

SENATE No. 766

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act regulating compensation of board members of public charities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol and Plymouth</i>

SENATE No. 766

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 766) of Mark C. Montigny, Robert M. Koczera, Gale D. Candaras, Martha M. Walz and others for legislation to regulate compensation of board members of public charities. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act regulating compensation of board members of public charities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 12 of the General Laws is hereby amended by inserting after
2 section 8F the following section:-

3 Section 8F 1/2. (a) For the purposes of this section, the following words shall have the
4 following meanings:-

5 “Compensation”, anything given or received for or on account of services, not including
6 (i) reimbursement for costs and expenses reasonably incurred by the independent officer, director
7 or trustee in the course and support of such service, or (ii) any noncash items of value that may
8 be set forth in regulations by the attorney general.

9 “Independent officer, director or trustee”, an officer, director or trustee of a public
10 charity, not including an employee of the public charity or an employee of a subsidiary or
11 affiliate of the public charity.

12 “Massachusetts based public charity”, a public charity incorporated or otherwise
13 organized in Massachusetts or, if incorporated or organized outside of Massachusetts, that
14 primarily conducts its business in Massachusetts.

15 “Professional fiduciary services”, fiduciary services provided as part of the ordinary
16 course of the trade or business of an individual or institution.

17 (b) No Massachusetts based public charity required to be registered under section 8E and
18 to file annual reports under section 8F shall provide compensation to any independent officer,
19 director or trustee for service as an independent officer, director or trustee except with the

20 approval of the attorney general under this section; provided, however, that an independent
21 officer, director or trustee who provides professional fiduciary services to a Massachusetts based
22 public charity may receive compensation for providing those services but shall not receive
23 compensation for otherwise serving as an independent officer, director or trustee except with the
24 approval of the attorney general under this section.

25 Any Massachusetts based public charity intending to provide compensation to any
26 independent officer, director or trustee shall file an application with the division, on the forms
27 and with the supporting information and documentation as the attorney general shall from time to
28 time prescribe, requesting the approval of the attorney general to provide compensation.

29 The attorney general may adopt and promulgate guidelines, rules or regulations to carry
30 out the provisions of this section including, but not limited to, the criteria for granting approval
31 and the time period during which the approval shall be effective. The criteria shall recognize that
32 service as an independent officer, director or trustee of a public charity is recognized as a
33 voluntary contribution of time and expertise to benefit the community served by the public
34 charity and that any departure from the voluntary nature of that service requires a clear and
35 convincing showing that compensation is necessary to enable the public charity to attract and
36 retain experienced and competent individuals to serve as independent officers, directors or
37 trustees. These regulations may also authorize the attorney general to exempt categories of
38 charities from the prohibition of this section if the exemption serves the public interest. Any
39 regulations allowing for an exemption shall set forth the criteria for granting an exemption.

40 If the attorney general approves an application for compensation, the amount paid as
41 compensation shall be limited to the amount the Massachusetts based public charity reasonably
42 determines to be necessary to accomplish the purposes for which compensation is paid. The
43 attorney general may rescind the approval for compensation if he finds that any compensation
44 paid under this section is in excess of that reasonably necessary to accomplish the purposes for
45 which compensation is approved and paid.

46 SECTION 2. Section 1 shall take effect 6 months after the effective date of this act.