SENATE DOCKET, NO. 1240 FILED ON: 1/20/2011

SENATE . . . . . No. 824

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 passage of the accompanying:

An Act relative to public charities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Mark C. Montigny	
	☐ *[District]*
	☐

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SENATE . . . . . No. 824

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 824) of Mark C. Montigny for legislation relative to public charities. The Judiciary.

The Commonwealth of Massachusetts

An Act relative to 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:

Section 1. Chapter 12 of the General Laws, as appearing in the 2008 Official Edition, is amended by inserting after Section 8N, the following new sections:-

Section 8O. Whistleblower complaints

Any public charity, with the exception of charities with no paid employees, required to file an annual report pursuant to section eight F shall comply with the requirements of this section.

A public charity shall not retaliate against any employee of the public charity who has filed a complaint with the governing board, directors or trustees, the attorney general or any other government agency pertaining to the following: (a) dissipation of the charity's assets; (b) the mishandling or misuse of restricted funds; (c) related party transactions; (d) compliance with state or federal reporting requirements; (e) overriding or circumventing of the charity's internal controls; (f) private inurement; and (g) fraud.

All records pertaining to any complaint that falls under this section and its resolution shall be retained by the public charity for four years from the date the complaint was filed and shall also be made available to the attorney general upon request of the attorney general. These documents shall not constitute public records subject to section eight M or section ten of chapter sixty-six of the general laws.

If a public charity or the responsible officer or agent willfully retaliates against an employee for a complaint that falls under this section, the attorney general, in addition to any other statutory or common law remedies, may seek: (a) compensation for the employee; (b) back pay for the employee; or (c) any appropriate order prohibiting the reoccurrence of the unlawful conduct.

23 Section 8P. Audit committee policies and procedures

24 Any public charity, with the exception of testamentary or inter vivos trusts, required to
25 file an annual report pursuant to section eight F shall comply with the requirements of this
26 section.

27 If a public charity is required to file an audit with its annual report pursuant to section
28 eight F, the trustees or governing board shall appoint an audit committee of not fewer than three
29 persons. The audit committee may include persons who are not members of the board so long as
30 the majority of the audit committee is made up of members of the board, but the members of the
31 audit committee shall not include any employees of the public charity. Members of the audit
32 committee may not receive any compensation from the organization in excess of the standard
33 compensation, if any, received by all trustees or members of the board in exchange for their
34 service as trustees or as members of the board. No member of the audit committee shall have
35 any material financial interest in any entity doing significant business with the public charity, nor
36 have engaged in any related party transactions within the three years preceding appointment to
37 the audit committee. The board may designate its finance committee or other permanent
38 committee of the board to perform the audit committee function, so long as it is in compliance
39 with all of the audit committee membership requirements of this paragraph. If a charitable
40 corporation that is required to have an audit committee is under the control of another charitable
41 corporation, the controlled organization's audit committee may be the audit committee of the
42 controlling corporation, so long as that audit committee complies with all of the requirements of
43 this section.

44 Subject to the supervision of the board, the audit committee, or other such committee
45 functioning as the audit committee, shall be responsible for making recommendations to the
46 board regarding: (a) the selection, retention and termination of an independent auditor; (b) the
47 compensation of the auditor; (c) measures to ensure that the internal controls are documented by
48 management and evaluated as part of the audit; (d) the process by which the audit committee
49 shall review the audit and the management letter, if any, with the auditor and work with the
50 auditor and management of the organization to resolve or recommend resolution to the board of
51 any issues of concern arising from the audit or the management letter; and (e) measures to ensure
52 that any non-audit services provided by the auditing firm conform with the standards of
53 independence required in section eight F. Prior to the board's consideration of and action on the
54 independent auditor's report, the audit committee shall report to the board on the results of the
55 audit.

56 Section 8Q: Related party contracts, transactions and compensation

57 In the administration and operation of any public charity, the following acts shall be
58 prohibited: (a) engaging in any act that the Internal Revenue Service determines constitutes an
59 "excess benefit transaction" under section 4958 of the Internal Revenue Code; and (b) engaging

60 in any act that would constitute an "excess benefit transaction" under the standards of section
61 4958 of the Internal Revenue Code.

62 The documentation required by 26 C.F.R. section 53.4958-6(a)(3) shall be
63 maintained for at least four years after the transaction was approved and shall be made available
64 to the attorney general upon request of the attorney general. These documents shall not
65 constitute public records subject to section eight M or section ten of chapter sixty-six of the
66 general laws.

67 If the attorney general determines that any contract, compensation arrangement or
68 transaction is an excess benefit under this section or constitutes "self-dealing" under chapter
69 sixty-eight A, section (1)(a), the attorney general may, in addition to any other remedies
70 available under statutory or common law, bring an action in superior court to: (a) impose a fine
71 equal to the value of what the Internal Revenue Code permits as a fine if the contract,
72 compensation agreement or transaction was an Internal Revenue Code sanctioned transaction;
73 (b) recover restitution from the related party; and/or (c) obtain any other appropriate legal or
74 equitable relief in the public interest, including removal of trustees, directors or officers.

75 References to the Internal Revenue Code and the regulations promulgated thereunder in
76 this section and in section eight A shall mean the United States Internal Revenue Code of 1986,
77 as amended, and the regulations promulgated thereunder as such are in effect on the effective
78 date of this section.

79 If said Internal Revenue Code or said regulations are amended after the
80 effective date of this section, then, unless the director shall determine otherwise, by regulation,
81 said references shall mean the Internal Revenue Code and regulations as so amended.

82 The director may exempt certain de minimis contracts, transactions or
83 compensation from the requirements of this section if the director determines that such
84 exemptions are in the public interest."

85 SECTION 2. Chapter 180 of the General Laws, as appearing in the 2008
86 Official Edition, is hereby amended by inserting after section 29 the following sections:-

87 Section 30. Executive Compensation Caps

88 Any public charity with annual gross revenues in excess of $1,000,000.00 are
89 subject to the following provisions: (a) no officer, director, trustee or senior manager shall
90 receive annual compensation in excess of $500,000.00; (b) compensation, as defined by this
91 Section, includes salary, bonus payments, incentive payments, deferred compensation, severance
92 payments, below market rate loans, and the lease or rental of any vehicle.

93 Section 31. Waiver Hearing

94 Any public charity as defined in Section 30 of this chapter seeking to
95 compensate an officer, director, trustee, or senior manager in excess of the executive
96 compensation cap as defined in Section 30 of this chapter shall be entitled to a public hearing
97 before the a commission comprised of the secretary of the commonwealth, inspector general and
98 attorney general ("Commission").

99 Any public charity seeking said waiver shall comply with the following
100 requirements (a) request a hearing in writing to the Commission indicating good cause for any
101 deviation from the limits set forth in Section 30; (b) such hearing shall be conducted before the
102 Commission within six months of receipt of a written request by a public charity; (c) the board of
103 the public charity shall be responsible for the compensation of an independent auditor. The
104 Auditor of the Commonwealth shall certify the independent auditor's professional competence;
105 certify that the independent auditor has no material financial interest in any entity doing
106 significant business with the public charity; and that the independent auditor has not engaged in
107 any related party transactions within the three years preceding appointment. The Auditor of the
108 Commonwealth shall provide written confirmation to the Commission that these requirements
109 have been satisfied.

110 The independent auditor shall provide a written report to the Commission seven days
111 prior to any hearing conducted pursuant to this Section.

112 The Commission shall review and consider the independent auditor's report at
113 the waiver hearing. The public charity and members of the general public shall be permitted to
114 present additional evidence in support or opposition to such a waiver; all audit documents and
115 any additional evidence submitted at a waiver hearing shall be deemed public records subject to
116 section ten of chapter sixty-six of the general laws.

117 At the close of the waiver hearing, the Commission shall weigh all evidence
118 presented, the charitable purpose of the public charity, and the public interest of the
119 Commonwealth.

120 Final determination as to whether a waiver shall be granted shall rest with the
121 Commission who shall make said determination in writing within thirty days of the waiver
122 hearing. Such a waiver shall be granted only if deemed in the public interest of the
123 Commonwealth. If a waiver is granted, it shall be valid only for a period of two years from the
124 date of the decision of the Secretary of the Commonwealth.

125 Section 32. Penalties

126 Any public charity found in violation of Section 30 of this chapter, and having failed to
127 obtain a waiver pursuant to Sections 31 of this chapter, shall lose its status as a public charity as
128 it is organized and operates under the general laws.