

Legislature Hears Testimony on Legislation Limiting the Right of Public Charities to Compensate Independent Directors

September 30, 2011

On Tuesday, September 27, 2011, the Massachusetts Joint Committee on the Judiciary heard testimony on H.3516 – a bill that would regulate compensation of board members for public charities.

The bill, introduced by Representative Martha Walz, would prohibit Massachusetts-based public charities from compensating independent (non-employee) officers, directors and trustees, except in instances where the charity can make a clear and convincing showing, by means of an application to the Non-Profit Organizations/Public Charities Division of the Attorney General's Office (AGO), that compensation is necessary to enable the public charity to attract and retain the services of experienced and competent individuals. The bill allows the AGO to prescribe criteria for approval of such applications, and also allows the AGO to rescind its approval if it determines that the level of compensation paid by the public charity exceeds what is reasonably necessary.

Attorney General Martha Coakley testified in favor of the bill, arguing that compensation of board members of public charities raises conflict of interest concerns and is antithetical to the charitable mission of the organizations that the board members serve, concluding that “voluntary service has been the rule historically and makes sense.”

The Attorney General was joined in testifying in support of the bill by Representative Walz, as well as Senator Mark Montigny, who has introduced similar legislation in the Senate, and Professor F. Warren McFarlan of Harvard Business School, who testified that, in his experience, public charities have no trouble attracting qualified individuals to board service absent compensation.

Testifying in opposition to the bill, Jeffrey Poulos, the Executive Director of Associated Grant Makers, argued that current laws sufficiently regulate director compensation at public charities.

We have previously covered the increased scrutiny of public charities that choose to compensate independent directors, and will continue to track the progress of H.3516, as well as similar legislation pending before the Senate. Foley Hoag is available to assist organizations and their boards in navigating the requirements that may be imposed by this legislation. All Massachusetts-based public charities are well-advised to assess the processes and rationale by which decisions about independent director compensation are made.

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