

NEW YORK STATE LEGISLATIVE DEVELOPMENTS FOR TAX-EXEMPT ORGANIZATIONS/NONPROFITS

Hodgson Russ Tax-Exempt Organizations Alert
December 15, 2021

This Client Alert highlights two recent legislative developments applicable to nonprofit organizations in New York State.

NY Executive Law 172-b Amendment: Repeal of NYS DOS Filing Requirements

Governor Hochul signed S4817a/A1141a into law on November 12, 2021. S4817a amended New York's Executive Law 172-b, repealing in part the controversial and burdensome requirement that certain organizations registered with the New York State Attorney General Charities Bureau (the "Charities Bureau") also file specified documentation with the New York Department of State (the "NYS DOS"). In addition to requiring duplicative filings, Executive Law 172-b was subject to significant criticism because it forced public disclosure by organizations of previously confidential information concerning their donors on their Forms 990 (namely, Schedule B donor disclosure lists) to the NYS DOS, but did not require that the information provided be kept confidential. Now, as a result of the repeal, most nonprofits are no longer required to file with the NYS DOS. It should be noted, however, that nonprofits that were required to register and file Form CHAR500 annual statements with the Charities Bureau are still required to do so. For more information on the Charities Bureau filing requirement, please see our prior alerts ([May 14, 2021](#) and [November 10, 2021](#)).

Importantly, organizations subject to Executive Law 172-e and 172-f are still required to file with the NYS DOS, in addition to filing with the Charities Bureau. Executive Law 172-e applies to 501(c)(3) charitable organizations that make an in-kind donation of \$10,000 or more to 501(c)(4) social welfare organizations that spend \$15,000 or more in a twelve-month period on lobbying New York State or county or local governments within the state and the lobbying expenditures constitute at least 3% of the 501(c)(4)'s total revenues. Executive Law 172-f applies to certain 501(c)(4) social welfare organizations that spend \$10,000 or more in a twelve-month period on "covered communications." A "covered communication" is conveyed to 500 or more members of the general public, and "refers to and advocates for or against a clearly identified elected official, executive or administrative body or legislative body relating to the sponsorship, support, opposition, or outcome of any proposed legislation, pending legislation, rule, regulation, hearing or decision, or

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advocates for or against action by any elected official, executive or administrative body or legislative body.”

NY Not-for-Profit Corporation Law Amendment: Electronic Member Meetings

Governor Hochul signed S1182/A01237 into law on November 8, 2021, which amended section 603(a) of the New York Not-for-Profit Corporation Law, making permanent the allowance for member meetings to take place remotely by utilizing electronic and/or audio-visual communication technologies.

Prior to amendment, the law allowed for electronic meetings only during the state disaster emergency (beginning March 7, 2020) as declared by Executive Order 202. The amendment, however, removes this temporal limitation, and makes permanent the ability of a nonprofit organization’s board of directors to authorize member meetings to take place partially or solely by means of electronic communication, in the board’s discretion, unless otherwise restricted by the organization’s certificate of incorporation or bylaws. As was the case during the emergency allowance, this allowance is still subject to certain requirements. Specifically, the board of directors must implement reasonable measures to do the following:

- Verify that each person participating electronically is a member or proxy of a member;
- Provide each member participating electronically with a reasonable opportunity to participate in the meeting, including an opportunity to propose, object to, and vote upon a specific action to be taken by the members, and to see, read, or hear the proceedings of the meeting substantially concurrently with those proceedings; and,
- Record and maintain a record of any votes or other actions taken by electronic communication at the meeting.

Though the COVID pandemic has presented unique challenges for nonprofit organizations, these legislative developments will hopefully provide some administrative relief and increased efficiencies.

The professionals at Hodgson Russ LLP will continue to monitor relevant developments and publish updates as information becomes available. Please contact [Marla Waiss](#) (716.848.1203) or [Patricia Sandison](#) (518.433.2427) for any questions you may have regarding how these changes may impact your organization.