

New state laws revamp NY's nonprofit sector

Audit rules, mergers, board meetings part of 'overdue' overhaul

By **CLAUDE SOLNIK**

Modernizing antiquated regulations, easing financial burdens and approving new technological protocols are among the functions of new state laws targeting nonprofit organizations.

As of this coming July, the New York Nonprofit Revitalization Act of 2013 will take some bold steps – including higher thresholds where mandatory audits kick in, new rules allowing board members to meet via conference call and video and

overhauled conflict-of-interest and merger policies – with the ultimate goal of attracting new not-for-profit groups to New York.

Ken Cerini, managing partner at Cerini & Associates, a Bohemia accounting firm with a heavy focus on health care and nonprofits, called the new laws “long overdue.”

“The laws haven’t changed in many years,” Cerini said. “I don’t know if it’s bringing the nonprofit laws into the 21st century, but close enough.”

There’s more at stake here than saving nonprofit organizations some money. For instance, a cash-strapped state government can get more mileage out of its nonprofit funding if recipient organizations spend less on regulation compliance and more on service.

“The government’s cutting back on what it’s giving to the nonprofit sector,”

Cerini noted. “The government wants to make sure the sector’s working, that smaller organizations have the ability to function effectively.”

In what is potentially the biggest money saver in the new package of laws, the threshold at which nonprofit audits are required doubles from \$250,000 to \$500,000 in annual revenue. And it won’t stop there: The threshold increases to \$750,000 in July 2017 and to \$1 million in 2021.

The threshold for mandatory reviews – less costly financial examinations – increases from \$100,000 to \$250,000 this summer.

“This is a relief for small charities especially,” said Marla Esan, senior manager in Marcum’s Tax and Businesses Service Group in Melville. “Many will begin to fall under the threshold to obtain an independ-

ent audit.”

Fewer audits could lead to certain financial abuses at smaller groups, but nonprofits will still be required to file tax returns and answer to regulators – and overall, raising the audit threshold is “a good thing,” according to Ann Marie Thigpen, director of Adelphi University’s Center for Nonprofit Leadership.

“It’s reasonable – audits are expensive,” Thigpen said. “They still have to file reports with the attorney general.”

And the bulk of contributions made to charity organizations will still be subject to regular audits, Cerini noted.

“You’ll still probably have 80 to 85 percent of the dollars that flow to (larger) nonprofits covered by audit,” Cerini said.

There could be some backlash if donors feel smaller nonprofits don’t provide assurances that donations are well spent, he added, but that’s not likely to occur on a large scale.

“Organizations still need to have effective controls,” Cerini said. “But there may be large donors who go back to nonprofits that say, ‘We won’t donate to you unless you have an audit.’”

In some cases, organizations may request such audits. Some board members, for instance, could find themselves missing the reassurance that comes with an auditor looking over their shoulders. Esan predicted there could “be some ripple” in that direction.

New York follows several states that have raised their audit and review thresholds, including New Jersey, which in 2011 doubled its audit thresholds from \$250,000 to \$500,000. Illinois raised its audit threshold in 2010 from \$150,000 to \$300,000 in annual revenues, a year after Connecticut increased its own threshold from \$200,000 to \$500,000, Esan said. Also in 2009, Minnesota lifted its audit threshold from \$250,000 to \$750,000 and Michigan doubled its minimum to \$500,000.

“Many states are increasing the threshold,” Esan said. “A lot of states listen to smaller charities’ cry for help. These costs for smaller charities can be quite onerous.”

The new New York law also recognizes a reality that has outpaced older regulations:

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Many groups’ boards already meet via videoconferencing, in violation of state law, but that will be legal as of July. Labeling such meetings illegal was “preposterous,” Thigpen noted.

“The whole point of it is for New York State to catch up with modern technology and make best practices explicit,” she said.

In order to further simplify life in the nonprofit sector, New York is also reducing the number of nonprofit categories from four to two – “charitable” and “not charitable.” And courts will no longer be required to approve mergers between nonprofit organizations, a process that currently takes months if not longer – only the state attorney general’s approval will be necessary now.

“It eliminates one step,” Thigpen said. “Going before the courts was a perfunctory thing. This streamlines it.”

Other nonprofit rules coming in July: Nonprofits will be required to have written conflict-of-interest policies, organization executives will no longer be allowed to attend board meetings wherein board members are voting on executive compensation packages and nonprofits with \$1 million or more in annual revenues will be required to create and publish whistleblower policies designed to safeguard public interests.

For some in the nonprofit industry, the question is not whether the new laws are sound, but why they took so long to get on the books.

“This revitalization act was 50 years in the making,” Thigpen said. “I think people just didn’t pay attention. Nobody bothered to look at nonprofit requirements until now.”

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MARLA ESAN: Raising the threshold for mandatory audits will be a relief for small nonprofits.