

Nonprofit Institutions Alert

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Massachusetts Senate Adopts Legislation Limiting Compensation of Non-Employee Officers, Directors, and Trustees of Public Charities

BY ANTHONY E. HUBBARD AND NATHAN N. MCCONARTY

Late last week, the Massachusetts Senate adopted legislation that would require public charities to obtain approval from the Massachusetts Attorney General before compensating non-employee officers, directors, and trustees for their service in those roles. A “Massachusetts based public charity” seeking to compensate officers, directors, or trustees would be required to submit an application to the Director of the Non-Profit Organizations/Public Charities Division that demonstrates in a clear and convincing manner that compensation is necessary to attract and retain experienced and competent individuals to serve as non-employee officers, directors, and trustees. The Senate legislation provides that if an application is approved, the compensation granted to non-employee officers, directors, or trustees must be reasonable as compared to the purposes for which it is awarded. After granting approval, if the Director of the Non-Profit Organizations/Public Charities Division later finds it excessive, the Director may rescind the compensation authorization.

The legislation defines a “Massachusetts based public charity” as a public charity established under the laws of Massachusetts and specifically includes a public charity established outside of Massachusetts if the organization “primarily conducts its business in the commonwealth.”

If the legislation becomes law, the foregoing requirements would become effective six months after its enactment. The Director of The Non-Profit Organizations/Public Charities Division may adopt regulations to carry out the foregoing provisions.

Continuing a trend we are seeing in other states, the Senate legislation also authorizes the Massachusetts Attorney General to review the compensation of public charity directors, officers, and senior managers acting in an executive capacity for the purpose of considering appropriate compensation levels. As opposed to the application submission provisions discussed above, which apply only to Massachusetts-organized institutions and those foreign public charities that “primarily” conduct their business in Massachusetts, this broad-based review of executive compensation covers all public charities that are required to register with the Non-Profit Organizations/Public Charities Division. The legislation permits the Attorney General to consider compensation standards of public charities under her oversight as well as compensation standards by public charities on a nationwide basis. This portion of the legislation would become effective upon enactment of the legislation. The Attorney General is required to submit her report, including her recommendations concerning excessive compensation, to the Massachusetts Senate and House of Representatives by no later than December 31, 2012.

The Senate legislation was approved in the form of an amendment to the Massachusetts budget for fiscal 2013. As a comparable amendment was not included in the Massachusetts House version of the state budget, the House will review and have the opportunity to make additional revisions. A joint Senate and House committee has been convened to consider this legislation and other matters. Given the Patrick Administration’s track record of working together with the Massachusetts legislature to complete annual budgets in a timely manner, the fate of the Senate legislation may well be resolved by June 30, 2012.

As this legislation could have broad implications for public charities operating in Massachusetts and their executives, Mintz Levin's Nonprofit Institutions team will continue to monitor developments and provide updates. We are available to advise and assist organizations that are interested in further information.

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Contact Mintz Levin's Nonprofit Institutions attorneys listed below with any questions you may have.

Anthony E. Hubbard
617.348.1706
AEHubbard@mintz.com

Peter M. Miller
617.348.1726
PMMiller@mintz.com

Travis L. Blais
617.348.1684
TLLBlais@mintz.com

Nathan N. McConarty
617.348.4402
NNMcConarty@mintz.com

Boston · London · Los Angeles · New York · San Diego · San Francisco · Stamford · Washington

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