

Legal Compliance Checklist for North Carolina Nonprofits

Created by the North Carolina Center for Nonprofits and updated annually, the legal compliance checklist outlines laws that affect North Carolina nonprofits' governance, finances, advocacy, human resources, and fundraising. This checklist is not intended to give legal advice and should not be relied on without your attorney's counsel. Throughout the document, the term "nonprofit" generally refers to 501(c)(3) public charities incorporated in or operating in North Carolina. Private foundations and nonprofits classified as tax-exempt under other Internal Revenue Code sections may be subject to different rules and regulations.

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☐ Filed your articles of incorporation?	• All NC nonprofits must file articles of incorporation with the NC Secretary of State to operate as a nonprofit corporation. • Any individual (incorporator) can file the articles.	• File with the NC Secretary of State Business Registration Division, www.sosnc.gov/divisions/business_registration. • Then adopt bylaws and related governance policies at your initial board meeting. • It is a good practice for nonprofit boards and key staff to review articles of incorporation and bylaws regularly to be certain they are consistent with each other, with state laws, and with the organization's actual practices.
☐ Updated your registered agent's name, phone number, and physical addresses with the NC Secretary of State?	• Any nonprofit incorporated (or authorized as a foreign nonprofit) in North Carolina that has changed its principal office address, registered office address, or registered agent. • Note: If your nonprofit is registered as a foreign corporation in other states, you may need to file annual reports in those states. Currently, North Carolina is one of the few states that does not require nonprofit corporations to file annual reports. The Center continues to advocate for the state to adopt a simple, no-fee annual report for nonprofit corporations.	• File a Change of Registered Office/Agent or Change of Office Address form at any time. To get the form or check what is on file now, contact the NC Secretary of State, www.sosnc.gov/divisions/business_registration.
☐ Filed IRS Form 1023 to apply for federal corporate tax exemption and made it available to the public?	• All nonprofits with gross receipts of \$5,000 or more that want to receive tax-deductible grants or contributions. • Churches, their integrated auxiliaries, and conventions or associations of churches do not have to apply. For more, see IRS Publication 1828 (www.irs.gov/pub/irs-pdf/p1828.pdf). • Many organizations with annual gross receipts of \$50,000 or less and total assets of \$250,000 or less may file the online Form 1023-EZ.	• Make your form available for review by anyone who requests it. • Download Form 1023 at www.irs.gov/pub/irs-pdf/f1023.pdf and instructions at www.irs.gov/pub/irs-pdf/i1023.pdf. • Download Form 1023-EZ at www.irs.gov/pub/irs-pdf/f1023ez.pdf and instructions at www.irs.gov/pub/irs-pdf/i1023ez.pdf. The form must be filed electronically at www.pay.gov. • File within 27 months of incorporation for retroactive recognition of tax exemption.
☐ Filed Form 990, 990-EZ, or 990-N (e-Postcard) and made your forms for the past three years publicly available?	• Nonprofits with \$50,000 or less in annual gross receipts may use the online Form 990-N (e-Postcard). Very small nonprofits with budgets under \$5,000 do not need to file, even if they are not required to file Form 1023. • Nonprofits with annual gross receipts of more than \$50,000 or with an average of more than \$50,000 over the past three years must file a 990 or 990-EZ. • Nonprofits with annual gross receipts under \$200,000 and total assets under \$500,000 may file Form 990-EZ. • All supporting or controlling organizations must file Form 990 or 990-EZ. • Most nonprofits must file Form 990 or 990-EZ electronically for fiscal years beginning on or after July 2, 2019. The IRS may allow small nonprofits with annual gross receipts under \$200,000 and total assets under \$500,000 to file paper forms for two more years.	• File the form each year by the 15th day of the 5th month after your fiscal year ends (e.g., Nov. 15 if your year ends June 30). • Large nonprofits (over \$10 million in assets) and private foundations must file electronically if you file at least 250 tax returns per year. Congress is considering legislation requiring all tax-exempt nonprofits to file their 990s electronically, but would have a two-year hardship delay for small nonprofits with annual budgets below \$200,000 and less than \$500,000 in assets. • Get forms at www.irs.gov/charities-non-profits/required-filing-form-990-series and www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. • You must make your forms available for review by anyone who requests them. You must provide immediately for in-person requests or within 30 days for written requests. You may charge a reasonable copying fee and postage, if any. Alternately, post your three most recent forms on your website or GuideStar.

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<i>continued</i> Filed Form 990, 990-EZ, or 990-N (e-Postcard) and made your forms for the past three years publicly available?	- Nonprofits that fail to file their 990, 990-EZ, or 990-N for three consecutive years will automatically lose their tax-exempt status. The IRS must provide notice of this possible revocation of tax-exempt status to organizations that have failed to file a Form 990, 990-EZ, or 990-N for two consecutive years. - Churches, their integrated auxiliaries, and conventions or associations of churches don't have to file.	- For what to file, see www.irs.gov/charities-non-profits/form-990-series-which-forms-do-exempt-organizations-file-filing-phase-in. - Ask the IRS (877-829-5500) or your CPA for details. - State law requires nonprofits that receive \$5,000 or more in federal, state, or local grants or loans to make their Forms 990, 990-EZ, or 990-N available to the public. Comply by posting it on your website or GuideStar (https://guidestar.candid.org/update-nonprofit-profile). These nonprofits must also give anyone who asks a basic statement about the amount of public funds received and how they were used.
☐ Made sure that your board members understand their fiduciary duties?	- All nonprofits. - Every nonprofit board member is a fiduciary of the organization and has duties of care, loyalty, and obedience.	- Part 3 of the North Carolina Center for Nonprofits' <i>Guidebook for Boards of Directors of North Carolina Nonprofits</i> explains the duties and liabilities of board members (www.ncnonprofits.org/sites/default/files/resource_attachments/BoardGuidebook_2ed.pdf). Share it with your board. Nonprofits with board members who are local government elected officials (e.g. county commissioners, city council members, or mayors) should be particularly careful that these board members avoid potential conflicts of interest if the local government where they serve awards grants, contracts, or appropriations to the nonprofits on whose boards they serve. A new state law, which took effect on January 1, 2022, requires these local elected officials to recuse themselves from voting on the award of grants, contracts, or appropriations to the nonprofits on whose boards they serve. The law does not prohibit local elected officials from serving on nonprofit boards, and it does not apply to employees of counties or municipalities. It only applies in cities and towns with at least 15,000 residents and in counties that have cities or towns with at least 15,000 residents.
☐ Adopted and adhered to policies on conflicts of interest, gift acceptance, Form 990 review, whistleblower protection, and document retention and destruction?	- Most nonprofits. - On Part VI of Form 990, nonprofits may be required to indicate whether they have these policies in place. - On Part VI of Form 990, nonprofits are also asked whether officers, directors, trustees, and key employees are required to disclose annually interests that could give rise to conflicts.	See the Center's website for sample policies on conflicts of interest (www.ncnonprofits.org/resources/sample-conflict-interests-policy), gift acceptance (www.ncnonprofits.org/resources/gift-acceptance-policies), whistleblower protection (www.ncnonprofits.org/resources/whistleblowing-retaliation), and document retention and destruction (www.ncnonprofits.org/resources/document-retention-and-destruction-policy).
☐ Complied with the limitation on private benefit and the prohibition on private inurement for 501(c)(3) organizations?	All 501(c)(3) public charities.	- Under the private benefit doctrine, tax-exempt nonprofits must be organized and operated for public purposes, and any benefits to specific private individuals must only be incidental. For more, see www.irs.gov/pub/irs-tege/eotopich01.pdf. - Under the private inurement doctrine, tax-exempt nonprofits are prohibited from providing unjust enrichment to insiders, including board members and officers. Common examples of private inurement include paying excessive compensation to an executive director and paying a board member greater than fair market value for goods or services provided to the nonprofit. For more, see https://nonprofitlawblog.com/private-benefit-rules-part-ii-private-inurement-doctrine. - The Internal Revenue Code may impose "intermediate sanctions" on insiders who receive excess benefits from their transactions with the nonprofits they serve. These sanctions can require the organization to undo the transaction with the insider and lead to excise taxes on the insider and other board members and officers of the nonprofit. For more, see www.irs.gov/charities-non-profits/charitable-organizations/intermediate-sanctions.

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☐ Satisfied the public support requirement to be classified as “not a private foundation” under Section 501(c)(3) of the Internal Revenue Code?	All 501(c)(3) public charities.	- To be treated as a public charity rather than a private foundation for federal income tax exemption purposes, a nonprofit must demonstrate that it has broad public support. - There are two basic tests for public support: (1) a donative test under Section 509(a)(1) of the Internal Revenue Code in which at least one-third of a nonprofit's support comes from contributions from the general public, or at least 10% of the nonprofit's support comes from contributions from the general public, and it also meets a facts and circumstances test; and (2) a gross receipts test under Section 509(a)(2) of the Internal Revenue Code in which at least one-third of a nonprofit's support comes from a combination of contributions from the general public and mission-related earned income, and no more than one-third of the nonprofit's support comes from investment income or unrelated business income. For more, see www.irs.gov/charities-non-profits/exempt-organizations-annual-reporting-requirements-form-990-schedules-a-and-b-public-charity-support-test. - Some other organizations qualify as public charities because they are organized and operated in support of another tax-exempt nonprofit. - Hospitals, schools, houses of worship, and medical research organizations are deemed public charities by the nature of their activities and are not required to meet a public support test.
☐ Used comparability data to determine executive compensation?	- Nonprofits with paid employees. - On Form 990, nonprofits are required to indicate whether they used comparability data to determine salaries and benefits.	The Center publishes a biennial report on salaries and benefits in NC nonprofits (www.ncnonprofits.org/resources/salaries-and-benefits).
☐ Reported and paid tax on Unrelated Business Income (UBIT) and made your Form 990-T for the past three years publicly available?	- Any nonprofit with unrelated business income of \$1,000 or more. - Nonprofits with more than one line of unrelated trade or business must “silo” their tax liability for each “separate” “trade or business” and pay UBIT on each of these rather than aggregating all the profits and losses from all of their unrelated business income activities. - See IRS Publication 598, Tax on Unrelated Business Income of Exempt Organizations (www.irs.gov/pub/irs-pdf/p598.pdf). Ask the IRS (877-829-5500, www.irs.gov/charities-non-profits/unrelated-business-income-defined) or your CPA for details.	- File IRS Form 990-T (www.irs.gov/pub/irs-pdf/f990t.pdf) each year by the 15th day of the 5th month after your fiscal year ends (e.g., Nov. 15 if your year ends June 30). - File Form CD-405 with the NC Department of Revenue by the 15th day of the 5th month after your fiscal year ends and pay any applicable state corporate income tax. In April 2020, the IRS issued proposed regulations on siloing of UBIT expenses (www.govinfo.gov/content/pkg/FR-2020-04-24/pdf/2020-06604.pdf). - See www.ncnonprofits.org/content/new-tax-transportation-and-parking-benefits-problematic-nonprofits.
☐ Stayed nonpartisan?	Under federal tax law, all 501(c)(3) nonprofits are prohibited from supporting or opposing candidates for office or political parties. This means that nonprofits can't endorse candidates, contribute money in partisan elections, or coordinate activities with political campaigns.	- Be certain your staff and board understand that they may not suggest or imply that they are speaking on behalf of your nonprofit when they engage in personal political activities. - Nonprofits can (and should) engage in a wide range of nonpartisan election-related activities, including voter registration, voter education, and get-out-the vote efforts (www.nonprofitvote.org). - Nonprofits also may take positions on ballot measures such as state constitutional amendments and bond initiatives. - For more on what nonprofits can and can't do during an election year, see www.ncnonprofits.org/blog/everything-you-wanted-know-about-nonprofits-and-elections-but-were-afraid-ask. - For more on the nonpartisanship requirement and why it matters for charitable nonprofits, see www.ncnonprofits.org/blog/why-weakening-johnson-amendment-would-be-devastating-nonprofits.

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☐ Elected 501(h) status to have clearer and more generous limits on your lobbying than if you stay with the default option of “insubstantial part test”?	- Any charitable nonprofit (other than a house of worship and integrated auxiliaries of houses of worship) that lobbies can choose to elect 501(h) status. Under Section 501(h), nonprofits can use for direct lobbying up to 20% of the first \$500,000 of their exempt purpose expenditures. For larger organizations, this limit increases on a sliding scale up to \$1 million. Under Section 501(h), the limit on grassroots lobbying expenditures (i.e., asking members of the public to contact legislators with a specific call to action) is 25% of the limit on direct lobbying expenditures. - Nonprofits that do not take the 501(h) election must be prepared to demonstrate that lobbying is an “insubstantial” part of their activities.	- Complete the simple one-page IRS Form 5768 once (www.irs.gov/pub/irs-pdf/f5768.pdf); the election will apply for the current and subsequent tax years. See www.councilofnonprofits.org/nonprofit-advocacy/501h-election. - Note that advocacy for or against ballot measures, such as state constitutional amendments and bond initiatives is direct lobbying (www.ncnonprofits.org/content/501c3-advocacy-state-constitutional-amendments). A nonprofit's expenditures advocating for or against ballot measures are included as direct lobbying expenses for the 501(h) expenditure test. For a nonprofit not taking the 501(h) election, ballot measure advocacy activities are included in the “insubstantial” part determination.
☐ Provided donors with letters of acknowledgment for “quid pro quo” gifts of \$75 or more and all gifts of \$250 or more?	- Every nonprofit that provides goods or services to donors in exchange for contributions above \$75. Your nonprofit must disclose the value of the goods or services received by the donor. Only the remaining amount is tax-deductible. - The U.S. Tax Court has denied a donor's significant tax deduction in part because the nonprofit didn't follow these rules!	- See IRS Publication 1771 (www.irs.gov/pub/irs-pdf/p1771.pdf) for gift acknowledgement guidelines. - Donors are responsible for obtaining written gift acknowledgments for contributions of \$250 or more, but it is a good practice for nonprofits to send timely acknowledgements for <i>all</i> contributions.
☐ Applied for a state charitable solicitation license, renewed it every year, and included the required disclosure statement on your fundraising materials and donor acknowledgement letters?	- Most nonprofits must contact the NC Secretary of State each year. Generally, any nonprofit that receives \$25,000 or more a year in private grants and contributions is required to have a charitable solicitation license. - If your nonprofit receives less than \$25,000 per year in contributions, you may be eligible to apply annually to become exempt from requiring the license. Government grants and contracts, fees for services, and other earned or investment revenues are not included. In 2021, the NC House of Representatives passed a bill that would increase the threshold for charitable solicitation exemption to \$50,000 in contributions per year. The bill also would eliminate notarization requirements for charitable solicitation filings and would bring the filing deadlines for charitable solicitation renewals into alignment with Form 990 filing deadlines and extensions to help prevent nonprofits from having their charitable solicitation licenses lapse. This legislation is currently pending in the NC Senate. - Nonprofit churches, hospitals, YMCAs, YWCAs, and schools are generally exempt. For other statutory exemptions to this requirement, contact the Charitable Solicitation Licensing Section (www.sosnc.gov/csl) or see www.ncnonprofits.org/resources/charitable-solicitation-faqs.	- Apply at any time, and renew annually by the 15th day of the 5th month after your fiscal year ends. Contact the Charitable Solicitation Licensing Section, NC Secretary of State, www.sosnc.gov/csl. Online filing is available, but not required. - A Unified Registration Statement is acceptable if you also complete the NC Addendum (www.multistatefiling.org). - Check requirements if you solicit funds in other states. For more, see www.councilofnonprofits.org/tools-resources/charitable-solicitation-registration. The National Association of State Charity Officials (NASCO) is working on developing a single portal that may simplify multi-state filing for nonprofits that solicit funds in more than one state. - Conspicuously display (in at least 9-point bold type) this disclosure statement on every printed solicitation, written confirmation, receipt, and contribution reminder: Financial information about this organization and a copy of its license are available from the Charitable Solicitation Licensing Section at 888-830-4989. The license is not an endorsement by the State.
☐ Confirmed that any contract fundraisers or fundraising consultants are licensed?	Any nonprofit that uses a contractor to solicit contributions or to advise or assist in fundraising-related activities. Note: All contracts with solicitors and fundraising consultants are filed with the NC Secretary of State and available to the public.	- Check the registry of licensed solicitors and fundraising consultants at www.sosnc.gov/search/index/csl. - Have at least two officials of your nonprofit (including at least one board member) sign all contracts with solicitors and fundraising consultants.
☐ Requested state corporate income and franchise tax exemption?	To be exempt from corporate taxes, all North Carolina nonprofits must request these state tax exemptions from the NC Department of Revenue.	- Send a request to the NC Department of Revenue with a brief description of your charitable purposes and dissolution provision. - Enclose copies of your articles of incorporation, certified copy of bylaws, and IRS determination letter. - Send the request to NC Department of Revenue, Corporate Income and Franchise Tax Department, PO Box 871, Raleigh, NC 27602.

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☐ Applied for exemption from local property taxes?	Most nonprofits owning real or personal property (buildings, land, or property such as office equipment) used wholly and exclusively for tax-exempt purposes.	- Apply with your local county tax assessor. Call your local county tax office for details. You may appeal the local board's decision to the State Property Tax Commission. - Notify the county assessor of any change in the use of your nonprofit's property. A September 2018 article in the North Carolina Law Review provides a good overview of nonprofit property tax exemption in North Carolina (https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=6690&context=nclr). - Let the Center know if your request for property tax exemption is unreasonably denied by your county assessor.
☐ Applied for refunds of state and local sales and use taxes that you have paid?	- Any qualifying nonprofit that wants refunds of sales tax it pays on purchases in NC. - Qualifying nonprofits include all 501(c)(3)s except those properly classified with NTEE codes of Community Improvement and Capacity Building, Public and Societal Benefit, or Mutual and Membership Benefit organizations (https://nccs.urban.org/project/national-taxonomy-exempt-entities-ntee-codes). - Now applies to purchases made directly by the organization and through staff reimbursement (other than reimbursement for travel expenses). - Refunds are capped at \$45 million per year (total of state and local sales taxes paid) per nonprofit, starting July 1, 2014. Nonprofits are generally not exempt from North Carolina's 3% highway use tax and are not eligible for refunds of this tax. Charitable nonprofits may be exempt from highway use tax on vehicles that are donated solely for the purpose of resale by the nonprofits.	- Apply for an Account ID number from the Central Examination Division, NC Department of Revenue. Details at www.ncdor.gov/taxes-forms/sales-and-use-tax/amended-returns-and-refund-claims/frequently-asked-questions-regarding-form-e-585-nonprofit-and-governmental-entity-claim-refund-state. - File Form E-585 semi-annually for refunds: by Oct. 15 for taxes paid Jan.-June; by April 15 for taxes paid July-Dec. - If the Internal Revenue Service misclassifies your nonprofit's NTEE code, you may appeal and request refunds from the NC Department of Revenue based on the proper classification. Note: Under North Carolina's current tax laws, nonprofits are not eligible for point-of-sale exemption from sales and use tax, and the NC Department of Revenue does not issue sales and use tax exemption certificates to nonprofits on the basis of their federal tax-exempt status. Some businesses erroneously ask North Carolina nonprofits to provide a sales tax exemption certificate (Form E-595E) when they make purchases. The Center continues to advocate for legislators to replace the current nonprofit sales tax refund process with a point-of-sale exemption from sales tax for most 501(c)(3) nonprofits.
☐ Collected sales tax on items you sell and remitted these funds to the State?	- Any nonprofit selling physical or digital retail items like books, videos, t-shirts, concessions, recordings of webinars, and e-publications. - Sales are exempt if conducted on an annual basis to raise funds and if all products are delivered within 60 days after the solicitation (e.g., Girl Scout cookie sales). Nonprofits may have separate distinct annual sales events that are exempt from sales tax. Note: This exemption doesn't apply to sales tax on admission charges. - Other nonprofit exemptions from sales tax include: (a) sales where the proceeds are given to the State of North Carolina or a state agency (e.g., public schools); (b) sales of concessions at school events that benefit the school, even if the proceeds go through a charitable nonprofit; (c) nonprofits' sales of meals to seniors and individuals with disabilities where the meals are delivered to the individuals' homes; and (d) food or prepared food sold by a house of worship where the proceeds are used for religious activities. - A nonprofit charging admission for entertainment activities, including live performances or live events for the purpose of entertainment, motion pictures, museums, cultural sites, gardens, exhibits, shows, and similar attractions. Educational, recreational, and many fundraising events done by nonprofits	- Register with the NC Department of Revenue for a Certificate of Registration. - File Form E-500 and pay the tax quarterly or monthly, depending on your volume of sales (www.ncdor.gov/taxes-forms/sales-and-use-tax/sales-and-use-tax-forms-and-certificates/tax-returns-schedules/form-e-500-sales-and-use-tax-return-october-2014-and-forward). - If your nonprofit has collected taxes in more than one county, also file Form E-536 (Schedule of County Sales and Use Taxes). The county rate you charge is based on the delivery location. The tax rate differs by county (www.ncdor.gov/taxes-forms/sales-and-use-tax/sales-and-use-tax-rates-other-information).

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Collected sales tax on items you sell and remitted these funds to the State?

are not subject to this tax. **A 2019 law clarifies that nonprofits do not need to charge sales tax on tuition or registration fees for educational events, regardless of whether entertainment is offered as an ancillary feature of these events.**

- Admission fees are exempt if they are tax-deductible contributions, including any tax-deductible portion of membership fees that would otherwise be subject to the tax.
- Admission fees are also exempt if they are: (a) events sponsored by elementary or secondary schools; or (b) sponsored by “volunteer only” nonprofits that do not pay salary or other compensation to individuals and that do not compensate anyone for performing in, placing in, or producing the event.
- **Beginning on October 1, 2019, nonprofits and businesses were required to collect and remit sales tax on digital property, including many online educational offerings. A 2020 law created an exemption from the sales tax on digital property for sales of digital audio or audiovisual works that consist of the contemporaneous access to a non-taxable service. Effectively, this means that nonprofits do not need to charge sales tax on registration fees for online educational participatory events like webinars, conferences, workshops, or fitness classes. However, nonprofits are required to collect and remit sales tax if they sell recordings of these types of online offerings.**
- **Under a law effective November 9, 2019, marketplace facilitators such as Amazon or Ebay are required to collect and remit sales tax on sales made through their platforms. This means that nonprofits may not need to collect and remit sales tax on goods and services sold through certain third-party websites.**

☐ Properly classified all employees and independent contractors?

- Any nonprofit with paid staff, consultants, or contractors. The U.S. Department of Labor, IRS, and NC Department of Revenue can impose penalties for improper classification of consultants and contractors who are really employees.

- See IRS Publication 1779 (www.irs.gov/pub/irs-pdf/p1779.pdf) to find specific criteria for classifying employees vs. contractors for the purpose of federal tax laws.
- **In May 2021, the U.S. Department of Labor rescinded a recently-changed regulation that had set new standards for classifying workers as employees or independent contractors. The now-rescinded rule, which took effect on March 8, created a two-prong test focusing on the employee’s exercise of control over their work and their opportunity for profit or loss. This “economic realities” test allowed more employers – including some nonprofits – to classify their workers as contractors to avoid paying benefits and payroll taxes. With this change, the DOL will once again use a multi-factor “totality of circumstances” test to determine whether workers are properly classified as employees or independent contractors for purposes of federal employment laws (www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship).**
- **Starting in 2021, nonprofits that paid individuals \$600 or more as independent contractors must file the new IRS Form 1099-NEC with the IRS and with these contractors. In the past, nonprofits used IRS Form 1099-MISC to report non-employee compensation to contractors. Nonprofits should still use Form 1099-MISC to report compensation of \$600 or more paid to attorneys and for raffle prizes of \$600 or more. See www.irs.gov/instructions/i1099misc.**

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☐ Properly classified all employees as either exempt or non-exempt from the Fair Labor Standards Act and paid overtime where appropriate?	• All nonprofits and foundations with paid employees. • Under the Fair Labor Standards Act (FLSA) and the NC Wage and Hour Act, you must provide overtime pay to all workers unless they are specifically exempted from coverage. See p. 20-22 of the Center's <i>Employment Law for North Carolina Nonprofits</i> (www.ncnonprofits.org/sites/default/files/resource_attachments/EmploymentLawHandbook.pdf). • Note: In September 2019, the U.S. Department of Labor issued final regulations that increased the salary threshold for exempt employees. Starting in 2020, more nonprofit employees were eligible for overtime pay when they work more than 40 hours in a work week.	• Employees are exempt from the overtime pay requirements of FLSA if they: (1) are paid at least the minimum salary level; (2) are paid on a salary basis; and (3) exercise job duties that are classified as exempt (i.e., executive, administrative, or professional). Through December 31, 2019, the minimum salary threshold was \$23,660 per year (\$455 per week), and highly compensated employees with salaries of at least \$100,000 per year were also exempt from overtime pay requirements if they regularly perform at least some of the job duties of executive, administrative, or professional employees. • Effective January 1, 2020, the salary threshold for exempt administrative, executive, and professional employees increased to \$35,568 per year (\$684 per week), and the salary threshold for highly compensated employees increased to \$107,432 per year. For more details about the increased salary threshold for overtime pay and compliance options for nonprofits, see www.ncnonprofits.org/resources/2019-dol-overtime-rule-and-nonprofits. • Nonprofits can change an employee's status any time during the year. • Nonprofits must pay non-exempt staff 1.5 times their usual hourly pay rate for any time they work more than 40 hours in one work week. • The U.S. Department of Labor has a fact sheet with more details about the duties tests for administrative, executive, and professional employees at www.dol.gov/whd/overtime/fs17a_overview.pdf.
☐ Provided paid sick leave and paid family and medical leave to employees needing time off due to COVID-19 and applied for tax credits to reimburse your nonprofit for the cost of this paid leave?	• Most nonprofits with fewer than 500 employees. • The requirement in the Families First Coronavirus Response Act (FFCRA) that nonprofits and other employers with fewer than 500 employees must provide two weeks of paid sick leave at the full rate of pay and 10 weeks of paid family and medical leave (FMLA) at two-thirds of the regular rate of pay for employees who are unable to work for reasons related to COVID-19 expired on December 31, 2020. Under that requirement, employees generally could take paid sick leave if they were sick with COVID-19, in self-quarantine due to government mandate or medical directions, or caring for others who were sick with COVID-19. Generally, employees could take paid family and medical leave if they were caring for someone who was sick or in self-quarantine due to COVID-19 or if they were caring for a child whose school or child care facility was closed due to the pandemic. • Although nonprofits are no longer required to provide this paid time off, the American Rescue Plan Act extended through September 30, 2021 the refundable payroll tax credits for nonprofits and other employers that elect to provide paid sick leave and paid FMLA for employees who are out of work for reasons that would have made them eligible for paid leave under the expired FFCRA required leave provisions. In addition, in April 2021, the IRS announced that paid leave credits apply to leave taken by employees to receive or recover from COVID-19 vaccinations.	• For more information, see www.councilofnonprofits.org/thought-leadership/covid-related-tax-credits-available-nonprofit-employers. • Nonprofits may receive a refund of FFCRA paid leave offered to their employees through a refundable payroll tax. The Internal Revenue Service has guidance on the process for applying for these tax credits at www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#sick_leave.

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☐ Followed all state and federal employment laws including: filing I-9, W-2, and W-4 forms; withholding tax; paying employment taxes; and putting up posters?	- Any nonprofit with paid employees, whether part-time or full-time. - Your nonprofit must pay Social Security and Medicare taxes for <i>all</i> employees. - State law requires nonprofits with 25 or more employees to use the federal E-Verify system to check the immigration status of new employees. Legislation has been filed in the NC House of Representatives to extend E-Verify requirements to employers with five or more employees and to extend it to all employers that provide services through contracts with the state of North Carolina.	- Contact the U.S. Department of Labor, www.dol.gov, or NC Department of Labor, www.labor.nc.gov. - Download free employment posters at www.labor.nc.gov/safety-and-health/publications. You do not need to buy these posters! - See the Center's <i>Employment Law for North Carolina Nonprofits</i> (www.ncnonprofits.org/sites/default/files/resource_attachments/EmploymentLawHandbook.pdf). - For more on withholding and paying federal employment taxes, see www.irs.gov/charities-non-profits/employment-taxes-for-exempt-organizations. A temporary federal law allowed employers – including nonprofits – to defer payment of their share of Social Security taxes. For nonprofits that used this deferral of payroll taxes, the deferred taxes are due to the IRS by January 3, 2022. Nonprofits that pay their deferred taxes after this deadline may be subject to penalties and interest. See www.irs.gov/newsroom/what-employers-need-to-know-about-repayment-of-deferred-payroll-taxes.
☐ Applied for an Unemployment Tax Number and paid State Unemployment Tax?	- Nonprofits generally pay state unemployment insurance (UI) taxes. - Nonprofits that have employed four or more people for any part of 20 different weeks in the current or previous calendar year. - Nonprofits have the option of electing to reimburse the state for unemployment claims instead of paying UI taxes. Nonprofits electing to reimburse must maintain 1% of their total payroll in an escrow account with the NC Department of Commerce. Reimbursing nonprofits in North Carolina will not be charged for UI claims arising due to COVID-19 through September 4, 2021. Reimbursing nonprofits may receive statements of their claims from the Division of Employment Security of the NC Department of Commerce for weeks ending on or before September 4, 2021, but these statements are not bills. The federal and state laws providing for partial non-charging of benefits to reimbursing nonprofits expired on September 4, 2021, so reimbursing nonprofits will be responsible for the cost of benefits beginning on September 4, 2021. Most nonprofits with fewer than four employees and most religious nonprofits are exempt from paying state UI taxes. Employees of exempt nonprofits are generally not eligible for UI benefits if they are out of work. During the COVID-19 pandemic, individuals who worked for exempt nonprofits and were out of work due to COVID-19 were eligible to apply for up to 39 weeks of UI benefits through September 4, 2021 through the Pandemic Unemployment Assistance program.	- Apply before hiring employees. - Contact the Division of Employment Security (DES) of the NC Department of Commerce, http://des.nc.gov. The Center's unemployment tax savings program for members has already saved nonprofits more than \$9 million. For details, see First Nonprofit Group at www.ncnonprofits.org/services/money-saving-partnerships#FirstNonprofit and contact Joe Poretto (312-239-8388, jporetto@firstnonprofit.com). - Effective April 27, 2017, nonprofits that elect to reimburse the state for unemployment claims may apply for a refund if they erroneously remit more than the required 1% of payroll to the state. - Because unemployment benefits are lower in North Carolina than in other states, electing to reimburse may be a more cost-effective approach for many North Carolina nonprofits. Nonprofits that pay state unemployment tax (SUTA) instead of reimbursing for unemployment claims must pay SUTA quarterly. The SUTA tax rate is a combination of the base rate (1.9% in 2021) and employers' experience rating, which is based on the history of UI claims by their employees.
☐ Obtained workers' compensation insurance?	Any incorporated nonprofit with three or more employees and/or corporate officers. Effective October 22, 2015, nonprofits are no longer required to provide workers' compensation for uncompensated board officers.	- Contact the NC Industrial Commission, 800-688-8349, www.ic.nc.gov. - For more, see www.ncnonprofits.org/public-policy/workers-compensation-good-nonprofit-employees-and-employers.
☐ Properly compensated your paid interns?	- Charitable nonprofits can use volunteer interns as long as they are unpaid and not provided a stipend. - If a 501(c)(3) nonprofit chooses to pay its interns, these interns may be classified as employees who are subject to minimum wage and overtime pay requirements under the Fair Labor Standards Act.	In January 2018, the U.S. Department of Labor released guidance with a seven-factor test to determine whether paid interns are classified as employees who are subject to the minimum wage requirements of the Fair Labor Standards Act (www.dol.gov/whd/regs/compliance/whdfs71.pdf).

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<i>continued</i> Properly compensated your paid interns?	If a nonprofit pays an intern a stipend lower than the minimum wage of \$7.25 per hour, it must be certain that the internship satisfies the “economic realities” test that the relationship is not employment.	See the National Council of Nonprofits’ resource on nonprofit interns at www.councilofnonprofits.org/tools-resources/interns-employee-or-volunteer.
☐ Created a plan document for your employee retirement plan and electronically filed a Form 5500?	Nonprofits with 403(b) plans and other retirement plans subject to the Employment Retirement Income Security Act (ERISA).	- You must file Form 5500 electronically. It is due seven months after your plan’s year-end date. See www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500. - Those at your nonprofit responsible for signing your Form 5500 need to register on the Department of Labor’s EFAST2 website, www.efast.dol.gov. - If your nonprofit has a 403(b) plan, you must have a written plan document. See www.irs.gov/retirement-plans/irc-403b-tax-sheltered-annuity-plans.
☐ Provided health insurance for your employees?	Any nonprofit with 50 or more full-time employees (including full-time equivalents) on average for the prior year is a large employer that is required to offer health insurance to its employees under the Affordable Care Act. Smaller nonprofits have the option of offering health coverage for their employees.	- Nonprofits that qualify as large employers are required to provide health insurance for their employees and must file Form 1095-C and 1094-C with the Internal Revenue Service. The IRS has more information about requirements for large employers at www.irs.gov/affordable-care-act/employers/aca-information-center-for-applicable-large-employers-ales. Smaller nonprofits have a variety of options for providing (or not providing) health coverage for their employees. These options include obtaining a group health insurance for employees and offering a taxable salary supplement to cover some or all of employees’ health insurance costs and tax-free Qualified Small Employer Health Reimbursement Arrangement (QSEHRA). Healthcare.gov has more information about QSEHRAs (www.healthcare.gov/glossary/qsehra). - Some nonprofits that offer health insurance for their employees may be eligible for a refundable tax credit under the Small Business Health Care Tax Credit (www.irs.gov/affordable-care-act/employers/small-business-health-care-tax-credit-and-the-shop-marketplace). A new law that took effect on October 1, 2021 allows nonprofits and small businesses to form exclusive provider benefit (EPO) plans for their employees. EPO benefit plans are typically about 0-15% less expensive than other health insurance plans and allow participants to use a limited network of local health care providers while paying the full cost for any out-of-network health services other than emergency care. - The Center has more information on health insurance options for nonprofits at www.ncnonprofits.org/nonprofit-health-insurance.
☐ Followed state laws for raffles, bingo events, game nights, and alcohol at fundraising events? <i>continued</i>	- Any nonprofit that offers a raffle or bingo game as a fundraising event. Any nonprofit that offers a game night (or casino night) as a fundraising event, beginning on June 1, 2019. - Any nonprofit that serves or sells alcohol at a fundraising event.	- Nonprofits may conduct up to four raffles per year as fundraising events. The maximum cash prize for any raffle is \$250,000, and nonprofits may raffle real property valued at up to \$500,000. At least 90% of the net proceeds of the raffle must be used for a nonprofit’s mission-related purposes, and none of the net proceeds can be used to pay a person to conduct a raffle or to rent a space where the raffle is conducted. Nonprofits are not required to have a license to conduct raffles. See www.ncnonprofits.org/resources/raffles-101. - Effective October 1, 2018, nonprofits may also offer alcohol in the manufacturer’s original closed container as a prize for a raffle or auction, as long as the nonprofit has obtained a special one-time alcohol permit for the event. For more on one-time alcohol permits, see https://abc.nc.gov/Permit/QualificationSOTNP. Beginning on June 1, 2019, a state law makes it legal for nonprofits to offer casino nights or game nights as fundraising events anywhere east of I-26 in North

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Followed state laws for raffles, bingo events, game nights, and alcohol at fundraising events?

Carolina. Nonprofits may offer up to four game nights per year (not more than one per quarter) and must obtain a license from the NC Department of Public Safety (www.ncdps.gov/our-organization/law-enforcement/alcohol-law-enforcement/game-nights). The fee for a game night sponsor license is \$100.

- A nonprofit conducting bingo games is required to get an annual license from the NC Department of Public Safety (www.ncdps.gov/our-organization/law-enforcement/alcohol-law-enforcement/bingo). The annual fee for a nonprofit bingo license is \$200.
- Nonprofits may obtain special one-time permits from the NC Department of Public Safety to sell or serve alcohol at fundraising events (<https://abc.nc.gov/Permit/QualificationSOTNP>).
- Nonprofits must file IRS Form W-2G on raffle prizes of \$600 or more where the payout is at least 300 times the amount of the wager, and must withhold 25% taxes on raffle prizes of \$5,000 or more. Raffle tickets are not deductible as charitable contributions. For more, see www.irs.gov/pub/irs-tege/notice_1340.pdf.

☐ Complied with donor instructions not to reveal their identity?

- **Nonprofits receiving contributions from donors who provide written instructions prior to, or at the time of, their donations that the nonprofit may not disclose their identity.**

- **Under legislation that passed the NC General Assembly but was vetoed by Governor Roy Cooper, nonprofits would have been required to keep private (and not disclose) the identity of donors who provided written notice requesting that their identity not be disclosed. Although this limitation is not currently required by the NC Nonprofit Corporation Act, it is a good practice for nonprofits to follow written instructions from their donors requesting that their identities not be disclosed.**

☐ Studied current reporting requirements for any funds that your nonprofit receives through the State?

- Any nonprofit that receives state grant funds or federal grant funds that pass through a state government agency.

- Any nonprofit receiving state grants and/or appropriations must provide certification to its granting agency that its state funds were used for the purposes for which they were awarded and must provide an accounting of all state funds it receives, uses, holds, or spends.
- Any nonprofit receiving a state grant must provide the granting agency a copy of its conflict of interest policy and must certify to the granting agency that it does not have overdue federal, state, or local tax debts.
- Any nonprofit receiving \$25,000 or more in state grants and/or appropriations must report to its granting agency on its activities and accomplishments, including reporting on any relevant performance measures.
- Any nonprofit receiving \$500,000 or more in state grants and/or appropriations must have a single or program-specific audit prepared in accordance with Generally Accepted Governmental Auditing Standards (also known as a Yellow Book Audit).
- Beginning on July 1, 2016, nonprofits receiving state grants and/or appropriations must submit reports directly to their granting agencies, not to the NC Office of State Budget and Management.
- Cities and counties *may* require nonprofits receiving grants or appropriations of \$1,000 or more in any fiscal year to have an audit.
- The NC State Auditor has the authority to audit any nonprofit receiving \$1,000 or more in state funding in any fiscal year.
- **Under a new law that took effect on October 21, 2021, any nonprofit with a state grant or state contract that does not provide information requested by the State Auditor as part of a state verification audit is presumed to have “failed to meet any condition precedent, classification, or other eligibility or qualifying standard subject to the verification audit.”**

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☐ Followed the federal grant and contract rules under the OMB Uniform Guidance?	Nonprofits with federal grants or contracts – or state or local grants or contracts that include federal funds – with effective dates on or after December 26, 2014.	- Nonprofits without a federally-approved indirect cost rate can elect to be paid a <i>de minimis</i> rate of 10% of modified total direct costs. - Pass-through entities (state and local governments) are required to recognize this <i>de minimis</i> rate of nonprofits' federally-negotiated rates. - More costs (e.g., some program administration costs) are treated as direct costs under the OMB Uniform Guidance. - The threshold for single audits has been raised to \$750,000. - The OMB Uniform Guidance requires the use of consistent, documented procurement processes for purchases made with federal funds. In August 2020, OMB issued updates to the Uniform Guidance (www.govinfo.gov/content/pkg/FR-2020-08-13/pdf/2020-17468.pdf). These changes took effect on November 12, 2020. - For more information, see www.councilofnonprofits.org/omb-uniform-guidance.
☐ Complied with Uniform Prudent Management of Institutional Funds Act (UPMIFA) to invest and spend from endowed and other restricted funds?	- All nonprofits holding funds with donor-imposed restrictions. - These rules do not apply to funds set aside for specific purposes by the board. - Restrictions may be released for funds created more than 10 years ago <i>and</i> with total assets less than \$100,000.	- Adopt a policy that requires the board to analyze statutory "prudence factors" when investing and spending from endowed and other restricted funds. - Retain gift agreements creating endowed and other restricted funds in your permanent records.
☐ Registered with the state as a lobbyist principal or solicitor (organizations) and as a lobbyist (individuals), as well as filed quarterly reports?	- Nonprofit employees (but not volunteers) who spend at least 5% of their time lobbying members of the NC General Assembly or NC executive branch officers in any 30-day period must register as lobbyists. Any paid nonprofit contractor who lobbies must register as a lobbyist. Nonprofits compensating lobbyists need to register as "lobbyist principals." - Nonprofits that are not "lobbyist principals" but that ask members of the general public to engage in lobbying must register as solicitors if they spend at least \$3,000 in any 90-day period on this type of solicitation.	- Lobbyists, principals, and solicitors must register with the NC Secretary of State every year (within one day of starting to lobby) and pay a \$250 annual fee (separate fees for lobbyists and principals). Principals must report total compensation paid to lobbyists for actual lobbying and related activities once a year on their final reports. Lobbyists, principals, and solicitors must file notarized quarterly reports of their lobbying and solicitation activities. All forms must be submitted electronically (and, therefore, also include a \$3 electronic filing fee). - Get forms at www.sosnc.gov/divisions/lobbying. See a summary of NC lobbying laws at www.ncnonprofits.org/resources/summary-north-carolina-lobbying-law.
☐ Filed for an assumed business name certificate?	Any nonprofit that operates under a name other than the name identified in its articles of incorporation.	- Starting December 1, 2017, a nonprofit that operates using a name other than its legal name (e.g., the name in its articles of incorporation) is required to file for an assumed business name certificate with the register of deeds in one NC county where it conducts business. Under a new law passed in 2016, the NC Secretary of State will maintain a statewide database of assumed business names so nonprofits will no longer need to file in more than one county. - All assumed name certificates issued under the current law (Article 14 of Chapter 66 of the NC General Statutes) will expire on December 1, 2022, so nonprofits with existing assumed business name certificates will need to refile these under the new law (Article 14A of Chapter 66 of the NC General Statutes) in one county to continue to have an assumed business name certificate after that date. - More information, assumed business names searches, and registration forms are available at www.sosnc.gov/divisions/business_registration/assumed_business_names.

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☐ Provided notice of actions taken to limit the spread of COVID-19 at your nonprofit's facility?	- Any nonprofit that owns or rents a physical space. - A 2020 state law provides limited immunity for nonprofits and businesses for the contraction of COVID-19 at their facilities unless the act or omission leading to the contraction of COVID-19 was due to gross negligence, willful or wanton conduct, or intentional wrongdoing. This limitation of liability continues for 180 days after the expiration of the state's emergency declaration due to COVID-19. - The law also requires nonprofits and businesses to provide reasonable notice of the actions they have taken to reduce the spread of COVID-19 on their premises.	Throughout the course of the pandemic, nonprofits should post clear and public notice of the steps they are taking to reduce the spread of COVID-19 at their facilities, including policies related to face coverings, social distancing, and sanitation.
☐ Considered whether to require your nonprofit's employees to have COVID-19 vaccinations?	- Under two new federal regulations, workers at nonprofits with 100 or more employees and nonprofit health facilities with Medicare or Medicaid reimbursement must be vaccinated against COVID-19 or be tested at least weekly for COVID-19. Pending court action, a federal executive order would require employees at nonprofits with federal contracts or subcontracts (but not federal grants) to be vaccinated against COVID-19. - Any nonprofit with employees should consider whether a vaccination requirement is an appropriate measure to help protect its staff, clients, and visitors from the spread of COVID-19.	- President Biden issued an executive order requiring COVID-19 vaccinations for federal employees, contractors, and subcontractors on September 9, 2021. The implementation is currently on hold due to a federal court injunction. If it is ultimately upheld in courts, nonprofits with federal contracts – but not those with federal grants – will be required to have policies in place to ensure that their employees are vaccinated against COVID-19. - On November 5, 2021, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) and the Centers for Medicare and Medicaid Services (CMS) issued Emergency Temporary Standards (ETS) on COVID-19 vaccinations for employers with 100 or more employees (OSHA) and for health facilities that receive Medicaid or Medicare reimbursements (CMS). The OSHA ETS requires covered employers to have policies requiring their employees to be vaccinated against COVID-19 or to be tested weekly for COVID-19. The CMS ETS requires covered health facilities to have policies requiring their employees to be vaccinated against COVID-19. On January 13, 2022, the U.S. Supreme Court issued a stay that temporarily stops the implementation and enforcement of the OSHA ETS. In a separate ruling on the same day, the Supreme Court allowed the CMS ETS to move forward. For more information on the OSHA Emergency Temporary Standards, see https://www.osha.gov/coronavirus/ets2. For more information on the CMS Emergency Temporary Standards, see https://www.cms.gov/files/document/cms-omnibus-covid-19-health-care-staff-vaccination-requirements-2021.pdf. - Federal and state laws give nonprofits the option of requiring employees to be vaccinated against COVID-19. Nonprofits that adopt vaccination requirements must provide exceptions for employees who are unable to be vaccinated for medical reasons or because of sincerely-held religious beliefs. - More information is available at www.ncnonprofits.org/blog/covid-19-vaccination-requirements-considerations-nonprofits.
☐ Provided face coverings for your employees working outside of the home?	- Any nonprofit with employees or contractors. - Pursuant to state executive orders related to the COVID-19 pandemic, North Carolina employers must make a good faith effort to provide a one week supply of reusable face coverings or daily supplies of disposable face coverings for all of their workers who perform work outside of their homes.	Nonprofits should ensure that their employees and contractors who are working anywhere other than their homes have adequate supplies of face coverings throughout the course of the pandemic.

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☐ Sought forgiveness of your Paycheck Protection Program loan?	- Nonprofits with first draw or second draw Paycheck Protection Program (PPP) loans. - The PPP loan program, which was created under the CARES Act in 2020 and extended and expanded under the December 2020 federal COVID-19 relief law and the American Rescue Plan Act, provides forgivable loans to nonprofits and businesses that retained their workforce during the terms of their loans. Note: The Center will continue to provide updates on any changes to the PPP in our weekly <i>Nonprofit Policy Update</i> newsletter.	- PPP borrowers may apply with their lenders for loan forgiveness. In August 2021, the Small Business Administration (SBA) opened a streamlined application portal to allow borrowers with PPP loans of \$150,000 or less secured through participating lenders to apply for forgiveness directly through the SBA (https://directforgiveness.sba.gov/requests/borrower/login). The SBA has information and forms that nonprofits and other borrowers can use to apply for forgiveness of their PPP loans at www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program. - In October 2020, the SBA issued a simplified loan forgiveness application for borrowers with loans of \$50,000 or less (www.sba.gov/article/2020/oct/08/sba-treasury-announce-simpler-ppp-forgiveness-loans-50000-or-less).
☐ Considered applying for the Employee Retention Tax Credit?	Nonprofits with a 20% drop in revenue for any of the first three quarters in 2021 compared to the same quarter in 2019.	- In December 2020, Congress extended and expanded the Employee Retention Tax Credit. Eligible nonprofits may now receive this refundable payroll tax credit if they had a 20% decline in revenue for any of the first three quarters of 2021 compared to the same quarter in 2019. Nonprofits that received Paycheck Protection Program loans may also apply for the ERTC, but they must use separate expenses for the two federal relief programs. - See www.councilofnonprofits.org/thought-leadership/nonprofits-don-t-overlook-your-potential-refund-under-the-employee-retention-tax.
☐ Followed state laws for remote membership meetings?	Nonprofits with voting members.	- From April 24, 2020 through June 1, 2021, an Executive Order allowed nonprofits with voting members to hold membership meetings remotely. - A new law that took effect on September 20, 2021 allows nonprofits to conduct membership meetings remotely or in person and allows nonprofits to conduct membership votes by written ballots or electronic votes without a meeting. For more information, see www.ncnonprofits.org/blog/new-options-electronic-voting-boards-and-remote-membership-meetings.
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