

New York State Bar Association

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Memorandum urging APPROVAL

NYSBA Memorandum #13 GOV

December 6, 2013

S.5845

By: Sen. Ranzenhofer

A.8072

By: M of A Brennan

Senate Committee: Corporations

Assembly Committee: Corporations

Effective Date: July 1, 2014

THE NEW YORK STATE BAR ASSOCIATION STRONGLY URGES APPROVAL OF THE NON-PROFIT REVITALIZATION ACT

The New York State Bar Association has been working toward revision of the Not-For-Profit Corporation Law (NFPCL) for many years, including developing legislation first introduced in 2008. The Association's Business Law Section through its Subcommittee on Not-For-Profit Corporations identified several areas of the NFPCL that, if revised, would make New York State a more desirable place for not-for-profit corporations to incorporate and do business.

The Association is pleased that many other interested parties have since come forward to identify concerns with the current NFPCL statutory scheme. We also appreciate the statewide series of public hearings held in May to engage stakeholders in developing evidence of the clear need to revise the law.

The not-for-profit sector in New York is enormous and wide ranging, including such entities as foundations, charities, health care organizations, service agencies, cultural institutions, religious organizations, research and educational centers, and more. The impact of the sector is vital to the people and economy of the State.

The Association has long held the view that the NFPCL should be revised to remove the incentives for organizations to incorporate out of state; reduce government burdens; simplify non-profit transactions and governance without compromising oversight; and generally to modernize a long-neglected statute.

This bill would address significant concerns. In particular, the bill would eliminate the designation and distinction among statutory "types" of not-for-profit corporations. The four current statutory types complicate the formation process given some ambiguity among types.

The bill also would, in many cases, eliminate the need to obtain certain state agency consents as a condition of incorporation, a legal oddity unique to New York. An unintended consequence of this current requirement is the unnecessary and unwarranted delay in incorporation with unclear benefits to the public interest.

In conclusion, this bill would reduce barriers to the formation of not-for-profit corporations in New York, while maintaining state oversight and the fiduciary responsibilities of not-for-profit directors and officers.

Based on the foregoing, the Association, with its 76,000 members, **STRONGLY URGES APPROVAL** of this legislation, which is among our legislative priorities in 2013.