

A7337 Brennan (MS) No Same as
Department of Law (Internal # 3 - 2013)
Not-for-Profit Corporation Law
TITLE....Relates to the reform of charitable organizations; repealer
05/10/13 referred to corporations, authorities and commissions

STATE OF NEW YORK

7337

2013-2014 Regular Sessions

IN ASSEMBLY

May 10, 2013

Introduced by M. of A. BRENNAN, WEINSTEIN, ENGLEBRIGHT -- (at request of the Department of Law) -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, the estates, powers and trusts law, the religious corporations law, the benevolent orders law, the public authorities law, the insurance law, the racing, pari-mutuel wagering and breeding law, the private housing finance law, the education 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 relating thereto (Part A); and to amend the not-for-profit corporation law, the estates, powers and trusts law, the surrogate's court procedure act, the executive law, the education law, the religious corporations 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 (Part B)

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

1 Section 1. This act enacts into law components of legislation relating
2 to the reform of charitable organizations. Each component is wholly
3 contained within a Part identified as Parts A through B. The effective
4 date for each particular provision contained within such Part is set
5 forth in the last section of such Part. Any provision in any section
6 contained within a Part, including the effective date of the Part, which
7 makes a reference to a section "of this act", when used in connection
8 with that particular component, shall be deemed to mean and refer to the
9 corresponding section of the Part in which it is found. Section three of
10 this act sets forth the general effective date of this act.

11 PART A

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

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

4 (3-a) "Charitable corporation" means any corporation formed, or for
5 the purposes of this chapter, deemed to be formed, for charitable
6 purposes.

7 (3-b) "Charitable purposes" of a corporation means purposes contained
8 in the certificate of incorporation of the corporation that are charita-
9 ble, educational, religious, scientific, literary, cultural or for the
10 prevention of cruelty to children or animals.

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

15 (9-a) "Non-charitable corporation" means any corporation formed under
16 this chapter, other than a charitable corporation, including one formed
17 for any one or more of the following non-pecuniary purposes: civic,
18 patriotic, political, social, fraternal, athletic, agricultural, horti-
19 cultural, or animal husbandry, or for the purpose of operating a profes-
20 sional, commercial, industrial, trade or service association.

21 (19) "Related party" means (i) any director, officer or key employee
22 of the corporation or any affiliate of the corporation; (ii) any rela-
23 tive of any director, officer or key employee of the corporation or any
24 affiliate of the corporation; or (iii) any entity in which any individ-
25 ual described in clauses (i) and (ii) of this subparagraph has a thir-
26 ty-five percent or greater ownership or beneficial interest or, in the
27 case of a partnership or professional corporation, a direct or indirect
28 ownership interest in excess of five percent.

29 (20) "Related party transaction" means any transaction, agreement or
30 any other arrangement in which a related party has a financial interest
31 and in which the corporation or any affiliate of the corporation is a
32 participant.

33 (21) "Key employee" means any person who is in a position to exercise
34 substantial influence over the affairs of the corporation, as referenced
35 in 26 U.S.C. §4958(f)(1)(A) and further specified in 26 CFR §
36 53.4958-3(c) and (d), or succeeding provisions.

37 § 2. Paragraphs (b) and (c) of section 515 of the not-for-profit
38 corporation law, paragraph (c) as amended by chapter 847 of the laws of
39 1970, are amended to read as follows:

40 (b) A corporation may (1) pay compensation [~~in a reasonable amount~~] to
41 members, directors, [~~or~~] officers, or key employees for services
42 rendered, as permitted by this chapter, and [~~may~~] (2) make distributions
43 of cash or property to members upon dissolution or final liquidation as
44 permitted by this chapter. Total compensation paid to any person pursu-
45 ant to subparagraph one of this paragraph shall be fair, reasonable, and
46 commensurate with services provided to the corporation. No person who
47 may benefit from such compensation may be present at or otherwise
48 participate in any board or committee deliberation or vote concerning
49 such person's compensation.

50 (c) A corporation may confer benefits upon members or non-members in
51 conformity with its purposes as permitted by this chapter, including
52 without limitation, section 715 (Interested directors and officers) of
53 this chapter, may redeem its capital certificates or subvention certifi-
54 cates, and may make other distributions of cash or property to its
55 members or former members, directors, or officers prior to dissolution
56 or final liquidation, as authorized by this article, except when the

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1 corporation is currently insolvent or would thereby be made insolvent or
2 rendered unable to carry on its corporate purposes, or when the fair
3 value of the corporation's assets remaining after such conferring of
4 benefits, or redemption, or other distribution would be insufficient to
5 meet its liabilities.

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

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

17 (f) No employee of the corporation shall serve as chair of the board
18 or hold any other title with similar responsibilities.

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

21 § 715-a. Conflict of interest policy.

22 (a) Every corporation shall adopt a conflict of interest policy to
23 ensure that its directors, officers and key employees act in the corpo-
24 ration's best interest and comply with applicable legal requirements,
25 including but not limited to the requirements set forth in section seven
26 hundred fifteen of this article.

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

29 (1) a definition of the circumstances that constitute a conflict of
30 interest;

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

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

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

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

42 (6) procedures for disclosing, addressing, and documenting related
43 party transactions in accordance with section seven hundred fifteen of
44 this article.

45 (c) The conflict of interest policy shall require that prior to the
46 initial election of any director, and annually thereafter, such director
47 shall complete, sign and submit to the secretary of the corporation a
48 written statement identifying any entity of which such director is an
49 officer, director, trustee, member, owner (either as a sole proprietor
50 or a partner), or employee and with which the corporation has a
51 relationship, and any transaction in which the corporation is a partic-
52 ipant and in which the director might have a conflicting interest. The
53 policy shall require that each director annually resubmit such written
54 statement. The secretary of the corporation shall provide a copy of
55 all completed statements to the chair of the audit committee or, if
56 there is no audit committee, to the chair of the board.

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1 (d) Nothing in this section shall be interpreted to require a corpo-
2 ration to adopt any specific conflict of interest policy not otherwise
3 required by this section or any other law or rule, or to supersede or
4 limit any requirement or duty governing conflicts of interest required
5 by any other law or rule.

6 § 715-b. Whistleblower policy.

7 (a) Every corporation that has twenty or more employees and in the
8 prior fiscal year had annual revenue in excess of one million dollars
9 shall adopt a whistleblower policy to protect from retaliation persons
10 who report suspected improper conduct. Such policy shall provide that no
11 director, officer, employee or volunteer of a corporation who in good
12 faith reports any action or suspected action taken by or within the
13 corporation that is illegal, fraudulent or in violation of any adopted
14 policy of the corporation shall suffer intimidation, harassment,
15 discrimination or other retaliation or, in the case of employees,
16 adverse employment consequence.

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

18 (1) Procedures for the reporting of violations or suspected violations
19 of laws or corporate policies, including procedures for preserving the
20 confidentiality of reported information;

21 (2) A requirement that an employee, officer or director of the corpo-
22 ration be designated to administer the whistleblower policy and to
23 report to the audit committee or other committee of independent direc-
24 tors or, if there are no such committees, to the board; and

25 (3) A requirement that a copy of the policy be distributed to all
26 directors, officers, employees and volunteers.

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

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

33 § 8-1.9 Trust governance

34 (a) For purposes of this section:

35 (1) A "trust" means a trust created solely for charitable purposes, or
36 a trust that continues solely for such purposes after all non-charitable
37 interests have terminated.

38 (2) "Charitable purpose" means any religious, charitable, educational
39 or benevolent purpose.

40 (3) "Key employee" means any person who has responsibilities, powers
41 or influence over the trust similar to those of an officer of a not-for-
42 profit corporation, or is otherwise in a position to exercise substan-
43 tial influence over the affairs of the trust, as referenced in 26 U.S.C.
44 §4958(f)(1)(A) and further specified in 26 CFR §53.4958-3(c) and (d), or
45 succeeding provisions.

46 (4) An "affiliate" of a trust means any entity controlled by, in
47 control of, or under common control with such trust.

48 (5) "Relative" of an individual means the (i) spouse, domestic partner
49 as defined by section twenty-eight hundred five-q of the public health
50 law, child, grandchild, brother or sister (whether by the whole- or
51 half-blood) of the individual; and (ii) the spouse or domestic partner
52 of a child, grandchild, brother, or sister (whether by the whole- or
53 half-blood) of the individual.

54 (6) "Related party" means (i) any trustee or key employee of the trust
55 or any affiliate of the trust; (ii) any relative of any trustee or key
56 employee of the trust or any affiliate of the trust; or (iii) an entity

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1 in which any individual described in clauses (i) and (ii) of this
2 subparagraph has a thirty-five percent or greater ownership or benefi-
3 cial interest or, in the case of a partnership or professional corpo-
4 ration, a direct ownership interest in excess of five percent.

5 (7) "Independent trustee" means a trustee who: (i) is not, and has not
6 been within the last three years, an employee of the trust or an affil-
7 iate of the trust, and does not have a relative who is, or has been
8 within the last three years, a key employee of the trust or an affiliate
9 of the trust; (ii) has not received, and does not have a relative who
10 has received, in any of the last three fiscal years, more than ten thou-
11 sand dollars in direct compensation from the trust or an affiliate of
12 the trust (other than reimbursement for expenses or the payment of trus-
13 tee commissions as permitted by law and the governing instrument); and
14 (iii) is not a current employee of or have a substantial financial
15 interest in, and does not have a relative who is a current officer of or
16 have a substantial financial interest in, any entity that has made
17 payments to, or received payments from, the trust or an affiliate of the
18 trust for property or services in an amount which, in any of the last
19 three fiscal years, exceeds the lesser of twenty-five thousand dollars
20 or two percent of such entity's consolidated gross revenues. For
21 purposes of this subparagraph, "payment" does not include charitable
22 contributions.

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

26 (9) "Independent auditor" means any certified public accountant
27 performing the audit of the financial statements of a trust required by
28 subdivision one of section one hundred seventy-two-b of the executive
29 law.

30 (b)(1) Every trust shall adopt a conflict of interest policy to ensure
31 that its trustees, officers and key employees act in the best interest
32 of the trust and its beneficiaries and comply with applicable legal
33 requirements, including but not limited to the requirements set forth in
34 paragraph (e) of this section.

35 (2) The conflict of interest policy shall include, at a minimum, the
36 following provisions:

37 (A) a definition of the circumstances that constitute a conflict of
38 interest;

39 (B) procedures for disclosing a conflict of interest to the audit
40 committee or, if there is no audit committee, to the trustees;

41 (C) a requirement that the person with the conflict of interest not be
42 present at or participate in any deliberation or vote on the matter
43 giving rise to such conflict;

44 (D) a prohibition against any attempt by the person with the conflict
45 to influence the deliberation or voting on the matter giving rise to
46 such conflict;

47 (E) a requirement that the existence and resolution of the conflict be
48 documented in the trust's records, including in the minutes of any meet-
49 ing at which the conflict was discussed or voted upon; and

50 (F) procedures for disclosing, addressing, and documenting related
51 party transactions in accordance with paragraph (e) of this section.

52 (3) The conflict of interest policy shall require that prior to a
53 trustee's initial appointment, and annually thereafter, such trustee
54 shall complete, sign and file with the records of the trust a written
55 statement identifying any entity of which he or she is an officer,
56 director, trustee, member, owner (either as a sole proprietor or a part-

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1 ner), or employee and with which the trust has a relationship, and any
2 transaction in which the trust is a participant and in which the trustee
3 might have a conflicting interest. The policy shall require that each
4 trustee annually resubmit such written statement. The trustees shall
5 provide a copy of all completed statements to the chair of the audit
6 committee, if there is an audit committee.

7 (4) Nothing in this paragraph shall be interpreted to require a trust
8 to adopt any specific conflict of interest policy not otherwise required
9 by this paragraph or any other law or rule, or to supersede or limit any
10 requirement or duty governing conflicts of interest required by any
11 other law or rule.

12 (c)(1) Every trust that has twenty or more employees and in the prior
13 fiscal year had annual revenue in excess of one million dollars shall
14 adopt a whistleblower policy to protect from retaliation persons who
15 report suspected improper conduct. Such policy shall provide that no
16 officer, trustee, employee or volunteer of a trust who in good faith
17 reports any action or suspected action taken by or within the trust that
18 is illegal, fraudulent or in violation of any adopted policy of the
19 trust shall suffer intimidation, harassment, discrimination or other
20 retaliation or, in the case of employees, adverse employment conse-
21 quence.

22 (2) The whistleblower policy shall include the following provisions:

23 (A) Procedures for the reporting of violations or suspected violations
24 of laws or trust policies, including procedures for preserving the
25 confidentiality of reported information;

26 (B) A requirement that a trustee, officer or employee of the trust be
27 designated to administer, the whistleblower policy and to report to the
28 audit committee or other committee of independent trustees, or to the
29 trustees; and

30 (C) A requirement that a copy of the policy be distributed to all
31 trustees, officers, employees and volunteers, with instructions on how
32 to comply with the procedures set forth in the policy.

33 (3) Nothing in this paragraph shall be interpreted to relieve any
34 trust from any additional requirements in relation to internal compli-
35 ance, retaliation, or document retention required by any other law or
36 rule.

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

39 § 105. Certificates; corrections.

40 (a) Any certificate or other instrument relating to a domestic or
41 foreign corporation submitted to the department of state under this
42 chapter may be corrected with respect to any typographical, or similar
43 non-material error apparent on the face of the certificate or instru-
44 ment, prior to the filing of such certificate or instrument by the
45 department of state. Such correction shall be effected by the department
46 of state upon authorization in writing or by electronic mail by the
47 incorporator, or following incorporation, by any person authorized by
48 the corporation.

49 (b) Any certificate or other instrument relating to a domestic or
50 foreign corporation filed by the department of state under this chapter
51 may be corrected with respect to any [~~informality or~~ typographical or
52 similar non-material error apparent on the face or defect in the
53 execution thereof including the deletion of any matter not permitted to
54 be stated therein. A certificate, entitled "Certificate of correction
55 of..... (correct title of certificate and name of corporation)"
56 shall be signed and delivered to the department of state. It shall set

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1 forth the name of the corporation, the date the certificate to be
2 corrected was filed by the department of state, the provision in the
3 certificate as corrected or eliminated and if the execution was defec-
4 tive, the proper execution. The filing of the certificate by the depart-
5 ment of state shall not alter the effective time of the instrument being
6 corrected, which shall remain as its original effective time, and shall
7 not affect any right or liability accrued or incurred before such
8 filing. A corporate name may not be changed or corrected under this
9 section other than to correct any typographical or similar non-material
10 error.

11 § 7. Section 113 of the not-for-profit corporation law is REPEALED.

12 § 8. Section 201 of the not-for-profit corporation law, paragraph (b)
13 as amended by chapter 847 of the laws of 1970 and paragraph (c) as
14 amended by chapter 1058 of the laws of 1971, is amended to read as
15 follows:

16 § 201. Purposes.

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

22 (b) [~~A corporation, of a type and for a purpose or purposes as~~
23 ~~follows, may be formed under this chapter, provided consents required~~
24 ~~under any other statute of this state have been obtained:~~

25 Type A -] A corporation formed on or after January first, two thousand
26 fourteen shall either be a charitable corporation or a non-charitable
27 corporation. Any corporation formed for both charitable purposes and
28 non-charitable purposes shall be deemed a charitable corporation for
29 purposes of this chapter. A type A not-for-profit corporation [~~of this~~
30 ~~type may be formed for any lawful non-business purpose or purposes~~
31 ~~including, but not limited to, any one or more of the following non-pe-~~
32 ~~culiary purposes: civic, patriotic, political, social, fraternal,~~
33 ~~athletic, agricultural, horticultural, animal husbandry, and for a~~
34 ~~professional, commercial, industrial, trade or service association.~~

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

39 ~~Type C - A not-for-profit corporation of this type may be formed for~~
40 ~~any lawful business purpose to achieve a lawful public or quasi-public~~
41 ~~objective.~~

42 ~~Type D - A not-for-profit corporation of this type may be formed under~~
43 ~~this chapter when such formation is authorized by any other corporate~~
44 ~~law of this state for any business or non-business, or pecuniary or~~
45 ~~non-pecuniary, purpose or purposes specified by such other law, whether~~
46 ~~such purpose or purposes are also within types A, B, C above or other-~~
47 ~~wise.~~

48 (c) If a corporation is formed for purposes which are within both type
49 ~~A and type B above, it is a type B corporation. If a corporation has~~
50 ~~among its purposes any purpose which is within type C, such corporation~~
51 ~~is a type C corporation. A type D corporation is subject to all~~
52 ~~provisions of this chapter which are applicable to a type B corporation~~
53 ~~under this chapter unless provided to the contrary in, and subject to~~
54 ~~the contrary provisions of, the other corporate law authorizing forma-~~
55 ~~tion under this chapter of the type D corporation.] formed prior to
56 January first, two thousand fourteen shall be deemed a non-charitable~~

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1 corporation under this chapter. Any submission or filing by such corpo-
2 ration to any person or entity shall be deemed to have been submitted or
3 filed by a non-charitable corporation, and any reference in any such
4 filing or submission referring to the status of such corporation as a
5 type A corporation shall be deemed to refer to a non-charitable corpo-
6 ration.

7 (c) A type B or C not-for-profit corporation formed prior to January
8 first, two thousand fourteen shall be deemed a charitable corporation
9 for all purposes under this chapter. Any submission or filing by such
10 corporation to any person or entity shall be deemed to have been submit-
11 ted or filed by a charitable corporation, and any reference in any such
12 filing or submission referring to the status of such corporation as a
13 type B or type C corporation shall be deemed to refer to a charitable
14 corporation.

15 (d) A type D not-for-profit corporation formed prior to January first,
16 two thousand fourteen for charitable purposes as that term is defined in
17 this chapter shall be deemed a charitable corporation. Any submission or
18 filing by such corporation to any person or entity shall be deemed to
19 have been submitted or filed by a charitable corporation, and any refer-
20 ence in any such filing or submission referring to the status of such
21 corporation as a type D corporation shall be deemed to refer to a chari-
22 table corporation. Any other type D not-for-profit corporations formed
23 prior to January first, two thousand fourteen shall be deemed a non-
24 charitable corporation. Any submission or filing by such corporation to
25 any person or entity shall be deemed to have been submitted or filed by
26 a non-charitable corporation, and any reference in any such filing or
27 submission referring to the status of such corporation as a type D
28 corporation shall be deemed to refer to a non-charitable corporation.

29 § 9. Section 204 of the not-for-profit corporation law is amended to
30 read as follows:

31 § 204. Limitation on activities.

32 Notwithstanding any other provision of this chapter or any other
33 general law, a corporation of any [~~type or~~] kind to which this chapter
34 applies shall conduct no activities for pecuniary profit or financial
35 gain, [~~whether or not~~] except in furtherance of, and as reasonably
36 necessary to achieve, its corporate purposes[~~, except to the extent that~~
37 ~~such activity supports its other lawful activities then being~~
38 ~~conducted~~].

39 § 10. Paragraph (a) of section 104-A of the not-for-profit corporation
40 law is REPEALED.

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

43 § 115. Power to solicit contributions for charitable purposes.

44 [~~No corporation having the power to solicit contributions for charita-~~
45 ~~ble purposes may solicit contributions for any purpose for which~~
46 ~~approval of such solicitation is required under the provisions of~~
47 ~~section four hundred four of this chapter unless the certificate specif-~~
48 ~~ically makes provision for such solicitation and the required written~~
49 ~~approval is endorsed on or annexed to such certificate or unless the~~
50 ~~corporation is among those referred to in section one hundred seventy-~~
51 ~~two-a of the executive law. If such approval is not obtained and the~~
52 ~~corporation continues to solicit or to receive contributions for such~~
53 ~~purpose or advertises that it has obtained such approval, the] (a) No
54 corporation required to obtain approval or provide notice of formation
55 pursuant to section 404 (Approvals, notices and consents) of this chap-
56 ter may solicit contributions for any purpose unless and until such~~

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1 corporation (1) obtains and submits any approval or notice required
2 thereunder, and (2) is in compliance with the registration and reporting
3 requirements of article seven-A of the executive law and section 8-1.4
4 of the estates, powers and trusts law.

5 (b) The attorney general [~~at the request of the officer or body~~
6 ~~authorized to grant such approval, shall~~] may maintain an action or
7 proceeding pursuant to the provisions of subparagraph one of paragraph
8 (a) of section one hundred twelve of this [~~chapter~~] article against any
9 corporation that solicits contributions in violation of paragraph (a) of
10 this section. Such an action may also be maintained in relation to a
11 corporation hereinafter incorporated if the name, purposes, objects or
12 the activities of such corporation may, in any manner, lead to the
13 belief that the corporation possesses or may exercise any of such
14 purposes.

15 § 12. The section heading and paragraph (a) of section 304 of the
16 not-for-profit corporation law, as amended by chapter 168 of the laws of
17 1982, is amended to read as follows:

18 Statutory designation of secretary of state as agent of domestic
19 corporations [~~formed under article four of this chapter~~] and authorized
20 foreign corporations for service of process.

21 (a) The secretary of state shall be the agent of every domestic corpo-
22 ration [~~formed under article four of this chapter~~] and every authorized
23 foreign corporation upon whom process against the corporation may be
24 served.

25 § 13. Paragraphs (b) and (c) of section 306 of the not-for-profit
26 corporation law, paragraph (b) as amended by chapter 168 of the laws of
27 1982, and paragraph (c) as amended by chapter 93 of the laws of 1984,
28 are amended to read as follows:

29 (b) Service of process on the secretary of state as agent of a domes-
30 tic corporation [~~formed under article four of this chapter~~] or an
31 authorized foreign corporation shall be made by personally delivering to
32 and leaving with [~~him or his~~] the deputy of the secretary of state, or
33 with any person authorized by the secretary of state to receive such
34 service, at the office of the department of state in the city of Albany,
35 duplicate copies of such process together with the statutory fee, which
36 fee shall be a taxable disbursement. Service of process on such corpo-
37 ration shall be complete when the secretary of state is so served. The
38 secretary of state shall promptly send one of such copies by certified
39 mail, return receipt requested, to such corporation, at the post office
40 address, on file in the department of state, specified for the purpose.
41 If a domestic corporation [~~formed under article four of this chapter~~] or
42 an authorized foreign corporation has no such address on file in the
43 department of state, the secretary of state shall so mail such copy to
44 such corporation at the address of its office within this state on file
45 in the department.

46 (c) If an action or special proceeding is instituted in a court of
47 limited jurisdiction, service of process may be made in the manner
48 provided in this section if the office of the domestic corporation
49 [~~formed under article four of this chapter~~] or foreign corporation is
50 within the territorial jurisdiction of the court.

51 § 14. Subparagraphs 2 and 4 of paragraph (a) of section 402 of the
52 not-for-profit corporation law, subparagraph 2 as amended by chapter 847
53 of the laws of 1970 and subparagraph 4 as amended by chapter 679 of the
54 laws of 1985, are amended to read as follows:

55 (2) That the corporation is a corporation as defined in subparagraph
56 (a) (5) of section 102 (Definitions)[~~7~~], the purpose or purposes for

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1 which it is formed, and [~~the type of~~] whether it is a charitable corpo-
2 ration [~~it shall be~~] or a non-charitable corporation under section 201
3 (Purposes)[~~; and in the case of a Type C corporation, the lawful public~~
4 ~~or quasi-public objective which each business purpose will achieve~~].
5 Any corporation may also set forth any activities that it intends to
6 carry out in furtherance of such purpose or purposes; provided that this
7 subparagraph shall not be interpreted to require that the certificate of
8 incorporation set forth such activities or otherwise state how the
9 corporation's purposes will be achieved.

10 (4) [~~In the case of a Type A, Type B, or Type C corporation, the~~] The
11 names and addresses of the initial directors. [~~In the case of a Type D~~
12 ~~corporation, the names and addresses of the initial directors, if any,~~
13 ~~may but need not be set forth.~~]

14 § 15. The section heading and paragraphs (b) and (d) of section 404 of
15 the not-for-profit corporation law, the section heading and paragraph
16 (d) as amended by chapter 139 of the laws of 1993, paragraph (b) as
17 amended by section 4 of part D of chapter 58 of the laws of 2006, and
18 paragraph (d) as relettered by chapter 431 of the laws of 1993, are
19 amended to read as follows:

20 Approvals, notices and consents.

21 (b) (1) Every certificate of incorporation which includes among its
22 purposes the care of destitute, delinquent, abandoned, neglected or
23 dependent children; the establishment or operation of any adult care
24 facility, or the establishment or operation of a residential program for
25 victims of domestic violence as defined in subdivision four of section
26 four hundred fifty-nine-a of the social services law, or the placing-out
27 or boarding-out of children or a home or shelter for unmarried mothers,
28 excepting the establishment or maintenance of a hospital or facility
29 providing health-related services as those terms are defined in article
30 twenty-eight of the public health law and a facility for which an oper-
31 ating certificate is required by articles sixteen, nineteen, twenty-two
32 and thirty-one of the mental hygiene law; or the solicitation of
33 contributions for any such purpose or purposes, shall have endorsed
34 thereon or annexed thereto the approval of the commissioner of the
35 office of children and family services or with respect to any adult care
36 facility, the commissioner of health.

37 (2) A corporation whose statement of purposes specifically includes
38 the establishment or operation of a child day care center, as that term
39 is defined in section three hundred ninety of the social services law,
40 shall provide a certified copy of the certificate of incorporation, each
41 amendment thereto, and any certificate of merger, consolidation or
42 dissolution involving such corporation to the office of children and
43 family services within [~~thirty~~] ten business days after the filing of
44 such certificate, amendment, merger, consolidation or dissolution with
45 the department of state. This requirement shall also apply to any
46 foreign corporation filing an application for authority under section
47 thirteen hundred four of this chapter, any amendments thereto, and any
48 surrender of authority or termination of authority in this state of such
49 corporation.

50 (d) Every corporation the certificate of incorporation of which
51 includes among its purposes the operation of a school, college, univer-
52 sity, library, museum or historical society shall have endorsed thereon
53 or annexed thereto the approval of the commissioner of education. Any
54 other corporation the certificate of incorporation of which includes a
55 purpose for which a corporation might be chartered by the regents of the
56 university of the State of New York shall [~~have endorsed thereon or~~

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1 ~~annexed thereto the consent of the commissioner of education.] provide a~~
2 certified copy of the certificate of incorporation to the commissioner
3 of education within ten business days after the corporation receives
4 confirmation from the department of state that the certificate has been
5 accepted for filing.

6 § 16. Paragraph (w) of section 404 of the not-for-profit corporation
7 law is REPEALED.

8 § 17. The section heading and paragraph (a) of section 804 of the
9 not-for-profit corporation law, as amended by chapter 139 of the laws of
10 1993, and subparagraph (i) of paragraph (a) as amended by chapter 198 of
11 the laws of 2010, are amended to read as follows:

12 Approvals, notices and effect.

13 (a) (i) A certificate of amendment shall not be filed if the amendment
14 adds, changes or eliminates a purpose, power or provision the inclusion
15 of which in a certificate of incorporation requires consent or approval
16 of a governmental body or officer or any other person or body, or if the
17 amendment changes the name of a corporation whose certificate of incor-
18 poration had such consent or approval endorsed thereon or annexed there-
19 to, unless such consent or approval is no longer required or is endorsed
20 on or annexed to the certificate of amendment. A certificate of amend-
21 ment adding, changing or eliminating a purpose, power or provision the
22 inclusion of which in a certificate of incorporation requires the incor-
23 porator to send such certificate to a governmental body or officer or
24 any other person or body, or if the amendment changes the name of a
25 corporation whose certificate of incorporation was required to be deliv-
26 ered by the incorporator to a governmental body or officer or any other
27 person or body, shall be delivered by the person or entity filing the
28 certificate of amendment within ten business days after the corporation
29 receives confirmation from the department of state that the certificate
30 has been accepted for filing.

31 (ii) Every certificate of amendment of a charitable corporation [~~clas-~~
32 ~~sified as type B or type C under section 201 (Purposes)] which seeks to
33 change or eliminate a purpose or power enumerated in the corporation's
34 certificate of incorporation, or to add a power or purpose not enumer-
35 ated therein, shall have endorsed thereon or annexed thereto the
36 approval of either (A) the attorney general, or (B) a justice of the
37 supreme court of the judicial district in which the office of the corpo-
38 ration is located. [~~Ten days' written notice of the application for such~~
39 approval shall be given to the attorney-general] If the attorney general
40 does not approve a certificate of amendment submitted pursuant to clause
41 (A) of this subparagraph the corporation may apply for approval of the
42 amendment to a justice of the supreme court of the judicial district in
43 which the office of the corporation is located. Any application for
44 approval of a certificate of amendment by the supreme court pursuant to
45 this paragraph shall be on ten days' written notice to the attorney
46 general.~~

47 § 18. Section 909 of the not-for-profit corporation law, as amended by
48 section 6 of part D of chapter 58 of the laws of 2006, is amended to
49 read as follows:

50 § 909. Consent to filing; notices.

51 (a) If the purposes of any constituent or consolidated corporation
52 would require the approval or consent of any governmental body or offi-
53 cer or any other person or body under section 404 (Approvals, notices
54 and consents) of this chapter no certificate of merger or consolidation
55 shall be filed pursuant to this article unless such approval or consent
56 is endorsed thereon or annexed thereto. A corporation whose statement of

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1 purposes specifically includes the establishment or operation of a child
2 day care center, as that term is defined in section three hundred ninety
3 of the social services law, shall provide a certified copy of any
4 certificate of merger or consolidation involving such corporation to the
5 office of children and family services within thirty days after the
6 filing of such merger or consolidation with the department of state.

7 (b) If the purposes of any constituent or consolidated corporation
8 would require the certificate of incorporation or any other notice to be
9 delivered to any person or entity under section 404 (Approvals, notices
10 and consents) of this chapter, the corporation shall provide to such
11 person or entity a certified copy of the certificate of incorporation
12 within ten business days after the corporation receives confirmation
13 from the department of state that the certificate has been accepted for
14 filing.

15 § 19. Paragraphs (a), (b) and (c) of section 103 of the not-for-profit
16 corporation law, paragraph (a) as amended by chapter 807 of the laws of
17 1973, paragraph (b) as amended by chapter 847 of the laws of 1970, and
18 paragraph (c) as amended by chapter 961 of the laws of 1972, are amended
19 to read as follows:

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

33 To the extent that the membership corporations law or the general
34 corporation law applied to it as of the effective date of this chapter,
35 the corresponding provisions of this chapter apply to a corporation
36 heretofore formed by or pursuant to a special act of this state other
37 than a religious corporation or an "education corporation" under clause
38 (b) of subdivision one of section two hundred sixteen-a of the education
39 law, if (1) its principal purpose is a religious, charitable or educa-
40 tion purpose, and (2) it is operated, supervised or controlled by or in
41 connection with a religious organization. [~~Any such corporation may~~
42 ~~elect hereunder at any time after the effective date of this chapter to~~
43 ~~file a certificate of type under section one hundred thirteen (Certif-~~
44 ~~icate of type of not-for-profit corporation). Upon the filing of such~~
45 ~~certificate by the department of state, this chapter shall apply in all~~
46 ~~respects to such corporation.]~~

47 This chapter also applies to any other corporation of any [type or]
48 kind, formed not for profit under any other chapter of the laws of this
49 state except a chapter of the consolidated laws, to the extent that
50 provisions of this chapter do not conflict with the provisions of such
51 unconsolidated law. If an applicable provision of such unconsolidated
52 law relates to a matter embraced in this chapter but is not in conflict
53 therewith, both provisions shall apply. Any corporation to which this
54 chapter is made applicable by this paragraph shall be treated as a
55 "corporation" or "domestic corporation" as such terms are used in this
56 chapter, except that the purposes of any such corporation formed or

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1 formable under such unconsolidated law shall not thereby be extended.
2 For the purpose of this paragraph, the effective date of this chapter as
3 to corporations to which this chapter is made applicable by this para-
4 graph shall be September one, nineteen hundred seventy-three.

5 (b) The general corporation law does not apply to a corporation of
6 any [~~type or~~] kind to which this chapter applies. A reference in any
7 statute of this state which makes a provision of the general corporation
8 law applicable to a corporation of any [~~type or~~] kind to which this
9 chapter is applicable or a reference in any statute of this state, other
10 than the membership corporations law, which makes a provision of the
11 membership corporations law applicable to a corporation of any [~~type or~~]
12 kind shall be deemed and construed to refer to and make applicable the
13 corresponding provision, if any, of this chapter.

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

28 § 20. Subparagraphs 7, 8 and 9 of paragraph (a) of section 112 of the
29 not-for-profit corporation law, subparagraphs 7 and 9 as amended by
30 chapter 1058 of the laws of 1971, are amended to read as follows:

31 (7) To enforce any right given under this chapter to members, a
32 director or an officer of a [~~Type B or Type C~~] charitable corporation.
33 The attorney-general shall have the same status as such members, direc-
34 tor or officer.

35 (8) [~~To compel the directors and officers, or any of them, of a Type B~~
36 ~~or Type C corporation which has been dissolved under section 1011~~
37 ~~(Dissolution for failure to file certificate of type of Not-for-Profit~~
38 ~~Corporation law under section 113) to account for the assets of the~~
39 ~~dissolved corporation.~~

40 (9) Upon application, ex parte, for an order to the supreme court at
41 a special term held within the judicial district where the office of the
42 corporation is located, and if the court so orders, to enforce any right
43 given under this chapter to members, a director or an officer of a [~~Type~~
44 ~~A corporation~~] non-charitable corporation. For such purpose, the attor-
45 ney-general shall have the same status as such members, director or
46 officer.

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

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

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

55 § 114. Visitation of supreme court.

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1 ~~[Type B and Type C]~~ Charitable corporations, whether formed under
2 general or special laws, with their books and vouchers, shall be subject
3 to the visitation and inspection of a justice of the supreme court, or
4 of any person appointed by the court for that purpose. If it appears by
5 the verified petition of a member, director, officer or creditor of any
6 such corporation on notice to the attorney general, that it, or its
7 directors, officers, members, key employees or agents, have misappropri-
8 ated any of the funds or property of the corporation, or diverted them
9 from the purpose of its incorporation, or that the corporation has
10 acquired property in excess of the amount which it is authorized by law
11 to hold, or has engaged in any business other than that stated in its
12 certificate of incorporation, the court may order that notice of at
13 least eight days, with a copy of the petition, be served on the corpo-
14 ration and the persons charged with misconduct, requiring them to show
15 cause at a time and place specified, why they should not be required to
16 make and file an inventory and account of the property, effects and
17 liabilities of such corporation with a detailed statement of its trans-
18 actions during the twelve months next preceding the granting of such
19 order. On the hearing of such application, the court may make an order
20 requiring such inventory, account and statement to be filed, and proceed
21 to take and state an account of the property and liabilities of the
22 corporation, or may appoint a referee for that purpose. When such
23 account is taken and stated, after hearing all the parties to the appli-
24 cation, the court may enter a final order determining the amount of
25 property so held by the corporation, its annual income, whether any of
26 the property or funds of the corporation have been misappropriated or
27 diverted to any other purpose than that for which such corporation was
28 incorporated, and whether such corporation has been engaged in any
29 activity not covered by its certificate of incorporation. An appeal may
30 be taken from the order by any party aggrieved to the appellate division
31 of the supreme court, and to the court of appeals, as in a civil action.
32 No corporation shall be required to make and file more than one invento-
33 ry and account in any one year, nor to make a second account and inven-
34 tory, while proceedings are pending for the statement of an account
35 under this section.

36 § 23. Subparagraphs 2 and 3 of paragraph (a) of section 301 of the
37 not-for-profit corporation law, subparagraph 2 as amended by chapter 344
38 of the laws of 2004, are amended to read as follows:

39 (2) (A) Shall be such as to distinguish it from the names of corpo-
40 rations of any ~~type or~~ kind, or a fictitious name of an authorized
41 foreign corporation filed pursuant to article thirteen of this chapter,
42 as such names appear on the index of names of existing domestic and
43 authorized foreign corporations of any ~~type or~~ kind, including ficti-
44 tious names of authorized foreign corporations filed pursuant to article
45 thirteen of this chapter, in the department of state, division of corpo-
46 rations, or a name the right to which is reserved.

47 (B) Shall be such as to distinguish it from (i) the names of domestic
48 limited liability companies, (ii) the names of authorized foreign limit-
49 ed liability companies, (iii) the fictitious names of authorized foreign
50 limited liability companies, (iv) the names of domestic limited partner-
51 ships, (v) the names of authorized foreign limited partnerships, or (vi)
52 the fictitious names of authorized foreign limited partnerships, in each
53 case, as such names appear on the index of names of existing domestic
54 and authorized foreign limited liability companies, including fictitious
55 names of authorized foreign limited liability companies, in the depart-
56 ment of state, or on the index of names of existing domestic or author-

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1 ized foreign limited partnerships, including fictitious names of author-
2 ized foreign limited partnerships, in the department of state, or names
3 the rights to which are reserved; provided, however, that no corporation
4 that was formed prior to the effective date of this clause and no
5 foreign corporation that was qualified to conduct activities in this
6 state prior to such effective date shall be required to change the name
7 or fictitious name it had on such effective date solely by reason of
8 such name or fictitious name being indistinguishable from the name or
9 fictitious name of any domestic or authorized foreign limited liability
10 company or limited partnership or from any name the right to which is
11 reserved by or on behalf of any domestic or foreign limited liability
12 company or limited partnership.

13 (3) Shall not contain any word or phrase, or any abbreviation or
14 derivative thereof, the use of which is prohibited or restricted by
15 section 404 (Approvals, notices and consents) or any other statute of
16 this state, unless in the latter case the restrictions have been
17 complied with.

18 § 24. Subparagraph 3 of paragraph (b) of section 302 of the not-for-
19 profit corporation law, as amended by chapter 847 of the laws of 1970,
20 is amended to read as follows:

21 (3) Shall not prevent a foreign corporation from being authorized
22 under a name which is similar to the name of a corporation of any [~~type~~
23 ~~or~~] kind existing or authorized under any statute, if the department of
24 state finds, upon proof by affidavit or otherwise as it may determine,
25 that a difference between such names exists in the terms or abbrevi-
26 ations indicating corporate character or otherwise, that the applicant
27 has conducted activities as a corporation under its said name for not
28 less than ten consecutive years immediately prior to the date of its
29 application, that the activities to be conducted in this state are not
30 the same or similar to the business or activities conducted by the
31 corporation with whose name it may conflict and that the public is not
32 likely to be confused or deceived, and if the applicant shall agree in
33 its application for authority to use with its corporate name, in this
34 state, to be placed immediately under or following such name, the words
35 "a (name of jurisdiction of incorporation) corporation".

36 § 25. Paragraph (c) of section 303 of the not-for-profit corporation
37 law, as amended by chapter 590 of the laws of 1982, is amended to read
38 as follows:

39 (c) Application to reserve a corporate name shall be delivered to the
40 department of state. It shall set forth the name and address of the
41 applicant, the name to be reserved and a statement of the basis under
42 paragraph (a) or (b) for the application. The secretary of state may
43 require the applicant to set forth in his application the nature of the
44 activities to be conducted by the corporation. If the name is available
45 for corporate use, the department of state shall reserve the name for
46 the use of the applicant for a period of sixty days and issue a certif-
47 icate of reservation. The prohibitions, restrictions and qualifications
48 set forth in section 301 (Corporate name; general), section 302 (Corpo-
49 rate name; exceptions) and section 404 (Approvals, notices and consents)
50 are not waived by the issuance of a certificate of reservation. The
51 certificate of reservation shall include the name of the applicant, the
52 name reserved and the date of the reservation. The certificate of reser-
53 vation (or in lieu thereof an affidavit by the applicant or by his agent
54 or attorney that the certificate of reservation has been lost or
55 destroyed) shall accompany the certificate of incorporation or the

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1 application for authority when either is delivered to the department of
2 state.

3 § 26. Paragraph (a) of section 305 of the not-for-profit corporation
4 law, as amended by chapter 131 of the laws of 1985, is amended to read
5 as follows:

6 (a) Every domestic corporation or authorized foreign corporation may
7 designate a registered agent in this state upon whom process against
8 such corporation may be served. The agent shall be a natural person who
9 is a resident of or has a business address in this state or a domestic
10 corporation or foreign corporation of any [~~type or~~] kind formed, or
11 authorized to do business in this state, under this chapter or under any
12 other statute of this state.

13 § 27. Paragraph (d) of section 502 of the not-for-profit corporation
14 law is amended to read as follows:

15 (d) A member's capital contribution shall be evidenced by a capital
16 certificate which shall be non-transferable, except that the certificate
17 of incorporation of a [~~Type A~~] non-charitable corporation may provide
18 that its capital certificates, or some of them, may be transferable to
19 other members with the consent of the corporation upon specified terms
20 and conditions.

21 § 28. Paragraphs (b) and (c) of section 503 of the not-for-profit
22 corporation law, subparagraph 1 of paragraph (b) and paragraph (c) as
23 amended by chapter 847 of the laws of 1970, are amended to read as
24 follows:

25 (b) Each capital certificate shall when issued state upon the face
26 thereof:

27 (1) [~~That the corporation is a Type corporation under section~~
28 ~~113 or section 402 of the New York Not-for-Profit Corporation Law.~~

29 ~~(2)~~] The name of the member to whom issued.

30 [~~(3)~~] (2) The amount of the member's capital contribution evidenced by
31 such certificate.

32 [~~(4)~~] (3) If appropriate, that the corporation is a [~~Type A~~] non-char-
33 itable corporation, and that its certificate of incorporation provides
34 that the capital certificate is transferable to other members with the
35 consent of the corporation.

36 [~~(c)~~] (4) The fact that the corporation is a not-for-profit corpo-
37 ration, and that the capital certificate is non-transferable or is
38 transferable to other members, with the consent of the corporation,
39 shall be noted conspicuously on the face or back of each such certif-
40 icate.

41 § 29. Paragraph (b) of section 505 of the not-for-profit corporation
42 law, subparagraph 1 as amended by chapter 847 of the laws of 1970, is
43 amended to read as follows:

44 (b) Each subvention certificate shall when issued state upon the face
45 thereof:

46 (1) [~~That the corporation is a Type corporation under section~~
47 ~~113 or section 402 of the New York Not-for-Profit Corporation Law.~~

48 ~~(2)~~] The name of the person or persons to whom issued.

49 [~~(3)~~] (2) The amount of the subvention evidenced by such certificate.

50 [~~(4)~~] (3) The amount of the periodic payment thereon, if any, author-
51 ized by the resolution of the board.

52 [~~(5)~~] (4) If appropriate, that the certificate is redeemable and a
53 summary of the conditions for redemption at the option of the corpo-
54 ration or of the holder.

55 [~~(6)~~] (5) If appropriate, that the certificate is transferable, either
56 at will or subject to specified restrictions.

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1 § 30. Paragraph (a) of section 510 of the not-for-profit corporation
2 law, the opening paragraph as amended by chapter 961 of the laws of
3 1972, subparagraph 3 as amended by chapter 847 of the laws of 1970, is
4 amended to read as follows:

5 (a) A sale, lease, exchange or other disposition of all, or substan-
6 tially all, the assets of a corporation may be made upon such terms and
7 conditions and for such consideration, which may consist in whole or in
8 part of cash or other property, real or personal, including shares,
9 bonds or other securities of any other domestic or foreign corporation
10 or corporations of any [~~type or~~] kind, as may be authorized in accord-
11 ance with the following procedure:

12 (1) If there are members entitled to vote thereon, the board shall
13 adopt a resolution recommending such sale, lease, exchange or other
14 disposition. The resolution shall specify the terms and conditions of
15 the proposed transaction, including the consideration to be received by
16 the corporation and the eventual disposition to be made of such consid-
17 eration, together with a statement that the dissolution of the corpo-
18 ration is or is not contemplated thereafter. The resolution shall be
19 submitted to a vote at a meeting of members entitled to vote thereon,
20 which may be either an annual or a special meeting. Notice of the meet-
21 ing shall be given to each member and each holder of subvention certif-
22 icates or bonds of the corporation, whether or not entitled to vote. At
23 such meeting by two-thirds vote as provided in paragraph (c) of section
24 613 (Vote of members) the members may approve the proposed transaction
25 according to the terms of the resolution of the board, or may approve
26 such sale, lease, exchange or other disposition and may authorize the
27 board to modify the terms and conditions thereof.

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

33 (3) If the corporation is, or would be if formed under this chapter,
34 classified as a [~~Type B or Type C~~] charitable corporation under section
35 201[7] (Purposes) such sale, lease, exchange or other disposition shall
36 in addition require [~~leave~~] approval of the supreme court in the judi-
37 cial district or of the county court of the county in which the corpo-
38 ration has its office or principal place of carrying out the [~~purposes~~]
39 purposes for which it was formed in accordance with section 511 (Peti-
40 tion for leave of court) of this article.

41 § 31. Paragraph (a) of section 513 of the not-for-profit corporation
42 law, as amended by chapter 690 of the laws of 1978, is amended to read
43 as follows:

44 (a) A corporation which is, or would be if formed under this chapter,
45 [~~classified as~~] a [~~Type B~~] charitable corporation shall hold full owner-
46 ship rights in any assets consisting of funds or other real or personal
47 property of any kind, that may be given, granted, bequeathed or devised
48 to or otherwise vested in such corporation in trust for, or with a
49 direction to apply the same to, any purpose specified in its certificate
50 of incorporation, and shall not be deemed a trustee of an express trust
51 of such assets. Any other corporation subject to this chapter may simi-
52 larly hold assets so received, unless otherwise provided by law or in
53 the certificate of incorporation.

54 § 32. Paragraph (a) of section 601 of the not-for-profit corporation
55 law, as amended by chapter 1058 of the laws of 1971, is amended to read
56 as follows:

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1 (a) A corporation shall have one or more classes of members, or, in
2 the case of a [~~Type-B~~] charitable corporation, may have no members, in
3 which case any such provision for classes of members or for no members
4 shall be set forth in the certificate of incorporation or the by-laws.
5 Corporations, joint-stock associations, unincorporated associations and
6 partnerships, as well as any other person without limitation, may be
7 members.

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

10 § 716. Loans to directors and officers.

11 No loans, other than through the purchase of bonds, debentures, or
12 similar obligations of the type customarily sold in public offerings, or
13 through ordinary deposit of funds in a bank, shall be made by a corpo-
14 ration to its directors or officers, or to any other corporation, firm,
15 association or other entity in which one or more of its directors or
16 officers are directors or officers or hold a substantial financial
17 interest, except a loan by one [~~type-B~~] charitable corporation to another
18 [~~type-B~~] charitable corporation. A loan made in violation of this
19 section shall be a violation of the duty to the corporation of the
20 directors or officers authorizing it or participating in it, but the
21 obligation of the borrower with respect to the loan shall not be
22 affected thereby.

23 § 34. Paragraphs (a) and (c) of section 722 of the not-for-profit
24 corporation law, as amended by chapter 368 of the laws of 1987, are
25 amended to read as follows:

26 (a) A corporation may indemnify any person, made, or threatened to be
27 made, a party to an action or proceeding other than one by or in the
28 right of the corporation to procure a judgment in its favor, whether
29 civil or criminal, including an action by or in the right of any other
30 corporation of any [~~type-or~~] kind, domestic or foreign, or any partner-
31 ship, joint venture, trust, employee benefit plan or other enterprise,
32 which any director or officer of the corporation served in any capacity
33 at the request of the corporation, by reason of the fact that he, his
34 testator or intestate, was a director or officer of the corporation, or
35 served such other corporation, partnership, joint venture, trust,
36 employee benefit plan or other enterprise in any capacity, against judg-
37 ments, fines, amounts paid in settlement and reasonable expenses,
38 including attorneys' fees actually and necessarily incurred as a result
39 of such action or proceeding, or any appeal therein, if such director or
40 officer acted, in good faith, for a purpose which he reasonably believed
41 to be in, or, in the case of service for any other corporation or any
42 partnership, joint venture, trust, employee benefit plan or other enter-
43 prise, not opposed to, the best interests of the corporation and, in
44 criminal actions or proceedings, in addition, had no reasonable cause to
45 believe that his conduct was unlawful.

46 (c) A corporation may indemnify any person made, or threatened to be
47 made, a party to an action by or in the right of the corporation to
48 procure a judgment in its favor by reason of the fact that he, his
49 testator or intestate, is or was a director or officer of the corpo-
50 ration, or is or was serving at the request of the corporation as a
51 director or officer of any other corporation of any [~~type-or~~] kind,
52 domestic or foreign, of any partnership, joint venture, trust, employee
53 benefit plan or other enterprise, against amounts paid in settlement and
54 reasonable expenses, including attorneys' fees, actually and necessarily
55 incurred by him in connection with the defense or settlement of such
56 action, or in connection with an appeal therein, if such director or

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1 officer acted, in good faith, for a purpose which he reasonably believed
2 to be in, or, in the case of service for any other corporation or any
3 partnership, joint venture, trust, employee benefit plan or other enter-
4 prise, not opposed to, the best interests of the corporation, except
5 that no indemnification under this paragraph shall be made in respect of
6 (1) a threatened action, or a pending action which is settled or other-
7 wise disposed of, or (2) any claim, issue or matter as to which such
8 person shall have been adjudged to be liable to the corporation, unless
9 and only to the extent that the court in which the action was brought,
10 or, if no action was brought, any court of competent jurisdiction,
11 determines upon application that, in view of all the circumstances of
12 the case, the person is fairly and reasonably entitled to indemnity for
13 such portion of the settlement amount and expenses as the court deems
14 proper.

15 § 35. Subparagraph 3 of paragraph (a) of section 803 of the not-for-
16 profit corporation law, as amended by chapter 168 of the laws of 1982,
17 is amended to read as follows:

18 (3) That the corporation is a corporation as defined in subparagraph
19 (a) (5) of section 102 (Definitions) [~~; the type of corporation it is~~
20 ~~under section 201 (Purposes); and if the corporate purposes are~~
21 ~~enlarged, limited or otherwise changed, the type of corporation it shall~~
22 ~~thereafter be under section 201~~].

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

25 (a) One or more domestic or foreign corporations which is, or would be
26 if formed under this chapter, a non-charitable corporation, or any
27 corporation formed as a type A or [type] C corporation [under section
28 201 (Purposes)] prior to January first, two thousand fourteen, may be
29 merged or consolidated into a domestic or foreign corporation which is,
30 or would be if formed under the laws of this state, a corporation formed
31 under the business corporation law of this state if such merger or
32 consolidation is not contrary to the law of the state of incorporation
33 of any constituent corporation. With respect to such merger or consol-
34 idation, any reference in paragraph (b) of section 901 (Power of merger
35 or consolidation) of this article or paragraph (b) of section 901 (Power
36 of merger or consolidation) of the business corporation law to a corpo-
37 ration shall, unless the context otherwise requires, include both domes-
38 tic and foreign corporations.

39 (f) Where any constituent corporation is, or would be if formed under
40 this chapter, a [~~Type C~~] charitable corporation [~~under section 201~~
41 ~~(Purposes)~~], no certificate shall be filed pursuant to this section
42 until an order approving the plan of merger or consolidation and author-
43 izing the filing of the certificate has been made by the supreme court,
44 as provided in section 907 (Approval by the supreme court) of this arti-
45 cle.

46 § 37. Paragraphs (b) and (d) of section 1001 of the not-for-profit
47 corporation law, as amended by chapter 434 of the laws of 2006, are
48 amended to read as follows:

49 (b) If the corporation is a [~~Type B, C or D~~] charitable corporation
50 and has no assets to distribute and no liabilities at the time of
51 dissolution, the plan of dissolution shall include a statement to that
52 effect.

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

55 (1) a description with reasonable certainty of the assets of the
56 corporation and their fair value, and the total amount of debts and

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1 other liabilities incurred or estimated by the corporation, including
2 the total amount of any accounting and legal fees incurred or estimated,
3 in connection with the dissolution procedure.

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

6 (3) if there are assets received and held by the corporation either
7 for a charitable purpose [~~specified as Type B in paragraph (b) of~~
8 ~~section 201 (Purposes)~~] or which are legally required to be used for a
9 particular purpose, a statement that the assets owned by the corpo-
10 ration, subject to any unpaid liabilities of the corporation, shall be
11 distributed as required by any gift instrument or to a charitable organ-
12 ization or organizations exempt from taxation pursuant to federal and
13 state laws and engaged in activities substantially similar to those of
14 the dissolved corporation. Each such recipient organization shall be
15 identified and the governing instrument and amendments thereto of each
16 of the proposed recipient organizations shall be annexed to such state-
17 ment, along with the most recent financial [~~reports~~] report of each
18 recipient organization for the last three years and a sworn affidavit
19 from a director and officer of each recipient organization stating the
20 purposes of the organization, and that it is currently exempt from
21 federal income taxation.

22 (4) if any of the assets of the corporation are to be distributed to a
23 recipient for a particular legally required purpose, an agreement by the
24 recipient to apply the assets received only for such purpose shall be
25 included.

26 § 38. Paragraphs (a) and (d) of section 1002 of the not-for-profit
27 corporation law, as amended by chapter 434 of the laws of 2006, are
28 amended to read as follows:

29 (a) Upon adopting a plan of dissolution and distribution of assets,
30 the board shall submit it to a vote of the members, if any, and such
31 plan shall be approved at a meeting of members by two-thirds vote as
32 provided in paragraph (c) of section 613 (Vote of members) of this chap-
33 ter; provided, however, that if the corporation is a [~~Type B, C or D~~]
34 charitable corporation, other than a corporation incorporated pursuant
35 to article 15 (Public cemetery corporations) of this chapter, [~~and has~~
36 ~~no assets to distribute, other than a reserve not to exceed twenty-five~~
37 ~~thousand dollars for the purpose of paying ordinary and necessary~~
38 ~~expenses of winding up its affairs including attorney and accountant~~
39 ~~fees, and liabilities not in excess of ten thousand dollars at the time~~
40 ~~of adoption of the plan of dissolution,~~] the vote required by the corpo-
41 ration's board of directors for adoption of the plan of dissolution of
42 such a corporation or by the corporation's members for the authorization
43 thereof shall be:

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

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

52 (2) In the case of a vote by the members, (i) the number of members
53 required under the certificate of incorporation, by-laws, this chapter
54 and any other applicable law; or (ii) by the vote of members authorized
55 by an order of the supreme court pursuant to section 608 (Quorum at

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1 meeting of members) of this chapter permitting the corporation to
2 dispense with the applicable quorum requirement.

3 Notice of a special or regular meeting of the board of directors or of
4 the members entitled to vote on adoption and authorization or approval
5 of the plan of dissolution shall be sent to all the directors and
6 members of record entitled to vote. Unless otherwise directed by order
7 of the supreme court pursuant to section 608 (Quorum at meeting of
8 members) of this chapter, the notice shall be sent by certified mail,
9 return receipt requested, to the last known address of record of each
10 director and member not fewer than thirty, and not more than sixty days
11 before the date of each meeting provided, however, that if the last
12 known address of record of any director or member is not within the
13 United States, the notice to such director shall be sent by any other
14 reasonable means.

15 (d) (1) The plan of dissolution and distribution of assets shall have
16 annexed thereto the approval of [~~a justice of the supreme court in the~~
17 ~~judicial district in which the office of the corporation is located~~] the
18 attorney general in the case of a [~~Type B, C or D~~] charitable corpo-
19 ration, and in the case of any [~~other~~] non-charitable corporation which
20 [~~holds assets~~] at the time of dissolution holds assets legally required
21 to be used for a particular purpose[, ~~except that no such approval shall~~
22 ~~be required with respect to the plan of dissolution of a corporation,~~
23 ~~other than a corporation incorporated pursuant to article 15 (Public~~
24 ~~cemetery corporations), which has no assets to distribute at the time of~~
25 ~~dissolution, other than a reserve not to exceed twenty-five thousand~~
26 ~~dollars for the purpose of paying ordinary and necessary expenses of~~
27 ~~winding up its affairs including attorney and accountant fees, and~~
28 ~~liabilities not in excess of ten thousand dollars, and which has~~
29 ~~complied with the requirements of section 1001 (Plan of dissolution and~~
30 ~~distribution of assets) and this section applicable to such a corpo-~~
31 ~~ration~~].

32 (2) Application to the [~~supreme court for an order~~] attorney general
33 for such approval shall be by verified petition, with the plan of
34 dissolution and distribution of assets and certified copies of the
35 consents prescribed by this section annexed thereto[, ~~and upon ten days~~
36 ~~written notice to the attorney general accompanied by copies of such~~
37 ~~petition, plan and consents. In such case where approval of a justice of~~
38 ~~the supreme court is not required for a Type B, C or D corporation, a~~
39 ~~copy of such plan certified under penalties of perjury shall be filed~~
40 ~~with the attorney general within ten days after its authorization~~].

41 (3) The attorney general may approve the petition if the corporation
42 has adopted a plan in accordance with the requirements of section 1001
43 (Plan of dissolution and distribution of assets) of this article, and
44 any other requirements imposed by law or rule. If the attorney general
45 does not approve the petition, or the attorney general concludes, in his
46 or her discretion, that court review of the petition is appropriate, the
47 corporation may apply for approval to the supreme court in the judicial
48 district in which the principal office of the surviving or consolidated
49 corporation is to be located, or in which the office of one of the
50 domestic constituent corporations is located, for an order dissolving
51 the corporation. Application to the supreme court for an order for such
52 approval shall be by verified petition upon ten days written notice to
53 the attorney general, and shall include all information required to be
54 included in the application to the attorney general pursuant to this
55 section.

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1 § 39. Paragraphs (a) and (b) of section 1003 of the not-for-profit
2 corporation law, as amended by chapter 434 of the laws of 2006, are
3 amended to read as follows:

4 (a) After the plan of dissolution and distribution of assets has been
5 adopted, authorized, approved and carried out pursuant to the terms of
6 the plan within the time period set forth pursuant to section 1002-a
7 (Carrying out the plan of dissolution and distribution of assets), a
8 certificate of dissolution, entitled "Certificate of dissolution
9 of (name of corporation) under section 1003 of the Not-for-Pro-
10 fit Corporation Law" shall be signed and, if required pursuant to
11 subparagraph two of paragraph (b) of this section, after the attorney
12 general has affixed thereon his or her consent to the dissolution, such
13 certificate of dissolution shall be delivered to the department of
14 state. It shall set forth:

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

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

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

20 (4) [~~The type of corporation it is at the time of dissolution~~] A
21 statement as to whether the corporation is a charitable corporation or a
22 non-charitable corporation.

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

27 (6) That the corporation elects to dissolve.

28 (7) The manner in which the dissolution was authorized. If the dissol-
29 ution of the corporation is authorized by a vote of the directors and/or
30 members of the corporation that is less than that ordinarily required by
31 the certificate of incorporation, the by-laws, this chapter or any other
32 applicable law, as permitted by paragraph (a) of section 1002 (Authori-
33 zation of plan) of this article, then the certificate of dissolution
34 shall so state.

35 (8) A statement that prior to delivery of such certificate of dissol-
36 ution to the department of state for filing, the plan of dissolution and
37 distribution of assets has been approved by the attorney general or by a
38 justice of the supreme court, if such approval is required pursuant to
39 section 1002 (Authorization of plan) of this article. A copy of the
40 order shall be attached to the certificate of dissolution. In the case
41 of a corporation, other than a corporation incorporated pursuant to
42 article 15 (Public cemetery corporations), having no assets to distrib-
43 ute, other than a reserve not to exceed twenty-five thousand dollars for
44 the purpose of paying ordinary and necessary expenses of winding up its
45 affairs including attorney and accountant fees, and liabilities not in
46 excess of ten thousand dollars at the time of dissolution, a statement
47 that a copy of the plan of dissolution which contains the statement
48 prescribed by paragraph (b) of section 1001 (Plan of dissolution and
49 distribution of assets) has been duly filed with the attorney general,
50 if required.

51 (b) Such certificate of dissolution shall have [~~indorsed~~] endorsed
52 thereon or annexed thereto the approval of the dissolution:

53 (1) By a governmental body or officer, if such approval is required. A
54 corporation whose statement of purposes specifically includes the estab-
55 lishment or operation of a child day care center, as that term is
56 defined in section three hundred ninety of the social services law,

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1 shall provide a certified copy of any certificate of dissolution involv-
2 ing such corporation to the office of children and family services with-
3 in thirty days after the filing of such dissolution with the department
4 of state.

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

8 § 40. Subparagraph 15 of paragraph (a) of section 1008 of the not-for-
9 profit corporation law, as amended by chapter 434 of the laws of 2006,
10 is amended to read as follows:

11 (15) Where assets were received and held by the corporation either for
12 a charitable purpose [~~specified as Type B in paragraph (b) of section~~
13 ~~201 (Purposes);~~] or [~~were~~] legally required to be used for a particular
14 purpose, the distribution of such assets to one or more domestic or
15 foreign corporations or other organizations engaged in activities
16 substantially similar to those of the dissolved corporation, on notice
17 to the attorney general and to such other persons, and in such manner,
18 as the court may deem proper.

19 § 41. Subparagraph 6 of paragraph (a) of section 1012 of the not-for-
20 profit corporation law, as amended by chapter 726 of the laws of 2005,
21 is amended to read as follows:

22 (6) That[~~, under section 201 (Purposes);~~] it is a [~~Type~~]
23 [~~Insert A, B, C or D) not for profit~~] charitable corporation or a non-
24 charitable corporation, as applicable.

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

27 § 1302. Application to existing authorized foreign corporations.

28 Every foreign corporation which on the effective date of this chapter
29 is authorized to conduct activities in this state under a certificate of
30 authority heretofore issued to it by the secretary of state shall
31 continue to have such authority. Such foreign corporation, its members,
32 directors, and officers shall have the same rights, franchises, and
33 privileges and shall be subject to the same limitations, restrictions,
34 liabilities, and penalties as a foreign corporation authorized under
35 this chapter, its members, directors, and officers respectively. A
36 foreign corporation may by amendment to its certificate of authority set
37 forth [~~the type of~~] whether it is a charitable corporation [~~it is under~~
38 ~~section 201 (Purposes);~~] or a non-charitable corporation and in the
39 absence of such amendment an authorized foreign corporation shall be a
40 [~~Type B~~] charitable corporation. Reference in this chapter to an appli-
41 cation for authority shall, unless the context otherwise requires,
42 include the statement and designation and any amendment thereof required
43 to be filed by the secretary of state under prior statutes to obtain a
44 certificate of authority.

45 § 43. Subparagraph 4 of paragraph (a) of section 1304 of the not-for-
46 profit corporation law, as amended by chapter 847 of the laws of 1970
47 and as renumbered by chapter 590 of the laws of 1982, is amended to read
48 as follows:

49 (4) That the corporation is a foreign corporation as defined in
50 subparagraph [~~(a)~~] (7) of paragraph (a) of section 102 (Definitions)[~~7~~
51 ~~the type of~~] of this chapter, whether it would be a charitable corpo-
52 ration [it shall be under section 201 (Purposes); a statement] or non-
53 charitable corporation if formed in this state; a statement of its
54 purposes to be pursued in this state and of the activities which it
55 proposes to conduct in this state; and a statement that it is authorized to
56 to conduct those activities in the jurisdiction of its incorporation[~~7~~

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1 ~~and in the case of a Type C corporation, the lawful public or quasi-~~
2 ~~public objective which each business purpose will achieve].~~

3 § 44. Paragraph (c) of section 1304 of the not-for-profit corporation
4 law is amended, and a new paragraph (d) is added to read as follows:

5 (c) If the application for authority sets forth any purpose or activ-
6 ity for which a domestic corporation could be formed only with the
7 consent or approval of any governmental body or officer, or other person
8 or body under section 404 (Approvals, notices and consents) of this
9 chapter, such consent or approval shall be endorsed thereon or annexed
10 thereto.

11 (d) If the application for authority sets forth any purpose or activ-
12 ity requiring a domestic corporation to provide notice of the filing of
13 a certificate of incorporation to any person or entity under section 404
14 (Approvals, notices and consents), then the corporation shall provide a
15 certified copy of the certificate of authority to such person or entity
16 within ten business days after the corporation receives confirmation
17 from the department of state that the certificate has been accepted for
18 filing.

19 § 45. Subparagraph 1 of paragraph (a) of section 1309 of the not-for-
20 profit corporation law, as amended by chapter 186 of the laws of 1983,
21 is amended to read as follows:

22 (1) The name of the foreign corporation as it appears on the index of
23 names of existing domestic and authorized foreign corporations of any
24 [~~type-or~~] kind in the department of state and the fictitious name the
25 corporation has agreed to use in this state pursuant to paragraph (d) of
26 section 1301 of this [~~chapter~~] article.

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

30 (1) The name of the foreign corporation as it appears on the index of
31 names of existing domestic and authorized foreign corporations of any
32 [~~type-or~~] kind in the department of state and the fictitious name the
33 corporation has agreed to use in this state pursuant to paragraph (d) of
34 section 1301 of this [~~chapter~~] article.

35 § 47. Subparagraph 1 of paragraph (a) of section 1311 of the not-for-
36 profit corporation law, as amended by chapter 186 of the laws of 1983,
37 is amended to read as follows:

38 (1) The name of the foreign corporation as it appears on the index of
39 names of existing domestic and authorized foreign corporations of any
40 [~~type-or~~] kind in the department of state and the fictitious name the
41 corporation has agreed to use in this state pursuant to paragraph (d) of
42 section 1301 of this [~~chapter~~] article.

43 § 48. Paragraphs (a) and (b) of section 1315 of the not-for-profit
44 corporation law, subparagraph 5 of paragraph (b) as amended by chapter
45 847 of the laws of 1970, are amended to read as follows:

46 (a) An action or special proceeding against a foreign corporation may
47 be maintained by a resident of this state or by a domestic corporation
48 of any [~~type-or~~] kind for any cause of action.

49 (b) Except as otherwise provided in this article, an action or
50 special proceeding against a foreign corporation may be maintained by
51 another foreign corporation of any [~~type-or~~] kind or by a nonresident in
52 the following cases only:

53 (1) Where the action is brought to recover damages for the breach of
54 a contract made or to be performed within this state, or relating to
55 property situated within this state at the time of the making of the
56 contract.

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

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

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

10 (5) Where the defendant is a foreign corporation conducting activ-
11 ities or authorized to conduct activities in this state.

12 § 49. Paragraph (b) of section 1316 of the not-for-profit corporation
13 law is amended to read as follows:

14 (b) An examination authorized by paragraph (a) may be denied to such
15 member or other person upon his refusal to furnish to the foreign corpo-
16 ration or its transfer agent or registrar an affidavit that such
17 inspection is not desired for a purpose which is in the interests of a
18 business or object other than the activities of the foreign corporation
19 and that such member or other person has not within five years sold or
20 offered for sale any list or record of members of any corporation of any
21 [~~type or~~] kind, whether or not formed under the laws of this state, or
22 aided or abetted any person in procuring any such list or record of
23 members for any such purpose.

24 § 50. Paragraph (a) of section 1321 of the not-for-profit corporation
25 law, subparagraphs 1, 2 and 3 as amended by chapter 847 of the laws of
26 1970, is amended to read as follows:

27 (a) Notwithstanding any other provision of this chapter, a foreign
28 corporation conducting activities in this state which is authorized
29 under this article, its directors, officers and members, shall be exempt
30 from the provisions of paragraph (e) of section 1317 (Voting trust
31 records), subparagraph [~~(a)~~] (1) of paragraph (a) of section 1318
32 (Liabilities of directors and officers of foreign corporations), and
33 subparagraph [~~(a)~~] (2) of paragraph (a) of section 1320 (Applicability
34 of other provisions) of this article if when such provision would other-
35 wise apply:

36 (1) The corporation is a [~~Type A~~] non-charitable corporation under
37 this chapter; its principal activities are conducted outside this state;
38 the greater part of its property is located outside this state; and less
39 than one third of its members are residents of this state; or

40 (2) The corporation is a [~~Type B~~] charitable corporation under this
41 chapter; its principal activities are conducted outside this state; the
42 greater part of its property is located outside this state; and less
43 than ten per cent of its annual revenues is derived from solicitation of
44 funds within this state[~~; or~~

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

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

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

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1 § 52. Paragraph (b) of section 1402 of the not-for-profit corporation
2 law is amended to read as follows:
3 (b) Type of corporation.
4 A fire corporation is a [~~Type-B~~] charitable corporation under this
5 chapter.

6 § 53. Paragraph (c) of section 1403 of the not-for-profit corporation
7 law is amended to read as follows:
8 (c) Type of corporation.
9 A corporation for the prevention of cruelty is a [~~Type-B~~] charitable
10 corporation under this chapter.

11 § 54. Paragraph (b) of section 1404 of the not-for-profit corporation
12 law, as amended by chapter 1058 of the laws of 1971, is amended to read
13 as follows:
14 (b) Type of corporation.
15 A christian association is a [~~Type-B~~] charitable corporation under
16 this chapter.

17 § 55. Paragraph (b) of section 1405 of the not-for-profit corporation
18 law is amended to read as follows:
19 (b) Type of corporation.
20 A soldiers' monument corporation is a [~~Type-B~~] charitable corporation.

21 § 56. Paragraph (b) of section 1406 of the not-for-profit corporation
22 law is amended to read as follows:
23 (b) Type of corporation.
24 A medical society is a [~~Type-A~~] non-charitable corporation under this
25 chapter.

26 § 57. Paragraph (b) of section 1407 of the not-for-profit corporation
27 law is amended to read as follows:
28 (b) Type of corporation.
29 An alumni corporation is a [~~Type-A~~] non-charitable corporation.

30 § 58. Paragraph (b) of section 1408 of the not-for-profit corporation
31 law is amended to read as follows:
32 (b) Type of corporation.
33 An historical society is a [~~Type-B~~] charitable corporation under this
34 chapter.

35 § 59. Paragraph (b) of section 1409 of the not-for-profit corporation
36 law, as amended by chapter 1058 of the laws of 1971, is amended to read
37 as follows:
38 (b) Type of corporation. An agricultural or horticultural corporation
39 is a [~~Type-A~~] non-charitable corporation under this chapter, except that
40 any such corporation which has received moneys from the state or has
41 acted as agent for the state under paragraph (c) of this section, or has
42 acquired or does acquire real property by condemnation is or becomes a
43 [~~Type-B~~] charitable corporation under this chapter. [~~If such corporation
44 has not already filed as a Type B corporation it shall, upon such
45 receipt of moneys or acting as such agent or such acquisition of real
46 property by condemnation, amend its certificate to that effect.~~]

47 § 60. Paragraph (b) of section 1410 of the not-for-profit corporation
48 law is amended to read as follows:
49 (b) Type of corporation.
50 A board of trade or a chamber of commerce is a [~~Type-A~~] non-charitable
51 corporation under this chapter.

52 § 61. Paragraph (b) of section 1411 of the not-for-profit corporation
53 law is amended to read as follows:
54 (b) Type of corporation.
55 A local development corporation is a [~~Type-C~~] charitable corporation
56 under this chapter.

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1 § 62. Paragraph (d) of section 1412 of the not-for-profit corporation
2 law, as added by chapter 555 of the laws of 1993, is amended to read as
3 follows:

4 (d) Type. A university faculty practice corporation is a [~~Type-B~~]
5 charitable corporation under this chapter.

6 § 63. Paragraph (c) of section 1505 of the not-for-profit corporation
7 law, as added by chapter 871 of the laws of 1977, is amended to read as
8 follows:

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

11 § 64. Paragraph (b) of section 1602 of the not-for-profit corporation
12 law, as added by chapter 257 of the laws of 2011, is amended to read as
13 follows:

14 (b) "land bank" shall mean a land bank established as a [~~type-C~~] char-
15 itable not-for-profit corporation under this chapter and in accordance
16 with the provisions of this article and pursuant to this article;

17 § 65. Paragraph (f) of section 1603 of the not-for-profit corporation
18 law, as added by chapter 257 of the laws of 2011, is amended to read as
19 follows:

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

24 § 66. The opening paragraph of paragraph (a) of section 1607 of the
25 not-for-profit corporation law, as added by chapter 257 of the laws of
26 2011, is amended to read as follows:

27 A land bank shall constitute a [~~type-C~~] charitable not-for-profit
28 corporation under New York law, which powers shall include all powers
29 necessary to carry out and effectuate the purposes and provisions of
30 this article, including the following powers in addition to those herein
31 otherwise granted:

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

34 § 1613. Dissolution of land bank.

35 A land bank may be dissolved as a [~~type-C~~] charitable not-for-profit
36 corporation sixty calendar days after an affirmative resolution approved
37 by two-thirds of the membership of the board of directors. Sixty calen-
38 dar days advance written notice of consideration of a resolution of
39 dissolution shall be given to the foreclosing governmental unit or units
40 that created the land bank, shall be published in a local newspaper of
41 general circulation, and posted prominently and continuously on the
42 homepage of any website maintained by the land bank, and shall be sent
43 certified mail to the trustee of any outstanding bonds of the land bank.
44 Upon dissolution of the land bank all real property, personal property
45 and other assets of the land bank shall become the assets of the fore-
46 closing governmental unit or units that created the land bank. In the
47 event that two or more foreclosing governmental units create a land bank
48 in accordance with section sixteen hundred three of this article, the
49 withdrawal of one or more foreclosing governmental units shall not
50 result in the dissolution of the land bank unless the intergovernmental
51 agreement so provides, and there is no foreclosing governmental unit
52 that desires to continue the existence of the land bank.

53 § 68. Paragraph (c) of subdivision 1 of section 2-b of the religious
54 corporations law, as amended by chapter 490 of the laws of 2010, is
55 amended to read as follows:

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

17 § 69. Paragraph (c) of subdivision 1 of section 1-a of the benevolent
18 orders law, as added by chapter 703 of the laws of 1970, is amended to
19 read as follows:

20 (c) The following provisions of the not-for-profit corporation law
21 shall not apply to benevolent orders: [~~section one hundred thirteen,~~]
22 section two hundred one, article four, paragraphs (a), (b), and (c) of
23 section eight hundred four, section nine hundred seven, section nine
24 hundred eight, section nine hundred nine, [~~section ten hundred eleven,~~]
25 section ten hundred twelve, and article fourteen.

26 § 70. Subdivision 1 of section 1825 of the public authorities law, as
27 amended by chapter 1045 of the laws of 1974, is amended to read as
28 follows:

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

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

50 (a) This section shall apply to public entities as defined in section
51 one hundred seven of this chapter, organizations described by section
52 501(c)(3) of the United States internal revenue code, [~~Type B~~] charita-
53 ble corporations as defined in paragraph (a) of section one hundred two
54 (Definitions) of the not-for-profit corporation law and formed pursuant
55 to paragraph [~~(b)~~] (a) of section two hundred one of the not-for-profit

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1 corporation law, and organizations described by section two hundred
2 sixteen-a of the education law.

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

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

19 § 73. The opening paragraph of subsection (b) of section 6704 of the
20 insurance law, as added by chapter 598 of the laws of 2000, is amended
21 to read as follows:

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

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

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

44 § 75. Section 202 of the racing, pari-mutuel wagering and breeding
45 law, as amended by chapter 18 of the laws of 2008, is amended to read as
46 follows:

47 § 202. Restriction upon commencement of business. No business corpo-
48 ration organized under the provisions of this article shall engage in
49 the prosecution or management of its business until the whole of its
50 capital stock shall have been subscribed, nor until it shall have filed
51 in the offices where certificates of incorporation were filed, a further
52 certificate stating that the whole of its capital stock has been in good
53 faith subscribed, executed and acknowledged by its president or vice-
54 president and treasurer or secretary, and verified by them to the effect
55 that the statements contained in it are true.

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1 Notwithstanding the foregoing, corporations organized pursuant to
2 section two hundred one of the not-for-profit corporation law as [~~type~~
3 ~~E~~] charitable corporations as defined in paragraph (a) of section one
4 hundred two (Definitions) of the not-for-profit corporation law shall
5 not engage in the prosecution or management of its business until its
6 certificate of incorporation has been accepted for filing by the secre-
7 tary of state and such confirmation of filing has been filed with the
8 board and the franchise oversight board.

9 § 76. Subdivision 2 of section 2-b of the religious corporations law,
10 as added by chapter 956 of the laws of 1971, is amended to read as
11 follows:

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

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

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

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

25 5. Every corporation to which the not-for-profit corporation law is
26 made applicable by this section, is a [~~type-B~~] charitable corporation as
27 defined in paragraph (a) of section one hundred two (Definitions) of the
28 not-for-profit corporation law under all applicable provisions of that
29 law.

30 § 79. Section 579 of the banking law, as amended by chapter 629 of the
31 laws of 2002, is amended to read as follows:

32 § 579. Doing business without license prohibited. Only a [~~type-B not-~~
33 ~~for-profit~~] charitable corporation as defined in [~~section two hundred~~
34 ~~one~~] paragraph (a) of section one hundred two (Definitions) of the not-
35 for-profit corporation law of this state, or an entity incorporated in
36 another state and having a similar not-for-profit status, shall engage
37 in the business of budget planning as defined in subdivision one of
38 section four hundred fifty-five of the general business law of this
39 state except as authorized by this article and without first obtaining a
40 license from the superintendent.

41 § 80. Subdivision 4 of section 455 of the general business law, as
42 amended by chapter 456 of the laws of 2006, is amended to read as
43 follows:

44 4. Person or entity as used in this article shall not include a [~~type~~
45 ~~B not-for-profit~~] charitable corporation as defined in [~~section two~~
46 ~~hundred one~~] paragraph (a) of section one hundred two (Definitions) of
47 the not-for-profit corporation law of this state, or an entity incorpo-
48 rated in another state and having a similar not-for-profit status,
49 licensed by the superintendent, to engage in the business of budget
50 planning as defined in this section.

51 § 81. Paragraph (a) of subdivision 1 of section 458-b of the general
52 business law, as added by chapter 386 of the laws of 1986, is amended to
53 read as follows:

54 (a) Any [~~type-B not-for-profit~~] charitable corporation as defined in
55 paragraph (a) of section one hundred two (Definitions) of the not-for-

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1 profit corporation law licensed pursuant to article twelve-c of the
2 banking law.

3 § 82. Subdivision (b) of section 16.32 of the mental hygiene law, as
4 amended by chapter 669 of the laws of 1995, is amended to read as
5 follows:

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

31 § 83. Subdivision (b) of section 31.31 of the mental hygiene law, as
32 amended by chapter 669 of the laws of 1995, is amended to read as
33 follows:

34 (b) No loans, other than through the purchase of bonds, debentures, or
35 similar obligations of the type customarily sold in public offerings, or
36 through ordinary deposit of funds in a bank, shall be made by a not-for-
37 profit corporation which is licensed as a provider of services pursuant
38 to this article to its employee who receives an annual salary in excess
39 of thirty thousand dollars, or to any other corporation, firm, associ-
40 ation or other entity in which such employee is a director or officer or
41 employee or holds a direct or indirect substantial financial interest,
42 except a loan by one corporation incorporated as a [~~type-B~~] charitable
43 corporation [pursuant to] as defined in paragraph (a) of section one
44 hundred two (Definitions) of the not-for-profit corporation law to
45 another type B corporation, or a loan for a temporary or emergency
46 purpose which will further the health and welfare of the employee so
47 long as the purpose and amount of such loan are disclosed to and
48 approved by the board of directors of such agency. Such disclosure shall
49 be filed with the secretary of the corporation and entered in the
50 minutes of the meeting, and, if approved by such board, such disclosure
51 shall also be forwarded in writing to the commissioner and to the direc-
52 tor of community services of each local governmental unit that has, at
53 the time of such disclosure, a contract with such corporation for the
54 rendition of services pursuant to article forty-one of this chapter. A
55 loan made in violation of this section shall be a violation of the duty
56 to the not-for-profit corporation of the directors or officers authoriz-

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1 ing it or participating in it, but the obligation of the borrower with
2 respect to the loan shall not be affected thereby.

3 § 84. Paragraph (f) of subdivision 7 of section 75 of the public lands
4 law, as added by chapter 791 of the laws of 1992, is amended to read as
5 follows:

6 (f) The commissioner, in consultation with the commissioner of envi-
7 ronmental conservation, the secretary of state, the office of parks,
8 recreation and historic preservation and other interested state agencies
9 administering state-owned lands underwater, shall promulgate pursuant to
10 article two of the state administrative procedure act such rules with
11 respect to grants, leases, easements and lesser interests for the use of
12 state-owned land underwater, and the cession of jurisdiction thereof, as
13 in his or her judgment are reasonable and necessary to protect the
14 interests of the people in such lands underwater. Such regulations shall
15 include without being limited to: the fees to be charged, consistent
16 with the provisions of this section, including mitigation of such fees
17 in the event of economic hardship on existing commercial enterprises;
18 fee limitations to administrative expenses for municipal uses which are
19 public, non-commercial and offer services free or for nominal fees, and
20 for uses undertaken and operated for public and non-commercial purposes
21 by not-for-profit corporations characterized as [~~"Type B"~~] charitable
22 corporations [~~pursuant to paragraph (b) of section two hundred one~~] as
23 defined in paragraph (a) of section one hundred two (Definitions) of the
24 not-for-profit corporation law, and for uses undertaken and operated for
25 public purposes by a corporation formed pursuant to the religious corpo-
26 ration law or by a corporation formed pursuant to a special act of this
27 state and which has as its principal purpose a religious purpose; such
28 further exemptions for projects as the commissioner determines do not
29 represent significant encroachments; limitations on grants, including
30 conversion grants, with respect to underwater lands consistent with the
31 public purposes of this subdivision and limiting such grants to excep-
32 tional circumstances; and factors to be examined in considering an
33 application for a lease, easement or other interest. Those factors shall
34 include without limitation the following: (i) the environmental impact
35 of the project; (ii) the values for natural resource management, recre-
36 ational uses, and commercial uses of the pertinent underwater land;
37 (iii) the size, character and effects of the project in relation to
38 neighboring uses; (iv) the potential for interference with navigation,
39 public uses of the waterway and rights of other riparian owners; (v) the
40 effect of the project on the natural resource interests of the state in
41 the lands; (vi) the water-dependent nature of the use; (vii) and any
42 adverse economic impact on existing commercial enterprises. The final
43 promulgation of rules establishing fees or fee structures shall be
44 subject to the approval of the director of the budget.

45 § 85. This act shall take effect January 1, 2014, provided that
46 section three of this act shall take effect January 1, 2015.

47

PART B

48 Section 1. Paragraph (a) of section 102 of the not-for-profit corpo-
49 ration law is amended by adding six new subparagraphs 6-a, 22, 23, 24,
50 25 and 26 to read as follows:

51 (6-a) "Entire board" means the total number of directors entitled to
52 vote which the corporation would have if there were no vacancies. If
53 the by-laws of the corporation provide that the board shall consist of a
54 fixed number of directors, then the "entire board" shall consist of that

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1 number of directors. If the by-laws of any corporation provide that the
2 board may consist of a range between a minimum and maximum number of
3 directors, then the "entire board" shall consist of the number of direc-
4 tors within such range that were elected as of the most recently held
5 election of directors.

6 (22) An "affiliate" of a corporation means any entity controlled by,
7 in control of, or under common control with such corporation.

8 (23) "Independent auditor" means any certified public accountant
9 performing the audit of the financial statements of a corporation
10 required by subdivision one of section one hundred seventy-two-b of the
11 executive law.

12 (24) "Independent director" means a director who: (i) is not, and has
13 not been within the last three years, an employee of the corporation or
14 an affiliate of the corporation, and does not have a relative who is, or
15 has been within the last three years, a key employee of the corporation
16 or an affiliate of the corporation; (ii) has not received, and does not
17 have a relative who has received, in any of the last three fiscal years,
18 more than ten thousand dollars in direct compensation from the corpo-
19 ration or an affiliate of the corporation (other than reimbursement for
20 expenses reasonably incurred as a director or reasonable compensation
21 for service as a director as permitted by paragraph (a) of section 202
22 (General and special powers)); and (iii) is not a current employee of or
23 have a substantial financial interest in, and does not have a relative
24 who is a current officer of or has a substantial financial interest in,
25 any entity that has made payments to, or received payments from, the
26 corporation or an affiliate of the corporation for property or services
27 in an amount which, in any of the last three fiscal years, exceeds the
28 lesser of twenty-five thousand dollars or two percent of such entity's
29 consolidated gross revenues. For purposes of this subparagraph,
30 "payment" does not include charitable contributions.

31 (25) "Relative" of an individual means the (i) spouse, domestic part-
32 ner as defined by section twenty-eight hundred five-g of the public
33 health law, child, grandchild, brother or sister (whether by the whole-
34 or half-blood) of the individual; and (ii) the spouse or domestic part-
35 ner of a child, grandchild, brother or sister (whether by the whole- or
36 half-blood) of the individual.

37 (26) "Total compensation" means: (i) any compensation, whether paid or
38 accrued, by or on behalf of the corporation or any affiliate of the
39 corporation for services rendered to, on behalf of, or at the request of
40 the corporation, including but not limited to salary, bonus, and
41 deferred compensation; and (ii) any benefit having monetary value
42 provided by or on behalf of the corporation or any affiliate of the
43 corporation, including but not limited to housing allowances, living
44 expenses, perquisites, fringe benefits, employer contributions to
45 defined contribution retirement plans and other retirement benefits.

46 § 2. Paragraph (a) of section 112 of the not-for-profit corporation
47 law is amended by adding a new subparagraph 9 to read as follows:

48 (9) To enjoin, void or rescind any related party transaction, or seek
49 additional damages or remedies pursuant to section 715 (Related party
50 transactions) of this chapter.

51 § 3. The not-for-profit corporation law is amended by adding a new
52 section 712-a to read as follows:

53 § 712-a. Audit oversight.

54 (a) The board or a designated audit committee of the board comprised
55 solely of independent directors of any corporation required to file an
56 independent certified public accountant's audit report with the attorney

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1 general pursuant to subdivision one of section one hundred seventy-two-b
2 of the executive law shall oversee the accounting and financial report-
3 ing processes of the corporation and the audit of the corporation's
4 financial statements. The board or designated audit committee shall
5 annually retain or renew the retention of an independent auditor to
6 conduct the audit and, upon completion thereof, review the results of
7 the audit and any related management letter with the independent audi-
8 tor.

9 (b) The board or a designated audit committee of the board comprised
10 solely of independent directors of any corporation required to file an
11 independent certified public accountant's audit report with the attorney
12 general pursuant to subdivision one of section one hundred seventy-two-b
13 of the executive law and that in the prior fiscal year had or in the
14 current fiscal year reasonably expects to have annual revenue in excess
15 of one million dollars shall, in addition to those duties set forth in
16 paragraph (a) of this section:

17 (1) review with the independent auditor the scope and planning of the
18 audit prior to the audit's commencement;

19 (2) upon completion of the audit, review and discuss with the inde-
20 pendent auditor: (A) any material risks and weaknesses in internal
21 controls identified by the auditor; (B) any restrictions on the scope of
22 the auditor's activities or access to requested information; (C) any
23 significant disagreements between the auditor and management; and (D)
24 the adequacy of the corporation's accounting and financial reporting
25 processes;

26 (3) annually consider the performance and independence of the inde-
27 pendent auditor; and

28 (4) if the duties required by this section are performed by an audit
29 committee, report on the committee's activities to the board.

30 (c) The board or designated audit committee of the board shall oversee
31 the adoption, implementation of, and compliance with any conflict of
32 interest policy or whistleblower policy adopted by the corporation if
33 this function is not otherwise performed by another committee of the
34 board comprised solely of independent directors.

35 (d) If a corporation controls a group of corporations, the board or
36 designated audit committee of the board of the controlling corporation
37 may perform the duties required by this section for one or more of the
38 controlled corporations.

39 (e) Only independent directors may participate in any board or commit-
40 tee deliberations or voting relating to matters set forth in this
41 section.

42 § 4. Section 715 of the not-for-profit corporation law, as amended by
43 chapter 847 of the laws of 1970 and paragraph (f) as amended by chapter
44 1057 of the laws of 1971, is amended to read as follows:

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

46 (a) [~~No contract or other transaction between a corporation and one or~~
47 ~~more of its directors or officers, or between a corporation and any~~
48 ~~other corporation, firm, association or other entity in which one or~~
49 ~~more of its directors or officers are directors or officers, or have a~~
50 ~~substantial financial interest, shall be either void or voidable for~~
51 ~~this reason alone or by reason alone that such director or directors or~~
52 ~~officer or officers are present at the meeting of the board, or of a~~
53 ~~committee thereof, which authorizes such contract or transaction, or~~
54 ~~that his or their votes are counted for such purpose:~~

55 (1) [~~If the material facts as to such director's or officer's interest~~
56 ~~in such contract or transaction and as to any such common directorship,~~

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1 ~~officership or financial interest are disclosed in good faith or known~~
2 ~~to the board or committee, and the board or committee authorizes such~~
3 ~~contract or transaction by a vote sufficient for such purpose without~~
4 ~~counting the vote or votes of such interested director or officer; or~~

5 ~~(2) If the material facts as to such director's or officer's interest~~
6 ~~in such contract or transaction and as to any such common directorship,~~
7 ~~officership or financial interest are disclosed in good faith or known~~
8 ~~to the members entitled to vote thereon, if any, and such contract or~~
9 ~~transaction is authorized by vote of such members.~~

10 ~~(b) If such good faith disclosure of the material facts as to the~~
11 ~~director's or officer's interest in the contract or transaction and as~~
12 ~~to any such common directorship, officership or financial interest, is~~
13 ~~made to the directors or members, or known to the board or committee or~~
14 ~~members authorizing such contract or transaction, as provided in para-~~
15 ~~graph (a), the contract or transaction may not be avoided by the corpo-~~
16 ~~ration for the reasons set forth in paragraph (a). If there was no such~~
17 ~~disclosure or knowledge, or if the vote of such interested director or~~
18 ~~officer was necessary for the authorization of such contract or trans-~~
19 ~~action at a meeting of the board or committee at which it was author-~~
20 ~~ized, the corporation may avoid the contract or transaction unless the~~
21 ~~party or parties thereto shall establish affirmatively that the contract~~
22 ~~or transaction was fair and reasonable as to the corporation at the time~~
23 ~~it was authorized by the board, a committee or the members.~~

24 ~~(c) Common or interested directors may be counted in determining the~~
25 ~~presence of a quorum at a meeting of the board or of a committee which~~
26 ~~authorizes such contract or transaction.~~

27 (d) No corporation shall enter into any related party transaction
28 unless the transaction is fair, reasonable and in the corporation's best
29 interest. Any director, officer or key employee who has an interest in a
30 related party transaction shall disclose in good faith to the board, or
31 an authorized committee thereof, the material facts concerning such
32 interest.

33 (b) With respect to any related party transaction involving a charita-
34 ble corporation and in which a related party has a substantial financial
35 interest, the board of such corporation, or an authorized committee
36 thereof, shall:

37 (1) Prior to entering into the transaction, consider alternative tran-
38 sactions to the extent available;

39 (2) Approve the transaction by not less than a majority vote of the
40 directors or committee members present at the meeting; and

41 (3) Contemporaneously document in writing the basis for the board or
42 authorized committee's approval, including its consideration of any
43 alternative transactions.

44 (c) The certificate of incorporation, by-laws or any policy adopted by
45 the board may contain additional restrictions on [contracts or] related
46 party transactions [between a corporation and its directors or officers
47 or other persons and may] and additional procedures necessary for the
48 review and approval of such transactions, or provide that [contracts or
49 transactions] any transaction in violation of such restrictions shall be
50 void or voidable.

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

54 ~~(f)] (d) The fixing of salaries of officers, if not done in or pursu-~~
55 ~~ant to the by-laws, shall require the affirmative vote of a majority of~~

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1 the entire board unless a higher proportion is set by the certificate of
2 incorporation or by-laws.

3 (e) The attorney general may bring an action to enjoin, void or
4 rescind any related party transaction or proposed related party trans-
5 action, including the payment of compensation to any officer, director
6 or key employee, that violates any law or is otherwise not fair, reason-
7 able, or in the best interests of the corporation, or to seek other
8 relief, including but not limited to damages, restitution, and the
9 removal of directors or officers, or seek to require any person or enti-
10 ty to:

11 (1) Account for any profits made from such transaction, and pay them
12 to the corporation;

13 (2) Pay the corporation the value of the use of any of its property or
14 other assets used in such transaction;

15 (3) Return or replace any property or other assets lost to the corpo-
16 ration as a result of such transaction, together with any income or
17 appreciation lost to the corporation by reason of such transaction, or
18 account for any proceeds of sale of such property, and pay the proceeds
19 to the corporation together with interest at the legal rate; and

20 (4) Pay, in the case of willful conduct, an amount up to double the
21 amount of any benefit improperly obtained.

22 (f) The powers of the attorney general provided in this section are in
23 addition to all other powers the attorney general may have under this
24 chapter or any other law.

25 (g) No related party may participate in deliberations or voting relat-
26 ing to matters set forth in this section.

27 § 5. The section heading and paragraph (a) of section 720 of the not-
28 for-profit corporation law, the section heading as amended by chapter
29 1058 of the laws of 1971, are amended to read as follows:

30 Actions ~~[on behalf of the corporation]~~ against directors, officers and
31 key employees.

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

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

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

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

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

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

48 § 6. Paragraph (c) of section 723 of the not-for-profit corporation
49 law, as amended by chapter 368 of the laws of 1987, is amended to read
50 as follows:

51 (c) Expenses incurred in defending a civil or criminal action or
52 proceeding may be paid by the corporation in advance of the final dispo-
53 sition of such action or proceeding upon receipt of an undertaking by or
54 on behalf of such director or officer ~~[to repay]~~ sufficient to ensure
55 repayment of such amount as, and to the extent, required by paragraph

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1 (a) of section 725 (other provisions affecting indemnification of direc-
2 tors and officers).

3 § 7. Paragraph (a) of section 724 of the not-for-profit corporation
4 law, as amended by chapter 368 of the laws of 1987, is amended to read
5 as follows:

6 (a) Notwithstanding the failure of a corporation to provide indemnifi-
7 cation, and despite any contrary resolution of the board or of the
8 members in the specific case under section 723 (Payment of indemnifica-
9 tion other than by court award), indemnification shall be awarded by a
10 court to the extent authorized under section 722 (Authorization for
11 indemnification of directors and officers), and paragraph (a) of section
12 723 (Payment of indemnification other than by court award). Application
13 therefor shall be made on notice to the attorney general and may be
14 made, in every case, either:

15 (1) In the civil action or proceeding in which the expenses were
16 incurred or other amounts were paid, or

17 (2) To the supreme court in a separate proceeding, in which case the
18 application shall set forth the disposition of any previous application
19 made to any court for the same or similar relief and also reasonable
20 cause for the failure to make application for such relief in the action
21 or proceeding in which the expenses were incurred or other amounts were
22 paid.

23 § 8. Section 8-1.9 of the estates, powers and trusts law, as added by
24 section 5 of part A of this act, is amended by adding two new paragraphs
25 (d) and (e) to read as follows:

26 (d)(1) The trustees or a designated audit committee consisting of one
27 or more independent trustees of any trust required to file an independ-
28 ent certified public accountant's audit report with the attorney general
29 pursuant to subdivision one of section one hundred seventy-two-b of the
30 executive law shall oversee the accounting and financial reporting proc-
31 esses of the trust and the audit of the trust's financial statements.
32 The trustees or designated audit committee shall annually retain or
33 renew the retention of an independent auditor to conduct the audit and,
34 upon completion thereof, review the results of the audit and any related
35 management letter with the independent auditor.

36 (2) The trustees or a designated audit committee consisting of one or
37 more independent trustees of any trust required to file an independent
38 certified public accountant's audit report with the attorney general
39 pursuant to subdivision one of section one hundred seventy-two-b of the
40 executive law and that in the prior fiscal year had or in the current
41 fiscal year reasonably expects to have annual revenue in excess of one
42 million dollars shall, in addition to those duties set forth in subpara-
43 graph one of this paragraph:

44 (A) review with the independent auditor the scope and planning of the
45 audit prior to the audit's commencement;

46 (B) upon completion of the audit, review and discuss with the inde-
47 pendent auditor: (i) any material risks and weaknesses in internal
48 controls identified by the auditor; (ii) any restrictions on the scope
49 of the auditor's activities or access to requested information; (iii)
50 any significant disagreements between the auditor and management; and
51 (iv) the adequacy of the trust's accounting and financial reporting
52 processes;

53 (C) annually consider the performance and independence of the inde-
54 pendent auditor; and

55 (D) if the duties required by this section are performed by an audit
56 committee, report on the committee's activities to the trustees.

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1 (3) The trustees or designated audit committee shall oversee the
2 adoption, implementation of, and compliance with any conflict of inter-
3 est policy or whistleblower policy adopted by the trust if this function
4 is not otherwise performed by another committee comprised solely of
5 independent trustees.

6 (4) If a trust is under the control of another trust or a corporation,
7 the trustees or designated audit committee of the controlling trust, or
8 the board or designated audit committee of the board of the controlling
9 corporation, may perform the duties required by this paragraph.

10 (5) Only independent trustees may participate in deliberations or
11 voting relating to matters set forth in this paragraph.

12 (e)(1) Notwithstanding any provision of the trust instrument to the
13 contrary, no trust shall enter into any related party transaction unless
14 the transaction is fair, reasonable and in the trust's best interest.
15 Any trustee, officer or key employee who has an interest in a related
16 party transaction shall disclose in good faith to the trustees, or an
17 authorized committee thereof, the material facts concerning such inter-
18 est.

19 (2) With respect to any related party transaction in which a related
20 party has a substantial financial interest, the trustees, or an author-
21 ized committee thereof, shall:

22 (A) Prior to entering into the transaction, consider alternative tran-
23 sactions to the extent available;

24 (B) Approve the transaction by not less than a majority vote of the
25 trustees or committee members present at the meeting; and

26 (C) Contemporaneously document in writing the basis for the trustees'
27 or authorized committee's approval, including consideration of any
28 alternative transactions.

29 (3) The trust instrument, by-laws or any policy adopted by the trus-
30 tees may contain additional restrictions on related party transactions
31 and additional procedures necessary for the review and approval of such
32 transactions, or provide that any transaction in violation of such
33 restrictions shall be void or voidable.

34 (4) The fixing of salaries of officers, if not done in or pursuant to
35 the by-laws shall require the affirmative vote of a majority of the
36 trustees unless a higher proportion is set by the trust instrument.

37 (5) The attorney general may bring an action to enjoin, void or
38 rescind any related party transaction or proposed related party trans-
39 action, including the payment of compensation to any officer, trustee or
40 key employee, that violates any law or is otherwise not fair, reason-
41 able, or in the best interests of the trust, or to seek other relief,
42 including but not limited to damages, restitution, and the removal of
43 trustees or officers, or seek to require any person or entity to:

44 (A) Account for any profits made from such transaction, and pay them
45 to the trust;

46 (B) Pay the trust the value of the use of any of its property or other
47 assets used in such transaction;

48 (C) Return or replace any property or other assets lost to the trust
49 as a result of such transaction, together with any income or appreci-
50 ation lost to the trust by reason of such transaction, or account for
51 any proceeds of sale of such property, and pay the proceeds to the trust
52 together with interest at the legal rate; and

53 (D) Pay, in the case of willful conduct, an amount up to double the
54 amount of any benefit improperly obtained.

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1 (6) The powers of the attorney general provided in this section are in
2 addition to all other powers the attorney general may have under this
3 chapter or any other law.

4 (7) No related party may participate in deliberations or voting relat-
5 ing to matters set forth in this paragraph.

6 § 9. Subdivision 2 of section 711 of the surrogate's court procedure
7 act is amended to read as follows:

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

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

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

18 (a) No corporation shall purchase [of] real property [shall be made by
19 a corporation and no corporation shall sell, mortgage or lease real
20 property, unless authorized by the vote of] unless such purchase is
21 authorized by the vote of a majority of directors of the board or a
22 committee authorized by the board, provided that if such property would,
23 upon purchase thereof, constitute all, or substantially all, of the
24 assets of the corporation, then the vote of two-thirds of the entire
25 board[, provided that if] shall be required, or, if there are twenty-one
26 or more directors, the vote of a majority of the entire board shall be
27 sufficient.

28 (b) No corporation shall sell, mortgage, lease, exchange or otherwise
29 dispose of its real property unless authorized by the vote of a majority
30 of directors of the board or a committee authorized by the board;
31 provided that if such property constitutes all, or substantially all, of
32 the assets of the corporation, then the vote of two-thirds of the entire
33 board shall be required, or, if there are twenty-one or more directors,
34 the vote of a majority of the entire board shall be sufficient.

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

38 (a) Whenever under the provisions of this chapter members are required
39 or permitted to take any action at a meeting, written notice shall state
40 the place, date and hour of the meeting and, unless it is an annual
41 meeting, indicate that it is being issued by or at the direction of the
42 person or persons calling the meeting. Notice of a special meeting shall
43 also state the purpose or purposes for which the meeting is called. A
44 copy of the notice of any meeting shall be given, personally [~~or~~], by
45 mail, or by electronic mail, to each member entitled to vote at such
46 meeting. If the notice is given personally [~~or~~], by first class mail or
47 by electronic mail, it shall be given not less than ten nor more than
48 fifty days before the date of the meeting; if mailed by any other class
49 of mail, it shall be given not less than thirty nor more than sixty days
50 before such date. If mailed, such notice is given when deposited in the
51 United States mail, with postage thereon prepaid, directed to the member
52 at his address as it appears on the record of members, or, if he shall
53 have filed with the secretary of the corporation a written request that
54 notices to him be mailed to some other address, then directed to him at
55 such other address. If mailed electronically, such notice is given when
56 directed to the member's electronic mail address as it appears on the

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1 record of members, or, to such other electronic mail address as filed
2 with the secretary of the corporation. Notwithstanding the foregoing,
3 such notice shall not be deemed to have been given electronically (1) if
4 the corporation is unable to deliver two consecutive notices to the
5 member by electronic mail; or (2) the corporation otherwise becomes
6 aware that notice cannot be delivered to the member by electronic mail.

7 An affidavit of the secretary or other person giving the notice or of a
8 transfer agent of the corporation that the notice required by this
9 section has been given shall, in the absence of fraud, be prima facie
10 evidence of the facts therein stated. Whenever a corporation has more
11 than five hundred members, the notice may be served by publication[~~, in~~
12 ~~lieu of mailing,~~] in a newspaper published in the county in the state in
13 which the principal office of the corporation is located, once a week
14 for three successive weeks next preceding the date of the meeting,
15 provided that the corporation shall also prominently post notice of such
16 meeting on the homepage of any website maintained by the corporation
17 continuously from the date of publication through the date of the meet-
18 ing.

19 § 12. Section 606 of the not-for-profit corporation law is amended to
20 read as follows:

21 § 606. Waivers of notice.

22 Notice of meeting need not be given to any member who submits a
23 [~~signed~~] waiver of notice, in person or by proxy, whether before or
24 after the meeting. Waiver of notice may be written or electronic. If
25 written, the waiver must be executed by the member or the member's
26 authorized officer, director, employee, or agent by signing such waiver
27 or causing his signature to be affixed to such waiver by any reasonable
28 means, including, but not limited to facsimile signature. If electronic,
29 the transmission of the waiver must be sent by electronic mail and set
30 forth, or be submitted with, information from which it can reasonably be
31 determined that the transmission was authorized by the member. The
32 attendance of any member at a meeting, in person or by proxy, without
33 protesting prior to the conclusion of the meeting the lack of notice of
34 such meeting, shall constitute a waiver of notice by him.

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

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

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

48 (2) A member may authorize another person or persons to act for the
49 member as proxy by [~~transmitting or authorizing the transmission of a~~
50 ~~telegram, cablegram or other means of~~] providing such authorization by
51 electronic [transmission] mail to the person who will be the holder of
52 the proxy or to a proxy solicitation firm, proxy support service organ-
53 ization or like agent duly authorized by the person [~~who will be the~~
54 ~~holder of the proxy to receive such transmission~~], provided that any
55 such [~~telegram, cablegram or other means of~~] authorization by electronic
56 [~~transmission] mail~~ shall either set forth [~~or be submitted with~~] infor-

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1 mation from which it can be reasonably determined that the [~~telegram,~~
2 ~~cablegram or other~~] authorization by electronic [~~transmission~~] mail was
3 authorized by the member. If it is determined that such [~~telegrams,~~
4 ~~cablegrams or other~~] authorization by electronic [~~transmissions are~~]
5 mail is valid, the inspectors or, if there are no inspectors, such other
6 persons making that determination shall specify the nature of the infor-
7 mation upon which they relied.

8 (c) Any copy, facsimile telecommunication or other reliable reprod-
9 uction of the writing or [~~transmission~~] electronic mail created pursuant
10 to paragraph (b) of this section may be substituted or used in lieu of
11 the original writing or transmission for any and all purposes for which
12 the original writing or transmission could be used, provided that such
13 copy, facsimile telecommunication or other reproduction shall be a
14 complete reproduction of the entire original writing or transmission.

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

17 (a) Whenever, under this chapter, members are required or permitted to
18 take any action by vote, such action may be taken without a meeting [~~on~~
19 ~~written~~] upon the consent[~~, setting forth the action so taken, signed~~
20 ~~by~~] of all of the members entitled to vote thereon, which consent shall
21 set forth the action so taken. Such consent may be written or electron-
22 ic. If written, the consent must be executed by the member or the
23 member's authorized officer, director, employee or agent by signing such
24 consent or causing his signature to be affixed to such waiver by any
25 reasonable means including but not limited to facsimile signature. If
26 electronic, the transmission of the consent must be sent by electronic
27 mail and set forth, or be submitted with, information from which it can
28 reasonably be determined that the transmission was authorized by the
29 member. This paragraph shall not be construed to alter or modify any
30 provision in a certificate of incorporation not inconsistent with this
31 chapter under which the written consent of less than all of the members
32 is sufficient for corporate action.

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

38 § 15. Paragraph (e) of section 621 of the not-for-profit corporation
39 law, as amended by chapter 847 of the laws of 1970, is amended to read
40 as follows:

41 (e) Upon the written request of any person who shall have been a
42 member of record for at least six months immediately preceding his
43 request, or of any person holding, or thereunto authorized in writing by
44 the holders of, at least five percent of any class of the outstanding
45 capital certificates, the corporation shall [~~give or mail~~] provide to
46 such member an annual balance sheet and profit and loss statement or a
47 financial statement performing a similar function for the preceding
48 fiscal year, and, if any interim balance sheet or profit and loss or
49 similar financial statement has been distributed to its members or
50 otherwise made available to the public, the most recent such interim
51 balance sheet or profit and loss or similar financial statement. The
52 corporation shall be allowed a reasonable time to prepare such annual
53 balance sheet and profit and loss or similar financial statement.

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

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1 (a) The number of directors constituting the entire board shall be not
2 less than three. Subject to such limitation, such number may be fixed by
3 the by-laws or[~~, in the case of a corporation having members,~~] by action
4 of the members or of the board under the specific provisions of a by-law
5 [adopted by the members] allowing such action, or by any number within a
6 range set forth in the by-laws. If not otherwise fixed under this para-
7 graph, the number shall be three. [~~As used in this article, "entire~~
8 ~~board" means the total number of directors entitled to vote which the~~
9 ~~corporation would have if there were no vacancies.~~]

10 § 17. Paragraphs (b) and (c) of section 708 of the not-for-profit
11 corporation law, paragraph (b) as amended by chapter 92 of the laws of
12 1983 and paragraph (c) as amended by chapter 211 of the laws of 2007,
13 are amended to read as follows:

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

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

40 § 18. Paragraph (c) of section 711 of the not-for-profit corporation
41 law, as amended by chapter 847 of the laws of 1970, is amended to read
42 as follows:

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

54 § 19. Paragraphs (a), (b) and (e) of section 712 of the not-for-profit
55 corporation law, paragraph (e) as amended by chapter 961 of the laws of
56 1972, are amended to read as follows:

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1 (a) If the certificate of incorporation or the by-laws so provide, the
2 board, by resolution adopted by a majority of the entire board, may
3 designate from among its members an executive committee and other
4 [~~standing~~] committees, each consisting of three or more directors, and
5 each of which, to the extent provided in the resolution or in the
6 certificate of incorporation or by-laws, shall have all the authority of
7 the board, except that no such committee shall have authority as to the
8 following matters:

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

11 (2) The filling of vacancies in the board of directors or in any
12 committee.

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

15 (4) The amendment or repeal of the by-laws or the adoption of new
16 by-laws.

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

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

22 (e) Committees, other than [~~standing or special~~] committees of the
23 board, whether created by the board or by the members, shall be commit-
24 tees of the corporation. Such committees of the corporation may be
25 elected or appointed in the same manner as officers of the corporation,
26 but no such committee shall have the authority to bind the board.
27 Provisions of this chapter applicable to officers generally shall apply
28 to members of such committees. Such committees of the corporation shall
29 be elected or appointed in the manner set forth in the by-laws, or if
30 not set forth in the by-laws, in the same manner as officers of the
31 corporation.

32 § 20. Paragraph (c) of section 712 of the not-for-profit corporation
33 law is REPEALED.

34 § 21. Paragraph (b-1) of section 406 of the not-for-profit corporation
35 law is REPEALED.

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

38 § 520. Reports of corporation.

39 Each domestic corporation, and each foreign corporation authorized to
40 conduct activities in this state, shall from time to time file such
41 reports on its activities as may be required by the laws of this state.
42 All registration and reporting requirements pursuant to [~~EPTL~~] article
43 seven-A of the executive law, and section 8-1.4 of the estates, powers
44 and trusts law, or related successor provisions, are, without limitation
45 on the foregoing, expressly included as reports required by the laws of
46 this state to be filed within the meaning of this section. Willful fail-
47 ure of a corporation to file a report as required by law shall consti-
48 tute a breach of the directors' duty to the corporation and shall
49 subject the corporation, at the suit of the attorney-general, to an
50 action or special proceeding for dissolution under article 11 (Judicial
51 dissolution) in the case of a domestic corporation, or under [~~§~~] section
52 1303 (Violations) in the case of a foreign corporation.

53 § 23. Paragraph (f) of section 555 of the not-for-profit corporation
54 law, as added by chapter 490 of the laws of 2010, is amended to read as
55 follows:

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1 (f) This section shall not limit the application of the [~~doctrine~~]
2 doctrines of cy pres and deviation.

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

5 § 718. List of directors and officers.

6 (a) If a member or creditor of a corporation, in person or by his
7 attorney or agent, or a representative of the district attorney or of
8 the secretary of state, the attorney general, or other state official,
9 makes a written demand on a corporation to inspect a current list of its
10 directors and officers [~~and their residence addresses~~], the corporation
11 shall, within two business days after receipt of the demand and for a
12 period of one week thereafter, make the list available for such
13 inspection at its office during usual business hours.

14 (b) Upon refusal by the corporation to make a current list of its
15 directors and officers [~~and their residence addresses~~] available, as
16 provided in paragraph (a) of this section, the person making a demand
17 for such list may apply, ex parte, to the supreme court at a special
18 term held within the judicial district where the office of the corpo-
19 ration is located for an order directing the corporation to make such
20 list available. The court may grant such order or take such other
21 action as it may deem just and proper.

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

25 (1) To give immediate notice of his appointment by publication once a
26 week for two successive weeks in two newspapers of general circulation
27 in the county where the office of the corporation is located or, in the
28 case of a foreign corporation against which an action has been brought
29 under subparagraph [~~(a)~~] (4) of paragraph (a) of section 1202 (Appoint-
30 ment of receiver of property of a domestic or foreign corporation) of
31 this article either, as directed by the court, in a newspaper of general
32 circulation [~~as directed by the court,~~] or posted prominently and
33 continuously for two successive weeks on the homepage of any website
34 maintained by the corporation or requiring:

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

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

41 (C) All creditors and claimants, including any with unliquidated or
42 contingent claims and any with whom the corporation has unfulfilled
43 contracts, to present their claims to the receiver in writing and in
44 detail at a specified place and by a specified day, which shall not be
45 less than six months after the first publication of such notice. When-
46 ever a receiver is appointed in dissolution proceedings under article 10
47 (Non-judicial dissolution) or article 11 (Judicial dissolution), section
48 1007 (Notice to creditors by corporations intending to dissolve; filing
49 or barring claims) of this chapter shall apply and shall control the
50 giving of notice to creditors and claimants and the filing and barring
51 of claims.

52 § 26. Paragraph (a) of section 1211 of the not-for-profit corporation
53 law is amended to read as follows:

54 (a) If there remains property of the corporation after the first
55 distribution, the receiver shall, within one year thereafter, make a
56 final distribution among the creditors entitled thereto. Notice that

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1 such distribution will be the final distribution to creditors shall be
2 published once a week for two consecutive weeks in a newspaper of gener-
3 al circulation in the county where the office of the corporation is
4 located or posted prominently and continuously for two consecutive weeks
5 on the homepage of any website maintained by the corporation.

6 § 27. Paragraph (b) of section 1215 of the not-for-profit corporation
7 law is amended to read as follows:

8 (b) The petition shall be accompanied by a verified account of all
9 the assets of the corporation received by him, of all payments or other
10 disposition thereof made by him, of the remaining assets of the corpo-
11 ration in respect to which he was appointed receiver and the situation
12 of the same, and of all his transactions as receiver. Thereupon, the
13 court shall grant an order directing notice to be given to the sureties
14 on his official bond and to all persons interested in the property of
15 the corporation to show cause, at a time and place specified, why the
16 receiver should not be permitted to resign. Such notice shall either,
17 as directed by the court, be published once in each week for six succes-
18 sive weeks in one or more newspapers [~~as the court shall direct~~] or
19 posted prominently and continuously for six successive weeks on the
20 homepage of any website maintained by the corporation. If it shall
21 appear that the proceedings of the receiver in the discharge of his
22 trust have been fair and honest and that there is no good cause to the
23 contrary, the court shall make an order permitting such receiver to
24 resign. Thereupon he shall be discharged and his powers as receiver
25 shall cease, but he shall remain subject to any liability incurred prior
26 to the making of such order. The court, in its discretion, may require
27 the expense of such proceeding to be paid by the receiver presenting the
28 petition.

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

31 (3) The order directing service of the summons shall require the
32 publication thereof either in a newspaper published in the state of New
33 York in the English language at least once a week for four successive
34 weeks, or posted prominently and continuously for four successive weeks
35 on any appropriate website, and shall also require the mailing on or
36 before the date of the first publication of a copy of the summons,
37 complaint and order to the corporation at its last known principal or
38 head office in the state or country of its incorporation.

39 § 29. Paragraph (e) of section 1611 of the not-for-profit corporation
40 law, as added by chapter 257 of the laws of 2011, is amended to read as
41 follows:

42 (e) Bonds issued by the land bank shall be issued, sold, and delivered
43 in accordance with the terms and provisions of a resolution adopted by
44 the board. The board may sell such bonds in such manner, either at
45 public or at private sale, and for such price as it may determine to be
46 in the best interests of the land bank. The resolution issuing bonds
47 shall be published in a newspaper of general circulation within the
48 jurisdiction of the land bank and posted prominently and continuously on
49 the homepage of any website maintained by the land bank.

50 § 30. Intentionally omitted.

51 § 31. Paragraph (h) of section 8-1.4 of the estates, powers and
52 trusts law, as amended by chapter 43 of the laws of 2002, is amended to
53 read as follows:

54 (h) The attorney general shall make rules and regulations necessary
55 for the administration of this section, including rules and regulations
56 as to the time for filing reports, the contents thereof, and [~~the~~] any

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1 manner of executing and filing them, including but not limited to allow-
2 ing or requiring any submission to the attorney general to be effected
3 by electronic means and electronic signatures. He or she may classify
4 trusts, estates, corporations and other trustees as to purpose, nature
5 of assets, duration, amount of assets, amounts to be devoted to charita-
6 ble purposes, or otherwise, and may establish different rules for
7 different classes as to time and nature of the reports required, to the
8 ends that he or she shall receive current financial reports as to all
9 such trusts, estates, corporations or other trustees which will enable
10 him or her to ascertain whether they are being properly administered.
11 The attorney general may suspend the filing of financial reports as to a
12 particular trustee for a reasonable, specifically designated time upon
13 written application of the trustee, signed under penalties for perjury,
14 and filed with the attorney general and after the attorney general has
15 filed in the register of trustees a written statement that the interests
16 of the beneficiaries will not be prejudiced thereby and that periodic
17 reports during the term of such suspension are not required for proper
18 supervision by his or her office. The filing of the financial reports
19 required by this section, or the exemption from such filing or the
20 suspension therefrom, shall not have the effect of absolving trustees
21 from any responsibility for accounting for property or income held by
22 them for charitable purposes. A copy of an account or other financial
23 report filed by a trustee in any court in this state, if the account or
24 other financial report substantially complies with the rules and regu-
25 lations of the attorney general, may be filed as a financial report
26 under this section.

27 § 32. Paragraph (b-1) of section 8-1.8 of the estates, powers and
28 trusts law is REPEALED.

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

31 9. "Fund raising counsel." Any person who for compensation consults
32 with a charitable organization or who plans, manages, advises, or
33 assists with respect to the solicitation in this state of contributions
34 for or on behalf of a charitable organization, but who does not have
35 access to contributions or other receipts from a solicitation or author-
36 ity to pay expenses associated with a solicitation and who does not
37 solicit. A bona fide officer, volunteer, or employee of a charitable
38 organization or an attorney at law retained by a charitable organization
39 or an individual engaged solely to draft applications for funding from a
40 governmental agency or an entity exempt from taxation pursuant to
41 section 501(c)(3) of the internal revenue code, shall not be deemed a
42 fund raising counsel.

43 § 34. Subdivisions 1, 2 and 2-a of section 172-b of the executive law,
44 as amended by section 43 of the laws of 2002, are amended to read as
45 follows:

46 1. Every charitable organization registered or required to be regis-
47 tered pursuant to section one hundred seventy-two of this article which
48 shall receive in any fiscal year gross revenue and support in excess of
49 [~~two hundred fifty~~] five hundred thousand dollars [~~and every charitable~~
50 ~~organization whose fund raising functions are not carried on solely by~~
51 ~~persons who are unpaid for such services~~] shall file with the attorney
52 general an annual written financial report, on forms prescribed by the
53 attorney general, on or before the fifteenth day of the fifth calendar
54 month after the close of such fiscal year. The annual financial report
55 shall be accompanied by an annual financial statement which includes an
56 independent certified public accountant's audit report containing an

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1 opinion that the financial statements are presented fairly in all mate-
2 rial respects and in conformity with generally accepted accounting prin-
3 ciples, including compliance with all pronouncements of the financial
4 accounting standards board and the American Institute of Certified
5 Public Accountants that establish accounting principles relevant to
6 not-for-profit organizations. Such financial report shall include a
7 statement of any changes in the information required to be contained in
8 the registration form filed on behalf of such organization. The finan-
9 cial report shall be signed by the president or other authorized officer
10 and the chief fiscal officer of the organization who shall certify under
11 penalties for perjury that the statements therein are true and correct
12 to the best of their knowledge, and shall be accompanied by an opinion
13 signed by an independent public accountant that the financial statement
14 and balance sheet therein present fairly the financial operations and
15 position of the organization. A fee of twenty-five dollars payable to
16 the attorney general shall accompany such financial report at the time
17 of filing, provided however, that any such organization that is regis-
18 tered with the attorney general pursuant to article eight of the
19 estates, powers and trusts law is required to file only one annual
20 financial report which meets the filing requirements of this article and
21 section 8-1.4 of the estates, powers and trusts law.

22 2. 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 gross revenue and support in any fiscal year at least
25 [~~one hundred~~] two hundred fifty thousand dollars but not more than [~~two~~
26 ~~hundred fifty~~] five hundred thousand dollars shall file an annual finan-
27 cial report. The annual financial report shall be accompanied by an
28 annual financial statement which includes an independent certified
29 public accountant's review report in accordance with "statements on
30 standards for accounting and review services" issued by the American
31 Institute of Certified Public Accountants. The annual financial state-
32 ment shall be prepared in conformity with generally accepted accounting
33 principles, including compliance with all pronouncements of the finan-
34 cial accounting standards board and the American Institute of Certified
35 Public Accountants that establish accounting principles relevant to
36 not-for-profit organizations. Such financial report shall be filed with
37 the attorney general, upon forms prescribed by the attorney general on
38 an annual basis on or before the fifteenth day of the fifth calendar
39 month after the close of such fiscal year, which shall include a finan-
40 cial report covering such fiscal year in accordance with such require-
41 ments as the attorney general may prescribe. Such financial report shall
42 include a statement of any changes in the information required to be
43 contained in the registration form filed on behalf of such organization.
44 The financial report shall be signed by the president or other author-
45 ized officer and the chief fiscal officer of the organization who shall
46 certify under penalties for perjury that the statements therein are true
47 and correct to the best of their knowledge. A fee of [~~ten~~] twenty-five
48 dollars payable to the attorney general shall accompany such financial
49 report at the time of filing, provided, however, that any such organiza-
50 tion that is registered with the attorney general pursuant to article
51 eight of the estates, powers and trusts law is required to file only one
52 annual financial report which meets the filing requirements of this
53 article and section 8-1.4 of the estates, powers and trusts law.
54 Notwithstanding the requirements of this section, if upon review of an
55 independent certified public accountant's review report filed pursuant
56 to this subdivision, the attorney general determines that a charitable

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1 organization should obtain an independent certified public accountant's
2 audit report, such organization shall obtain and file with the attorney
3 general an audit report that meets the requirements of subdivision one
4 of this section within sixty days of the attorney general's request for
5 such report.

6 2-a. Every charitable organization registered or required to be regis-
7 tered pursuant to section one hundred seventy-two of this article which
8 shall receive in any fiscal year of such organization gross revenue and
9 support not in excess of [~~one hundred thousand~~] two hundred fifty thou-
10 sand dollars shall file with the attorney general an unaudited financial
11 report on forms prescribed by the attorney general, on or before the
12 fifteenth day of the fifth calendar month after the close of such fiscal
13 year. Such financial report shall include a statement of any changes in
14 the information required to be contained in the registration form filed
15 on behalf of such organization. The financial report shall be signed by
16 the president or other authorized officer and the chief fiscal officer
17 of the organization who shall certify under penalties for perjury that
18 the statements therein are true and correct to the best of their know-
19 ledge. A fee of ten dollars payable to the attorney general shall
20 accompany such financial report at the time of filing. Provided, howev-
21 er, that any such organization that is registered with the attorney
22 general pursuant to article eight of the estates, powers and trusts law
23 is required to file only one annual financial report which meets the
24 filing requirements of this article and section 8-1.4 of the estates,
25 powers and trusts law.

26 § 35. Subdivision 1 of section 177 of the executive law, as amended by
27 chapter 83 of the laws of 1995, is amended to read as follows:

28 1. The attorney general shall make rules and regulations necessary for
29 the administration of this article including, but not limited to regu-
30 lations and waiver procedures that will ensure that charitable organiza-
31 tions do not have to register twice in relation to the solicitation and
32 administration of assets, and rules or regulations allowing or requiring
33 any submission to the attorney general to be effected by electronic
34 means.

35 § 36. Intentionally omitted.

36 § 37. The section heading and paragraph (a) of section 511 of the
37 not-for-profit corporation law, subparagraph 6 of paragraph (a) as
38 amended by chapter 961 of the laws of 1972, are amended to read as
39 follows:

40 Petition for [~~leave of~~] court approval.

41 (a) [~~A corporation required by law to~~] To obtain [~~leave of~~] court
42 approval to sell, lease, exchange or otherwise dispose of all or
43 substantially all its assets, a corporation shall present a verified
44 petition to the supreme court of the judicial district, or the county
45 court of the county, wherein the corporation has its office or principal
46 place of carrying out the purposes for which it was formed. The petition
47 shall set forth:

48 1. The name of the corporation, the law under or by which it was
49 incorporated.

50 2. The names of its directors and principal officers, and their places
51 of residence.

52 3. The activities of the corporation.

53 4. A description, with reasonable certainty, of the assets to be sold,
54 leased, exchanged, or otherwise disposed of, or a statement that it is
55 proposed to sell, lease, exchange or otherwise dispose of all or
56 substantially all the corporate assets more fully described in a sched-

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1 ule attached to the petition; and a statement of the fair value of such
2 assets, and the amount of the corporation's debts and liabilities and
3 how secured.

4 5. The consideration to be received by the corporation and the dispo-
5 sition proposed to be made thereof, together with a statement that the
6 dissolution of the corporation is or is not contemplated thereafter.

7 6. That the consideration and the terms of the sale, lease, exchange
8 or other disposition of the assets of the corporation are fair and
9 reasonable to the corporation, and that the purposes of the corporation,
10 or the interests of its members will be promoted thereby, and a concise
11 statement of the reasons therefor.

12 7. That such sale, lease, exchange or disposition of corporate assets,
13 has been recommended or authorized by vote of the directors in accord-
14 ance with law, at a meeting duly called and held, as shown in a schedule
15 annexed to the petition setting forth a copy of the resolution granting
16 such authority with a statement of the vote thereon.

17 8. Where the consent of members of the corporation is required by law,
18 that such consent has been given, as shown in a schedule annexed to the
19 petition setting forth a copy of such consent, if in writing, or of a
20 resolution giving such consent, adopted at a meeting of members duly
21 called and held, with a statement of the vote thereon.

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

25 § 38. The not-for-profit corporation law is amended by adding a new
26 section 511-a to read as follows:

27 § 511-a. Petition for attorney general approval.

28 (a) In lieu of obtaining court approval under section 511 (Petition
29 for court approval) of this article to sell, lease, exchange or other-
30 wise dispose of all or substantially all of its assets, the corporation
31 may alternatively seek approval of the attorney general by verified
32 petition, except in the following circumstances: 1. The corporation is
33 insolvent, or would become insolvent as a result of the transaction, and
34 must proceed on notice to creditors pursuant to paragraph (c) of section
35 511 of this article; or 2. The attorney general, in his or her
36 discretion, concludes that a court should review the petition and make a
37 determination thereon.

38 (b) The verified petition to the attorney general shall set forth (i)
39 all of the information required to be included in a verified petition to
40 obtain court approval pursuant to subparagraphs one through nine of
41 paragraph (a) of section 511 of this article; (ii) a statement that the
42 corporation is not insolvent and will not become insolvent as a result
43 of the transaction; and (iii) a statement as to whether any persons have
44 raised, or have a reasonable basis to raise, objections to the sale,
45 lease, exchange or other disposition that is the subject of the peti-
46 tion, including a statement setting forth the names and addresses of
47 such persons, the nature of their interest, and a description of their
48 objections. The attorney general, in his or her discretion, may direct
49 the corporation to provide notice of such petition to any interested
50 person, and the corporation shall provide the attorney general with a
51 certification that such notice has been provided.

52 (c) If it shall appear, to the satisfaction of the attorney general
53 that the consideration and the terms of the transaction are fair and
54 reasonable to the corporation and that the purposes of the corporation
55 or the interests of the members will be promoted, the attorney general
56 may authorize the sale, lease, exchange or other disposition of all or

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1 substantially all the assets of the corporation, as described in the
2 petition, for such consideration and upon such terms as the attorney
3 general may prescribe. The authorization of the attorney general shall
4 direct the disposition of the consideration to be received thereunder by
5 the corporation.

6 (d) If the attorney general does not approve the petition, or if the
7 attorney general concludes that court review is appropriate, the peti-
8 tioner may seek court approval on notice to the attorney general pursu-
9 ant to section 511 (Petition for court approval) of this article.

10 § 39. Intentionally omitted.

11 § 40. Section 907 of the not-for-profit corporation law is amended to
12 read as follows:

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

14 [~~(a)~~] Where any constituent corporation or the consolidated corpo-
15 ration is, or would be if formed under this chapter, a [~~Type B or a Type~~
16 ~~C~~] charitable corporation under section 201 (Purposes) of this chapter,
17 no certificate shall be filed pursuant to section 904 (Certificate of
18 merger or consolidation; contents) or section 906 (Merger or consol-
19 idation of domestic and foreign corporations) until (a) the supreme
20 court has granted an order approving the plan of merger or consolidation
21 and authorizing the filing of the certificate [~~has been made by the~~
22 ~~supreme court~~], as provided in [~~this~~] section[~~. A certified copy of such~~
23 ~~order shall be annexed to the certificate of merger or consolidation.~~
24 ~~Application for the order may be made in the judicial district in which~~
25 ~~the principal office of the surviving or consolidated corporation is to~~
26 ~~be located, or in which the office of one of the domestic constituent~~
27 ~~corporations is located. The application shall be made by all the~~
28 ~~constituent corporations jointly and shall set forth by affidavit (1)~~
29 ~~the plan of merger or consolidation, (2) the approval required by~~
30 ~~section 903 (Approval of plan) or paragraph (b) of section 906 (Merger~~
31 ~~or consolidation of domestic and foreign corporations) for each constit-~~
32 ~~uent corporation, (3) the objects and purposes of each such corporation~~
33 ~~to be promoted by the consolidation, (4) a statement of all property,~~
34 ~~and the manner in which it is held, and of all liabilities and of the~~
35 ~~amount and sources of the annual income of each such corporation, (5)~~
36 ~~whether any votes against adoption of the resolution approving the plan~~
37 ~~of merger or consolidation were cast at the meeting at which the resol-~~
38 ~~ution as adopted by each constituent corporation, and (6) facts showing~~
39 ~~that the consolidation is authorized by the laws of the jurisdictions~~
40 ~~under which each of the constituent corporations is incorporated]~~ 907-a
41 (Application for approval of the supreme court) of this article or (b)
42 the attorney general has approved the plan of merger or consolidation
43 and authorized the filing of the certificate, as provided in section
44 907-b (Application for approval of the attorney general) of this
45 article.

46 [~~(b) Upon the filing of the application the court shall fix a time for~~
47 ~~hearing thereof and shall direct that notice thereof be given to such~~
48 ~~persons as may be interested, including the attorney general, any~~
49 ~~governmental body or officer and any other person or body whose consent~~
50 ~~or approval is required by section 909 (Consent to filing), in such form~~
51 ~~and manner as the court may prescribe. If no votes against adoption of~~
52 ~~the resolution approving the plan of merger or consolidation were cast~~
53 ~~at the meeting at which the resolution was adopted by any constituent~~
54 ~~corporation the court may dispense with notice to anyone except the~~
55 ~~attorney-general, any governmental body or officer and any other person~~
56 ~~or body whose consent or approval is required by section 909 (Consent to~~

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1 ~~filing). Any person interested may appear and show cause why the appli-~~
2 ~~cation should not be granted.~~

3 ~~(c) If the court shall find that any of the assets of any of the~~
4 ~~constituent corporations are held for a purpose specified as Type B in~~
5 ~~paragraph (b) of section 201 or are legally required to be used for a~~
6 ~~particular purpose, but not upon a condition requiring return, transfer~~
7 ~~or conveyance by reason of the merger or consolidation, the court may,~~
8 ~~in its discretion, direct that such assets be transferred or conveyed to~~
9 ~~the surviving or consolidated corporation subject to such purpose or~~
10 ~~use, or that such assets be transferred or conveyed to the surviving or~~
11 ~~consolidated corporation or to one or more other domestic or foreign~~
12 ~~corporations or organizations engaged in substantially similar activi-~~
13 ~~ties, upon an express trust the terms of which shall be approved by the~~
14 ~~court.~~

15 ~~(d) If the court shall find that the interests of non-consenting~~
16 ~~members are or may be substantially prejudiced by the proposed merger or~~
17 ~~consolidation, the court may disapprove the plan or may direct a modifi-~~
18 ~~cation thereof. In the event of a modification, if the court shall find~~
19 ~~that the interests of any members may be substantially prejudiced by the~~
20 ~~proposed merger or consolidation as modified, the court shall direct~~
21 ~~that the modified plan be submitted to vote of the members of the~~
22 ~~constituent corporations, or if the court shall find that there is not~~
23 ~~such substantial prejudice, it shall approve the agreement as so modi-~~
24 ~~fied without further approval by the members. If the court, upon direct-~~
25 ~~ing a modification of the plan of merger or consolidation, shall direct~~
26 ~~that a further approval be obtained from members of the constituent~~
27 ~~corporations or any of them, such further approval shall be obtained in~~
28 ~~the manner specified in section 903 (Approval of plan) or section 906(b)~~
29 ~~(Merger or consolidation of domestic and foreign corporations) of this~~
30 ~~chapter.~~

31 ~~(e) If it shall appear, to the satisfaction of the court, that the~~
32 ~~provisions of this section have been complied with, and that the inter-~~
33 ~~ests of the constituent corporations and the public interest will not be~~
34 ~~adversely affected by the merger or consolidation, it shall approve the~~
35 ~~merger or consolidation upon such terms and conditions as it may~~
36 ~~prescribe.]~~

37 § 41. The not-for-profit corporation law is amended by adding a new
38 section 907-a to read as follows:

39 § 907-a. Application for approval of the supreme court.

40 (a) Application for an order approving the plan of merger and author-
41 izing the filing of the certificate may be made in the judicial district
42 in which the principal office of the surviving or consolidated corpo-
43 ration is to be located, or in which the office of one of the domestic
44 constituent corporations is located. The application shall be made by
45 all the constituent corporations jointly and shall set forth by affida-
46 vit: (1) the plan of merger or consolidation, (2) the approval required
47 by section 903 (Approval of plan) or paragraph (b) of section 906 (Merg-
48 er or consolidation of domestic and foreign corporations) of this arti-
49 cle for each constituent corporation, (3) the objects and purposes of
50 each such corporation to be promoted by the merger or consolidation, (4)
51 a statement of all property, and the manner in which it is held, and of
52 all liabilities and of the amount and sources of the annual income of
53 each such corporation, (5) whether any votes against adoption of the
54 resolution approving the plan of merger or consolidation were cast at
55 the meeting at which the resolution was adopted by each constituent
56 corporation, and (6) facts showing that the consolidation is authorized

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1 by the laws of the jurisdictions under which each of the constituent
2 corporations is incorporated.

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

17 (c) If the court shall find that any of the assets of any of the
18 constituent corporations are held for a charitable purpose or are legal-
19 ly required to be used for a particular purpose, but not upon a condi-
20 tion requiring return, transfer or conveyance by reason of the merger or
21 consolidation, the court may, in its discretion, direct that such assets
22 be transferred or conveyed to the surviving or consolidated corporation
23 subject to such purpose or use, or that such assets be transferred or
24 conveyed to the surviving or consolidated corporation or to one or more
25 other domestic or foreign corporations or organizations engaged in
26 substantially similar activities, upon an express trust the terms of
27 which shall be approved by the court.

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

44 (e) If it shall appear, to the satisfaction of the court, that the
45 provisions of this section have been complied with, and that the inter-
46 ests of the constituent corporations and the public interest will not be
47 adversely affected by the merger or consolidation, it shall approve the
48 merger or consolidation upon such terms and conditions as it may
49 prescribe.

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

52 § 42. The not-for-profit corporation law is amended by adding a new
53 section 907-b to read as follows:

54 § 907-b. Application for approval of the attorney general.

55 (a) In lieu of obtaining an order approving the plan of merger or
56 consolidation and authorizing the filing of the certificate, the corpo-

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1 ration may alternatively make an application to the attorney general for
2 approval, except where the attorney general, in his or her discretion,
3 concludes that a court should review the application and make a determi-
4 nation thereon.

5 (b) The application to the attorney general shall be made by all the
6 constituent corporations jointly and shall set forth by affidavit: (i)
7 all of the information required to be included in an application to
8 obtain court approval pursuant to section 907-a (Application for
9 approval of the supreme court) of this article, (ii) all consents and
10 approvals required by section 909 (Consent to filing), and (iii) a
11 statement as to whether any persons have raised, or have a reasonable
12 basis to raise, objections to the merger or consolidation that is the
13 subject of the application, including a statement setting forth the
14 names and addresses of such persons, the nature of their interest, and a
15 description of their objections.

16 (c) Upon the filing of the application, the attorney general, in his
17 or her discretion, may direct that the constituent corporations provide
18 notice to such persons as may be interested, including any governmental
19 body or officer and any other person or body that is required either to
20 give consent or be notified under section 404 (Approvals, notices and
21 consents) of this article or 909 (Consent to filing) of this article.
22 The constituent corporations shall provide the attorney general with a
23 certification that such notice has been provided.

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

31 (e) If the attorney general shall find that the interests of non-con-
32 senting members are or may be substantially prejudiced by the proposed
33 merger or consolidation, the attorney general may disapprove of the
34 application or may condition approval of the application upon modifica-
35 tion of the plan of merger or consolidation in accordance with this
36 chapter and any other law or rule.

37 (f) If it shall appear, to the satisfaction of the attorney general,
38 that the provisions of this section have been complied with, and that
39 the interests of the constituent corporations and the public interest
40 will not be adversely affected by the merger or consolidation, the
41 attorney general shall approve the merger or consolidation upon such
42 terms and conditions as it may prescribe.

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

45 (h) If the attorney general does not approve the application, or if
46 the attorney general concludes that court review is appropriate, the
47 constituent corporations may seek court approval on notice to the attor-
48 ney general pursuant to section 907-a (Application for approval of the
49 supreme court) of this article.

50 § 43. Intentionally omitted.

51 § 44. Paragraph (c) of section 1001 of the not-for-profit corporation
52 law is REPEALED.

53 § 45. Intentionally omitted.

54 § 46. Paragraphs (a) and (c) of section 1002-a of the not-for-profit
55 corporation law, as amended by chapter 434 of the laws of 2006, are
56 amended to read as follows:

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1 (a) Carry out the plan of dissolution and distribution of assets, pay
2 its liabilities and distribute its assets in accordance therewith within
3 two hundred seventy days from the date the plan of dissolution and
4 distribution of assets shall have been (1) authorized as provided in
5 section 1002 (Authorization of plan) of this article, (2) approved by
6 any governmental body or officer whose approval is required pursuant to
7 paragraph (c) of section 1002 (Authorization of plan) of this article,
8 and (3) approved by either the attorney general or a justice of the
9 supreme court[~~, if such approval is required~~] pursuant to paragraph (d)
10 of section 1002 (Authorization of plan) of this article[~~, or filed with~~
11 ~~the attorney general, if such filing is required pursuant to paragraph~~
12 ~~(d) of section 1002 of this article~~]. Evidence of the disposition of its
13 assets and payment of its liabilities pursuant to the plan of dissol-
14 ution and distribution of assets shall be submitted by the corporation
15 to the attorney general and any other governmental body or officer, as
16 required under applicable laws. If the plan of dissolution and distrib-
17 ution of assets cannot be carried out within the prescribed time, the
18 attorney general may upon good cause shown extend such time, or any
19 extended period of time, by not fewer than thirty days nor more than one
20 year;

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

24 (1) assets received and held by the corporation either for a charita-
25 ble purpose [~~specified as Type B in paragraph (b) of section 201~~
26 ~~(Purposes)~~] or which are legally required to be used for a particular
27 purpose, shall be distributed to one or more domestic or foreign corpo-
28 rations or other organizations engaged in activities substantially simi-
29 lar to those of the dissolved corporation pursuant to the plan of
30 dissolution and distribution or, if applicable, as approved by the
31 attorney general or ordered by the supreme court pursuant to [~~which such~~
32 ~~plan is submitted for approval under~~] section 1002 (Authorization of
33 plan) of this article. Any disposition of assets contained in a will or
34 other instrument, in trust or otherwise, made before or after the
35 dissolution, to or for the benefit of any corporation so dissolved shall
36 inure to or for the benefit of the corporation or organization acquiring
37 such assets of the dissolved corporation as provided in this section,
38 and so far as is necessary for that purpose the corporation or organiza-
39 tion acquiring such disposition shall be deemed a successor to the
40 dissolved corporation with respect to such assets; provided, however,
41 that such disposition shall be devoted by the acquiring corporation or
42 organization to the purposes intended by the testator, donor or grantor.

43 (2) assets other than those described by subparagraph one of this
44 paragraph, if any, shall be distributed in accordance with the specifi-
45 cations of the plan of dissolution and distribution of assets or, to the
46 extent that the certificate of incorporation prescribes the distributive
47 rights of members, or of any class or classes of members, as provided in
48 such certificate;

49 § 47. Intentionally omitted.

50 § 48. Paragraph (a) of section 1007 of the not-for-profit corporation
51 law, as amended by chapter 434 of the laws of 2006, is amended to read
52 as follows:

53 (a) At any time after the plan of dissolution and distribution of
54 assets shall have been (1) authorized as provided in section 1002 of
55 this article (Authorization of plan), (2) approved by any governmental
56 body or officer whose approval is required pursuant to paragraph (c) of

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1 section 1002 of this article, and (3) approved by either by the attorney
2 general or a justice of the supreme court[, ~~if such approval is required~~
3 ~~pursuant to paragraph (d) of section 1002 of this article, or filed with~~
4 ~~the attorney general, if such filing is required~~] pursuant to paragraph
5 (d) of section 1002 of this article, and prior to filing the certificate
6 of dissolution, the corporation may give a notice requiring all credi-
7 tors and claimants, including any with unliquidated or contingent claims
8 and any with whom the corporation has unfulfilled contracts, to present
9 their claims in writing and in detail at a specified place and by a
10 specified day, which shall not be less than six months after the first
11 publication of such notice. Such notice shall be published at least once
12 a week for two successive weeks in a newspaper of general circulation in
13 the county in which the office of the corporation was located at the
14 date of authorization of its plan of dissolution and distribution of
15 assets as provided in section 1002 of this article (Authorization of
16 plan), or, upon consent of the attorney general, posted prominently and
17 continuously for two successive weeks on the homepage of any website
18 maintained by the corporation. On or before the date of the first
19 publication or posting on a website of such notice, the corporation
20 shall mail a copy thereof, postage prepaid, to each person believed to
21 be a creditor of or claimant against the corporation whose current name
22 and address are known to or can with due diligence be ascertained by the
23 corporation. The giving of such notice shall not constitute a recogni-
24 tion that any person is a proper creditor or claimant, and shall not
25 revive or make valid, or operate as a recognition of the validity of, or
26 a waiver of any defense or counterclaim in respect of any claim against
27 the corporation, its assets, directors, officers or members, which has
28 been barred by any statute of limitations or become invalid by any
29 cause, or in respect of which the corporation, its directors, officers
30 or members, has any defense or counterclaim.

31 § 49. Paragraph c of subdivision 4 of section 216-a of the education
32 law, as added by chapter 901 of the laws of 1972, is amended to read as
33 follows:

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

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

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

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1 to be located, the number of its directors, which may be five or more,
2 the time of the annual election and the names of the persons to be
3 directors until the first or next annual meeting.

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

27 § 51. Section 13 of the religious corporations law, as amended by
28 chapter 705 of the laws of 1970, is amended to read as follows:

29 § 13. Consolidation or merger of incorporated churches. Two or more
30 incorporated churches may enter into an agreement, under their respec-
31 tive corporate seals, for the consolidation or merger of such corpo-
32 rations, setting forth the name of the proposed new corporation or
33 surviving corporation, the denomination, if any, to which it is to
34 belong, and if the churches of such denomination have more than one
35 method of choosing trustees, by which of such methods the trustees are
36 to be chosen, the number of such trustees, the names of the persons to
37 be the first trustees of the new corporation, and the date of its first
38 annual corporate meeting. Such an agreement shall not be valid for
39 United Methodist churches unless proposed by a majority vote of the
40 charge conference of each church and approved by the superintendent or
41 superintendents of the district or districts in which the consolidating
42 churches are located, and by the majority of the members of each of such
43 churches, over the age of twenty-one years, present and voting at a
44 meeting thereof held in the usual place of public worship and called for
45 the purpose of considering such agreement by announcement made at public
46 service in such churches on two Sundays, the first not less than ten
47 days next preceding the date of such meeting. Such agreement shall not
48 be valid unless approved in the case of Protestant Episcopal churches by
49 the bishop and standing committee of the diocese in which such churches
50 are situated and in the case of churches of other denominations by the
51 governing body of the denomination, if any, to which each church
52 belongs, having jurisdiction over such church. Each corporation shall
53 thereupon make a separate petition to the supreme court for an order
54 consolidating or merging the corporations, setting forth the denomi-
55 nation, if any, to which the church belongs, that the consent of the
56 governing body to the consolidation or merger, if any, of that denomi-

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1 nation having jurisdiction over such church has been obtained, the
2 agreement therefor, and a statement of all the property and liabilities
3 and the amount and sources of the annual income of such petitioning
4 corporation. In its discretion the court may direct that notice of the
5 hearing of such petition be given to the parties interested therein in
6 such manner and for such time as it may prescribe. After hearing all
7 the parties interested, present and desiring to be heard, the court may
8 make an order for the consolidation or merger of the corporations on the
9 terms of such agreement and such other terms and conditions as it may
10 prescribe, specifying the name of such new or surviving corporation and
11 the [~~first~~] trustees thereof, and the method by which their successors
12 shall be chosen and the date of its first or next annual corporate meet-
13 ing. When such order is made and duly entered, the persons constituting
14 such consolidated or merged corporations shall be or become an incorpo-
15 rated church by, and said petitioning churches shall become consolidated
16 or merged under, the name designated in the order, and the trustees
17 therein named shall be the [~~first~~] trustees thereof, and the future
18 trustees thereof shall be chosen by the method therein designated, and
19 all the estate, rights, powers and property of whatsoever nature belong-
20 ing to either corporation shall without further act or deed be vested in
21 and transferred to the new or surviving corporation as effectually as
22 they were vested in or belonging to the former corporations; and the
23 said new or surviving corporation shall be liable for all the debts and
24 liabilities of the former corporations in the same manner and as effec-
25 tually as if said debts or liabilities had been contracted or incurred
26 by the new or surviving corporation. A certified copy of such order
27 shall be recorded in the book for recording certificates of incorpo-
28 ration in each county clerk's office in which the certificate of incor-
29 poration of each consolidating or merging church was recorded; or if no
30 such certificate was so recorded, then in the clerk's office of the
31 county in which the principal place of worship or principal office of
32 the new or surviving corporation is, or is intended to be, situated.

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

36 § 15-a. Consolidation of incorporated presbyteries. 1. Two or more
37 incorporated presbyteries may enter into an agreement for the consol-
38 idation or merger of such corporations and such corporations may be
39 consolidated or merged so as to form a single corporation which may be
40 either a new corporation or one of the [~~constituent~~] constituent corpo-
41 rations. Said agreement shall set forth the name of the proposed new
42 corporation or the name of the existing corporation if it is to become
43 the consolidated or merged corporation, the method of choosing trustees,
44 the names of the persons to be the first trustees of the new corporation
45 if the consolidated or merged corporation is to be a new corporation and
46 the date of the first annual corporate meeting.

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

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

55 4. Each presbytery shall thereafter join in a petition to the supreme
56 court for an order consolidating or merging the corporation, setting

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1 forth the agreement of the contracting presbyteries, the direction and
2 approval of the bodies as set forth in subdivision three [~~hereof~~] of
3 this section, a statement of all the property and liabilities and the
4 sources of the annual income of each presbytery and a description of any
5 property held by such presbyteries in trust for specific purposes. In
6 its discretion the court may direct that notice of the hearing of such
7 petition be given to the parties interested therein in such manner as it
8 may prescribe.

9 5. After hearing all the parties interested, present and desiring to
10 be heard, the court may make an order for the consolidation or merger of
11 the presbyteries on the terms of such agreement and such other terms and
12 conditions as it may prescribe, specifying the name of the new corpo-
13 ration or the name the continuing corporation will have if one of the
14 [~~constituent~~] constituent corporations is to become the consolidated or
15 merged corporation, the first trustees thereof if a new corporation is
16 to be created and the method by which their successors shall be chosen
17 and the date of the first annual corporate meeting if a new corporation
18 is to be created.

19 6. When such order is made and duly entered, the persons constituting
20 such corporate presbyteries shall become one incorporated consolidated
21 or merged presbytery by, and said petitioning presbyteries shall become
22 consolidated or merged under, the name designated in the order, and the
23 trustees therein named, if it is a new corporation, shall be the first
24 trustees thereof, and if it is a new corporation the trustees thereof
25 shall be chosen by the method therein designated, and all the estate,
26 rights, powers and property of whatsoever nature, belonging to either
27 corporation shall without further act or deed be vested in and/or trans-
28 ferred to the new corporation as effectually as they were vested in or
29 belonging to the former corporations, and the new or continuing corpo-
30 rations shall be liable for all the debts and liabilities of the former
31 corporations in the same manner and as effectually as if said debts or
32 liabilities had been contracted or incurred by the new corporation.

33 7. The order or a certified copy thereof shall be recorded in the book
34 for recording certificates of incorporation in each county clerk's
35 office in which the certificate of incorporation of each constituent
36 presbytery was recorded.

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

40 § 53. Section 208 of the religious corporations law, as added by chap-
41 ter 117 of the laws of 1927, is amended to read as follows:

42 § 208. Consolidation. Any two or more religious corporations of the
43 Jewish faith, incorporated under or by general or special laws, may
44 enter into an agreement for the consolidation or merger of such corpo-
45 rations, setting forth the terms and conditions of consolidation, the
46 name of the proposed or surviving corporation, the number of its trus-
47 tees, the time of the annual election and the names of the persons to be
48 its trustees until the first or next annual meeting. Each corporation
49 may petition the supreme court for an order consolidating or merging the
50 corporations, setting forth the agreement for consolidation or merger
51 and a statement of its real property and of its liabilities. Before the
52 presentation of the petition to the court the agreement and petition
53 must be approved by two-thirds of the votes cast in person or by proxy
54 at a meeting of the members of each corporation called for the purpose
55 of considering the proposed consolidation or merger in the manner
56 prescribed by section [~~forty-three of the membership corporations law~~]

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1 six hundred five of the not-for-profit corporation law. An affidavit by
2 the president and the secretary of each corporation stating that such
3 approval has been given shall be annexed to the petition. On presenta-
4 tion to the court of such petition and agreement for consolidation or
5 merger and on such notice as the court may direct, the court after hear-
6 ing all the parties interested desiring to be heard, may make an order
7 approving the consolidation or merger. When such order is made and duly
8 entered and a certified copy thereof filed with the secretary of state
9 and in the offices of the clerks of the counties in which the certif-
10 icates of incorporation of the several constituent corporations were
11 recorded, or if no such certificate was recorded, then in the office of
12 the clerk of the county in which the principal place of worship of the
13 new or surviving corporation is intended to be situated, such corpo-
14 rations shall become one corporation by the name designated in the order
15 and the trustees named in the agreement for consolidation or merger
16 shall be the [first] trustees of the consolidated corporation.

17 § 54. Section 209 of the religious corporations law, as added by chap-
18 ter 117 of the laws of 1927, is amended to read as follows:

19 § 209. Effect of consolidation. The consolidated or merged corpo-
20 ration shall possess all the powers of the constituent corporations and
21 shall have the power and be subject to the duties and obligations of a
22 congregation of the Jewish faith formed for like purposes under the
23 religious corporations law. All the rights, privileges and interests of
24 each of the constituent corporations, all the property, real, personal
25 and mixed, and all the debts due on whatever account to either of them,
26 and all things in action, belonging to either of them, shall be deemed
27 to be transferred to and vested in such new corporation without further
28 act or deed; and all claims, demands[~~er~~], property, and every other
29 interest, belonging to the several constituent corporations, shall be as
30 effectually the property of the new corporation as they were of the
31 constituent corporations, and the title to all real property, held or
32 taken by deed or otherwise under the laws of this state, vested in the
33 several constituent corporations shall not be deemed to revert or to be
34 in any way impaired by reason of the consolidation but shall be vested
35 in the new corporation. Any devise, bequest, gift, grant, or declaration
36 of trust, contained in any deed, will, or other instrument, in trust or
37 otherwise, made before or after such consolidation, or merger to or for
38 any of the constituent corporations, shall inure to the benefit of the
39 consolidated or merged corporation. The consolidated corporation shall
40 be deemed to have assumed and shall be liable for all debts and obli-
41 gations of the constituent corporations in the same manner as if such
42 new corporation had itself incurred such debts or obligations.

43 § 55. This act shall take effect January 1, 2014, provided that
44 section three of this act and paragraph (d) of section 8-1.9 of the
45 estates, powers and trusts law as added by section eight of this act
46 shall not be applicable until January 1, 2015 for any corporation or
47 trust that had annual revenues of less than 10,000,000 dollars in the
48 last fiscal year ending prior to January 1, 2014.

49 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
50 sion, section or part of this act shall be adjudged by any court of
51 competent jurisdiction to be invalid, such judgment shall not affect,
52 impair, or invalidate the remainder thereof, but shall be confined in
53 its operation to the clause, sentence, paragraph, subdivision, section
54 or part thereof directly involved in the controversy in which such judg-
55 ment shall have been rendered. It is hereby declared to be the intent of

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1 the legislature that this act would have been enacted even if such
2 invalid provisions had not been included herein.

3 § 3. This act shall take effect immediately provided, however, that
4 the applicable effective date of Parts A through B of this act shall be
5 as specifically set forth in the last section of such Parts.

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