

May, 2022

Subject: S-9047 (Comrie)/A-9969 (Paulin)

Position: Strongly Support

The Lawyers Alliance for New York, New York Council of Nonprofits, and Nonprofit New York strongly support S-9047 (Comrie)/A-9969 (Paulin) because it would modernize New York's Not-for-Profit Corporation Law (N-PCL)<sup>1</sup> to align with current practice, allow board vacancies to be filled for the duration of a vacant seat, and codify that conflicted directors who leave a meeting do not disturb the quorum.

#### Decisions Through Electronic Means

Under N-PCL Â§ 614(a) and 708(b), board and member unanimous consent decisions without a meeting are only allowable by a writing or by email. Organizations currently use various electronic portals rather than email because they are much more efficient than collecting votes by email. A-9969 would explicitly allow Board and member unanimous consent decisions without a meeting to be done through electronic means.

#### Board Class Vacancies

Under the N-PCL Â§ 705(c), replacement directors can only be elected by board to hold office until the next annual members or directors meeting at which election of directors is in the regular order of business. Most nonprofits logically think that the board can fill the vacant seat for the remaining term of that class; instead they have to put the newly elected director in for a short term and then classify at the next election. A-9969 provides that vacancies are to be filled for the remainder of an unexpired term, but also allows a board to select a different period that concludes at an annual meeting in order to rebalance uneven class sizes or achieve other objectives.

#### Conflicted Directors and Quorum

Under the N-PCL Â§ 708(d), an action is only approved if a quorum is present at the time of the vote. In some instances, a meeting begins with a quorum but one or more directors must leave the meeting due to conflicts, which may result in disrupting the quorum. In 2014, language was added to the N-PCL to avoid this problem; however, practitioners recognize continuing confusion arising out of this change. A-9969 would clarify that conflicted directors who leave a meeting do not disturb the quorum.

For more information, please contact Chai Jindasurat, Vice President of Policy at Nonprofit New York: [cjindasurat@nonprofitnewyork.org](mailto:cjindasurat@nonprofitnewyork.org).