

**SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS**

**As of February 12, 2015**

Compiled by Richard W. Meyer, Attorney at Law

**Action early in the legislative session is important:**

Thirty days into the 84th Texas Legislature regular session, more almost 2,000 bills and resolutions have been filed by members of the House and Senate. Committees have been appointed and soon will be scheduling bills for hearing.

Contacting a bill's sponsor or your representative or senator can be very effective early in the process. You might choose to express support for a bill via a communication and thereby give it a bit of a boost, or express concern or opposition to a bill in time to raise an issue and perhaps "fix" the bill with changes before or during the committee process. More than half of all bills filed never leave the committee of the originating house; they are dead ink when filed.

Access the text of any proposed House bill (HB) or Senate bill (SB) at [www.capitol.state.tx.us](http://www.capitol.state.tx.us) and use other tracking and analysis tools available on the state's very useful legislative website.

Note on appropriations: This summary and later updates do not contain tracking or notations regarding legislative appropriations or funding for any of the issues or bills referenced. The general appropriations bills, HB 1 in the House and SB 2 in the Senate, are works-in-progress during the early weeks of the regular session and can be monitored through the Legislative Budget Board, [www.lbb.state.tx.us](http://www.lbb.state.tx.us).

**What to look for in proposed legislation:**

The bills listed here during the session will include currently filed bills of interest and concern to leaders in the nonprofit sector in Texas. In examining proposed legislation, always consider the following factors:

Whether a proposed bill strengthens nonprofit organizations' viability under Texas law or unduly burdens or threatens their status; whether the legal liability of nonprofit board members, officers, staff or volunteers is increased; whether current "charitable immunity" and "good faith" legal protections remain in place; whether laws governing nonprofits are necessary, understandable and based on reasonable public policy concerns; whether nonprofit advocacy is protected; whether ongoing nonprofit organization operations and finances are complicated by new governmental regulations; and whether nonprofit organization reporting, disclosure and accountability requirements remain reasonable and balanced.

Analysis and commentary below focus on **protecting your right to do good works**.

**First review of proposed legislation:**

The following bills are pending in the 2015 legislature and affect nonprofits, state associations and foundations in the following areas.\*

**Regulatory oversight of nonprofit organizations:**

**HB 971:** Board members or officers of condominium owner associations (COAs) or property owner associations (POAs) would be legally liable as fiduciaries for misconduct or illegal acts. If passed, this would drastically raise the risk level of volunteer residents serving on these boards and enhance their liability beyond the standards for nonprofit directors in Chapter 22, Texas Business Organizations Code (the Texas Nonprofit Corporation Law).

**Fundraising activities of nonprofit organizations:**

**HB 975:** This bill provides a special status for fundraising by major league sports teams and would create an entirely new chapter in the Occupations Code to permit professional sports clubs—from the NFL, NBA, MLB, MLS—that maintain §501(c)(3) tax-exempt charitable foundations to conduct raffles at every home game in their venue to benefit their charitable purposes.

**HB 103 (=HB 105), SB 31\*\*:** Volunteer firefighter or EMS organizations would be able to hold up to ten fundraising sales or auctions per year that are tax-exempt sales events (amending Texas Tax Code §151.310 that permits fewer such events).

**Texas Non-Profit Corporation Law, Chapter 22, Bus. Org. Code; tax-exempt entities**

**HB 1120:** Adds a definition of “integrated auxiliary of a church” (as found in the Internal Revenue Code) to the church-related provisions of Chapter 22 of the Texas Business Organizations Code. The bill specifies that the board of an incorporated church must approve the creation of such an integrated auxiliary.

**HB 590:** A special-purpose corporation could be chartered by a public or private university to develop or commercialize technologies developed and would be exempt from most state taxes. This corporation would be authorized under the Education Code (under the higher education provisions) rather than in the Business Organizations Code, where most Texas business entities are authorized and defined. A participating university could license technology it owns to the corporation.

**Limiting legal liability and amendments to Texas charitable immunity statutes:**

**HB 1116 (=SB 378):** Social workers performing voluntary professional services would be exempt from legal liability for their actions, except for intentional misconduct, when acting as a

“volunteer healthcare provider” under Chapter 84, Civil Practices and Remedies Code, known as the Charitable Immunity and Liability Act.

**HB 262:** Limits the legal liability of an owner, lessee or occupant of land used as a cooperative community garden for occurrences or injuries to users of the property.

**HB 1040:** Persons officiating or managing a community or interscholastic “athletic competition” (including a rodeo or livestock show) would be immune from liability for injuries to participants, except for gross negligence or intentional misconduct, under a new Chapter 94 to the Civil Practices and Remedies Code. The sponsoring organization is also given the same liability protection.

**HB 1203:** Liability for injuries or occurrences during “agri-tourism” events on private land would be limited if the required warning notice was posted and the “agri-tourism participant” had signed the required consent form.

**SB 381 (HB 323):** Volunteers operating motorized equipment or vehicles on properties of the Texas Parks and Wildlife Department would be protected from legal liability to third parties.

**HB 1050:** Clarifies that under the Good Faith Food Donor Act (Chapter 76, Civil Practices and Remedies Code), donors of unused food or surplus meals would not be liable to others if the condition of the food was apparently “wholesome at the time of donation”.

**Exemptions from state taxes now extended to nonprofit entities; local ‘PILOT’ fees:**

**HB 1003:** This bad penny won’t go away and returns this session. The “good government” idea behind the bill is that every six years all exemptions, credits or other exceptions granted under the Texas Tax Code would “sunset” (be automatically repealed) and could be re-authorized by the Legislature only after the costs and benefits of such tax exemptions and policies had been reviewed and justified by the Texas Sunset Commission in reports to the Legislature. This would include exemptions from the property tax, sales/use tax, franchise (business) tax and other state taxes now enjoyed by tax-exempt nonprofits.

**HB 960, HB 961:** Would add independent school districts (ISDs) to other public agencies listed as exempt from certain local PILOT-type water drainage and control fees. “PILOT” means *payments-in-lieu-of-taxes* and is an increasingly popular means for public agencies to tax collect fees or assessments from other public agencies or tax-exempt organizations for public services received without calling the fee a tax.

**Nonprofit board governance, officer, employee, volunteer and fundraising issues:**

**HB 1151:** Unpaid volunteer interns would receive the same legal protection against on-the-job sexual harassment under the Texas Labor Code as paid employees. The bill reflects growing use of unpaid internships that can generate increased employer legal liability and also creates a six-part analysis of what conditions constitute an unpaid internship.

**HB 237:** A member of a volunteer firefighting department could not be required to obtain a license or certification as a firefighter in order to serve.

**HB 990 (=SB 401):** E-Verify is a federal government online program to verify the employment eligibility of an employer's new hire and is very popular with legislators. This bill and others would require use of E-Verify by entities having a contract with the state or with local governments and school or special districts. A nonprofit receiving a grant from a public agency has a contract with that agency and likely would be impacted by these proposals. Other similar bills: **HB 88, HB 630, HB 997.**

**Open meetings / open records issues:**

**HB 649:** Creates an exception to the Texas open records laws in that public disclosure could not be required of a state contractor's (vendor's) confidential trade secrets, methods, formulas, work product or research provided to the agency as part of requirements under the contract.

**Public advocacy / Ethics Commission (lobbying) issues:**

**HB 213, HB 314, SB 319:** A ban on lobbying by former legislators for two years after leaving office would not apply to such person's lobbying on behalf of charitable organizations for no fee.

**HB 487:** A former office holder cannot now expend unused campaign contribution funds as a lobbying expense. An exception under the bill would enable such funds to be devoted to lobbying for a tax-exempt charitable organization or cause.

**Nonprofit social service organization and property owner association issues:**

**HB 269:** A community "healthy corner store" business in a "food desert" can be funded through a community development financial institution.

**HB 583:** Judges can now require a criminal defendant to make a contribution to food bank charitable organizations in lieu of performing community service work hours as a condition of probation sentencing. The bill would add veterans charitable organizations as eligible recipients under §42.12, Section 16(f), Code of Criminal Procedure.

**Other bills:**

**HCR 35:** Would make official what everyone already knows: the cowboy hat is the official hat of the State of Texas.

*\*Above list does **not** include bills introduced relating to the following:*

*Nonprofit hospitals, health care or nursing institutions and plans; credit unions; electric or agricultural cooperatives; private and charter schools and colleges; cemetery corporations; quasi-public nonprofit entities.*

*\*\*Many bills have an identical “companion” bill in the other house, bearing a different bill number. Access bills, background information, and current status at Texas Legislature Online, [www.capitol.state.tx.us](http://www.capitol.state.tx.us)*

---

### **Lessons learned:**

This writer has been monitoring the Texas Legislature for almost 20 years and has developed a perspective about the legislative process and government regulation of nonprofit organizations, state associations and foundations:

\*Many legislative and regulatory proposals have unintended consequences for nonprofit organizations. Legislators and their staffs are generally uninformed about the real operations of nonprofits and how they are different from businesses or government agencies.

\*Most “reform” proposals mean more reporting, compliance and governance time and administrative expense for nonprofits, which are judged harshly if administrative/operations expenses consume too large a percentage of their total budget.

\*Volunteer board members and other good people must not be discouraged by lengthy, confusing or threatening governmental regulations that make service risky and enhance their personal legal liability. Criminal penalties attached to reform legislation can frighten informed and qualified leaders who otherwise might have served on a board.

\*One size does *not* fit all. Many “reform” proposals are intended to cure mis-steps and excesses of large nonprofits or national associations. Sadly, reforms often land hard on good people doing good work in local communities across America.

\*The evolving social enterprise movement is composed of innovators and risk-takers who are investing in new ideas, new markets, and new forms of nonprofit operations based on a business model and revenue-based sustainability. These leaders should be given breathing room by government regulators.

\*Complex governmental regulations will discourage start-ups and the efforts of good people with good ideas who seek to advance our society and their communities. Every beneficial and acclaimed cause, movement, charitable institution or nonprofit organization probably started with one person, with one idea, in one community. It then grew and grew with hard work, and now serves the common good. Government policies that affect the nonprofit sector should preserve an environment that **encourages good works by ordinary people in their communities.**