

# BOND

## EXEMPT ORGANIZATIONS INFORMATION MEMO

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### New Technical “Fixes” in the Not-for-Profit Corporation Law: Board Classification

On Oct. 25, 2023, Governor Hochul signed legislation which updates the Not-for-Profit Corporation Law (NPCL) and authorizes non-membership not-for-profit corporations to classify their boards through their Bylaws (i.e., create classes of directors with staggered terms). This is part of a larger effort to provide nonprofit organizations with greater clarity and comfort in interpreting more ambiguous provisions of the NPCL. The full text of the amendments can be found [here](#).

Prior to this amendment, only membership organizations could use their Bylaws to classify their boards, while non-membership organizations were required to include classification provisions in the certificate of incorporation either at the time of formation or by filing a certificate of amendment. Many organizations decide to classify their boards over time, after the size of the board has grown and there is a greater need for succession planning and preserving institutional knowledge. As such, allowing organizations to make this governance change through their Bylaws, rather than a formal filing with the state, streamlines board action and encourages increased compliance with the law.

As a practical matter, Bylaws-only Board classification has been widespread prior to this amendment, and it is unclear what consequence, if any, would befall a non-membership corporation that has followed the approach. It is nonetheless helpful that the law has been updated to match what is common practice in the real world. If you have any questions or concerns related to NPCL updates or issues involving 501(c)(3) tax-exempt organizations, please contact [Thomas W. Simcoe](#), [Delaney M. R. Knapp](#) or the attorney at Bond with whom you are regularly in contact.

