
BOND INFORMATION MEMO

Exempt Organizations Law

July 2013

Nonprofit Revitalization Act of 2013

The New York State Legislature has passed the Nonprofit Revitalization Act of 2013 (the "Act"). If signed by Governor Cuomo, the Act will become effective July 1, 2014. The Act makes a number of significant changes to the law regarding nonprofit corporations. These changes will affect virtually every nonprofit corporation in the State of New York.

Some of the most significant changes included in the Act are as follows:

- All nonprofits must adopt written conflict of interest policies, and nonprofits with 20 or more employees and annual revenue of more than \$1 million must also adopt whistleblower policies.
- Boards and board committees must protect against self-dealing by independently reviewing transactions between the nonprofit and any related parties and must make a determination of whether any such transactions are in the nonprofit's best interest.
- Individuals that may benefit from compensation paid by the nonprofit will not be allowed to participate in deliberations regarding, or vote with respect to, their own compensation.
- An employee of a nonprofit is prohibited from also serving as its board chair.
- The gross revenue threshold of the requirement for an independent CPA's audit is raised from \$250,000 to \$500,000, and for an independent CPA's review from \$100,000 to \$250,000. The gross revenue threshold for CPA audits will escalate between 2017 and 2021. The Attorney General will have the authority to request an independent CPA's audit for nonprofits with gross revenue over \$250,000 after reviewing their annual filings.
- Nonprofits meeting the income threshold requiring an independent CPA audit must have their boards or board committees perform certain oversight functions to ensure that the board is aware of, and responds to, any issues identified by the auditors.
- Facsimile and e-mail may be used for board and membership meeting notices and waivers of notice, and may also be used for votes that require unanimous written consent.



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- Board members can participate in meetings by video conference, Skype and other forms of video communication.
- Makes clear that nonprofit officers, directors, key employees and agents are subject to the personal jurisdiction of New York State courts and those individuals shall be subject to service of process in any suit undertaken by the Attorney General.
- Non-substantial real estate transactions no longer require a two-thirds vote of the board and may now be approved by either a majority vote of the board or a board committee (with notice to the board).
- Allows nonprofits to make filings and registrations with the Attorney General electronically.
- Simplifies the process for nonprofit corporations seeking to sell, lease, exchange or transfer all or substantially all of their assets by allowing a one-step approval process with the Attorney General, rather than the previous two-step process which required court approval.

Conclusion

The Nonprofit Revitalization Act of 2013 creates both opportunities and responsibilities for nonprofit organizations to review, update and improve their operational policies and procedures based on the new statutory requirements. This will require, among other things, the adoption of new policies and possible changes to organizational documents. We will be presenting a series of seminars in order to assist nonprofit boards in developing an understanding of the challenges and opportunities that the Act presents.

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