

Attorney General Proposes Sweeping Not-for-Profit Corporation Law Reform

On May 15, 2012, the New York Attorney General proposed an unprecedented sweeping reform of the New York Not-for-Profit Corporation Law. The proposed changes would affect many aspects of the operation of New York not-for-profit corporations and charitable trusts.

Key proposed changes include:

- New requirements would be added requiring all compensation paid by a not-for-profit corporation to its employees be fair, reasonable, and commensurate with the services the employee provides to the corporation. Not-for-profits with annual revenues exceeding \$1M would be required to designate a compensation committee to oversee executive compensation in conformance with detailed requirements.
- All not-for-profit corporations with more than \$500,000 in annual gross receipts would be required to establish an audit committee. The audit committee would be required to conduct its business in conformance with detailed requirements.
- Specific provisions would be added allowing not-for-profit corporations to conduct business by electronic mail.
- New York's archaic system of classifying not-for-profit corporations by type would be abolished and replaced with a distinction between charitable and non-charitable corporations. "Charitable corporations" would include those organizations formed for charitable, educational, religious, scientific, literary, or cultural purposes; and would encompass former types B and C and some former type D corporations. "Non-charitable corporations" would include not-for-profit organizations formed for any other purpose and would encompass former type A corporations and some former type D corporations.
- The requirement for advance consent by the Commissioner of Education for formation of not-for-profit corporations would be abolished. However, the Attorney General has not proposed to eliminate certain other pre-approval requirements advocated by the bar.
- New procedures would be added for petitioning the Attorney General, rather than the courts, for approval of key corporate transactions, including approval of mergers, consolidations, dissolution, and related party transactions.
- New rules would be instituted for the approval of related-party transactions that are, in some cases, more restrictive than the existing rules under the federal tax law. The Attorney General would have authority to reverse any related-party transaction that does not meet the requirements and require the payment of fines in the case of willful misconduct.
- Not-for-profit organizations would be required to adopt a conflict of interest policy. This policy would differ from the sample policy provided by the IRS and widely adopted by not-for-profit organizations.
- Every not-for-profit with more than five employees and \$1M in annual revenue would be required to adopt a whistleblower policy meeting certain requirements.

PRACTICE LEADER

Joseph G. Casion
jcasion@hselaw.com

PARTNERS

Jeffrey H. Bowen
jbowen@hselaw.com

Theresa A. Conroy
tconroy@hselaw.com

Paul W. Holloway
pholloway@hselaw.com

John G. Horn
jhorn@hselaw.com

Ross P. Lanzafame
rlanzafame@hselaw.com

David M. Lascell
dlascell@hselaw.com

Anthony D. Mancinelli
amancinelli@hselaw.com

Michael R. McEvoy
mmcevoy@hselaw.com

Raymond P. Miller
rmiller@hselaw.com

Craig J. Zicari
czicari@hselaw.com

ASSOCIATES

Christine M. Ballard
cballard@hselaw.com

Robert G. Cruz
rcruz@hselaw.com

Joshua E. Gewolb
jgewolb@hselaw.com

W. Derek Wilson
dwilson@hselaw.com

While reform proposals have been circulating for many years, the Attorney General's proposal seems to have legs, coming with the support of the Cuomo administration, and on the heels of the recommendations of the Attorney General's Leadership Committee for Not-for-Profit Revitalization.

HSE is monitoring these developments as they occur. If you have any questions about the potential impact of the proposals on your organization, or other questions about the operation of the New York Not-for-Profit Corporation Law, please contact your HSE not-for-profit attorney. ■



Harter Secret & Emery LLP

ATTORNEYS AND COUNSELORS

ROCHESTER

1600 Bausch & Lomb Place
Rochester, NY 14604-2711
585.232.6500

BUFFALO

Twelve Fountain Plaza, Suite 400
Buffalo, NY 14202-2293
716.853.1616

ALBANY

111 Washington Ave., Suite 303
Albany, NY 12210-2209
518.434.4377

NAPLES

5811 Pelican Bay Blvd., Suite 600
Naples, Florida 34108-2711
239.598.4444