27 addition require [leave] either (A) approval of the supreme court in the
28 judicial district or of the county court of the county in which the
29 corporation has its office or principal place of carrying out the
30 purposes for which it was formed in accordance with section 511 (Peti-
31 tion for court approval) or (B) approval of the attorney general if
32 authorized under section 511-a (Petition for attorney general approval).

33 § 30. The section heading, the opening paragraph and subparagraph 9 of
34 paragraph (a) of section 511 of the not-for-profit corporation law, are
35 amended to read as follows:

36 Petition for [leave of] court approval.

37 [A corporation required by law to] To obtain [leave of] court approval
38 to sell, lease, exchange or otherwise dispose of all or substantially
39 all its assets, a corporation shall present a verified petition to the
40 supreme court of the judicial district, or the county court of the coun-
41 ty, wherein the corporation has its office or principal place of carry-
42 ing out the purposes for which it was formed. The petition shall set
43 forth:

44 9. A [prayer] request for [leave] court approval to sell, lease,
45 exchange or otherwise dispose of all or substantially all the assets of
46 the corporation as set forth in the petition.

47 § 31. The not-for-profit corporation law is amended by adding a new
48 section 511-a to read a follow:

49 § 511-a. Petition for attorney general approval.

50 (a) In lieu of obtaining court approval under section 511 (Petition
51 for court approval) to sell, lease, exchange or otherwise dispose of all
52 or substantially all of its assets, the corporation may alternatively
53 seek approval of the attorney general by verified petition, except in
54 the following circumstances:

1 1. The corporation is insolvent, or would become insolvent as a result
2 of the transaction, and must proceed on notice to creditors pursuant to
3 paragraph (c) of section 511 (Petition for court approval); or

4 2. The attorney general, in his or her discretion, concludes that a
5 court should review the petition and make a determination thereon.

6 (b) The verified petition to the attorney general shall set forth: 1.
7 all of the information required to be included in a verified petition to
8 obtain court approval pursuant to subparagraphs one through nine of
9 paragraph (a) of section 511 (Petition for court approval); 2. a state-
10 ment that the corporation is not insolvent and will not become insolvent
11 as a result of the transaction; and 3. a statement as to whether any
12 persons have raised, or have a reasonable basis to raise, objections to
13 the sale, lease, exchange or other disposition that is the subject of
14 the petition, including a statement setting forth the names and
15 addresses of such persons, the nature of their interest, and a
16 description of their objections. The attorney general, in his or her
17 discretion, may direct the corporation to provide notice of such peti-
18 tion to any interested person, and the corporation shall provide the
19 attorney general with a certification that such notice has been
20 provided.

21 (c) If it shall appear, to the satisfaction of the attorney general
22 that the consideration and the terms of the transaction are fair and
23 reasonable to the corporation and that the purposes of the corporation
24 or the interests of the members will be promoted, the attorney general
25 may authorize the sale, lease, exchange or other disposition of all or
26 substantially all the assets of the corporation, as described in the
27 petition, for such consideration and upon such terms as the attorney
28 general may prescribe. The authorization of the attorney general shall
29 direct the disposition of the consideration to be received thereunder by
30 the corporation.

31 (d) If the attorney general does not approve the petition, or if the
32 attorney general concludes that court review is appropriate, the peti-
33 tioner may seek court approval on ten days notice to the attorney gener-
34 al pursuant to section 511 (Petition for court approval).

35 § 32. Paragraph (a) of section 513 of the not-for-profit corporation
36 law, as amended by chapter 690 of the laws of 1978, is amended to read
37 as follows:

38 (a) A corporation which is, or would be if formed under this chapter,
39 [classified as a Type B corporation] shall hold full ownership rights in
40 any assets consisting of funds or other real or personal property of any
41 kind, that may be given, granted, bequeathed or devised to or otherwise
42 vested in such corporation in trust for, or with a direction to apply
43 the same to, any purpose specified in its certificate of incorporation,
44 and shall not be deemed a trustee of an express trust of such assets.
45 Any other corporation subject to this chapter may similarly hold assets
46 so received, unless otherwise provided by law or in the certificate of
47 incorporation.

48 § 33. Paragraphs (b) and (c) of section 515 of the not-for-profit
49 corporation law, paragraph (c) as amended by chapter 847 of the laws of
50 1970, are amended to read as follows:

51 (b) A corporation may pay compensation in a reasonable amount to
52 members, directors, or officers for services rendered as permitted by
53 this chapter, including without limitation, in accordance with subpara-
54 graph twelve of paragraph (a) of section 202 (General and special
55 powers), and sections 712-a (Audit oversight) and 715 (Related party

1 transactions), and may make distributions of cash or property to members
2 upon dissolution or final liquidation as permitted by this chapter.

3 (c) A corporation may confer benefits upon members or nonmembers in
4 conformity with its purposes as permitted by this chapter, including
5 without limitation, sections 712-a (Audit oversight) and 715 (Related
6 party transactions), may redeem its capital certificates or subvention
7 certificates, and may make other distributions of cash or property to
8 its members or former members, directors, or officers prior to dissol-
9 ution or final liquidation, as authorized by this article, except when
10 the corporation is currently insolvent or would thereby be made insol-
11 vent or rendered unable to carry on its corporate purposes, or when the
12 fair value of the corporation's assets remaining after such conferring
13 of benefits, or redemption, or other distribution would be insufficient
14 to meet its liabilities.

15 § 34. Section 520 of the not-for-profit corporation law, as amended by
16 chapter 58 of the laws of 1981, is amended to read as follows:

17 § 520. Reports of corporation.

18 Each domestic corporation, and each foreign corporation authorized to
19 conduct activities in this state, shall from time to time file such
20 reports on its activities as may be required by the laws of this state.
21 All registration and reporting requirements pursuant to [EPTL 8-1.4]
22 article seven-A of the executive law, and section 8-1.4 of the estates,
23 powers and trusts law, or related successor provisions, are, without
24 limitation on the foregoing, expressly included as reports required by
25 the laws of this state to be filed within the meaning of this section.
26 Willful failure of a corporation to file a report as required by law
27 shall constitute a breach of the directors' duty to the corporation and
28 shall subject the corporation, at the suit of the attorney-general, to
29 an action or special proceeding for dissolution under article 11 (Judicial
30 dissolution) in the case of a domestic corporation, or under § 1303
31 (Violations) in the case of a foreign corporation.

32 § 35. The not-for-profit corporation law is amended by adding a new
33 section 522 to read as follows:

34 § 522. Cy-pres and deviation.

35 Nothing in this chapter shall limit the application of the
36 doctrines of cy-pres and deviation.

37 § 36. Paragraph (a) of section 601 of the not-for-profit corporation
38 law, as amended by chapter 1058 of the laws of 1971, is amended to read
39 as follows:

40 (a) A corporation shall have one or more classes of members, or, in
41 the case of a [Type B] charitable corporation, may have no members, in
42 which case any such provision for classes of members or for no members
43 shall be set forth in the certificate of incorporation or the by-laws.
44 Corporations, joint-stock associations, unincorporated associations and
45 partnerships, as well as any other person without limitation, may be
46 members.

47 § 37. Paragraph (a) of section 605 of the not-for-profit corporation
48 law, as amended by chapter 1058 of the laws of 1971, is amended to read
49 as follows:

50 (a) Whenever under the provisions of this chapter members are required
51 or permitted to take any action at a meeting, written notice shall state
52 the place, date and hour of the meeting and, unless it is an annual
53 meeting, indicate that it is being issued by or at the direction of the
54 person or persons calling the meeting. Notice of a special meeting shall
55 also state the purpose or purposes for which the meeting is called. A
56 copy of the notice of any meeting shall be given, personally [or], by

1 mail, or by facsimile telecommunications or by electronic mail, to each
2 member entitled to vote at such meeting. If the notice is given
3 personally [or], by first class mail or by facsimile telecommunications
4 or by electronic mail, it shall be given not less than ten nor more than
5 fifty days before the date of the meeting; if mailed by any other class
6 of mail, it shall be given not less than thirty nor more than sixty days
7 before such date. If mailed, such notice is given when deposited in the
8 United States mail, with postage thereon prepaid, directed to the member
9 at his address as it appears on the record of members, or, if he shall
10 have filed with the secretary of the corporation a written request that
11 notices to him be mailed to some other address, then directed to him at
12 such other address. If sent by facsimile telecommunications or mailed
13 electronically, such notice is given when directed to the member's fax
14 number or electronic mail address as it appears on the record of
15 members, or, to such fax number or other electronic mail address as
16 filed with the secretary of the corporation. Notwithstanding the forego-
17 ing, such notice shall not be given electronically: (1) if the corpo-
18 ration is unable to deliver two consecutive notices to the member by
19 electronic mail; or (2) the corporation otherwise becomes aware that
20 notice cannot be delivered to the member by electronic mail. An affida-
21 vit of the secretary or other person giving the notice or of a transfer
22 agent of the corporation that the notice required by this section has
23 been given shall, in the absence of fraud, be prima facie evidence of
24 the facts therein stated. Whenever a corporation has more than five
25 hundred members, the notice may be served by publication[, in lieu of
26 mailing,] in a newspaper published in the county in the state in which
27 the principal office of the corporation is located, once a week for
28 three successive weeks next preceding the date of the meeting, provided
29 that the corporation shall also prominently post notice of such meeting
30 on the homepage of any website maintained by the corporation continuous-
31 ly from the date of publication through the date of the meeting.

32 § 38. Section 606 of the not-for-profit corporation law is amended to
33 read as follows:

34 § 606. Waivers of notice.

35 Notice of meeting need not be given to any member who submits a
36 [signed] waiver of notice, in person or by proxy, whether before or
37 after the meeting. Waiver of notice may be written or electronic. If
38 written, the waiver must be executed by the member or the member's
39 authorized officer, director, employee, or agent by signing such waiver
40 or causing the member's signature to be affixed to such waiver by any
41 reasonable means, including, but not limited to facsimile signature. If
42 electronic, the transmission of the waiver must be sent by electronic
43 mail and set forth, or be submitted with, information from which it can
44 reasonably be determined that the transmission was authorized by the
45 member. The attendance of any member at a meeting, in person or by
46 proxy, without protesting prior to the conclusion of the meeting the
47 lack of notice of such meeting, shall constitute a waiver of notice by
48 him.

49 § 39. Paragraphs (b) and (c) of section 609 of the not-for-profit
50 corporation law, as added by chapter 186 of the laws of 1999, are
51 amended to read as follows:

52 (b) Without limiting the manner in which a member may authorize another
53 person or persons to act for him as proxy pursuant to paragraph (a)
54 of this section, the following shall constitute a valid means by which a
55 member may grant such authority:

1 (1) A member may execute a writing authorizing another person or
2 persons to act for him as proxy. Execution may be accomplished by the
3 member or the member's authorized officer, director, employee or agent
4 signing such writing or causing his or her signature to be affixed to
5 such writing by any reasonable means including, but not limited to, by
6 facsimile signature.

7 (2) A member may authorize another person or persons to act for the
8 member as proxy by [transmitting or authorizing the transmission of a
9 telegram, cablegram or other means of] providing such authorization by
10 electronic [transmission] mail to the person who will be the holder of
11 the proxy or to a proxy solicitation firm, proxy support service organ-
12 ization or like agent duly authorized by the person [who will be the
13 holder of the proxy to receive such transmission], provided that any
14 such [telegram, cablegram or other means of electronic transmission]
15 authorization by electronic mail shall either set forth [or be submitted
16 with] information from which it can be reasonably determined that the
17 [telegram, cablegram or other] authorization by electronic [trans-
18 mission] mail was authorized by the member. If it is determined that
19 such [telegrams, cablegrams or other] authorization by electronic [tran-
20 smissions are] mail is valid, the inspectors or, if there are no inspec-
21 tors, such other persons making that determination shall specify the
22 nature of the information upon which they relied.

23 (c) Any copy, facsimile telecommunication or other reliable reprod-
24 uction of the writing or [transmission] electronic mail created pursuant
25 to paragraph (b) of this section may be substituted or used in lieu of
26 the original writing or transmission for any and all purposes for which
27 the original writing or transmission could be used, provided that such
28 copy, facsimile telecommunication or other reproduction shall be a
29 complete reproduction of the entire original writing or transmission.

30 § 40. Paragraphs (a) and (b) of section 614 of the not-for-profit
31 corporation law are amended to read as follows:

32 (a) Whenever, under this chapter, members are required or permitted to
33 take any action by vote, such action may be taken without a meeting [on
34 written] upon the consent[, setting forth the action so taken, signed
35 by] of all of the members entitled to vote thereon, which consent shall
36 set forth the action so taken. Such consent may be written or electron-
37 ic. If written, the consent must be executed by the member or the
38 member's authorized officer, director, employee or agent by signing such
39 consent or causing the member's signature to be affixed to such waiver
40 by any reasonable means including but not limited to facsimile signa-
41 ture. If electronic, the transmission of the consent must be sent by
42 electronic mail and set forth, or be submitted with, information from
43 which it can reasonably be determined that the transmission was author-
44 ized by the member. This paragraph shall not be construed to alter or
45 modify any provision in a certificate of incorporation not inconsistent
46 with this chapter under which the written consent of less than all of
47 the members is sufficient for corporate action.

48 (b) Written or electronic consent thus given by all members entitled
49 to vote shall have the same effect as a unanimous vote of members and
50 any certificate with respect to the authorization or taking of any such
51 action which is delivered to the department of state shall recite that
52 the authorization was by [unanimous] unanimous written consent.

53 § 41. Paragraph (a) of section 702 of the not-for-profit corporation
54 law is amended to read as follows:

55 (a) The number of directors constituting the entire board shall be not
56 less than three. Subject to such limitation, such number may be fixed by

1 the by-laws or, in the case of a corporation having members, by action
2 of the members or of the board under the specific provisions of a by-law
3 adopted by the members. If not otherwise fixed under this paragraph, the
4 number shall be three. [As used in this article, "entire board" means
5 the total number of directors entitled to vote which the corporation
6 would have if there were no vacancies.]

7 § 42. Paragraphs (b) and (c) of section 708 of the not-for-profit
8 corporation law, paragraph (b) as amended by chapter 92 of the laws of
9 1983 and paragraph (c) as amended by chapter 211 of the laws of 2007,
10 are amended to read as follows:

11 (b) Unless otherwise restricted by the certificate of incorporation or
12 the by-laws, any action required or permitted to be taken by the board
13 or any committee thereof may be taken without a meeting if all members
14 of the board or the committee consent [in writing] to the adoption of a
15 resolution authorizing the action. Such consent may be written or elec-
16 tronic. If written, the consent must be executed by the director by
17 signing such consent or causing his or her signature to be affixed to
18 such consent by any reasonable means including, but not limited to,
19 facsimile signature. If electronic, the transmission of the consent must
20 be sent by electronic mail and set forth, or be submitted with, informa-
21 tion from which it can reasonably be determined that the transmission
22 was authorized by the director. The resolution and the written consents
23 thereto by the members of the board or committee shall be filed with the
24 minutes of the proceedings of the board or committee.

25 (c) Unless otherwise restricted by the certificate of incorporation or
26 the by-laws, any one or more members of the board or of any committee
27 thereof [may participate in] who is not physically present at a meeting
28 of [such] the board or a committee may participate by means of a confer-
29 ence telephone or similar communications equipment [allowing all persons
30 participating in the meeting to hear each other at the same time] or by
31 electronic video screen communication. Participation by such means
32 shall constitute presence in person at a meeting as long as all persons
33 participating in the meeting can hear each other at the same time and
34 each director can participate in all matters before the board, includ-
35 ing, without limitation, the ability to propose, object to, and vote
36 upon a specific action to be taken by the board or committee.

37 § 43. Paragraph (c) of section 711 of the not-for-profit corporation
38 law, as amended by chapter 847 of the laws of 1970, is amended to read
39 as follows:

40 (c) Notice of a meeting need not be given to any alternate director,
41 nor to any director who submits a [signed] waiver of notice whether
42 before or after the meeting, or who attends the meeting without protest-
43 ing, prior thereto or at its commencement, the lack of notice to him or
44 her. Such waiver of notice may be written or electronic. If written, the
45 waiver must be executed by the director signing such waiver or causing
46 his or her signature to be affixed to such waiver by any reasonable
47 means including but not limited to facsimile signature. If electronic,
48 the transmission of the consent must be sent by electronic mail and set
49 forth, or be submitted with, information from which it can reasonably be
50 determined that the transmission was authorized by the director.

51 § 44. Paragraphs (a), (b) and (e) of section 712 of the not-for-profit
52 corporation law, paragraph (e) as amended by chapter 961 of the laws of
53 1972, are amended to read as follows:

54 (a) If the certificate of incorporation or the by-laws so provide, the
55 board, by resolution adopted by a majority of the entire board, may
56 designate from among its members an executive committee and other

1 [standing] committees, each consisting of three or more directors, and
2 each of which, to the extent provided in the resolution or in the
3 certificate of incorporation or by-laws, shall have all the authority of
4 the board, except that no such committee shall have authority as to the
5 following matters:

6 (1) The submission to members of any action requiring members'
7 approval under this chapter.

8 (2) The filling of vacancies in the board of directors or in any
9 committee.

10 (3) The fixing of compensation of the directors for serving on the
11 board or on any committee.

12 (4) The amendment or repeal of the by-laws or the adoption of new
13 by-laws.

14 (5) The amendment or repeal of any resolution of the board which by
15 its terms shall not be so amendable or repealable.

16 (b) The board may designate one or more directors as alternate members
17 of any [standing] committee, who may replace any absent member or
18 members at any meeting of such committee.

19 [(e)] (d) Committees, other than [standing or special] committees of
20 the board, whether created by the board or by the members, shall be
21 committees of the corporation. Such committees of the corporation may be
22 elected or appointed in the same manner as officers of the corporation,
23 but no such committee shall have the authority to bind the board.
24 Provisions of this chapter applicable to officers generally shall apply
25 to members of such committees.

26 § 45. Paragraph (c) of section 712 of the not-for-profit corporation
27 law is REPEALED and paragraphs (d) and (e) are relettered paragraphs (c)
28 and (d).

29 § 46. The not-for-profit corporation law is amended by adding two new
30 sections 712-a and 712-b to read as follows:

31 § 712-a. Audit oversight.

32 (a) Every corporation required to file an independent certified public
33 accountant's audit report with the attorney general pursuant to subdivi-
34 sion one of section one hundred seventy-two-b of the executive law or
35 which presents such a report as part of the annual report required by
36 section 519 (Annual report of directors) shall designate an audit
37 committee of the board, consisting of at least three independent direc-
38 tors, for the purpose of overseeing the accounting and financial report-
39 ing processes of the corporation and the independent certified public
40 accountant's audit of the corporation's financial statements. The corpo-
41 ration's entire board may constitute the audit committee, provided that
42 only independent directors may be present at and participate in deliber-
43 ations and voting relating to audit committee matters. If a corporation
44 controls a group of corporations, the audit committee of the controlling
45 corporation may be deemed to be the audit committee for one or more of
46 its controlled corporations.

47 (b) The audit committee shall, at a minimum:

48 (1) retain and evaluate the independent auditor who shall report
49 directly to the audit committee;

50 (2) review with the independent auditor the scope and planning of the
51 audit;

52 (3) review and discuss with the independent auditor, at a minimum: (a)
53 the results of any audit, including but not limited to: the management
54 letter to the board and any material risks and weaknesses in internal
55 controls identified by the auditor; (b) any restrictions on the scope of
56 the auditor's activities or access to requested information; (c) any

1 significant disagreements between the auditor and management; and (d)
2 the adequacy and performance of the corporation's accounting function;

3 (4) consider at least annually the performance and independence of the
4 independent auditor;

5 (5) oversee adoption, implementation of, and compliance with any
6 conflict of interest policy or whistleblower policy adopted by the
7 corporation pursuant to sections 715-a (Conflict of interest policy) or
8 715-b (Whistleblower policy), if this function is not otherwise
9 performed by another committee of the board comprised solely of inde-
10 pendent directors; and

11 (6) report its activities to the board at least annually.

12 (c) The audit committee shall adopt a charter that shall state its
13 authority and responsibilities, including those prescribed by this
14 section, and that shall state the size, composition and rules or proce-
15 dures of the audit committee.

16 § 712-b. Executive compensation oversight.

17 (a) For purposes of this section, "total compensation" means: (1) any
18 compensation, whether paid or accrued, by or on behalf of the corpo-
19 ration or any affiliate of the corporation, including but not limited to
20 salary, bonus, and deferred compensation; and (2) any benefit having
21 monetary value provided by the corporation or on behalf of the corpo-
22 ration or any affiliate of the corporation, including but not limited to
23 housing allowances, living expenses, perquisites, fringe benefits,
24 employer contributions to defined contribution retirement plans and
25 other retirement benefits.

26 (b) The total compensation paid by a corporation to any employee of
27 the corporation shall be fair, reasonable and commensurate with services
28 the employee provides to the corporation.

29 (c) No employee or other individual who may benefit from compensation
30 or benefits provided by the corporation may be present at or otherwise
31 participate in any board or committee deliberation or vote concerning
32 such compensation or benefits.

33 (d) Every charitable corporation that is required to be registered
34 with the attorney general under article seven-A of the executive law or
35 article eight of the estates, powers and trusts law or both and that in
36 the prior fiscal year had annual revenues in excess of two million
37 dollars shall designate a compensation committee of the board to oversee
38 executive compensation programs and related practices of the corpo-
39 ration.

40 (1) The compensation committee shall be comprised of at least three
41 independent directors.

42 (2) The corporation's board may perform the function of the compen-
43 sation committee unless the bylaws provide otherwise, provided that only
44 independent directors may be present at and participate in any deliber-
45 ations or voting relating to compensation committee matters.

46 (3) If a corporation controls one or more corporations, the compen-
47 sation committee of the controlling corporation may be deemed to be the
48 compensation committee for its controlled corporations.

49 (4) The compensation committee shall:

50 (A) Review the total compensation paid to the corporation's officers
51 and its five highest-compensated key employees; (B) affirmatively deter-
52 mine that the total compensation paid to any such individual is fair,
53 reasonable and commensurate with services provided to the corporation.
54 In making this determination, the compensation committee shall at a
55 minimum consider the following factors: (i) the total compensation
56 provided to the individual; (ii) relevant benchmark data on the total

1 compensation paid to individuals serving in similar positions at corpo-
2 rations of similar size, type, purpose, and scope; (iii) the individ-
3 ual's qualifications and performance; (iv) compensation, payments or any
4 other benefits provided to the individual from any affiliate of the
5 corporation; and (v) the overall financial condition of the corporation;
6 (C) make and keep a contemporaneous written record describing the basis
7 for its determination, including its analysis of the factors set forth
8 in this paragraph and how any relevant data was obtained and used; (D)
9 approve by not less than a majority vote the total compensation paid to
10 each such individual.

11 (5) If, pursuant to subparagraph two of this paragraph, the board does
12 not perform the function of the compensation committee, then: (i) the
13 compensation committee shall recommend to the board for its approval the
14 total compensation of each individual that the committee has affirma-
15 tively determined is fair, reasonable, and commensurate with services
16 provided to the corporation, and in connection therewith, provide to the
17 board the written record of its determination created pursuant to clause
18 (C) of this subparagraph; (ii) upon review of the recommendations of the
19 compensation committee, the board shall approve by not less than a
20 majority vote of the independent directors the total compensation of
21 each such individual, with only independent directors participating in
22 any such vote and any discussion relating thereto; and (iii) the board
23 shall keep a contemporaneous written record of the basis of its determi-
24 nation, including areas of agreement or disagreement with the recommen-
25 dations of the compensation committee.

26 (6) The compensation committee may retain a compensation consultant to
27 assist in the performance of its responsibilities. The compensation
28 committee shall be directly responsible for the appointment, compen-
29 sation and oversight of the work of such consultant, and any such
30 consultant shall report directly to the compensation committee. The
31 compensation committee shall, among its responsibilities, approve the
32 compensation peer group that the compensation consultant recommends be
33 used to develop benchmark data

34 (A) prior to retaining any such consultant, the compensation committee
35 shall determine that the consultant is independent and qualified to
36 render advice concerning compensation; provided that no consultant may
37 be determined independent if such consultant or any firm that employs
38 such consultant has (i) received directly or indirectly any payment, fee
39 or other compensation from the corporation or any affiliate of the
40 corporation within the preceding two years, other than reasonable
41 amounts paid for compensation consulting services, or (ii) any business
42 or personal relationship with the corporation or any affiliate, or any
43 of their officers, directors or employees, that may interfere with the
44 ability of the consultant to provide objective advice to the committee.

45 (B) Nothing in this paragraph shall be construed to (i) require the
46 compensation committee to implement or act consistently with any recom-
47 mendations provided by the compensation consultant; or (ii) affect the
48 ability or obligation of members of the compensation committee to exer-
49 cise their own judgment in fulfillment of their duties to the corpo-
50 ration, including those duties prescribed by section 717 (Duties of
51 directors and officers).

52 (7) The compensation committee shall adopt a charter setting forth its
53 responsibilities, including as prescribed by this section, as well as
54 requirements concerning the size, composition and functioning of the
55 compensation committee.

1 § 47. Paragraph (a) of section 713 of the not-for-profit corporation
2 law is amended and a new paragraph (f) is added to read as follows:

3 (a) The board may elect or appoint a chair, who may be given the title
4 chair of the board, chairperson of the board, chairman of the board, or
5 chairwoman of the board, or president, or both, one or more vice-presi-
6 dents, a secretary and a treasurer, and such other officers as it may
7 determine, or as may be provided in the by-laws. These officers may be
8 designated by such alternate titles as may be provided in the certif-
9 icate of incorporation or the by-laws. Any two or more offices may be
10 held by the same person, except the offices of president and secretary,
11 or the offices corresponding thereto.

12 (f) No employee of the corporation shall serve as chair of the board.

13 § 48. Section 715 of the not-for-profit corporation law, as amended by
14 chapter 847 of the laws of 1970, paragraph (f) as amended by chapter
15 1057 of the laws of 1971, is amended to read as follows:

16 § 715. [Interested directors and officers] Related party transactions.

17 (a) [No contract or other transaction between a corporation and one or
18 more of its directors or officers, or between a corporation and any
19 other corporation, firm, association or other entity in which one or
20 more of its directors or officers are directors or officers, or have a
21 substantial financial interest, shall be either void or voidable for
22 this reason alone or by reason alone that such director or directors or
23 officer or officers are present at the meeting of the board, or of a
24 committee thereof, which authorizes such contract or transaction, or
25 that his or their votes are counted for such purpose] No corporation
26 shall enter into a related party transaction, unless:

27 (1) [If the] material facts as to [such director's or officer's inter-
28 est in such contract or transaction and as] the related party's interest
29 in, and relationship to [any such common directorship, officership or
30 financial interest] the transaction are disclosed in good faith [or
31 known] to the board [or committee], and [the board or committee author-
32 izes such contract or transaction by a vote sufficient for such purpose
33 without counting the vote or votes of such interested director or offi-
34 cer; or

35 (2) If the material facts as to such director's or officer's interest
36 in such contract or transaction and as to any such common directorship,
37 officership or financial interest are disclosed in good faith or known
38 to the] any members of the corporation entitled to vote [thereon, if
39 any, and] to approve such [contract or] transaction [is authorized by
40 vote of such members].

41 [(b) If such good faith disclosure of the material facts as to the
42 director's or officer's interest in the contract or transaction and as
43 to any such common directorship, officership or financial interest, is
44 made to the directors or members, or known to the board or committee or
45 members authorizing such contract or transaction, as provided in para-
46 graph (a), the contract or transaction may not be avoided by the corpo-
47 ration for the reasons set forth in paragraph (a). If there was no such
48 disclosure or knowledge, or if the vote of such interested director or
49 officer was necessary for the authorization of such contract or trans-
50 action at a meeting of the board or committee at which it was author-
51 ized, the corporation may avoid the contract or transaction unless the
52 party or parties thereto shall establish affirmatively that the contract
53 or transaction was fair and reasonable as to the corporation at the time
54 it was authorized by the board, a committee or the members.

1 (c) Common or interested directors may be counted in determining the
2 presence of a quorum at a meeting of the board or of a committee which
3 authorizes such contract or transaction.

4 (d) (2) the board: (i) has considered alternative transactions to the
5 extent available and upon reasonable diligence determined that such
6 alternative transactions would not be more advantageous to the corpo-
7 ration; (ii) determines by a two-thirds vote of the board that the
8 related party transaction is fair, reasonable and in the best interests
9 of the corporation and approves such transaction, and the related party
10 with an interest in the transaction is not present at and does not
11 otherwise participate in any deliberation or voting relating thereto;
12 and (iii) contemporaneously documents in writing the basis for its
13 determination and approval of the transaction. This subparagraph shall
14 not apply to any compensation reviewed and approved in accordance with
15 paragraph (d) of section 712-a (Audit oversight). The certificate of
16 incorporation, bylaws or conflict of interest policy of the corporation
17 may contain additional restrictions on [contracts or] related party
18 transactions [between a corporation] and [its directors or officers or
19 other persons and may] additional procedures necessary for the review or
20 approval of such transactions, or provide that [contracts or] any trans-
21 actions in violation of such restrictions shall be void or voidable.

22 [(e) Unless otherwise provided in the certificate of incorporation or
23 the by-laws, the board shall have authority to fix the compensation of
24 directors for services in any capacity.

25 (f) The fixing of salaries of officers, if not done in or pursuant to
26 the by-laws, shall require the affirmative vote of a majority of the
27 entire board unless a higher proportion is set by the certificate of
28 incorporation or by-laws.]

29 (b) An officer, director or key employee who has an interest in a
30 related party transaction shall, prior to the board's consideration of
31 the proposed transaction, disclose in good faith to the corporation the
32 material facts as to such person's interest in, and relationship to, the
33 transaction. The board shall adopt and implement procedures for the
34 timely disclosure of such facts to the board.

35 (c) The attorney general may bring an action to enjoin, void or
36 rescind any related party transaction or a proposed related party trans-
37 action that violates any law or is otherwise not fair, reasonable, or in
38 the best interests of the corporation, or to seek other relief, includ-
39 ing but not limited to damages, restitution, the removal of directors or
40 officers, or seek to require any person or entity to:

41 (1) account for any profits made from such transaction, and pay them
42 to the corporation;

43 (2) pay the corporation the value of the use of any of its property or
44 other assets used in such transaction;

45 (3) return or replace any property or other assets lost to the corpo-
46 ration as a result of such transaction, together with any income or
47 appreciation lost to the corporation by reason of such transaction, or
48 account for any proceeds of sale of such property, and pay the proceeds
49 to the corporation together with interest at the legal rate; and

50 (4) pay, in the case of willful conduct, an amount up to double the
51 amount of any benefit improperly obtained.

52 (d) The powers of the attorney general provided in this section are in
53 addition to all other powers the attorney general may have under this
54 chapter or any other law.

55 § 49. The not-for-profit corporation law is amended by adding two new
56 sections 715-a and 715-b to read as follows:

1 § 715-a. Conflict of interest policy.

2 (a) Every corporation shall adopt a conflict of interest policy to
3 ensure that its directors, officers and key employees act in the corpo-
4 ration's best interest and comply with applicable legal requirements,
5 including but not limited to the requirements set forth in section 715
6 (Related party transactions).

7 (b) The conflict of interest policy shall include, at a minimum, the
8 following provisions:

9 (1) a definition of the circumstances that constitute a conflict of
10 interest;

11 (2) procedures for disclosing a conflict of interest to the audit
12 committee or, if there is no audit committee, to the board;

13 (3) a requirement that the person with the conflict of interest not be
14 present at or participate in board or committee deliberation or vote on
15 the matter giving rise to such conflict;

16 (4) a prohibition against any attempt by the person with the conflict
17 to influence the deliberation or voting on the matter giving rise to
18 such conflict;

19 (5) a requirement that the existence and resolution of the conflict be
20 documented in the corporation's records, including in the minutes of any
21 meeting at which the conflict was discussed or voted upon; and

22 (6) procedures for disclosing, addressing, and documenting related
23 party transactions in accordance with section 715 (Related party trans-
24 actions).

25 (c) The conflict of interest policy shall require that prior to the
26 initial election of any director, and annually thereafter, that such
27 director shall complete, sign and submit to the secretary of the corpo-
28 ration a written statement identifying any entity of which such director
29 is an officer, director, trustee, member, owner (either as a sole
30 proprietor or a partner), or employee with which the corporation has, or
31 might be expected to have, a relationship or a transaction in which the
32 director might have a conflicting interest. The policy shall require
33 that each director annually resubmit such written statement. The secre-
34 tary of the corporation shall provide a copy of all completed statements
35 to the chair of the audit committee or, if there is no audit committee,
36 to the chair of the board.

37 (d) Every corporation registered or required to be registered pursuant
38 to section one hundred seventy-two of the executive law or section 8-1.4
39 of the estates, powers and trusts law shall transmit a copy of its
40 conflict of interest policy to the attorney general in the form and
41 manner specified by the attorney general, and shall within thirty days
42 of any material change of these policies provide the attorney general
43 with the changed policies.

44 (e) Nothing in this section shall be interpreted to require a corpo-
45 ration to adopt any specific conflict of interest policy not otherwise
46 required by law, or to supersede or limit any requirement or duty
47 governing conflicts of interest required by any other law or rule.

48 § 715-b. Whistleblower policy.

49 (a) Every corporation that has twenty or more employees and in the
50 prior fiscal year had annual revenue in excess of one million dollars
51 shall adopt a whistleblower policy to protect from retaliation persons
52 who report suspected improper conduct. Such policy shall provide that no
53 director, officer, employee or volunteer of a corporation who in good
54 faith reports any action or suspected action taken by or within the
55 corporation that is illegal, fraudulent or in violation of any adopted
56 policy of the corporation shall suffer intimidation, harassment,

1 discrimination or other retaliation or, in the case of employees,
2 adverse employment consequence.

3 (b) The whistleblower policy shall include the following provisions:

4 (1) procedures for the reporting of violations or suspected violations
5 of laws or corporate policies, including procedures for preserving the
6 confidentiality of reported information;

7 (2) procedures for handling and investigating violations or suspected
8 violations of laws or corporate policies;

9 (3) a requirement that an employee of the corporation be designated to
10 administer, implement and oversee compliance of the whistleblower poli-
11 cy, and to report to the audit committee or other committee of independ-
12 ent directors or, if there are no such committees, to the board;

13 (4) a requirement that all documents concerning information reported
14 under the whistleblower policy and any investigation relating thereto be
15 retained by the corporation for a minimum period of six years; and

16 (5) a requirement that a copy of the policy be distributed to all
17 directors, officers, employees and volunteers, with instructions on how
18 to comply with the procedures set forth in the policy.

19 (c) Nothing in this section shall be interpreted to relieve any corpo-
20 ration from any additional requirements in relation to internal compli-
21 ance, retaliation, or document retention required by any other law or
22 rule.

23 § 50. Section 716 of the not-for-profit corporation law, as amended by
24 chapter 644 of the laws of 1971, is amended to read as follows:

25 § 716. Loans to directors and officers.

26 No loans, other than through the purchase of bonds, debentures, or
27 similar obligations of the type customarily sold in public offerings, or
28 through ordinary deposit of funds in a bank, shall be made by a corpo-
29 ration to its directors or officers, or to any other corporation, firm,
30 association or other entity in which one or more of its directors or
31 officers are directors or officers or hold a substantial financial
32 interest, except a loan by one [type B] charitable corporation to another
33 [type B] charitable corporation. A loan made in violation of this
34 section shall be a violation of the duty to the corporation of the
35 directors or officers authorizing it or participating in it, but the
36 obligation of the borrower with respect to the loan shall not be
37 affected thereby.

38 § 51. Section 717 of the not-for-profit corporation law, paragraph (a)
39 as amended by chapter 490 of the laws of 2010, and paragraph (b) as
40 amended by chapter 734 of the laws of 1988, is amended to read as
41 follows:

42 § 717. Duty of directors and officers.

43 (a) Directors and officers shall discharge the duties of their respec-
44 tive positions in good faith and with the care an ordinarily prudent
45 person in a like position would exercise under similar circumstances in
46 like positions. [The factors set forth in subparagraph one of paragraph
47 (e) of section 552 (Standard of conduct in managing and investing an
48 institutional fund), if relevant, must be considered by a governing
49 board delegating] In the administration of the powers to make and retain
50 investments pursuant to section 511-a (Petition for attorney general
51 approval), to appropriate appreciation pursuant to section 513 (Adminis-
52 tration of assets received for specific purposes), and to delegate
53 investment management of institutional funds pursuant to section 514
54 (Delegation of investment management) [For purposes of this paragraph,
55 the term institutional fund is defined in section 551 (Definitions).], a
56 governing board shall consider among other relevant considerations the

1 long and short term needs of the corporation in carrying out its
2 purposes, its present and anticipated financial requirements, expected
3 total return on its investments, price level trends, and general econom-
4 ic conditions.

5 (b) In discharging their duties, directors and officers, when acting
6 in good faith, may rely on information, opinions, reports or statements
7 including financial statements and other financial data, in each case
8 prepared or presented by: (1) one or more officers or employees of the
9 corporation, whom the director believes to be reliable and competent in
10 the matters presented, (2) counsel, public accountants or other persons
11 as to matters which the directors or officers believe to be within such
12 person's professional or expert competence or (3) a committee of the
13 board upon which they do not serve, duly designated in accordance with a
14 provision of the certificate of incorporation or the bylaws, as to
15 matters within its designated authority, which committee the directors
16 or officers believe to merit confidence, so long as in so relying they
17 shall be acting in good faith and with that degree of care specified in
18 paragraph (a) of this section, but if the director or officer has know-
19 ledge concerning the matter in question reported by the committee that
20 would cause such reliance to be unwarranted, the director or officer
21 shall not be considered to be acting in good faith. Persons shall not
22 be considered to be acting in good faith if they have knowledge concern-
23 ing the matter in question that would cause such reliance to be unwar-
24 ranted. Persons who so perform their duties shall have no liability by
25 reason of being or having been directors or officers of the corporation.

26 (c) In taking action, including, without limitation, action which may
27 involve or relate to a change or potential change in the control of
28 corporation, a director shall be entitled to consider, without limita-
29 tion, (1) both the long-term and the short-term interests of the corpo-
30 ration and its members and (2) the effects that the corporation's action
31 may have in the short-term or in the long-term upon any of the follow-
32 ing: (a) the prospects for potential growth, development, productivity
33 and financial stability of the corporation; (b) the corporation's
34 current employees; (c) the corporation's retired employees and other
35 beneficiaries receiving or entitled to receive retirement, welfare or
36 similar benefits from or pursuant to any plan sponsored, or agreement
37 entered into, by the corporation; (d) the beneficiaries or recipients of
38 the corporation's services; (e) the corporation's creditors; (f) the
39 ability of the corporation to provide, as a going concern, benefits,
40 goods, services, employment opportunities and employment benefits and
41 otherwise to contribute to the communities in which it conducts activ-
42 ities; and (g) the accomplishment of the corporation's purposes as stat-
43 ed in the certificate of incorporation. Nothing in this paragraph shall
44 create any duties owed by any director to any person or entity to
45 consider or afford any particular weight to any of the foregoing or
46 abrogate any duty of the directors, either statutory or recognized by
47 common law or court decisions. For purposes of this paragraph, "control"
48 shall mean the possession, directly or indirectly, of the power to
49 direct or cause the direction of the management and policies of the
50 corporation, whether through membership or otherwise.

51 § 52. Section 718 of the not-for-profit corporation law, as amended by
52 chapter 992 of the laws of 1970, is amended to read as follows:

53 § 718. List of directors and officers.

54 (a) If a member or creditor of a corporation, in person or by his
55 attorney or agent, or a representative of the district attorney or of
56 the secretary of state, the attorney general, or other state official,

1 makes a written demand on a corporation to inspect a current list of its
2 directors and officers and their [residence] current addresses, the
3 corporation shall, within two business days after receipt of the demand
4 and for a period of one week thereafter, make the list available for
5 such inspection at its office during usual business hours.

6 (b) Upon refusal by the corporation to make a current list of its
7 directors and officers and their [residence] current addresses avail-
8 able, as provided in paragraph (a) of this section, the person making a
9 demand for such list may apply, ex parte, to the supreme court at a
10 special term held within the judicial district where the office of the
11 corporation is located for an order directing the corporation to make
12 such list available. The court may grant such order or take such other
13 action as it may deem just and proper.

14 § 53. The section heading and paragraph (a) of section 720 of the
15 not-for-profit corporation law, the section heading as amended by chap-
16 ter 1058 of the laws of 1971, are amended to read as follows:

17 Actions [on behalf of the corporation] against directors, officers and
18 key employees.

19 (a) An action may be brought against one or more directors [or], offi-
20 cers, or key employees of a corporation to procure a judgment for the
21 following relief:

22 (1) To compel the defendant to account for his official conduct in the
23 following cases:

24 (A) The neglect of, or failure to perform, or other violation of his
25 duties in the management and disposition of corporate assets committed
26 to his charge.

27 (B) The acquisition by himself, transfer to others, loss or waste of
28 corporate assets due to any neglect of, or failure to perform, or other
29 violation of his duties.

30 (2) To set aside an unlawful conveyance, assignment or transfer of
31 corporate assets, where the transferee knew of its unlawfulness.

32 (3) To enjoin a proposed unlawful conveyance, assignment or transfer
33 of corporate assets, where there are reasonable grounds for belief that
34 it will be made.

35 § 54. Paragraphs (a) and (c) of section 722 of the not-for-profit
36 corporation law, as amended by chapter 368 of the laws of 1987, are
37 amended to read as follows:

38 (a) A corporation may indemnify any person, made, or threatened to be
39 made, a party to an action or proceeding other than one by or in the
40 right of the corporation to procure a judgment in its favor, whether
41 civil or criminal, including an action by or in the right of any other
42 corporation of any [type or] kind, domestic or foreign, or any partner-
43 ship, joint venture, trust, employee benefit plan or other enterprise,
44 which any director or officer of the corporation served in any capacity
45 at the request of the corporation, by reason of the fact that he, his
46 testator or intestate, was a director or officer of the corporation, or
47 served such other corporation, partnership, joint venture, trust,
48 employee benefit plan or other enterprise in any capacity, against judg-
49 ments, fines, amounts paid in settlement and reasonable expenses,
50 including attorneys' fees actually and necessarily incurred as a result
51 of such action or proceeding, or any appeal therein, if such director or
52 officer acted, in good faith, for a purpose which he reasonably believed
53 to be in, or, in the case of service for any other corporation or any
54 partnership, joint venture, trust, employee benefit plan or other enter-
55 prise, not opposed to, the best interests of the corporation and, in

1 criminal actions or proceedings, in addition, had no reasonable cause to
2 believe that his conduct was unlawful.

3 (c) A corporation may indemnify any person made, or threatened to be
4 made, a party to an action by or in the right of the corporation to
5 procure a judgment in its favor by reason of the fact that he, his
6 testator or intestate, is or was a director or officer of the corpo-
7 ration, or is or was serving at the request of the corporation as a
8 director or officer of any other corporation of any [type or] kind,
9 domestic or foreign, of any partnership, joint venture, trust, employee
10 benefit plan or other enterprise, against amounts paid in settlement and
11 reasonable expenses, including attorneys' fees, actually and necessarily
12 incurred by him in connection with the defense or settlement of such
13 action, or in connection with an appeal therein, if such director or
14 officer acted, in good faith, for a purpose which he reasonably believed
15 to be in, or, in the case of service for any other corporation or any
16 partnership, joint venture, trust, employee benefit plan or other enter-
17 prise, not opposed to, the best interests of the corporation, except
18 that no indemnification under this paragraph shall be made in respect of
19 (1) a threatened action, or a pending action which is settled or other-
20 wise disposed of, or (2) any claim, issue or matter as to which such
21 person shall have been adjudged to be liable to the corporation, unless
22 and only to the extent that the court in which the action was brought,
23 or, if no action was brought, any court of competent jurisdiction,
24 determines upon application that, in view of all the circumstances of
25 the case, the person is fairly and reasonably entitled to indemnity for
26 such portion of the settlement amount and expenses as the court deems
27 proper.

28 § 55. Paragraph (c) of section 723 of the not-for-profit corporation
29 law, as amended by chapter 368 of the laws of 1987, is amended to read
30 as follows:

31 (c) Expenses incurred in defending a civil or criminal action or
32 proceeding may be paid by the corporation in advance of the final dispo-
33 sition of such action or proceeding upon receipt of an undertaking by or
34 on behalf of such director or officer [to repay] sufficient to ensure
35 the repayment of such amount as, and to the extent, required by para-
36 graph (a) of section 725.

37 § 56. Paragraph (b) of section 724 of the not-for-profit corporation
38 law, as amended by chapter 368 of the laws of 1987, is amended to read
39 as follows:

40 (b) The application shall be made in such manner and form as may be
41 required by the applicable rules of court or, in the absence thereof, by
42 direction of a court to which it is made. Such application shall be upon
43 notice to the corporation and the attorney general. The court may also
44 direct that notice be given at the expense of the corporation to the
45 members and such other persons as it may designate in such manner as it
46 may require.

47 § 57. Subparagraph 3 of paragraph (a) of section 803 of the not-for-
48 profit corporation law, as amended by chapter 168 of the laws of 1982,
49 is amended to read as follows:

50 (3) That the corporation is a corporation as defined in subparagraph
51 (a) (5) of section 102 (Definitions)[; the type of corporation it is
52 under section 201 (Purposes); and if the corporate purposes are
53 enlarged, limited or otherwise changed, the type of corporation it shall
54 thereafter be under section 201].

55 § 58. The section heading and paragraph (a) of section 804 of the
56 not-for-profit corporation law, as amended by chapter 139 of the laws of

1 1993, and subparagraph (i) of paragraph (a) as amended by chapter 198 of
2 the laws of 2010, are amended to read as follows:

3 [Approvals] Notices, consents, and effect.

4 (a) (i) A certificate of amendment shall not be filed if the amendment
5 adds, changes or eliminates a purpose, power or provision the inclusion
6 of which in a certificate of incorporation requires consent or approval
7 of a governmental body or officer or any other person or body, or if the
8 amendment changes the name of a corporation whose certificate of incor-
9 poration had such consent or approval endorsed thereon or annexed there-
10 to, unless such consent or approval is no longer required or is endorsed
11 on or annexed to the certificate of amendment. If a certificate of
12 amendment adding, changing or eliminating a purpose, power or provision
13 the inclusion of which in a certificate of incorporation requires the
14 incorporator to send a certified copy of its certificate of incorpo-
15 ration to a governmental body or officer or any other person or entity
16 under section 404 (Notices and consents), or if the amendment changes
17 the name of a corporation whose incorporator was required to deliver a
18 certified copy of its certificate of incorporation to a governmental
19 body or officer or any other person or entity under section 404 (Notices
20 and consents), a certified copy of the certificate of amendment shall be
21 sent by certified mail, return receipt requested, to the government body
22 or officer or other person or entity immediately after the filing of
23 such certificate with the department of state.

24 (ii) Every certificate of amendment of a charitable corporation [clas-
25 sified as type B or type C under section 201 (Purposes)] which seeks to
26 change or eliminate a purpose or power enumerated in the corporation's
27 certificate of incorporation, or to add a power or purpose not enumer-
28 ated therein, shall have endorsed thereon or annexed thereto the
29 approval of a justice of the supreme court of the judicial district in
30 which the office of the corporation is located. Ten days' written notice
31 of the application for such approval shall be given to the attorney-gen-
32 eral.

33 § 59. Section 907 of the not-for-profit corporation law is amended to
34 read as follows:

35 § 907. Approval by the supreme court or the attorney general.

36 [(a)] Where any constituent corporation or the consolidated corpo-
37 ration is, or would be if formed under this chapter, a [Type B or a Type
38 C] charitable corporation under section 201 (Purposes) [of this chap-
39 ter], no certificate shall be filed pursuant to section 904 (Certificate
40 of merger or consolidation; contents) or section 906 (Merger or consol-
41 idation of domestic and foreign corporations) until (a) the Supreme
42 Court has granted an order approving the plan of merger or consolidation
43 and authorizing the filing of the certificate [has been made by the
44 supreme court,] as provided in [this] section[. A certified copy of such
45 order shall be annexed to the certificate of merger or consolidation.
46 Application for the order may be made in the judicial district in which
47 the principal office of the surviving or consolidated corporation is to
48 be located, or in which the office of one of the domestic constituent
49 corporations is located. The application shall be made by all the
50 constituent corporations jointly and shall set forth by affidavit (1)
51 the plan of merger or consolidation, (2) the approval required by
52 section 903 (Approval of plan) or paragraph (b) of section 906 (Merger
53 or consolidation of domestic and foreign corporations) for each consti-
54 tuent corporation, (3) the objects and purposes of each such corporation
55 to be promoted by the consolidation, (4) a statement of all property,
56 and the manner in which it is held, and of all liabilities and of the

1 amount and sources of the annual income of each such corporation, (5)
2 whether any votes against adoption of the resolution approving the plan
3 of merger or consolidation were cast at the meeting at which the resolu-
4 tion as adopted by each constituent corporation, and (6) facts showing
5 that the consolidation is authorized by the laws of the jurisdictions
6 under which each of the constituent corporations is incorporated] 907-a
7 (Application for approval of the supreme court) or (b) the attorney
8 general has approved the plan of merger or consolidation and authorized
9 the filing of the certificate, as provided in section 907-b (Application
10 for approval of the attorney general).

11 [(b) Upon the filing of the application the court shall fix a time for
12 hearing thereof and shall direct that notice thereof be given to such
13 persons as may be interested, including the attorney general, any
14 governmental body or officer and any other person or body whose consent
15 or approval is required by section 909 (Consent to filing), in such form
16 and manner as the court may prescribe. If no votes against adoption of
17 the resolution approving the plan of merger or consolidation were cast
18 at the meeting at which the resolution was adopted by any constituent
19 corporation the court may dispense with notice to anyone except the
20 attorney-general, any governmental body or officer and any other person
21 or body whose consent or approval is required by section 909 (Consent to
22 filing). Any person interested may appear and show cause why the appli-
23 cation should not be granted.

24 (c) If the court shall find that any of the assets of any of the
25 constituent corporations are held for a purpose specified as Type B in
26 paragraph (b) of section 201 or are legally required to be used for a
27 particular purpose, but not upon a condition requiring return, transfer
28 or conveyance by reason of the merger or consolidation, the court may,
29 in its discretion, direct that such assets be transferred or conveyed to
30 the surviving or consolidated corporation subject to such purpose or
31 use, or that such assets be transferred or conveyed to the surviving or
32 consolidated corporation or to one or more other domestic or foreign
33 corporations or organizations engaged in substantially similar activ-
34 ities, upon an express trust the terms of which shall be approved by the
35 court.

36 (d) If the court shall find that the interests of non-consenting
37 members are or may be substantially prejudiced by the proposed merger or
38 consolidation, the court may disapprove the plan or may direct a modifi-
39 cation thereof. In the event of a modification, if the court shall find
40 that the interests of any members may be substantially prejudiced by the
41 proposed merger or consolidation as modified, the court shall direct
42 that the modified plan be submitted to vote of the members of the
43 constituent corporations, or if the court shall find that there is not
44 such substantial prejudice, it shall approve the agreement as so modi-
45 fied without further approval by the members. If the court, upon direct-
46 ing a modification of the plan of merger or consolidation, shall direct
47 that a further approval be obtained from members of the constituent
48 corporations or any of them, such further approval shall be obtained in
49 the manner specified in section 903 (Approval of plan) or section 906(b)
50 (Merger or consolidation of domestic and foreign corporations) of this
51 chapter.

52 (e) If it shall appear, to the satisfaction of the court, that the
53 provisions of this section have been complied with, and that the inter-
54 ests of the constituent corporations and the public interest will not be
55 adversely affected by the merger or consolidation, it shall approve the

1 merger or consolidation upon such terms and conditions as it may
2 prescribe.]

3 § 60. The not-for-profit corporation law is amended by adding a new
4 section 907-a to read as follows:

5 § 907-a. Application for approval of the supreme court.

6 (a) Application for an order approving the plan of merger and author-
7 izing the filing of the certificate may be made in the judicial district
8 in which the principal office of the surviving or consolidated corpo-
9 ration is to be located, or in which the office of one of the domestic
10 constituent corporations is located. The application shall be made by
11 all the constituent corporations jointly and shall set forth by affida-
12 vit: (1) the plan of merger or consolidation, (2) the approval required
13 by section 903 (Approval of plan) or paragraph (b) of section 906 (Merg-
14 er or consolidation of domestic and foreign corporations) for each
15 constituent corporation, (3) the objects and purposes of each such
16 corporation to be promoted by the merger or consolidation, (4) a state-
17 ment of all property, and the manner in which it is held, and of all
18 liabilities and of the amount and sources of the annual income of each
19 such corporation, (5) whether any votes against adoption of the resol-
20 ution approving the plan of merger or consolidation were cast at the
21 meeting at which the resolution was adopted by each constituent corpo-
22 ration, and (6) facts showing that the consolidation is authorized by
23 the laws of the jurisdictions under which each of the constituent corpo-
24 rations is incorporated.

25 (b) Upon the filing of the application the court shall fix a time for
26 a hearing thereof and shall direct that notice thereof be given to such
27 persons as may be interested, including the attorney general, any
28 governmental body or officer and any other person or body whose consent
29 or approval is required by section 909 (Consent to filing), in such form
30 and manner as the court may prescribe. If no votes against adoption of
31 the resolution approving the plan of merger or consolidation were cast
32 at the meeting at which the resolution was adopted by any constituent
33 corporation the court may dispense with notice to anyone except the
34 attorney general, any governmental body or officer and any other person
35 or body whose consent or approval is required by section 909 (Consent to
36 filing). Any person interested may appear and show cause why the appli-
37 cation should not be granted.

38 (c) If the court shall find that any of the assets of any of the
39 constituent corporations are held for a charitable purpose or are legal-
40 ly required to be used for a particular purpose, but not upon a condi-
41 tion requiring return, transfer or conveyance by reason of the merger or
42 consolidation, the court may, in its discretion, direct that such assets
43 be transferred or conveyed to the surviving or consolidated corporation
44 subject to such purpose or use, or that such assets be transferred or
45 conveyed to the surviving or consolidated corporation or to one or more
46 other domestic or foreign corporations or organizations engaged in
47 substantially similar activities, upon an express trust the terms of
48 which shall be approved by the court.

49 (d) If the court shall find that the interests of non-consenting
50 members are or may be substantially prejudiced by the proposed merger or
51 consolidation, the court may disapprove the plan or may direct a modifi-
52 cation thereof. In the event of a modification, if the court shall find
53 that the interests of any members may be substantially prejudiced by the
54 proposed merger or consolidation as modified, the court shall direct
55 that the modified plan be submitted to vote of the members of the
56 constituent corporations, or if the court shall find that there is not

1 such substantial prejudice, it shall approve the agreement as so modi-
2 fied without further approval by the members. If the court, upon direct-
3 ing a modification of the plan of merger or consolidation, shall direct
4 that a further approval be obtained from members of the constituent
5 corporations or any of them, such further approval shall be obtained in
6 the manner specified in section 903 (Approval of plan) or paragraph (b)
7 of section 906 (Merger or consolidation of domestic and foreign corpo-
8 rations).

9 (e) If it shall appear, to the satisfaction of the court, that the
10 provisions of this section have been complied with, and that the inter-
11 ests of the constituent corporations and the public interest will not be
12 adversely affected by the merger or consolidation, it shall approve the
13 merger or consolidation upon such terms and conditions as it may
14 prescribe.

15 (f) A certified copy of such order shall be annexed to the certificate
16 of merger or consolidation.

17 § 61. The not-for-profit corporation law is amended by adding a new
18 section 907-b to read as follows:

19 § 907-b. Application for approval of the attorney general.

20 (a) In lieu of obtaining an order approving the plan of merger or
21 consolidation and authorizing the filing of the certificate, the corpo-
22 ration may alternatively make an application to the attorney general for
23 approval, except where the attorney general, in his or her discretion,
24 concludes that a court should review the application and make a determi-
25 nation thereon.

26 (b) The application to the attorney general shall be made by all the
27 constituent corporations jointly and shall set forth by affidavit: (i)
28 all of the information required to be included in an application to
29 obtain court approval pursuant to section 907-a (Application for
30 approval of the supreme court), (ii) all consents and approvals required
31 by section 909 (Consent to filing), and (iii) a statement as to whether
32 any persons have raised, or have a reasonable basis to raise, objections
33 to the merger or consolidation that is the subject of the application,
34 including a statement setting forth the names and addresses of such
35 persons, the nature of their interest, and a description of their
36 objections.

37 (c) Upon the filing of the application, the attorney general, in his
38 or her discretion, may direct that the constituent corporations provide
39 notice to such persons as may be interested, including any governmental
40 body or officer and any other person or body that is required either to
41 give consent or be notified under section 404 (Notices and consents) or
42 section 909 (Consent to filing). The constituent corporations shall
43 provide the attorney general with a certification that such notice has
44 been provided.

45 (d) If any assets of any of the constituent corporations are held for
46 a charitable purpose or are assets received for a specific purpose and
47 legally required to be used for a particular purpose, but not upon a
48 condition requiring return, transfer or conveyance by reason of the
49 merger or consolidation, the attorney general may, in his or her
50 discretion, direct that such assets be transferred or conveyed to the
51 surviving or consolidated corporation subject to such purpose or use.

52 (e) If the attorney general shall find that the interests of non-con-
53 senting members are or may be substantially prejudiced by the proposed
54 merger or consolidation, the attorney general may disapprove of the
55 application or may condition approval of the application upon modifica-

1 tion of the plan of merger or consolidation in accordance with this
2 chapter and any other law or rule.

3 (f) If it shall appear, to the satisfaction of the attorney general,
4 that the provisions of this section have been complied with, and that
5 the interests of the constituent corporations and the public interest
6 will not be adversely affected by the merger or consolidation, the
7 attorney general shall approve the merger or consolidation upon such
8 terms and conditions as it may prescribe.

9 (g) The approval of the attorney general shall be annexed to the
10 certificate of merger or consolidation.

11 (h) If the attorney general does not approve the application, or if
12 the attorney general concludes that court review is appropriate, the
13 constituent corporations may seek court approval on notice to the attor-
14 ney general pursuant to section 907-a (Application for approval of the
15 supreme court).

16 § 62. Paragraphs (a) and (f) of section 908 of the not-for-profit
17 corporation law are amended to read as follows:

18 (a) One or more domestic or foreign corporations which is, or would be
19 if formed under this chapter, beneficent corporation, or any corporation
20 formed as a type A or type C corporation [under section 201 (Purposes)]
21 prior to January first, two thousand fourteen, may be merged or consol-
22 idated into a domestic or foreign corporation which is, or would be if
23 formed under the laws of this state, a corporation formed under the
24 business corporation law of this state if such merger or consolidation
25 is not contrary to the law of the state of incorporation of any constit-
26 uent corporation. With respect to such merger or consolidation, any
27 reference in paragraph (b) of section 901 (Power of merger or consol-
28 idation) of this article or paragraph (b) of section 901 (Power of merg-
29 er or consolidation) of the business corporation law to a corporation
30 shall, unless the context otherwise requires, include both domestic and
31 foreign corporations.

32 (f) Where any constituent corporation is, or would be if formed under
33 this chapter, a [Type C] charitable corporation [under section 201
34 (Purposes)], no certificate shall be filed pursuant to this section
35 until an order approving the plan of merger or consolidation and author-
36 izing the filing of the certificate has been made by the supreme court,
37 as provided in section 907 (Approval by the supreme court).

38 § 63. Section 909 of the not-for-profit corporation law, as amended by
39 section 6 of part D of chapter 58 of the laws of 2006, is amended to
40 read as follows:

41 § 909. Consent to filing and notices.

42 If the purposes of any constituent or consolidated corporation would
43 require the approval or consent of any governmental body or officer or
44 any other person or body under section 404 ([Approvals] Notices and
45 consents) no certificate of merger or consolidation shall be filed
46 pursuant to this article unless such approval or consent is endorsed
47 thereon or annexed thereto. A corporation whose statement of purposes
48 specifically includes the establishment or operation of a child day care
49 center, as that term is defined in section three hundred ninety of the
50 social services law, shall [provide] send by certified mail, return
51 receipt requested, a certified copy of any certificate of merger or
52 consolidation involving such corporation to the office of children and
53 family services within thirty days after the filing of such merger or
54 consolidation with the department of state. If the purposes of any
55 constituent or consolidated corporation would require notice to any
56 governmental body or officer or any other person or entity under section

1 404 (Notices and consents), a certified copy of the certificate of merg-
2 er or consolidation shall be sent, certified mail, return receipt
3 requested, to the governmental body or officer or any other person or
4 entity immediately after the filing of such merger or consolidation by
5 the department of state.

6 § 64. Paragraphs (b), (c) and (d) of section 1001 of the not-for-pro-
7 fit corporation law, as amended by chapter 434 of the laws of 2006, are
8 amended to read as follows:

9 (b) If the corporation is a [Type B, C or D corporation and] has no
10 assets to distribute and no liabilities at the time of dissolution, the
11 plan of dissolution shall include a statement to that effect.

12 (c) If the corporation [is a Type B, C or D corporation and] has no
13 assets to distribute, other than a reserve not to exceed twenty-five
14 thousand dollars for the purpose of paying ordinary and necessary
15 expenses of winding up its affairs including attorney and accountant
16 fees, and liabilities not in excess of ten thousand dollars at the time
17 of adoption of the plan of dissolution, the plan of dissolution shall
18 include a statement to that effect.

19 (d) If the corporation has assets to distribute or liabilities, the
20 plan of dissolution shall contain:

21 (1) a description with reasonable certainty of the assets of the
22 corporation and their fair value, and the total amount of debts and
23 other liabilities incurred or estimated by the corporation, including
24 the total amount of any accounting and legal fees incurred or estimated,
25 in connection with the dissolution procedure.

26 (2) a statement as to whether any gifts or other assets are legally
27 required to be used for a particular purpose.

28 (3) if there are assets received and held by the corporation either
29 for a charitable corporation or beneficent corporation purpose [speci-
30 fied as Type B in paragraph (b) of section 201 (Purposes)] or which are
31 legally required to be used for a particular purpose, a statement that
32 the assets owned by the corporation, subject to any unpaid liabilities
33 of the corporation, shall be distributed as required by any gift instru-
34 ment or to a charitable corporation or organization or organizations or
35 a beneficent corporation exempt from taxation pursuant to federal and
36 state laws and engaged in activities substantially similar to those of
37 the dissolved corporation. Each such recipient organization shall be
38 identified and the governing instrument and amendments thereto of each
39 of the proposed recipient organizations shall be annexed to such state-
40 ment, along with the financial reports of each recipient organization
41 for the last three years and a sworn affidavit from a director and offi-
42 cer of each recipient organization stating the purposes of the organiza-
43 tion, and that it is currently exempt from federal income taxation.

44 (4) if any of the assets of the corporation are to be distributed to a
45 recipient for a particular legally required purpose, an agreement by the
46 recipient to apply the assets received only for such purpose shall be
47 included.

48 § 65. Paragraphs (a), (c) and (d) of section 1002 of the not-for-pro-
49 fit corporation law, as amended by chapter 434 of the laws of 2006, are
50 amended to read as follows:

51 (a) Upon adopting a plan of dissolution and distribution of assets,
52 the board shall submit it to a vote of the members, if any, and such
53 plan shall be approved at a meeting of members by two-thirds vote as
54 provided in paragraph (c) of section 613 (Vote of members) of this chap-
55 ter; provided, however, that if the corporation is a [Type B, C or D]
56 corporation, other than a corporation incorporated pursuant to article

1 15 (Public cemetery corporations), and has no assets to distribute, or
2 no assets to distribute other than a reserve not to exceed twenty-five
3 thousand dollars for the purpose of paying ordinary and necessary
4 expenses of winding up its affairs including attorney and accountant
5 fees, and liabilities not in excess of ten thousand dollars at the time
6 of adoption of the plan of dissolution, the vote required by the corpo-
7 ration's board of directors for adoption of the plan of dissolution of
8 such a corporation or by the corporation's members for the authorization
9 thereof shall be:

10 (1) In the case of a vote by the board of directors: (i) the number of
11 directors required under the certificate of incorporation, by-laws, this
12 chapter and any other applicable law; or

13 (ii) if the number of directors actually holding office as such at the
14 time of the vote to adopt the plan is less than the number required to
15 constitute a quorum of directors under the certificate of incorporation,
16 the by-laws, this chapter or any other applicable law, the remaining
17 directors unanimously;

18 (2) In the case of a vote by the members, (i) the number of members
19 required under the certificate of incorporation, by-laws, this chapter
20 and any other applicable law; or (ii) by the vote of members authorized
21 by an order of the supreme court pursuant to section 608 (Quorum at
22 meeting of members) of this chapter permitting the corporation to
23 dispense with the applicable quorum requirement.

24 Notice of a special or regular meeting of the board of directors or of
25 the members entitled to vote on adoption and authorization or approval
26 of the plan of dissolution shall be sent to all the directors and
27 members of record entitled to vote. Unless otherwise directed by order
28 of the supreme court pursuant to section 608 (Quorum at meeting of
29 members) of this chapter, the notice shall be sent by certified mail,
30 return receipt requested, to the last known address of record of each
31 director and member not fewer than thirty, and not more than sixty days
32 before the date of each meeting provided, however, that if the last
33 known address of record of any director or member is not within the
34 United States, the notice to such director shall be sent by any other
35 reasonable means.

36 (c) [Whenever] Except in the case of a corporation with no assets to
37 distribute or with no assets not to exceed twenty-five thousand dollars
38 and liabilities not in excess of ten thousand dollars, whenever a stat-
39 ute creating, or authorizing the formation of, a corporation requires
40 approval by a governmental body or officer for the formation of such
41 corporation, dissolution shall not be authorized without the approval of
42 such body or officer.

43 (d) (1) The plan of dissolution and distribution of assets shall have
44 annexed thereto the approval of the attorney general or a justice of the
45 supreme court in the judicial district in which the office of the corpo-
46 ration is located in the case of a Type B, C or D corporation, and in
47 the case of any other corporation which holds assets at the time of
48 dissolution legally required to be used for a particular purpose, except
49 that no such approval shall be required with respect to the plan of
50 dissolution of a corporation, other than a corporation incorporated
51 pursuant to article 15 (Public cemetery corporations), which has no
52 assets to distribute at the time of dissolution, or no assets to
53 distribute other than a reserve not to exceed twenty-five thousand
54 dollars for the purpose of paying ordinary and necessary expenses of
55 winding up its affairs including attorney and accountant fees, and
56 liabilities not in excess of ten thousand dollars, and which has

1 complied with the requirements of section 1001 (Plan of dissolution and
2 distribution of assets) and this section applicable to such a corpo-
3 ration.

4 (2) Application to the attorney general for such approval shall be by
5 verified petition, with the plan of dissolution and distribution of
6 assets and certified copies of the consents prescribed by this section
7 annexed thereto. The attorney general may approve the petition if the
8 corporation has adopted a plan in accordance with the requirements of
9 section 1001 (Plan of dissolution and distribution of assets) of this
10 article, and any other requirements imposed by law or rule. If the
11 attorney general does not approve the petition, or if the attorney
12 general concludes that court review is appropriate, the petitioner may
13 seek court approval upon ten days written notice to the attorney gener-
14 al.

15 (3) Application to the supreme court for an order for such approval
16 shall be by verified petition, with the plan of dissolution and distrib-
17 ution of assets and certified copies of the consents prescribed by this
18 section annexed thereto, and upon ten days written notice to the attor-
19 ney general accompanied by copies of such petition, plan and consents.

20 (4) In such case where approval of a justice of the supreme court or
21 the attorney general is not required [for a Type B, C or D corporation],
22 a copy of such plan certified under penalties of perjury shall be filed
23 with the attorney general within ten days after its authorization.

24 § 66. Paragraphs (a) and (c) of section 1002-a of the not-for-profit
25 corporation law as amended by chapter 434 of the laws of 2006, is
26 amended to read as follows:

27 (a) Carry out the plan of dissolution and distribution of assets, pay
28 its liabilities and distribute its assets in accordance therewith within
29 two hundred seventy days from the date the plan of dissolution and
30 distribution of assets shall have been (1) authorized as provided in
31 section 1002 of this article (Authorization of plan), (2) approved by
32 any governmental body or officer whose approval is required pursuant to
33 paragraph (c) of section 1002 of this article, and (3) approved by
34 either the attorney general or a justice of the supreme court, if such
35 approval is required pursuant to paragraph (d) of section 1002 of this
36 article, or filed with the attorney general, if such filing is required
37 pursuant to paragraph (d) of section 1002 of this article. Evidence of
38 the disposition of its assets and payment of its liabilities pursuant to
39 the plan of dissolution and distribution of assets shall be submitted by
40 the corporation to the attorney general and any other governmental body
41 or officer, as required under applicable laws. If the plan of dissol-
42 ution and distribution of assets cannot be carried out within the
43 prescribed time, the attorney general may upon good cause shown extend
44 such time, or any extended period of time, by not fewer than thirty days
45 nor more than one year;

46 (c) Distribute the assets of the corporation that remain after paying
47 or adequately providing for the payment of its liabilities, in the
48 following manner:

49 (1) assets received and held by the corporation [either for a purpose
50 specified as Type B in paragraph (b) of section 201 (Purposes)] or which
51 are legally required to be used for a particular purpose, shall be
52 distributed to one or more [domestic or foreign] charitable
53 corporations, beneficent corporations or other organizations engaged in
54 activities substantially similar to those of the dissolved corporation
55 pursuant to the plan of dissolution and distribution or, if applicable,
56 as ordered by the court to which such plan is submitted for approval

1 under section 1002 (Authorization of plan). Any disposition of assets
2 contained in a will or other instrument, in trust or otherwise, made
3 before or after the dissolution, to or for the benefit of any corpo-
4 ration so dissolved shall inure to or for the benefit of the corporation
5 or organization acquiring such assets of the dissolved corporation as
6 provided in this section, and so far as is necessary for that purpose
7 the corporation or organization acquiring such disposition shall be
8 deemed a successor to the dissolved corporation with respect to such
9 assets; provided, however, that such disposition shall be devoted by the
10 acquiring corporation or organization to the purposes intended by the
11 testator, donor or grantor.

12 (2) assets other than those described by subparagraph one of this
13 paragraph, if any, shall be distributed in accordance with the specifi-
14 cations of the plan of dissolution and distribution of assets or, to the
15 extent that the certificate of incorporation prescribes the distributive
16 rights of members, or of any class or classes of members, as provided in
17 such certificate;

18 § 67. Paragraphs (a) and (b) of section 1003 of the not-for-profit
19 corporation law, as amended by chapter 434 of the laws of 2006, are
20 amended to read as follows:

21 (a) After the plan of dissolution and distribution of assets has been
22 adopted, authorized, approved and carried out pursuant to the terms of
23 the plan within the time period set forth pursuant to section 1002-a
24 (Carrying out the plan of dissolution and distribution of assets), a
25 certificate of dissolution, entitled "Certificate of dissolution
26 of (name of corporation) under section 1003 of the Not-for-Pro-
27 fit Corporation Law" shall be signed and, if required pursuant to
28 subparagraph two of paragraph (b) of this section, after the attorney
29 general has affixed thereon his or her consent to the dissolution, such
30 certificate of dissolution shall be delivered to the department of
31 state. It shall set forth:

32 (1) The name of the corporation and, if its name has been changed, the
33 name under which it was formed.

34 (2) The date its certificate of incorporation was filed by the depart-
35 ment of state.

36 (3) The name and address of each of its officers and directors.

37 (4) The type of corporation it is at the time of dissolution.

38 (5) A statement as to whether or not the corporation holds assets at
39 the time of authorization of its plan of dissolution and distribution of
40 assets as provided in section 1002 of this article (Authorization of
41 plan) which are legally required to be used for a particular purpose.

42 (6) That the corporation elects to dissolve.

43 (7) The manner in which the dissolution was authorized. If the dissol-
44 ution of the corporation is authorized by a vote of the directors and/or
45 members of the corporation that is less than that ordinarily required by
46 the certificate of incorporation, the by-laws, this chapter or any other
47 applicable law, as permitted by paragraph (a) of section 1002 (Authori-
48 zation of plan), then the certificate of dissolution shall so state.

49 (8) A statement that prior to delivery of such certificate of dissol-
50 ution to the department of state for filing, the plan of dissolution and
51 distribution of assets has been approved by either the attorney general
52 or a justice of the supreme court, if such approval is required. A copy
53 of the order shall be attached to the certificate of dissolution. In the
54 case of a corporation, other than a corporation incorporated pursuant to
55 article 15 (Public cemetery corporations), having no assets to distrib-
56 ute, or having no assets to distribute other than a reserve not to

1 exceed twenty-five thousand dollars for the purpose of paying ordinary
2 and necessary expenses of winding up its affairs including attorney and
3 accountant fees, and liabilities not in excess of ten thousand dollars
4 at the time of dissolution, a statement that a copy of the plan of
5 dissolution which contains the statement prescribed by paragraph (b) of
6 section 1001 (Plan of dissolution and distribution of assets) has been
7 duly filed with the attorney general, if required.

8 (b) Such certificate of dissolution shall have indorsed thereon or
9 annexed thereto the approval of the dissolution:

10 (1) By a governmental body or officer, if such approval is required. A
11 corporation whose statement of purposes specifically includes the estab-
12 lishment or operation of a child day care center, as that term is
13 defined in section three hundred ninety of the social services law,
14 shall provide a certified copy of any certificate of dissolution involv-
15 ing such corporation to the office of children and family services with-
16 in thirty days after the filing of such dissolution with the department
17 of state.

18 (2) By the attorney general in the case of a [Type B, C or D] charita-
19 ble corporation, or any other corporation that holds assets at the time
20 of dissolution legally required to be used for a particular purpose.

21 § 68. Paragraph (a) of section 1007 of the not-for-profit corporation
22 law, as amended by chapter 434 of the laws of 2006, is amended to read
23 as follows:

24 (a) At any time after the plan of dissolution and distribution of
25 assets shall have been (1) authorized as provided in section 1002 of
26 this article (Authorization of plan), (2) approved by any governmental
27 body or officer whose approval is required pursuant to paragraph (c) of
28 section 1002 of this article, and (3) approved by either by the attorney
29 general or a justice of the supreme court, if such approval is required
30 pursuant to paragraph (d) of section 1002 of this article, or filed with
31 the attorney general, if such filing is required pursuant to paragraph
32 (d) of section 1002 of this article, and prior to filing the certificate
33 of dissolution, the corporation may give a notice requiring all credi-
34 tors and claimants, including any with unliquidated or contingent claims
35 and any with whom the corporation has unfulfilled contracts, to present
36 their claims in writing and in detail at a specified place and by a
37 specified day, which shall not be less than six months after the first
38 publication of such notice. Such notice shall be published at least once
39 a week for two successive weeks in a newspaper of general circulation in
40 the county in which the office of the corporation was located at the
41 date of authorization of its plan of dissolution and distribution of
42 assets as provided in section 1002 of this article (Authorization of
43 plan). On or before the date of the first publication or posting on a
44 website of such notice, the corporation shall mail a copy thereof, post-
45 age prepaid, to each person believed to be a creditor of or claimant
46 against the corporation whose current name and address are known to or
47 can with due diligence be ascertained by the corporation. The giving of
48 such notice shall not constitute a recognition that any person is a
49 proper creditor or claimant, and shall not revive or make valid, or
50 operate as a recognition of the validity of, or a waiver of any defense
51 or counterclaim in respect of any claim against the corporation, its
52 assets, directors, officers or members, which has been barred by any
53 statute of limitations or become invalid by any cause, or in respect of
54 which the corporation, its directors, officers or members, has any
55 defense or counterclaim.

1 § 69. Subparagraph 15 of paragraph (a) of section 1008 of the not-for-
2 profit corporation law, as amended by chapter 434 of the laws of 2006,
3 is amended to read as follows:

4 (15) Where assets were received and held by the corporation either for
5 a charitable corporation or a beneficent corporation purpose [specified
6 as Type B in paragraph (b) of section 201 (Purposes),] or were legally
7 required to be used for a particular purpose, the distribution of such
8 assets to one or more [domestic or foreign] charitable corporations,
9 beneficent corporations or other organizations engaged in activities
10 substantially similar to those of the dissolved corporation, on notice
11 to the attorney general and to such other persons, and in such manner,
12 as the court may deem proper.

13 § 70. Paragraph (a) of section 1010 of the not-for-profit corporation
14 law is amended to read as follows:

15 [(a)] At any time prior to the filing of a certificate of dissolution
16 by the department of state, a corporation may revoke the action taken to
17 dissolve the corporation in the following manner:

18 (1) If there are members entitled to vote thereon:

19 (A) Unless the certificate of incorporation dispenses with dissol-
20 ution action by the board, the board shall adopt a resolution recommend-
21 ing that the voluntary dissolution proceedings be revoked and directing
22 submission of the proposed revocation to a vote of the members entitled
23 to vote thereon.

24 (B) Revocation of the voluntary dissolution proceedings shall be
25 authorized by two-thirds vote as provided in paragraph (c) of section
26 613 (Vote of members).

27 (2) If there are no members entitled to vote thereon, revocation of
28 the voluntary dissolution proceedings shall be authorized by the vote of
29 a majority of the directors then in office.

30 (3) If approval of the dissolution of a corporation by a governmental
31 body or officer is required, as provided in paragraph (c) of section
32 1002 (Authorization of plan), and such approval has been given, revoca-
33 tion of the voluntary dissolution proceedings shall not be authorized
34 without approval thereof by such body or officer.

35 § 71. Subparagraph 6 of paragraph (a) of section 1012 of the not-for-
36 profit corporation law, as amended by chapter 726 of the laws of 2005,
37 is amended to read as follows:

38 (6) That[, under section 201 (Purposes),] it is a [Type
39 (Insert A, B, C or D)] charitable or beneficent not-for-profit corpo-
40 ration.

41 § 72. Subparagraph 1 of paragraph (a) of section 1207 of the not-for-
42 profit corporation law, clause (C) as amended by chapter 847 of the laws
43 of 1970, is amended to read as follows:

44 (1) To give immediate notice of his appointment by publication once a
45 week for two successive weeks in two newspapers of general circulation
46 in the county where the office of the corporation is located or, in the
47 case of a foreign corporation against which an action has been brought
48 under subparagraph [(a)] (4) of paragraph (a) of section 1202 (Appoint-
49 ment of receiver of property of a domestic or foreign corporation) of
50 this article either, as directed by the court, in a newspaper of general
51 circulation [as directed by the court,] or posted prominently and
52 continuously for two successive weeks on the homepage of any website
53 maintained by the corporation or requiring:

54 (A) All persons indebted to the corporation to render an account of
55 all debts owing by them to the corporation and to pay the same to the
56 receiver at a specified place and by a specified day.

1 (B) All persons having in their possession any property of the corpo-
2 ration to deliver the same to the receiver at the specified place and by
3 the specified day.

4 (C) All creditors and claimants, including any with unliquidated or
5 contingent claims and any with whom the corporation has unfulfilled
6 contracts, to present their claims to the receiver in writing and in
7 detail at a specified place and by a specified day, which shall not be
8 less than six months after the first publication of such notice. When-
9 ever a receiver is appointed in dissolution proceedings under article 10
10 (Non-judicial dissolution) or article 11 (Judicial dissolution), section
11 1007 (Notice to creditors by corporations intending to dissolve; filing
12 or barring claims) shall apply and shall control the giving of notice to
13 creditors and claimants and the filing and barring of claims.

14 § 73. Paragraph (a) of section 1211 of the not-for-profit corporation
15 law is amended to read as follows:

16 (a) If there remains property of the corporation after the first
17 distribution, the receiver shall, within one year thereafter, make a
18 final distribution among the creditors entitled thereto. Notice that
19 such distribution will be the final distribution to creditors shall be
20 published once a week for two consecutive weeks in a newspaper of gener-
21 al circulation in the county where the office of the corporation is
22 located or posted prominently and continuously for two consecutive weeks
23 on the homepage of any website maintained by the corporation.

24 § 74. Paragraph (b) of section 1215 of the not-for-profit corporation
25 law is amended to read as follows:

26 (b) The petition shall be accompanied by a verified account of all
27 the assets of the corporation received by him, of all payments or other
28 disposition thereof made by him, of the remaining assets of the corpo-
29 ration in respect to which he was appointed receiver and the situation
30 of the same, and of all his transactions as receiver. Thereupon, the
31 court shall grant an order directing notice to be given to the sureties
32 on his official bond and to all persons interested in the property of
33 the corporation to show cause, at a time and place specified, why the
34 receiver should not be permitted to resign. Such notice shall either,
35 as directed by the court, be published once in each week for six succes-
36 sive weeks in one or more newspapers [as the court shall direct] or
37 posted prominently and continuously for six successive weeks on the
38 homepage of any website maintained by the corporation. If it shall
39 appear that the proceedings of the receiver in the discharge of his
40 trust have been fair and honest and that there is no good cause to the
41 contrary, the court shall make an order permitting such receiver to
42 resign. Thereupon he shall be discharged and his powers as receiver
43 shall cease, but he shall remain subject to any liability incurred prior
44 to the making of such order. The court, in its discretion, may require
45 the expense of such proceeding to be paid by the receiver presenting the
46 petition.

47 § 75. Subparagraph 3 of paragraph (a) of section 1218 of the not-for-
48 profit corporation law is amended to read as follows:

49 (3) The order directing service of the summons shall require the
50 publication thereof either in a newspaper published in the state of New
51 York in the English language at least once a week for four successive
52 weeks, or posted prominently and continuously for four successive weeks
53 on any appropriate website, and shall also require the mailing on or
54 before the date of the first publication of a copy of the summons,
55 complaint and order to the corporation at its last known principal or
56 head office in the state or country of its incorporation.

1 § 76. Section 1302 of the not-for-profit corporation law, as amended
2 by chapter 847 of the laws of 1970, is amended to read as follows:

3 § 1302. Application to existing authorized foreign corporations.

4 Every foreign corporation which on the effective date of this chapter
5 is authorized to conduct activities in this state under a certificate of
6 authority heretofore issued to it by the secretary of state shall
7 continue to have such authority. Such foreign corporation, its members,
8 directors, and officers shall have the same rights, franchises, and
9 privileges and shall be subject to the same limitations, restrictions,
10 liabilities, and penalties as a foreign corporation authorized under
11 this chapter, its members, directors, and officers respectively. A
12 foreign corporation may by amendment to its certificate of authority set
13 forth [the type of] whether it is a charitable corporation [it is under
14 section 201 (Purposes);] or a beneficent corporation and in the absence
15 of such amendment an authorized foreign corporation shall be a [Type B]
16 charitable corporation. Reference in this chapter to an application for
17 authority shall, unless the context otherwise requires, include the
18 statement and designation and any amendment thereof required to be filed
19 by the secretary of state under prior statutes to obtain a certificate
20 of authority.

21 § 77. Subparagraph 4 of paragraph (a) of section 1304 of the not-for-
22 profit corporation law, as amended by chapter 847 of the laws of 1970
23 and as renumbered by chapter 590 of the laws of 1982, is amended to read
24 as follows:

25 (4) That the corporation is a foreign corporation as defined in
26 subparagraph [(a)] (7) of paragraph (a) of section 102 (Definitions)[;
27 the type of] of this chapter, whether it would be a charitable corpo-
28 ration [it shall be under section 201 (Purposes); a statement] or a
29 beneficent corporation if formed in this state; a statement of its
30 purposes to be pursued in this state and of the activities which it
31 proposes to conduct in this state; and a statement that it is authorized
32 to conduct those activities in the jurisdiction of its incorporation[;
33 and in the case of a Type C corporation, the lawful public or quasi-
34 public objective which each business purpose will achieve].

35 § 78. Paragraph (c) of section 1304 of the not-for-profit corporation
36 law is amended to read as follows:

37 (c) If the application for authority sets forth any purpose or activ-
38 ity for which a domestic corporation could be formed only with the
39 consent or approval of any governmental body or officer, or other person
40 or body under section 404 ([Approvals] Notices and consents), such
41 consent or approval shall be endorsed thereon or annexed thereto. If the
42 application for authority sets forth any purpose or activity requiring a
43 domestic corporation to provide notice of the filing of a certificate of
44 incorporation to any government body or officer or other entity under
45 section 404 (Notices and consents) of this chapter, then the corporation
46 shall send by certified mail, return receipt requested, a certified copy
47 of the certificate of authority to such person or entity immediately
48 after filing the certificate of authority by the department of state.

49 § 79. Subparagraph 1 of paragraph (a) of section 1309 of the not-for-
50 profit corporation law, as amended by chapter 186 of the laws of 1983,
51 is amended to read as follows:

52 (1) The name of the foreign corporation as it appears on the index of
53 names of existing domestic and authorized foreign corporations of any
54 [type or] kind in the department of state and the fictitious name the
55 corporation has agreed to use in this state pursuant to paragraph (d) of
56 section 1301 of this chapter.

1 § 80. Subparagraph 1 of paragraph (b) of section 1310 of the not-for-
2 profit corporation law, as amended by chapter 186 of the laws of 1983,
3 is amended to read as follows:

4 (1) The name of the foreign corporation as it appears on the index of
5 names of existing domestic and authorized foreign corporations of any
6 [type or] kind in the department of state and the fictitious name the
7 corporation has agreed to use in this state pursuant to paragraph (d) of
8 section 1301 of this chapter.

9 § 81. Subparagraph 1 of paragraph (a) of section 1311 of the not-for-
10 profit corporation law, as amended by chapter 186 of the laws of 1983,
11 is amended to read as follows:

12 (1) The name of the foreign corporation as it appears on the index of
13 names of existing domestic and authorized foreign corporations of any
14 [type or] kind in the department of state and the fictitious name the
15 corporation has agreed to use in this state pursuant to paragraph (d) of
16 section 1301 of this chapter.

17 § 82. Paragraphs (a) and (b) of section 1315 of the not-for-profit
18 corporation law, subparagraph 5 of paragraph (b) as amended by chapter
19 847 of the laws of 1970, are amended to read as follows:

20 (a) An action or special proceeding against a foreign corporation may
21 be maintained by a resident of this state or by a domestic corporation
22 of any [type or] kind for any cause of action.

23 (b) Except as otherwise provided in this article, an action or special
24 proceeding against a foreign corporation may be maintained by another
25 foreign corporation of any [type or] kind or by a nonresident in the
26 following cases only:

27 (1) Where the action is brought to recover damages for the breach of a
28 contract made or to be performed within this state, or relating to prop-
29 erty situated within this state at the time of the making of the
30 contract.

31 (2) Where the subject matter of the litigation is situated within this
32 state.

33 (3) Where the cause of action arose within this state, except where
34 the object of the action or special proceeding is to affect the title of
35 real property situated outside this state.

36 (4) Where, in any case not included in the preceding subparagraphs, a
37 non-domiciliary would be subject to the personal jurisdiction of the
38 courts of this state under section [302] three hundred two of the civil
39 practice law and rules.

40 (5) Where the defendant is a foreign corporation conducting activities
41 or authorized to conduct activities in this state.

42 § 83. Paragraph (b) of section 1316 of the not-for-profit corporation
43 law is amended to read as follows:

44 (b) An examination authorized by paragraph (a) may be denied to such
45 member or other person upon his refusal to furnish to the foreign corpo-
46 ration or its transfer agent or registrar an affidavit that such
47 inspection is not desired for a purpose which is in the interests of a
48 business or object other than the activities of the foreign corporation
49 and that such member or other person has not within five years sold or
50 offered for sale any list or record of members of any corporation of any
51 [type or] kind, whether or not formed under the laws of this state, or
52 aided or abetted any person in procuring any such list or record of
53 members for any such purpose.

54 § 84. Paragraph (a) of section 1321 of the not-for-profit corporation
55 law, subparagraphs 1, 2 and 3 as amended by chapter 847 of the laws of
56 1970, is amended to read as follows:

1 (a) Notwithstanding any other provision of this chapter, a foreign
2 corporation conducting activities in this state which is authorized
3 under this article, its directors, officers and members, shall be exempt
4 from the provisions of paragraph (e) of section 1317 (Voting trust
5 records), subparagraph [(a)] (1) of paragraph (a) of section 1318
6 (Liabilities of directors and officers of foreign corporations), and
7 subparagraph [(a)] (2) of paragraph (a) of section 1320 (Applicability
8 of other provisions) if when such provision would otherwise apply:

9 (1) The corporation is a [Type A] beneficent corporation under this
10 chapter; its principal activities are conducted outside this state; the
11 greater part of its property is located outside this state; and less
12 than one third of its members are residents of this state; or

13 (2) The corporation is a [Type B] charitable corporation under this
14 chapter; its principal activities are conducted outside this state; the
15 greater part of its property is located outside this state; and less
16 than ten per cent of its annual revenues is derived from solicitation of
17 funds within this state[; or

18 (3) The corporation is a Type C corporation under this chapter; its
19 principal activities are conducted outside this state; the greater part
20 of its property is located outside this state; and less than one half of
21 its revenues for the preceding three fiscal years, or such portion ther-
22 eof as the foreign corporation was in existence, was derived from sourc-
23 es within this state].

24 § 85. Paragraph (d) of section 1401 of the not-for-profit corporation
25 law, as added by chapter 871 of the laws of 1977, is amended to read as
26 follows:

27 (d) Type of corporation. A family or private cemetery corporation is a
28 [type B] charitable corporation under this chapter.

29 § 86. Paragraph (b) of section 1402 of the not-for-profit corporation
30 law is amended to read as follows:

31 (b) Type of corporation.

32 A fire corporation is a [Type B] charitable corporation under this
33 chapter.

34 § 87. Paragraph (c) of section 1403 of the not-for-profit corporation
35 law is amended to read as follows:

36 (c) Type of corporation. A corporation for the prevention of cruelty
37 is a [Type B] charitable corporation under this chapter.

38 § 88. Paragraph (b) of section 1404 of the not-for-profit corporation
39 law, as amended by chapter 1058 of the laws of 1971, is amended to read
40 as follows:

41 (b) Type of corporation.

42 A christian association is a [Type B] charitable corporation under
43 this chapter.

44 § 89. Paragraph (b) of section 1405 of the not-for-profit corporation
45 law is amended to read as follows:

46 (b) Type of corporation.

47 A soldiers' monument corporation is a [Type B] charitable corporation.

48 § 90. Paragraph (b) of section 1406 of the not-for-profit corporation
49 law is amended to read as follows:

50 (b) Type of corporation.

51 A medical society is a [Type A] beneficent corporation under this
52 chapter.

53 § 91. Paragraph (b) of section 1407 of the not-for-profit corporation
54 law is amended to read as follows:

55 (b) Type of corporation.

56 An alumni corporation is a [Type A] beneficent corporation.

1 § 92. Paragraph (b) of section 1408 of the not-for-profit corporation
2 law is amended to read as follows:

3 (b) Type of corporation.

4 An historical society is a [Type B] charitable corporation under this
5 chapter.

6 § 93. Paragraph (b) of section 1409 of the not-for-profit corporation
7 law, as amended by chapter 1058 of the laws of 1971, is amended to read
8 as follows:

9 (b) Type of corporation.

10 An agricultural or horticultural corporation is a [Type A] beneficent
11 corporation under this chapter, except that any such corporation which
12 has received moneys from the state or has acted as agent for the state
13 under paragraph (c) of this section, or has acquired or does acquire
14 real property by condemnation is or becomes a [Type B] charitable corpo-
15 ration under this chapter. [If such corporation has not already filed as
16 a Type B corporation it shall, upon such receipt of moneys or acting as
17 such agent or such acquisition of real property by condemnation, amend
18 its certificate to that effect.]

19 § 94. Paragraph (b) of section 1410 of the not-for-profit corporation
20 law is amended to read as follows:

21 (b) Type of corporation.

22 A board of trade or a chamber of commerce is a [Type A] beneficent
23 corporation under this chapter.

24 § 95. Paragraph (b) of section 1411 of the not-for-profit corporation
25 law is amended to read as follows:

26 (b) Type of corporation. A local development corporation is a [Type
27 C] charitable corporation under this chapter.

28 § 96. Paragraph (d) of section 1412 of the not-for-profit corporation
29 law, as added by chapter 555 of the laws of 1993, is amended to read as
30 follows:

31 (d) Type. A university faculty practice corporation is a [Type B]
32 charitable corporation under this chapter.

33 § 97. Paragraph (c) of section 1505 of the not-for-profit corporation
34 law, as added by chapter 871 of the laws of 1977, is amended to read as
35 follows:

36 (c) Type of corporation. A cemetery corporation is a [Type B] chari-
37 table corporation under this chapter.

38 § 98. Paragraph (b) of section 1602 of the not-for-profit corporation
39 law, as added by chapter 257 of the laws of 2011, is amended to read as
40 follows:

41 (b) "land bank" shall mean a land bank established as a [type C not-
42 for-profit] charitable corporation under this chapter and in accordance
43 with the provisions of this article and pursuant to this article;

44 § 99. Paragraph (f) of section 1603 of the not-for-profit corporation
45 law, as added by chapter 257 of the laws of 2011, is amended to read as
46 follows:

47 (f) Each land bank created pursuant to this act shall be a [type C
48 not-for-profit] charitable corporation, and shall have permanent and
49 perpetual duration until terminated and dissolved in accordance with the
50 provisions of section sixteen hundred thirteen of this article.

51 § 100. The opening paragraph of paragraph (a) of section 1607 of the
52 not-for-profit corporation law, as added by chapter 257 of the laws of
53 2011, is amended to read as follows:

54 A land bank shall constitute a [type C not-for-profit] charitable
55 corporation under New York law, which powers shall include all powers
56 necessary to carry out and effectuate the purposes and provisions of

1 this article, including the following powers in addition to those herein
2 otherwise granted:

3 § 101. Paragraph (e) of section 1611 of the not-for-profit corporation
4 law, as added by chapter 257 of the laws of 2011, is amended to read as
5 follows:

6 (e) Bonds issued by the land bank shall be issued, sold, and delivered
7 in accordance with the terms and provisions of a resolution adopted by
8 the board. The board may sell such bonds in such manner, either at
9 public or at private sale, and for such price as it may determine to be
10 in the best interests of the land bank. The resolution issuing bonds
11 shall be published in a newspaper of general circulation within the
12 jurisdiction of the land bank and posted prominently and continuously on
13 the homepage of any website maintained by the land bank.

14 § 102. Section 1613 of the not-for-profit corporation law, as added by
15 chapter 257 of the laws of 2011, is amended to read as follows:

16 § 1613. Dissolution of land bank.

17 A land bank may be dissolved as a [type C not-for-profit] charitable
18 corporation sixty calendar days after an affirmative resolution approved
19 by two-thirds of the membership of the board of directors. Sixty calen-
20 dar days advance written notice of consideration of a resolution of
21 dissolution shall be given to the foreclosing governmental unit or units
22 that created the land bank, shall be published in a local newspaper of
23 general circulation, and posted prominently and continuously on the
24 homepage of any website maintained by the land bank, and shall be sent
25 certified mail to the trustee of any outstanding bonds of the land bank.
26 Upon dissolution of the land bank all real property, personal property
27 and other assets of the land bank shall become the assets of the fore-
28 closing governmental unit or units that created the land bank. In the
29 event that two or more foreclosing governmental units create a land bank
30 in accordance with section [sixteen hundred three] 1603 of this article,
31 the withdrawal of one or more foreclosing governmental units shall not
32 result in the dissolution of the land bank unless the intergovernmental
33 agreement so provides, and there is no foreclosing governmental unit
34 that desires to continue the existence of the land bank.

35 § 103. Paragraph (h) of section 8-1.4 of the estates, powers and
36 trusts law, as amended by chapter 43 of the laws of 2002, is amended to
37 read as follows:

38 (h) The attorney general shall make rules and regulations necessary
39 for the administration of this section, including rules and regulations
40 as to the time for filing reports, the contents thereof, and [the] any
41 manner of executing and filing them, including but not limited to allow-
42 ing or requiring any submission to the attorney general to be effected
43 by electronic means and electronic signatures. He or she may classify
44 trusts, estates, corporations and other trustees as to purpose, nature
45 of assets, duration, amount of assets, amounts to be devoted to charita-
46 ble purposes, or otherwise, and may establish different rules for
47 different classes as to time and nature of the reports required, to the
48 ends that he or she shall receive current financial reports as to all
49 such trusts, estates, corporations or other trustees which will enable
50 him or her to ascertain whether they are being properly administered.
51 The attorney general may suspend the filing of financial reports as to a
52 particular trustee for a reasonable, specifically designated time upon
53 written application of the trustee, signed under penalties for perjury,
54 and filed with the attorney general and after the attorney general has
55 filed in the register of trustees a written statement that the interests
56 of the beneficiaries will not be prejudiced thereby and that periodic

1 reports during the term of such suspension are not required for proper
2 supervision by his or her office. The filing of the financial reports
3 required by this section, or the exemption from such filing or the
4 suspension therefrom, shall not have the effect of absolving trustees
5 from any responsibility for accounting for property or income held by
6 them for charitable purposes. A copy of an account or other financial
7 report filed by a trustee in any court in this state, if the account or
8 other financial report substantially complies with the rules and regu-
9 lations of the attorney general, may be filed as a financial report
10 under this section.

11 § 104. Paragraph (b-1) of section 8-1.8 of the estates, powers and
12 trusts law is REPEALED.

13 § 105. The estates, powers and trusts law is amended by adding a new
14 section 8-1.9 to read as follows:

15 § 8-1.9 Trust Governance

16 (a) for purposes of this section:

17 (1) a "trust" means a trust created solely for charitable purposes, or
18 a trust that continues solely for such purposes after all non-charitable
19 interests have terminated.

20 (2) "charitable purpose" means any religious, charitable educational
21 or benevolent purpose.

22 (3) "key employee" means any person who has responsibilities, powers
23 or influence over the trust similar to those of an officer of a not-for-
24 profit corporation, or is otherwise in a position to exercise substan-
25 tial influence over the affairs of the trust, as defined in section
26 4958(f)(1)(A) of the internal revenue code of 1986 as amended, and the
27 regulations thereunder, and any successor law or regulation.

28 (4) an "affiliate" of a trust means any entity controlled by, in
29 control of, or under common control with such trust.

30 (5) "relative" of an individual means the (i) spouse, ancestor, chil-
31 dren, grandchildren, great grandchildren, brother or sister (whether by
32 the whole- or half-blood) of the individual; and (ii) the spouses of
33 children, grandchildren, great grandchildren, brother, or sister (wheth-
34 er by the whole- or half-blood) of the individual.

35 (6) "related party" means (i) any trustee or key employee of the trust
36 or any affiliate of the trust;

37 (ii) any relative of any trustee or key employee of the trust or any
38 affiliate of the trust; or (iii) an entity in which any individual
39 described in clauses (i) and (ii) of this subparagraph has a thirty-
40 five percent or greater ownership or beneficial interest.

41 (7) "independent trustee" means a trustee who in the past three years:
42 (i) was not employed by, and did not have a relative who was employed
43 by, the trust or an affiliate of the trust; (ii) was not employed by,
44 and does not have a relative who was employed by, any entity that made
45 payments to, or received payments from, the trust or any affiliate of
46 the trust for goods, property or services exceeding ten thousand
47 dollars; (iii) has not had, and does not have a relative who has had, a
48 material financial interest in any entity that made payments to, or
49 received payments from, the trust or any affiliate of the trust for
50 goods, property or services exceeding ten thousand dollars; and (iv) has
51 not received, and does not have any relative who has received, any other
52 compensation, payment or benefit having monetary value from the trust or
53 any affiliate of the trust, other than reimbursement for expenses or the
54 payment of trustee commissions or other trustee compensation as permit-
55 ted by law and the governing instrument.

1 (8) "related party transaction" means any transaction, agreement or
2 any other arrangement in which a related party has a financial interest
3 and in which the trust or any affiliate of the trust is a participant.

4 (9) "independent auditor" means any certified public accountant
5 performing the audit of the financial statements of a trust required by
6 subdivision one of section one hundred seventy-two-b of the executive
7 law.

8 (b)(1) every trust required to file an independent certified public
9 accountant's audit report with the attorney general pursuant to subdivi-
10 sion one of section one hundred seventy-two-b of the executive law and
11 this chapter shall designate an audit committee, consisting of one or
12 more independent trustees, for the purpose of overseeing the accounting
13 and financial reporting processes of the trust and the independent
14 certified public accountant's audit of the trust's financial statements.
15 An audit committee that is not made up of all trustees shall be overseen
16 by and be responsible to the trustees. If a trust required to have an
17 audit committee pursuant to this paragraph is under the control of
18 another trust or corporation, the audit committee function may be
19 conducted by the trustees or the board of directors of the controlling
20 trust or corporation.

21 (2) the audit committee shall, at a minimum:

22 (i) retain and evaluate the independent auditor, which shall report
23 directly to the audit committee;

24 (ii) review with the independent auditor the scope and planning of the
25 audit;

26 (iii) review and discuss with the independent auditor, at a minimum:
27 (A) the results of any audit, including but not limited to: the manage-
28 ment letter to the trust and any material risks and weaknesses in inter-
29 nal controls identified by the auditor; (B) any restrictions on the
30 scope of the auditor's activities or access to requested information;
31 (C) any significant disagreements between the auditor and management;
32 and (D) the adequacy and performance of the trust's accounting function.

33 (iv) consider at least annually the performance and independence of
34 the independent auditor;

35 (v) oversee adoption, implementation of and compliance with any
36 conflict of interest policy adopted by the trust pursuant to paragraph
37 (f) of this section, and if applicable, any whistleblower policy, if
38 this function is not otherwise performed by another committee comprised
39 solely of independent trustees; and

40 (vi) report its activities to the trustees at least annually.

41 (3) the audit committee shall adopt a charter that shall state its
42 authority and responsibilities, including those prescribed by this para-
43 graph, and that shall state the size, composition and functioning of the
44 audit committee.

45 (c)(1) for purposes of this paragraph, "total compensation" means (1)
46 any compensation, whether paid or accrued, by or on behalf of the trust
47 or any affiliate of the trust, including but not limited to salary,
48 bonus, and deferred compensation, and (2) any benefit having monetary
49 value provided by the trust or on behalf of the trust or any affiliate
50 of the trust, including but not limited to housing allowances, living
51 expenses, perquisites, fringe benefits, employer contributions to
52 defined contribution retirement plans and other retirement benefits.

53 (2) the total compensation paid by a trust to any employee of the
54 trust shall be fair, reasonable and commensurate with services the
55 employee provides to the trust.

1 (3) no employee or other individual who may benefit from compensation
2 or benefits provided by the trust may be present at or otherwise partic-
3 ipate in trustee or committee deliberation or vote concerning such
4 compensation or benefits.

5 (4) every trust that is required to be registered with the attorney
6 general under article seven-A of the executive law and this chapter and
7 that in the prior fiscal year had annual revenues in excess of two
8 million dollars shall designate a compensation committee of the trustees
9 to oversee executive compensation programs and related practices of the
10 trust. (i) the compensation committee shall be comprised of one or more
11 independent trustees. If a trust controls one or more trusts or corpo-
12 rations, the compensation committee of the controlling trust may be
13 deemed to be the compensation committee for its controlled entities.
14 (ii) the compensation committee shall:

15 (A) review the total compensation paid to the trust's officers and its
16 five highest-compensated key employees. (B) affirmatively determine that
17 the total compensation paid to any such individual is fair, reasonable
18 and commensurate with services provided to the trust. In making this
19 determination, the compensation committee shall at a minimum consider
20 the following factors: 1. the total compensation provided to the indi-
21 vidual; 2. relevant benchmark data on the total compensation paid to
22 individuals serving in similar positions at trusts or corporations of
23 similar size, type, purpose, and scope; 3. the individual's qualifica-
24 tions and performance; 4. compensation, payments or any other benefits
25 provided to the individual from any affiliate of the trust; and 5. the
26 overall financial condition of the trust. (C) make and keep a contempo-
27 aneous written record describing the basis for its determination,
28 including its analysis of the factors set forth in this paragraph and
29 how any relevant data was obtained and used. (D) approve by not less
30 than a majority vote the total compensation paid to each such individ-
31 ual.

32 (d) if the compensation committee is comprised of fewer than all of
33 the independent trustees, then: (1) the compensation committee shall
34 recommend to all of the independent trustees for their approval the
35 total compensation of each individual that the committee has affirma-
36 tively determined is fair, reasonable, and commensurate with services
37 provided to the trust, and include therewith the written record of its
38 determination created pursuant to subparagraph three of this paragraph;
39 (2) upon review of the recommendations of the compensation committee,
40 the trustees shall approve by not less than a majority vote of the inde-
41 pendent trustees the total compensation of each such individual, with
42 only independent trustees participating in any such vote and any
43 discussion relating thereto; and (3) the independent trustees shall keep
44 a contemporaneous written record of the basis of its determination,
45 including areas of agreement or disagreement with the recommendations of
46 the compensation committee. (4) the compensation committee may retain a
47 compensation consultant to assist in the performance of its responsibil-
48 ities. The compensation committee shall be directly responsible for the
49 appointment, compensation and oversight of the work of such consultant,
50 and any such consultant shall report directly to the compensation
51 committee. The compensation committee shall, among its responsibilities,
52 approve the compensation peer group that the compensation consultant
53 recommends be used to develop benchmark data. (i) prior to retaining any
54 such consultant, the compensation committee shall determine that the
55 consultant is independent and qualified to render advice to the trust
56 concerning compensation; provided that no consultant may be determined

1 independent if such consultant or any firm that employs such consultant
2 has (A) received directly or indirectly any payment, fee or other
3 compensation from the trust or any affiliate of the trust within the
4 preceding two years, other than reasonable amounts paid for compensation
5 consulting services, or (B) any business or personal relationship with
6 the trust or any affiliate of the trust, or any of its or their offi-
7 cers, directors or employees, that may interfere with the ability of the
8 consultant to provide objective advice to the committee. (ii) nothing in
9 this subparagraph shall be construed to (A) require the compensation
10 committee to implement or act consistently with the advice or recommen-
11 dations provided by the compensation consultant to the compensation
12 committee; or (B) affect the ability or obligation of members of the
13 compensation committee to exercise their own judgment in fulfillment of
14 their duties to the trust and its beneficiaries. (5) the compensation
15 committee shall adopt a charter setting forth its responsibilities,
16 including as prescribed by this paragraph, as well as requirements
17 concerning the size, composition and functioning of the compensation
18 committee.

19 (e) (1) notwithstanding any provision in the trust instrument to the
20 contrary, no trust shall enter into a related party transaction, unless:

21 (i) the material facts as to the related party's interest in, and
22 relationship to, the transaction are disclosed in good faith to the
23 trustees; (ii) the trustees: (A) consider alternative transactions to
24 the extent available and upon reasonable diligence determine that such
25 alternative transactions would not be more advantageous to the trust and
26 its beneficiaries under the circumstances; (B) determine by a two-thirds
27 vote of the trustees that the related party transaction is fair, reason-
28 able and in the best interests of the trust and its beneficiaries and
29 approve such transaction, and the related party with an interest in the
30 transaction is not present at and otherwise does not otherwise partic-
31 ipate in any deliberation or voting relating thereto; and (C) contempo-
32 ranously document in writing the basis for their determination and
33 approval of the transaction. This subparagraph shall not apply to any
34 compensation reviewed and approved in accordance with subparagraph four
35 of paragraph (c) of this section.

36 (2) the trust instrument, bylaws or conflict of interest policy of the
37 trust may contain additional restrictions on related party transactions
38 and additional procedures necessary for the review or approval of such
39 transactions, or provide that any transactions in violation of such
40 restrictions shall be void or voidable.

41 (3) any trustee or key employee who has an interest in a related party
42 transaction shall, prior to the trustees' consideration of the proposed
43 transaction, disclose in good faith to the trustees the material facts
44 as to such person's interest in, and relationship to, the transaction.
45 The trustees shall adopt and implement procedures for the timely disclo-
46 sure of such facts to the trustees.

47 (4) the attorney general may bring an action to enjoin, void or
48 rescind any related party transaction or a proposed related party trans-
49 action that violates any law or is otherwise not fair, reasonable, or in
50 the best interests of the trust or its beneficiaries, or to seek other
51 relief, including but not limited to damages, restitution, the removal
52 of trustees, or seek to require any person or entity to: (i) account
53 for any profits made from such transaction, and pay them to the trust;
54 (ii) pay the trust the value of the use of any of its property or other
55 assets used in such transaction; (iii) return or replace any property or
56 other assets lost to the trust as a result of such transaction, together

1 with any income or appreciation lost to the trust by reason of such
2 transaction, or account for any proceeds of sale of such property, and
3 pay the proceeds to the trust together with interest at the legal rate;
4 and (iv) pay, in the case of willful conduct, an amount up to double the
5 amount of any benefit improperly obtained.

6 (5) the powers and duties of the attorney general provided in this
7 paragraph are in addition to all other powers and duties the attorney
8 general may have under this chapter or any other law.

9 (f)(1) every trust shall adopt a conflict of interest policy to ensure
10 that its trustees and key employees act in the best interest of the
11 trust and its beneficiaries and comply with applicable legal require-
12 ments, including but not limited to the requirements set forth in para-
13 graph (d) of this section.

14 (2) the conflict of interest policy shall include, at a minimum, the
15 following provisions:

16 (i) a definition of the circumstances that constitute a conflict of
17 interest; (ii) procedures for disclosing a conflict of interest to the
18 audit committee or, if there is no audit committee, to the trustees;
19 (iii) a requirement that the person with the conflict of interest not be
20 present at or participate in any deliberation or vote on the matter
21 giving rise to such conflict; (iv) a prohibition against any attempt by
22 the person with the conflict to influence the deliberation or voting on
23 the matter giving rise to such conflict; (v) a requirement that the
24 existence and resolution of the conflict be documented in the trust's
25 records, including in the minutes of any meeting at which the conflict
26 was discussed or voted upon; and (vi) procedures for disclosing,
27 addressing, and documenting related party transactions in accordance
28 with paragraph (d) of this section.

29 (3) the conflict of interest policy shall require that prior to a
30 trustee's initial appointment, and annually thereafter, such trustee
31 shall complete, sign and file with the records of the trust a written
32 statement identifying any entity of which he or she is an officer,
33 director, trustee, member, owner (either as a sole proprietor or a part-
34 ner), or employee with which the trust has, or might be expected to
35 have, a relationship or a transaction in which the trustee might have a
36 conflicting interest. The policy shall require that each trustee annual-
37 ly resubmit such written statement. The trustees shall provide a copy of
38 all completed statements to the chair of the audit committee, if there
39 is an audit committee.

40 (4) every trust registered or required to be registered pursuant to
41 section one hundred seventy-two of the executive law or section 8-1.4 of
42 this part shall transmit such policies to the attorney general in the
43 form and manner specified by the attorney general, and shall within
44 thirty days of any material change of these policies provide the attor-
45 ney general with the changed policies.

46 (5) nothing in this paragraph shall be interpreted to require a trust
47 to adopt any specific conflict of interest policy not otherwise required
48 by law, or to supersede or limit any requirement or duty governing
49 conflicts of interest required by any other law or rule.

50 (g)(1) every trust that has twenty or more employees and in the prior
51 fiscal year had annual revenue in excess of one million dollars shall
52 adopt a whistleblower policy to protect from retaliation persons who
53 report suspected improper conduct. Such policy shall provide that no
54 trustee, employee or volunteer of a trust who in good faith reports any
55 action or suspected action taken by or within the trust that is illegal,
56 fraudulent or in violation of any adopted policy of the trust shall

1 suffer intimidation, harassment, discrimination or other retaliation or,
2 in the case of employees, adverse employment consequence.

3 (2) the whistleblower policy shall include the following provisions:

4 (i) procedures for the reporting of violations or suspected violations
5 of laws or trust policies, including procedures for preserving the
6 confidentiality of reported information;

7 (ii) procedures for handling and investigating violations or suspected
8 violations of laws or trust policies;

9 (iii) a requirement that a trustee or an employee of the trust be
10 designated to administer, implement and oversee compliance of the whis-
11 tle-blower policy and to report to the audit committee or other commit-
12 tee of independent trustees, or to the trustees;

13 (iv) a requirement that all documents concerning information reported
14 under the whistleblower policy and any investigation relating thereto be
15 retained by the trust for a minimum period of six years; and

16 (v) a requirement that a copy of the policy be distributed to all
17 trustees, employees and volunteers, with instructions on how to comply
18 with the procedures set forth in the policy.

19 (3) nothing in this section shall be interpreted to relieve any trust
20 from any additional requirements in relation to internal compliance,
21 retaliation, or document retention required by any other law or rule.

22 § 106. Subdivision 2 of section 711 of the surrogate's court procedure
23 act is amended to read as follows:

24 2. Where by reason of his having wasted or improperly applied the
25 assets of the estate, or made investments unauthorized by law or other-
26 wise improvidently managed or injured the property committed to his
27 charge, including by failing to comply with section 8-1.9 of the
28 estates, powers and trusts law, or by reason of other misconduct in the
29 execution of his office or dishonesty, drunkenness, improvidence or want
30 of understanding, he is unfit for the execution of his office.

31 § 107. Section 202 of the racing, pari-mutuel wagering and breeding
32 law, as amended by chapter 18 of the laws of 2008, is amended to read as
33 follows:

34 § 202. Restriction upon commencement of business. No business corpo-
35 ration organized under the provisions of this article shall engage in
36 the prosecution or management of its business until the whole of its
37 capital stock shall have been subscribed, nor until it shall have filed
38 in the offices where certificates of incorporation were filed, a further
39 certificate stating that the whole of its capital stock has been in good
40 faith subscribed, executed and acknowledged by its president or vice-
41 president and treasurer or secretary, and verified by them to the effect
42 that the statements contained in it are true.

43 Notwithstanding the foregoing, [corporations organized] no charitable
44 corporation as defined in paragraph (a) of section one hundred two of
45 the not-for-profit corporation law or any corporations organized prior
46 to January first, two thousand fourteen as a type C corporation pursuant
47 to section two hundred one of the not-for-profit corporation law [as
48 type C corporations] or as a charitable corporation as defined in para-
49 graph (a) of section one hundred two of the not-for-profit corporation
50 law shall [not] engage in the prosecution or management of its business
51 until its certificate of incorporation has been accepted for filing by
52 the secretary of state and such confirmation of filing has been filed
53 with the board and the franchise oversight board.

54 § 108. Subdivision 9 of section 171-a of the executive law, as amended
55 by chapter 353 of the laws of 1987, is amended to read as follows:

1 9. "Fund raising counsel." Any person who for compensation consults
2 with a charitable organization or who plans, manages, advises, or
3 assists with respect to the solicitation in this state of contributions
4 for or on behalf of a charitable organization, but who does not have
5 access to contributions or other receipts from a solicitation or author-
6 ity to pay expenses associated with a solicitation and who does not
7 solicit. A bona fide officer, volunteer, or employee of a charitable
8 organization or an attorney at law retained by a charitable organization
9 or an individual engaged solely to draft applications for funding from a
10 governmental agency or an entity exempt from taxation pursuant to
11 section five hundred one (c)(3) of the internal revenue code, shall not
12 be deemed a fund raising counsel.

13 § 109. Subdivision 1 of section 172 of the executive law is amended by
14 adding a new paragraph (k) to read as follows:

15 (k) any conflict of interest policy and any whistleblower policy
16 adopted pursuant to sections seven hundred fifteen-a and seven hundred
17 fifteen-b of the not-for-profit corporation law or section 8-1.9 of the
18 estates, powers and trusts law.

19 § 110. Subdivisions 1 and 2 of section 172-b of the executive law, as
20 amended by section 43 of the laws of 2002, are amended to read as
21 follows:

22 1. Every charitable organization registered or required to be regis-
23 tered pursuant to section one hundred seventy-two of this article which
24 shall receive in any fiscal year gross revenue and support in excess of
25 [two hundred fifty] five hundred thousand dollars [and every charitable
26 organization whose fund-raising functions are not carried on solely by
27 persons who are unpaid for such services] shall file with the attorney
28 general an annual written financial report, on forms prescribed by the
29 attorney general, on or before the fifteenth day of the fifth calendar
30 month after the close of such fiscal year. The annual financial report
31 shall be accompanied by an annual financial statement which includes an
32 independent certified public accountant's audit report containing an
33 opinion that the financial statements are presented fairly in all mate-
34 rial respects and in conformity with generally accepted accounting prin-
35 ciples, including compliance with all pronouncements of the financial
36 accounting standards board and the American Institute of Certified
37 Public Accountants that establish accounting principles relevant to
38 not-for-profit organizations. Such financial report shall include a
39 statement of any changes in the information required to be contained in
40 the registration form filed on behalf of such organization. The finan-
41 cial report shall be signed by the president or other authorized officer
42 and the chief fiscal officer of the organization who shall certify under
43 penalties for perjury that the statements therein are true and correct
44 to the best of their knowledge, and shall be accompanied by an opinion
45 signed by an independent public accountant that the financial statement
46 and balance sheet therein present fairly the financial operations and
47 position of the organization. A fee of twenty-five dollars payable to
48 the attorney general shall accompany such financial report at the time
49 of filing, provided however, that any such organization that is regis-
50 tered with the attorney general pursuant to article eight of the
51 estates, powers and trusts law is required to file only one annual
52 financial report which meets the filing requirements of this article and
53 section 8-1.4 of the estates, powers and trusts law.

54 2. Every charitable organization registered or required to be regis-
55 tered pursuant to section one hundred seventy-two of this article which
56 shall receive in gross revenue and support in any fiscal year at least

1 one hundred thousand dollars but not more than [two hundred fifty] five
2 hundred thousand dollars shall file an annual financial report. The
3 annual financial report shall be accompanied by an annual financial
4 statement which includes an independent certified public accountant's
5 review report in accordance with "statements on standards for accounting
6 and review services" issued by the American Institute of Certified
7 Public Accountants. The annual financial statement shall be prepared in
8 conformity with generally accepted accounting principles, including
9 compliance with all pronouncements of the financial accounting standards
10 board and the American Institute of Certified Public Accountants that
11 establish accounting principles relevant to not-for-profit organiza-
12 tions. Such financial report shall be filed with the attorney general,
13 upon forms prescribed by the attorney general on an annual basis on or
14 before the fifteenth day of the fifth calendar month after the close of
15 such fiscal year, which shall include a financial report covering such
16 fiscal year in accordance with such requirements as the attorney general
17 may prescribe. Such financial report shall include a statement of any
18 changes in the information required to be contained in the registration
19 form filed on behalf of such organization. The financial report shall be
20 signed by the president or other authorized officer and the chief fiscal
21 officer of the organization who shall certify under penalties for perju-
22 ry that the statements therein are true and correct to the best of their
23 knowledge. A fee of ten dollars payable to the attorney general shall
24 accompany such financial report at the time of filing, provided, howev-
25 er, that any such organization that is registered with the attorney
26 general pursuant to article eight of the estates, powers and trusts law
27 is required to file only one annual financial report which meets the
28 filing requirements of this article and section 8-1.4 of the estates,
29 powers and trusts law. Notwithstanding the requirements of this
30 section, if upon review of an independent certified public accountant's
31 review report filed pursuant to this subdivision, the attorney general
32 determines that a charitable organization should obtain an independent
33 certified public accountant's audit report, such organization shall
34 obtain and file with the attorney general an audit report that meets the
35 requirements of subdivision one of this section within sixty days of the
36 attorney general's request for such report.

37 § 111. Subdivision 1 of section 177 of the executive law, as amended
38 by chapter 83 of the laws of 1995, is amended to read as follows:

39 1. The attorney general shall make rules and regulations necessary for
40 the administration of this article including, but not limited to regu-
41 lations and waiver procedures that will ensure that charitable organiza-
42 tions do not have to register twice in relation to the solicitation and
43 administration of assets, and rules or regulations allowing or requiring
44 any submission to the attorney general to be effected by electronic
45 means.

46 § 112. Section 223 of the education law, as amended by chapter 106 of
47 the laws of 1974, is amended to read as follows:

48 § 223. Consolidation or merger of corporations. Any two or more
49 corporations chartered under the powers of the regents or incorporated
50 under a special act of the legislature or under a general law for
51 purposes for which a charter may be granted by the regents may enter
52 into an agreement for the consolidation or merger of such corporations,
53 setting forth the terms and conditions of consolidation or merger, the
54 name of the proposed consolidated or merged corporation, the place or
55 places where the institution or institutions to be maintained is or are
56 to be located, the number of its directors, which may be five or more,

1 the time of the annual election and the names of the persons to be
2 directors until the first or next annual meeting.

3 The agreement must be approved by three-fourths of the trustees or
4 directors of such [corporation] corporations at a meeting of the trus-
5 tees or directors of each corporation, separately and specially called
6 for that purpose, which approval, duly verified by the chairman and
7 clerk of such meeting, shall be annexed to the petition. On presenta-
8 tion of a petition, together with the certificate of approval and the
9 agreement for consolidation or merger, and on such notice to interested
10 parties as the regents shall prescribe, and after hearing such inter-
11 ested parties as desire to be heard, the regents may make and execute an
12 order for the consolidation or merger of the corporations on such terms
13 and conditions as the regents may prescribe. When such order is made,
14 such corporations shall become one corporation by the name designated in
15 the order, and shall be subject only to such duties and obligations as a
16 corporation formed under this chapter for the same purposes; and all the
17 property belonging to the corporations so consolidated or merged shall
18 be vested in and transferred to the new or surviving corporation, which
19 shall be subject to all the liabilities of the former corporations, to
20 the same extent as if they had been contracted or incurred by it. If
21 any corporation so consolidated or merged was incorporated under a
22 special act of the legislature or under a general law pursuant to which
23 its certificate of incorporation was filed with the department of state,
24 the regents shall deliver a certified copy of the order of consolidation
25 or merger to such department.

26 § 113. Paragraph c of subdivision 4 of section 216-a of the education
27 law, as added by chapter 901 of the laws of 1972, is amended to read as
28 follows:

29 c. The following provisions of the not-for-profit corporation law
30 shall not apply to education corporations: section one hundred five,
31 [section one hundred thirteen,] section one hundred fourteen, paragraph
32 (a) of section two hundred one, paragraphs (b) and (c) of section two
33 hundred two, section two hundred five, section three hundred one,
34 section three hundred two, section three hundred three, article four
35 except paragraphs (b) through (p) of section four hundred four and
36 section four hundred five, section five hundred nine, [section five
37 hundred eighteen,] section five hundred twenty-one to the extent that it
38 refers to [section five hundred eighteen,] paragraph (d) of section
39 seven hundred six, article eight except section eight hundred four,
40 section nine hundred seven, [section one thousand eleven,] section one
41 thousand twelve and article fourteen.

42 § 114. Section 13 of the religious corporations law, as amended by
43 chapter 705 of the laws of 1970, is amended to read as follows:

44 § 13. Consolidation or merger of incorporated churches. Two or more
45 incorporated churches may enter into an agreement, under their respec-
46 tive corporate seals, for the consolidation or merger of such corpo-
47 rations, setting forth the name of the proposed new corporation or
48 surviving corporation, the denomination, if any, to which it is to
49 belong, and if the churches of such denomination have more than one
50 method of choosing trustees, by which of such methods the trustees are
51 to be chosen, the number of such trustees, the names of the persons to
52 be the first trustees of the new corporation, and the date of its first
53 annual corporate meeting. Such an agreement shall not be valid for
54 United Methodist churches unless proposed by a majority vote of the
55 charge conference of each church and approved by the superintendent or
56 superintendents of the district or districts in which the consolidating

1 churches are located, and by the majority of the members of each of such
2 churches, over the age of twenty-one years, present and voting at a
3 meeting thereof held in the usual place of public worship and called for
4 the purpose of considering such agreement by announcement made at public
5 service in such churches on two Sundays, the first not less than ten
6 days next preceding the date of such meeting. Such agreement shall not
7 be valid unless approved in the case of Protestant Episcopal churches by
8 the bishop and standing committee of the diocese in which such churches
9 are situated and in the case of churches of other denominations by the
10 governing body of the denomination, if any, to which each church
11 belongs, having jurisdiction over such church. Each corporation shall
12 thereupon make a separate petition to the supreme court for an order
13 consolidating or merging the corporations, setting forth the denomi-
14 nation, if any, to which the church belongs, that the consent of the
15 governing body to the consolidation or merger, if any, of that denomi-
16 nation having jurisdiction over such church has been obtained, the
17 agreement therefor, and a statement of all the property and liabilities
18 and the amount and sources of the annual income of such petitioning
19 corporation. In its discretion the court may direct that notice of the
20 hearing of such petition be given to the parties interested therein in
21 such manner and for such time as it may prescribe. After hearing all
22 the parties interested, present and desiring to be heard, the court may
23 make an order for the consolidation or merger of the corporations on the
24 terms of such agreement and such other terms and conditions as it may
25 prescribe, specifying the name of such new or surviving corporation and
26 the [first] trustees thereof, and the method by which their successors
27 shall be chosen and the date of its first or next annual corporate meet-
28 ing. When such order is made and duly entered, the persons constituting
29 such consolidated or merged corporations shall be or become an incorpo-
30 rated church by, and said petitioning churches shall become consolidated
31 or merged under, the name designated in the order, and the trustees
32 therein named shall be the [first] trustees thereof, and the future
33 trustees thereof shall be chosen by the method therein designated, and
34 all the estate, rights, powers and property of whatsoever nature belong-
35 ing to either corporation shall without further act or deed be vested in
36 and transferred to the new or surviving corporation as effectually as
37 they were vested in or belonging to the former corporations; and the
38 said new or surviving corporation shall be liable for all the debts and
39 liabilities of the former corporations in the same manner and as effec-
40 tually as if said debts or liabilities had been contracted or incurred
41 by the new or surviving corporation. A certified copy of such order
42 shall be recorded in the book for recording certificates of incorpo-
43 ration in each county clerk's office in which the certificate of incor-
44 poration of each consolidating or merging church was recorded; or if no
45 such certificate was so recorded, then in the clerk's office of the
46 county in which the principal place of worship or principal office of
47 the new or surviving corporation is, or is intended to be, situated.

48 § 115. Section 15-a of the religious corporations law, as added by
49 chapter 108 of the laws of 1965, subdivisions 2, 3 and 8 as amended by
50 chapter 381 of the laws of 1985, is amended to read as follows:

51 § 15-a. Consolidation of incorporated presbyteries. 1. Two or more
52 incorporated presbyteries may enter into an agreement for the consol-
53 idation or merger of such corporations and such corporations may be
54 consolidated or merged so as to form a single corporation which may be
55 either a new corporation or one of the [constituent] constituent corpo-
56 rations. Said agreement shall set forth the name of the proposed new

1 corporation or the name of the existing corporation if it is to become
2 the consolidated or merged corporation, the method of choosing trustees,
3 the names of the persons to be the first trustees of the new corporation
4 if the consolidated or merged corporation is to be a new corporation and
5 the date of the first annual corporate meeting.

6 2. Such agreement must be authorized and approved by a majority vote
7 of the members of each contracting presbytery taken at a meeting at
8 which a quorum is present duly called in accordance with the form of
9 government of the Presbyterian Church (U.S.A.) and the notice of such
10 meeting shall state the purpose of the meeting.

11 3. Before such agreement is approved as aforesaid, such consolidation
12 or merger must be directed and approved by the Synod of the Northeast
13 and the General Assembly of the Presbyterian Church (U.S.A.).

14 4. Each presbytery shall thereafter join in a petition to the supreme
15 court for an order consolidating or merging the corporation, setting
16 forth the agreement of the contracting presbyteries, the direction and
17 approval of the bodies as set forth in subdivision three [hereof] of
18 this section, a statement of all the property and liabilities and the
19 sources of the annual income of each presbytery and a description of any
20 property held by such presbyteries in trust for specific purposes. In
21 its discretion the court may direct that notice of the hearing of such
22 petition be given to the parties interested therein in such manner as it
23 may prescribe.

24 5. After hearing all the parties interested, present and desiring to
25 be heard, the court may make an order for the consolidation or merger of
26 the presbyteries on the terms of such agreement and such other terms and
27 conditions as it may prescribe, specifying the name of the new corpo-
28 ration or the name the continuing corporation will have if one of the
29 [constituent] constituent corporations is to become the consolidated or
30 merged corporation, the first trustees thereof if a new corporation is
31 to be created and the method by which their successors shall be chosen
32 and the date of the first annual corporate meeting if a new corporation
33 is to be created.

34 6. When such order is made and duly entered, the persons constituting
35 such corporate presbyteries shall become one incorporated consolidated
36 or merged presbytery by, and said petitioning presbyteries shall become
37 consolidated or merged under, the name designated in the order, and the
38 trustees therein named, if it is a new corporation, shall be the first
39 trustees thereof, and if it is a new corporation the trustees thereof
40 shall be chosen by the method therein designated, and all the estate,
41 rights, powers and property of whatsoever nature, belonging to either
42 corporation shall without further act or deed be vested in and/or trans-
43 ferred to the new corporation as effectually as they were vested in or
44 belonging to the former corporations, and the new or continuing corpo-
45 rations shall be liable for all the debts and liabilities of the former
46 corporations in the same manner and as effectually as if said debts or
47 liabilities had been contracted or incurred by the new corporation.

48 7. The order or a certified copy thereof shall be recorded in the book
49 for recording certificates of incorporation in each county clerk's
50 office in which the certificate of incorporation of each constituent
51 presbytery was recorded.

52 8. Such consolidated or merged presbytery shall have all the powers
53 and responsibilities conferred upon presbyteries by the constitution and
54 form of government of the Presbyterian Church (U.S.A.).

55 § 116. Section 208 of the religious corporations law, as added by
56 chapter 117 of the laws of 1927, is amended to read as follows:

1 § 208. Consolidation or merger. Any two or more religious corpo-
2 rations of the Jewish faith, incorporated under or by general or special
3 laws, may enter into an agreement for the consolidation or merger of
4 such corporations, setting forth the terms and conditions of consol-
5 idation, the name of the proposed or surviving corporation, the number
6 of its trustees, the time of the annual election and the names of the
7 persons to be its trustees until the first or next annual meeting. Each
8 corporation may petition the supreme court for an order consolidating or
9 merging the corporations, setting forth the agreement for consolidation
10 or merger and a statement of its real property and of its liabilities.
11 Before the presentation of the petition to the court the agreement and
12 petition must be approved by two-thirds of the votes cast in person or
13 by proxy at a meeting of the members of each corporation called for the
14 purpose of considering the proposed consolidation or merger in the
15 manner prescribed by section [forty-three of the membership corporations
16 law] six hundred five of the not-for-profit corporation law. An affida-
17 vit by the president and the secretary of each corporation stating that
18 such approval has been given shall be annexed to the petition. On pres-
19 entation to the court of such petition and agreement for consolidation
20 or merger and on such notice as the court may direct, the court after
21 hearing all the parties interested desiring to be heard, may make an
22 order approving the consolidation or merger. When such order is made
23 and duly entered and a certified copy thereof filed with the secretary
24 of state and in the offices of the clerks of the counties in which the
25 certificates of incorporation of the several constituent corporations
26 were recorded, or if no such certificate was recorded, then in the
27 office of the clerk of the county in which the principal place of
28 worship of the new or surviving corporation is intended to be situated,
29 such corporations shall become one corporation by the name designated in
30 the order and the trustees named in the agreement for consolidation or
31 merger shall be the [first] trustees of the consolidated corporation.

32 § 117. Section 209 of the religious corporations law, as added by
33 chapter 117 of the laws of 1927, is amended to read as follows:

34 § 209. Effect of consolidation or merger. The consolidated or merged
35 corporation shall possess all the powers of the constituent corporations
36 and shall have the power and be subject to the duties and obligations of
37 a congregation of the Jewish faith formed for like purposes under the
38 religious corporations law. All the rights, privileges and interests of
39 each of the constituent corporations, all the property, real, personal
40 and mixed, and all the debts due on whatever account to either of them,
41 and all things in action, belonging to either of them, shall be deemed
42 to be transferred to and vested in such new corporation without further
43 act or deed; and all claims, demands[.], property, and every other
44 interest, belonging to the several constituent corporations, shall be as
45 effectually the property of the new corporation as they were of the
46 constituent corporations, and the title to all real property, held or
47 taken by deed or otherwise under the laws of this state, vested in the
48 several constituent corporations shall not be deemed to revert or to be
49 in any way impaired by reason of the consolidation but shall be vested
50 in the new corporation. Any devise, bequest, gift, grant, or declaration
51 of trust, contained in any deed, will, or other instrument, in trust or
52 otherwise, made before or after such consolidation, or merger to or for
53 any of the constituent corporations, shall inure to the benefit of the
54 consolidated or merged corporation. The consolidated corporation shall
55 be deemed to have assumed and shall be liable for all debts and obli-

1 gations of the constituent corporations in the same manner as if such
2 new corporation had itself incurred such debts or obligations.

3 § 118. Paragraph (c) of subdivision 1 of section 2-b of the religious
4 corporations law, as amended by chapter 490 of the laws of 2010, is
5 amended to read as follows:

6 (c) The following provisions of the not-for-profit corporation law
7 shall not apply to religious corporations: subparagraphs (7) and (8) of
8 paragraph (a) of section one hundred twelve, [section one hundred thir-
9 teen,] section one hundred fourteen, section two hundred one, section
10 three hundred three, section three hundred four, section three hundred
11 five, section three hundred six, article four except section four
12 hundred one, section five hundred fourteen, that portion of section five
13 hundred fifty-five (b) and section five hundred fifty-five (c) which
14 reads "The institution shall notify the donor, if available, and the
15 attorney general of the application, and the attorney general and such
16 donor must be given an opportunity to be heard", section six hundred
17 five, section six hundred seven, section six hundred nine, section eight
18 hundred four, article nine except section nine hundred ten, article ten
19 except as provided in section eleven hundred fifteen, section eleven
20 hundred two, and article fifteen except paragraph (c) of section fifteen
21 hundred seven.

22 § 119. Paragraph (c) of subdivision 1 of section 1-a of the benevolent
23 orders law, as added by chapter 703 of the laws of 1970, is amended to
24 read as follows:

25 (c) The following provisions of the not-for-profit corporation law
26 shall not apply to benevolent orders: [section one hundred thirteen,]
27 section two hundred one, article four, paragraphs (a), (b), and (c) of
28 section eight hundred four, section nine hundred seven, section nine
29 hundred eight, section nine hundred nine, [section ten hundred eleven,]
30 section ten hundred twelve, and article fourteen.

31 § 120. Subdivision 1 of section 1825 of the public authorities law, as
32 amended by chapter 1045 of the laws of 1974, is amended to read as
33 follows:

34 1. The corporation shall (a) be incorporated or reincorporated under
35 [article nineteen of the membership corporations law, or under] section
36 fourteen hundred eleven of the not-for-profit corporation law, or (b) be
37 incorporated under [article two of the membership corporations law, or
38 under] article four of the not-for-profit corporation law, in addition
39 to other purposes, to construct new industrial or manufacturing plants
40 or new research and development buildings and acquire machinery and
41 equipment deemed related thereto or acquire, rehabilitate, and improve
42 for use by others, industrial or manufacturing plants in the area of the
43 state in which an assisted project is to be located, to assist finan-
44 cially in such construction, acquisition, rehabilitation and improvement
45 and to maintain such plants, buildings and equipment for others, and may
46 also be authorized to study and promote, alone or in concert with local
47 officials and interested local groups, the economic growth and business
48 prosperity of the area and the solution of other civic problems of the
49 region which includes such areas[, and (c) if incorporated or reincorpo-
50 rated under the membership corporations law, have complied with the
51 requirements of section one hundred thirteen of the not-for-profit
52 corporation law].

53 § 121. Subsection (a) of section 3435 of the insurance law, as added
54 by chapter 220 of the laws of 1986, is amended to read as follows:

55 (a) This section shall apply to public entities as defined in section
56 one hundred seven of this chapter, organizations described by section

1 501 (c)(3) of the United States internal revenue code, [Type B] charita-
2 ble corporations as defined in paragraph (a) of section one hundred two
3 (Definitions), of the not-for-profit corporation law and formed pursuant
4 to paragraph [(b)] (a) of section two hundred one of the not-for-profit
5 corporation law, and organizations described by section two hundred
6 sixteen-a of the education law.

7 § 122. Subsection (a) of section 6703 of the insurance law, as added
8 by chapter 598 of the laws of 2000, is amended to read as follows:

9 (a) A corporation may be organized as a [type B] charitable corpo-
10 ration [pursuant to paragraph (b) of section two hundred one] as defined
11 in paragraph (a) of section one hundred two (Definitions) of the not-
12 for-profit corporation law or as a nonprofit reciprocal insurer under
13 article sixty-one of this chapter to write the kinds of insurance speci-
14 fied in subsection (a) of section one thousand one hundred thirteen of
15 this chapter other than (1) those types of insurance specified in para-
16 graphs one, two, eighteen, twenty-two, twenty-three and twenty-five of
17 such subsection, (2) insurance against legal liability of the insured,
18 and against loss, damage or expense incident to a claim of such liabil-
19 ity arising out of death or injury of any person, due to medical or
20 hospital malpractice by any licensed physician or hospital, and (3)
21 insurance subject to section three thousand four hundred twenty-five of
22 this chapter.

23 § 123. The opening paragraph of subsection (b) of section 6704 of the
24 insurance law, as added by chapter 598 of the laws of 2000, is amended
25 to read as follows:

26 The superintendent may pursuant to this article issue a license to a
27 nonprofit property/casualty insurance company that is organized as a
28 [type B] charitable corporation [pursuant to paragraph (b) of section
29 two hundred one] as defined in paragraph (a) of section one hundred two
30 (Definitions) of the not-for-profit corporation law if such company:

31 § 124. Subsection (a) of section 6706 of the insurance law, as added
32 by chapter 598 of the laws of 2000, is amended to read as follows:

33 (a) Except as otherwise provided in this article, where inconsistent
34 with this article, or where the context otherwise requires, all of the
35 provisions of this chapter and the rules and regulations of the super-
36 intendent, relating to all insurers and those relating to
37 property/casualty insurance companies transacting the same kind or kinds
38 of insurance shall be applicable to a nonprofit property/casualty insur-
39 ance company organized as a [type B] charitable corporation as defined
40 in paragraph (a) of section one hundred two (Definitions) of the not-
41 for-profit corporation law and formed pursuant to paragraph (b) of
42 section two hundred one of the not-for-profit corporation law and
43 licensed pursuant to subsection (b) of section six thousand seven
44 hundred four of this article. Where any of such provisions of law refer
45 to a corporation, company or insurer, such references, when read in
46 connection with and applicable to this article, shall mean such a
47 nonprofit property/casualty insurance company.

48 § 125. Subdivision 2 of section 2-b of the religious corporations law,
49 as added by chapter 956 of the laws of 1971, is amended to read as
50 follows:

51 2. Every corporation to which the not-for-profit corporation law is
52 made applicable by this section is a [type B] charitable corporation as
53 defined in paragraph (a) of section one hundred two (Definitions) of the
54 not-for-profit corporation law for all purposes of that law.

1 § 126. Subdivision 2 of section 13-a of the private housing finance
2 law, as added by chapter 547 of the laws of 1971, is amended to read as
3 follows:

4 2. Every corporation to which the not-for-profit corporation law is
5 made applicable by this section is a [type B] charitable corporation as
6 defined in paragraph (a) of section one hundred two (Definitions) of the
7 not-for-profit corporation law for all purposes of that law.

8 § 127. Subdivision 5 of section 216-a of the education law, as added
9 by chapter 901 of the laws of 1972, is amended to read as follows:

10 5. Every corporation to which the not-for-profit corporation law is
11 made applicable by this section, is a [type B] charitable corporation as
12 defined in paragraph (a) of section one hundred two (Definitions) of the
13 not-for-profit corporation law under all applicable provisions of that
14 law.

15 § 128. Section 579 of the banking law, as amended by chapter 629 of
16 the laws of 2002, is amended to read as follows:

17 § 579. Doing business without license prohibited. Only a [type B not-
18 for-profit] charitable corporation as defined in [section two hundred
19 one] paragraph (a) of section one hundred two (Definitions) of the not-
20 for-profit corporation law of this state, or an entity incorporated in
21 another state and having a similar not-for-profit status, shall engage
22 in the business of budget planning as defined in subdivision one of
23 section four hundred fifty-five of the general business law of this
24 state except as authorized by this article and without first obtaining a
25 license from the superintendent.

26 § 129. Subdivision 4 of section 455 of the general business law, as
27 amended by chapter 456 of the laws of 2006, is amended to read as
28 follows:

29 4. Person or entity as used in this article shall not include a [type
30 B not-for-profit] charitable corporation as defined in [section two
31 hundred one] paragraph (a) of section one hundred two (Definitions) of
32 the not-for-profit corporation law of this state, or an entity incorpo-
33 rated in another state and having a similar not-for-profit status,
34 licensed by the superintendent, to engage in the business of budget
35 planning as defined in this section.

36 § 130. Paragraph (a) of subdivision 1 of section 458-b of the general
37 business law, as added by chapter 386 of the laws of 1986, is amended to
38 read as follows:

39 (a) Any [type B not-for-profit] charitable corporation as defined in
40 paragraph (a) of section one hundred two (Definitions) of the not-for-
41 profit corporation law licensed pursuant to article [twelve-c] twelve-C
42 of the banking law.

43 § 131. Subdivision (b) of section 16.32 of the mental hygiene law, as
44 amended by chapter 669 of the laws of 1995, is amended to read as
45 follows:

46 (b) No loans, other than through the purchase of bonds, debentures, or
47 similar obligations of the type customarily sold in public offerings, or
48 through ordinary deposit of funds in a bank, shall be made by a not-for-
49 profit corporation which is certified as a provider of services pursuant
50 to this article to its employee who receives an annual salary in excess
51 of thirty thousand dollars, or to any other corporation, firm, associ-
52 ation or other entity in which such employee is a director or officer or
53 employee or holds a direct or indirect substantial financial interest,
54 except a loan by one corporation incorporated as a [type B] charitable
55 corporation [pursuant to] as defined in paragraph (a) of section one
56 hundred two (Definitions) of the not-for-profit corporation law to

1 another type B corporation, or a loan for a temporary or emergency
2 purpose which will further the health and welfare of the employee so
3 long as the purpose and amount of such loan are disclosed to and
4 approved by the board of directors of such agency. Such disclosure shall
5 be filed with the secretary of the corporation and entered in the
6 minutes of the meeting, and, if approved by such board, such disclosure
7 shall also be forwarded in writing to the commissioner and to the direc-
8 tor of community services of each local governmental unit that has, at
9 the time of such disclosure, a contract with such corporation for the
10 rendition of services pursuant to article forty-one of this chapter. A
11 loan made in violation of this section shall be a violation of the duty
12 to the not-for-profit corporation of the directors or officers authoriz-
13 ing it or participating in it, but the obligation of the borrower with
14 respect to the loan shall not be affected thereby.

15 § 132. Subdivision (b) of section 31.31 of the mental hygiene law, as
16 amended by chapter 669 of the laws of 1995, is amended to read as
17 follows:

18 (b) No loans, other than through the purchase of bonds, debentures, or
19 similar obligations of the type customarily sold in public offerings, or
20 through ordinary deposit of funds in a bank, shall be made by a not-for-
21 profit corporation which is licensed as a provider of services pursuant
22 to this article to its employee who receives an annual salary in excess
23 of thirty thousand dollars, or to any other corporation, firm, associ-
24 ation or other entity in which such employee is a director or officer or
25 employee or holds a direct or indirect substantial financial interest,
26 except a loan by one corporation incorporated as [a type B] charitable
27 corporation [pursuant to] as defined in paragraph (a) of section one
28 hundred two (Definitions) of the not-for-profit corporation law to
29 another type B corporation, or a loan for a temporary or emergency
30 purpose which will further the health and welfare of the employee so
31 long as the purpose and amount of such loan are disclosed to and
32 approved by the board of directors of such agency. Such disclosure shall
33 be filed with the secretary of the corporation and entered in the
34 minutes of the meeting, and, if approved by such board, such disclosure
35 shall also be forwarded in writing to the commissioner and to the direc-
36 tor of community services of each local governmental unit that has, at
37 the time of such disclosure, a contract with such corporation for the
38 rendition of services pursuant to article forty-one of this chapter. A
39 loan made in violation of this section shall be a violation of the duty
40 to the not-for-profit corporation of the directors or officers authoriz-
41 ing it or participating in it, but the obligation of the borrower with
42 respect to the loan shall not be affected thereby.

43 § 133. Paragraph (f) of subdivision 7 of section 75 of the public
44 lands law, as added by chapter 791 of the laws of 1992, is amended to
45 read as follows:

46 (f) The commissioner, in consultation with the commissioner of envi-
47 ronmental conservation, the secretary of state, the office of parks,
48 recreation and historic preservation and other interested state agencies
49 administering state-owned lands underwater, shall promulgate pursuant to
50 article two of the state administrative procedure act such rules with
51 respect to grants, leases, easements and lesser interests for the use of
52 state-owned land underwater, and the cession of jurisdiction thereof, as
53 in his or her judgment are reasonable and necessary to protect the
54 interests of the people in such lands underwater. Such regulations shall
55 include without being limited to: the fees to be charged, consistent
56 with the provisions of this section, including mitigation of such fees

1 in the event of economic hardship on existing commercial enterprises;
2 fee limitations to administrative expenses for municipal uses which are
3 public, non-commercial and offer services free or for nominal fees, and
4 for uses undertaken and operated for public and non-commercial purposes
5 by not-for-profit corporations characterized as ["Type B"] charitable
6 corporations [pursuant to paragraph (b) of section two hundred one] as
7 defined in paragraph (a) of section one hundred two (Definitions) of the
8 not-for-profit corporation law, and for uses undertaken and operated for
9 public purposes by a corporation formed pursuant to the religious corpo-
10 ration law or by a corporation formed pursuant to a special act of this
11 state and which has as its principal purpose a religious purpose; such
12 further exemptions for projects as the commissioner determines do not
13 represent significant encroachments; limitations on grants, including
14 conversion grants, with respect to underwater lands consistent with the
15 public purposes of this subdivision and limiting such grants to excep-
16 tional circumstances; and factors to be examined in considering an
17 application for a lease, easement or other interest. Those factors shall
18 include without limitation the following: (i) the environmental impact
19 of the project; (ii) the values for natural resource management, recre-
20 ational uses, and commercial uses of the pertinent underwater land;
21 (iii) the size, character and effects of the project in relation to
22 neighboring uses; (iv) the potential for interference with navigation,
23 public uses of the waterway and rights of other riparian owners; (v) the
24 effect of the project on the natural resource interests of the state in
25 the lands; (vi) the water-dependent nature of the use; (vii) and any
26 adverse economic impact on existing commercial enterprises. The final
27 promulgation of rules establishing fees or fee structures shall be
28 subject to the approval of the director of the budget.

29 § 134. This act shall take effect January 1, 2014, provided, however,
30 that section forty-five of this act shall take effect January 1, 2015.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI, Sec. 1

() Memo on original bill
() Memo on amended bill

SENATE BILL #

ASSEMBLY BILL #

SENATE SPONSOR: MICHAEL RANZENHOFER
ASSEMBLY SPONSOR:

TITLE OF BILL: AN ACT to amend the not-for-profit corporation law, in relation to its recodification, reorganization, and overall operation of non-profit entities in New York state; and to repeal certain provisions of such law relating thereto

PURPOSE OR GENERAL IDEA OF BILL: To undertake a comprehensive revision of the Not-for-Profit Corporation Law (N-PCL).

SUMMARY OF SPECIFIC PROVISIONS:

Section 1: amends subparagraph 6 of paragraph (a) of section 102 of the N-PCL and adds twelve new subparagraphs:

- (3-a) defines "charitable corporation"
- (6) amends the definition of "board"
- (6-a) defines "entire board"
- (9-a) defines "beneficient corporation"
- (19) defines "affiliate"
- (20) defines "independent auditor"
- (21) defines "independent director"
- (22) defines "relative"
- (23) defines "related party"
- (24) defines "related party transaction"
- (25) defines "key employee"

Section 2 amends paragraphs (a), (b), and (c) of section 103 of N-PCL to reflect later changes reducing the types of not for profit corporations from four to two.

Section 3 repeals paragraph (a) of section 104-a of N-PCL, and reletters paragraphs (b through (s) of section 104-a N-PCL.

Section 4 amends section 105 of N-PCL regarding corrections to certificates

Section 5 amends paragraph (a) of section 112 of N-PCL to reflect the reduction in the types of not for profit corporations and adds new subsections (10) and (11) to grant additional powers to the Attorney General.

Sections 6, 7 and 8 amend paragraphs (b), (c) and (e) of section 112 of N-PCL.

Section 9 repeals section 113 of N-PCL.

Section 10 amends section 114 of N-PCL deleting type references and adding additional parties who can petition the court in cases of suspected improprieties.

Section 11 amends section 115 of N-PCL with regard to solicitation of contributions.

Section 12 amends section 201 of N-PCL to reflect only two classifications of not for profit corporations.

Section 13 amends section 204 of N-PCL to remove references to "type".

Section 14 amends section 301 of N-PCL with regard to names for corporations.

Section 15 amends section 302 of N-PCL to remove references to "type".

Section 16 amends section 304 of N-PCL regarding designation of agent.

Section 17 amends section 305 of N-PCL to remove references to "type".

Section 18 amends section 306 regarding service of process.

Section 19 adds a new section 309 regarding jurisdiction and service of process on non-domiciliary directors.

Section 20 amends section 402 of N-PCL to reflect reduction to two classification of corporations.

Section 21 and 22 amend section 404 of N-PCL regarding notices to other state entities of formation.

Section 23 repeals paragraph (b-1) of section 406 of N-PCL.

Section 24 amends section 404 of N-PCL regarding the rights and powers of the courts and the attorney general.

Section 25 amends section 502 of N-PCL to apply to beneficent corporations.

Section 26 amends section 503 of N-PCL to reflect reduction to two classification of corporations.

Section 27 amends section 505 of N-PCL to reflect reduction to two classification of corporations.

Section 28 amends section 509 of N-PCL regarding the purchase, sale, mortgage or lease of real property.

Section 29 amends section 510 of N-PCL regarding the disposition of all or substantially all of the assets of a corporation.

Section 30 amends section 511 of N-PCL regarding procedure for court approval.

Section 31 adds a new section 511-a of N-PCL regarding petition to the attorney general.

Section 32 amends section 513 of N-PCL to delete references to “type B”.

Section 33 amends section 515 of N-PCL regarding compensation to members, directors or officers.

Section 34 amends section 520 of N-PCL regarding registration and reporting requirements.

Section 35 adds a new section 522 of N-PCL regarding Cy-pres.

Section 36 amends section 601 of N-PCL to reflect changes in type identification.

Sections 37 amends section 605 of N-PCL regarding notice of meetings.

Section 38 amends section 606 of N-PCL regarding waiver of notice.

Section 39 amends section 609 of N-PCL regarding proxy authorization.

Section 40 amends section 614 of N-PCL regarding consent of members.

Section 41 amends section 702 of N-PCL to amend the definition of the entire board for purposes member or board action.

Section 42 amends section 708 of N-PCL regarding board or committee consent.

Section 43 amends section 711 of N-PCL regarding waiver of notice.

Section 44 amends section 712 of N-PCL regarding authority of committees to bind the corporation.

Section 45 repeals paragraph (c) of section 712 of N-PCL.

Section 46 adds new sections 712-a and 712-b regarding audit oversight and executive compensation oversight.

Section 47 amends section 713 of N-PCL regarding appointment of a Chair.

Section 48 amends section 715 of N-PCL regarding related party transactions.

Section 49 adds a new section 715-a and 715-b of N-PCL regarding conflict of interest policy and whistleblower policy.

Section 50 amends section 716 of N-PCL regarding loans to directors and officers.

Section 51 amends section 717 of N-PCL regarding board oversight of investment.

Section 52 amends section 718 of N-PCL regarding lists of officers and directors.

Section 53 amends section 720 of N-PCL regarding actions against officers and directors.

Section 54 amends section 722 of N-PCL to reflect changes in type identification.

Section 55 amends section 723 of N-PCL regarding advancement of funds to defend directors or officers.

Section 56 amends section 724 of N-PCL regarding choice of application to the courts or the Attorney General.

Section 57 amends section 803 of N-PCL to reflect changes in type identification.

Section 58 amends section 804 of N-PCL regarding notices and consents.

Section 59 amends section 907 of N-PCL to reflect a choice for application to the courts or the Attorney General.

Section 60 adds a new section 907-a of N-PCL regarding application to the Supreme Court.

Section 61 adds a new section 907-b of N-PCL regarding application to the Attorney General.

Section 62 amends section 908 of N-PCL to reflect changes in type identification.

Section 63 amends section 909 of N-PCL regarding filing of notices.

Section 64 amends section 1001 of N-PCL to reflect changes in type identification.

Section 65 amends section 1002 of N-PCL regarding dissolution of corporations.

Section 66 amends section 1002-a of N-PCL regarding application to the Attorney General.

Section 67 amends section 1003 of N-PCL regarding dissolution of corporations.

Section 68 amends section 1007 regarding application to the Attorney General.

Section 69 amends section 1008 to reflect changes in type identification.

Section 70 amends section 101 of N-PCL regarding dissolution by the Department of State.

Section 71 amends section 1012 of N-PCL to reflect changes in type identification.

Section 72 amends section 1207 of N-PCL regarding notice of appointment of receiver.

Section 73 amends section 1211 of N-PCL regarding notice.

Section 74 amends section 1215 of N-PCL regarding notice.

Section 75 amends section 1218 of N-PCL regarding notice.

Section 76 amends section 1302 to reflect changes in type identification.

Section 77 amends section 1304 of N-PCL to reflect changes in type identification.

Section 78 amends section 1304 of N-PCL regarding notice to governmental bodies.

Section 80 amends section 1310 of N-PCL to reflect changes in type identification.

Section 81 amends section 1311 of N-PCL to reflect changes in type identification.

Section 82 amends section 1315 of N-PCL to reflect changes in type identification.

Section 83 amends section 1316 of N-PCL to reflect changes in type identification.

Section 84 amends section 1321 of N-PCL to reflect changes in type identification.

Section 85 amends section 1401 of N-PCL to reflect changes in type identification.

Section 86 amends section 1402 of N-PCL to reflect changes in type identification.

Section 87 amends section 1403 of N-PCL to reflect changes in type identification.

Section 88 amends section 1404 of N-PCL to reflect changes in type identification.

Section 89 amends section 1405 of N-PCL to reflect changes in type identification.

Section 90 amends section 1406 of N-PCL to reflect changes in type identification.

Section 91 amends section 1407 of N-PCL to reflect changes in type identification.

Section 92 amends section 1408 of N-PCL to reflect changes in type identification.

Section 93 amends section 1409 of N-PCL to reflect changes in type identification.

Section 94 amends section 1410 of N-PCL to reflect changes in type identification.

Section 95 amends section 1411 of N-PCL to reflect changes in type identification.

Section 96 amends section 1412 of N-PCL to reflect changes in type identification.

Section 97 amends section 1505 of N-PCL to reflect changes in type identification.

Section 98 amends section 1602 of N-PCL to reflect changes in type identification.

Section 99 amends section 1603 of N-PCL to reflect changes in type identification.

Section 100 amends section 1607 of N-PCL to reflect changes in type identification.

Section 101 amends section 1611 of N-PCL regarding posting of notice.

Section 102 amends section 1613 of N-PCL regarding posting of notice.

Section 103 amends section 8-1.4 of the Estates Powers and Trusts Law (EPTL) to permit submission of documents to the Attorney General by electronic means.

Section 104 repeals section 8-1.8 of EPTL.

Section 105 adds a new EPTL section 8-1.9 regarding trust governance.

Section 106 amends section 711 of the Surrogate Court Procedure Act (SCPA) to add references to new EPTL section 8-1.9.

Section 107 amends section 202 of the Racing, Pari-mutual Wagering and Breeding Law regarding commencement of business.

Section 108 amends Executive Law section 171-a regarding fund raising counsel for a charitable organization.

Section 109 amends section 172 of the Executive law regarding conflict of interest policies.

Section 110 amends section 172-b of the Executive Law regarding increase of revenue limits for filing requirements.

Section 111 amends section 177 of the Executive law regarding filing with the Attorney by electronic means.

Section 112 amends section 223 of the Education Law regarding merger of corporations.

Section 113 amends section 216-a of the Education Law regarding applicability of the N-PCL.

Section 114 amends section 13 of the Religious Corporations Law regarding merger.

Section 115 amends section 15-a of the Religious Corporations Law regarding merger.

Section 116 amends section 208 of the Religious Corporations Law regarding merger.

Section 117 amends section 209 of the Religious Corporations Law regarding merger.

Section 118 amends section 2-b of the Religious Corporations Law regarding applicability of the N-PCL.

Section 119 amends section 1-a of the Benevolent Orders Law regarding applicability of the N-PCL.

Section 120 amends section 1825 of the Public Authorities Law regarding applicability of the N-PCL.

Section 121 amends subdivision 1840-q of the Public Authorities Law regarding applicability of the N-PCL.

Section 122 amends section 3435 of the insurance Law regarding applicability of the N-PCL.

Section 123 amends section 6703 of the Insurance Law to reflect changes in type identification.

Section 124 amends section 6704 of the Insurance Law to reflect changes in type identification.

Section 125 amends section 6706 of the Insurance Law to reflect changes in type identification.

Section 126 amends section 202 of the Racing, Pari-mutual wagering and Breeding Law to reflect changes in type identification.

Section 127 amends section 2-b of the Religious Corporations Law to reflect changes in type identification.

Section 128 amends section 13-a of the Private Housing Finance Law to reflect changes in type identification.

Section 129 amends section 216-a of the Education Law to reflect changes in type identification.

Section 130 amends section 579 of the Banking Law to reflect changes in type identification.

Section 131 amends section 455 of the General Business Law to reflect changes in type identification.

Section 132 amends section 458-b of the General Business Law to reflect changes in type identification.

Section 133 amends section 16.32 of the Mental Hygiene Law to reflect changes in type identification.

Section 134 amends section 31.31 of the Mental Hygiene Law to reflect changes in type identification.

Section 135 amends section 75 of the Public Lands Law to reflect changes in type identification.

Section 136 provides that this act shall take effect January 1, 2014, except that section 45 shall take effect January 1, 2015.

JUSTIFICATION:

The Corporation Law Committee (the "Committee") of the New York State Bar Association ("NYSBA") initiated a process of review and proposed revision of the N-PCL. Initially undertaken to conform the N-PCL to the current Business Corporation Law in New York, this process presented an opportunity to revisit and improve selected provisions of the N-PCL, especially in light of the dramatic changes in corporate governance throughout the sector in response to the Sarbanes-Oxley Act. The Committee's analysis, in consultation with other experts, resulted in a comprehensive draft revision of the N-PCL, a statute that has not seen extensive revision since its adoption over four decades ago. The nonprofit sector in New York State is enormous and wide-ranging, including foundations and charities, health care organizations, service agencies, clubs and neighborhood groups, cultural institutions, religious organizations, research and educational centers, chambers of commerce, economic development corporations, and more. The impact of the sector, is vital to the people and economy of the State of New York.

The proposal of the Corporation Law Committee has been reviewed and after consultations with many not-for-profit corporations and other interested parties, a revised draft revision has been completed by the Law Revision Commission. These N-PCL draft revisions continue to conform where appropriate to the BCL, including parallel articles and section numbers as well as similar language in parallel provisions. Beyond conforming the N-PCL to the BCL, the draft revisions reflect an effort to reduce excessive barriers to formation and operation of not-for-profit corporations in New York, while maintaining sufficient government oversight and emphasizing the fiduciary responsibilities of directors and officers. These changes are the product of a generation's worth of experience since the enactment of the original statute. For example, unlike non-profit corporation statutes in most other states, New York's N-PCL requires incorporators to obtain advance approvals from various state agencies as a condition of incorporation. This denies organizations the opportunity to conduct planning and seek crucial federal recognition of tax-exempt status while simultaneously securing state regulatory approval to operate. This bill includes a more streamlined approach, commonly used throughout the U.S., by which incorporation can occur but regulated activities cannot be conducted until appropriate licensure is obtained. Other changes with respect to dissolutions of not-for-profit corporations have largely already been incorporated by recent changes to the N-PCL, an indication of the recognized need to modernize the statute without compromising the public interest. The draft revisions eliminate many of the idiosyncratic provisions unique to New York law, created at a time when the law in the field was not as well developed and the Legislature was grappling with amalgamating various model acts and the recently-adopted BCL into a single statute. In particular, the draft revisions eliminate the designation of statutory "Types" of not-for-profit corporations. The current N-PCL definitions of four types -- A, B, C or D -- create undue complexity in formation and ambiguity at the borders between Types, disguise the impact of the common and statutory law on charitable funds managed by corporations, and provide potential dissonance with federal Internal Revenue Code ("IRC") categories for tax exemption. Reduction of types to two, namely "Charitable" and all others, which have been identified as "Beneficient Corporations" would result in consistent statutory rules for all non-profit corporations incorporated in New York, with targeted protections for continued use of donor-restricted and charitable funds for their intended purposes.

PRIOR LEGISLATIVE HISTORY:

2012:S.4611/A.5727 -- THIRD READING/corporations

2009-10:S.3678/A.51355 -- CORPORATIONS/corporations

2007-08: S.7941/A.11042 -- CORPORATIONS/corporations

FISCAL IMPLICATIONS: None to state or local government.

EFFECTIVE DATE: This act shall take effect January 1, 2014, except that section 45 shall take effect January 1, 2015.