

84th Texas Legislature, 2015 Regular Session

SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS

June 25, 2015 Final Report

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Final end-of-session summary:

Adjournment of the 84th Texas Legislature Regular Session on June 1 began the task of sorting the bills that passed or did not, which issues and ideas are worth highlighting, and the new laws and policies ahead that need to be reviewed to stay informed.

Bills that passed the Texas House and Senate and were signed by the governor (or simply “filed” without his signature) are in bold, underscored, and noted below as follows: **HB 975 PASSED**. The date the legislation is effective is also indicated. Of the 6,300 bills filed, 1,332 were passed and sent to the governor, who vetoed only 42 bills.

Access the text and legislative history of any bill at Texas Legislature Online, www.capitol.state.tx.us . Information about the 2015 appropriations bills and the new state budget is at www.lbb.state.tx.us .

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

Final end-of-session summary of legislation:

The following bills were filed and considered during the 2015 legislature and affect nonprofits, state associations and foundations in the following areas:*

Fundraising activities of nonprofit organizations:

HB 975 PASSED (=SB 898)**: This bill provides a special status for fundraising by major league sports teams and creates 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 “50-50” raffles at every home game in their venues to benefit their charitable causes. Related: **HJR 73 PASSED**.

Status: Effective 1-1-16 if voters approve a constitutional amendment in November on this subject as provided in HJR 73

SB 31 PASSED (=HB 103, HB 105): Volunteer firefighter or EMS organizations will 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).

Status: Effective 5-28-15

HB 2745: Permits unlimited number of raffles per year by a “nonprofit wildlife conservation association” (removing previous limits).

Status: Passed House, referred to Senate State Affairs Committee

HB 2313 PASSED (=SB 1933): A vending machine can be used to sell and dispense products sales-tax-free if operated by a person with special needs who is supported by a qualified nonprofit organization.

Status: Effective 9-1-15

HB 3093: The value of a residential dwelling offered or awarded as a prize at a raffle conducted by a charitable organization would be increased from \$250,000 to \$2 million.

Status: Passed House, referred to Senate State Affairs Committee

HB 2642: The bill contains a number of technical changes to the regulation of charitable bingo operations.

Status: Reported favorably from House Licensing and Admin.Proc.Committee

SB 272 PASSED (=HB 2756): When registering a motor vehicle and paying fees, a revised DMV form permits the person to donate additional funds to the Special Olympics.

Status: Effective 1-1-16

HB 3710 PASSED: When applying for a license to carry concealed handgun, the state form will include space to donate additional funds to a veteran’s assistance fund managed by the state.

Status: Effective 9-1-15

HB 1584 PASSED: When applying for a hunting or fishing license, the state form will carry a space for a donation to a veteran assistance fund.

Status: Effective 9-1-15

SB 1978 PASSED: When applying for a hunter’s license, the state form will include space for the applicant to contribute to a fund that manages distribution of legally harvested deer meat to food assistance provider groups.

Status: Effective 6-19-15

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

HB 38, HB 37 and HB 3773: These bills expand existing state regulation of contributions to a nonprofit organization that may be seen as or have been intended for “political expenditures”, as governed by the Elections Code. See *Public Advocacy* heading below and **SB 19**.

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.

Status: Referred to House Business and Industry Committee

SB 1233 PASSED (=HB 3479): The current prohibition on distributing the assets of a nonprofit corporation to its members on dissolution or winding-up could be waived, with a new exception in §22.054, Bus. Org.Code, providing that the assets of the corporation may be distributed to a similar 501(c)(3) nonprofit that is a member of the dissolving nonprofit, while also observing the purposes of both organizations and exercising board fiduciary obligations, such as safeguarding of restricted funds. Charitable hospital mergers seem to be the purpose of these bills.

Status: Effective 5-23-15

SB 860 PASSED (=HB 2142): Contains three minor amendments to the Texas Nonprofit Corporation Law (Chapter 22, Business Organizations Code) to clarify circumstances in which a vote by the corporation's members or organizers can occur with regard to restating its certification of formation (charter), winding-up (dissolving) the corporation's affairs or acting on similar matters requiring a formal vote.

Status: Effective 9-1-15

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.

Status: Passed House, referred to Senate committee

HB 3420: Specifies that a "nonprofit community business organization" is *governed by* rather than *organized under* the Texas Nonprofit Corporation Law as described by §1.008, Bus.Org.Code.

Status: Referred to House Ways and Means Committee

HB 2557 PASSED: A charitable organization created by a hospital district may enter into a joint venture or other agreement with a public or private entity, including holding an ownership interest in another entity; may operate or manage a captive insurance company, and; is specifically not a political subdivision because of its connection to a unit of local government (the hospital district).

Status: Effective 6-19-15

Regulatory oversight of nonprofit organizations:

SB 200 PASSED: The original Senate version of **SB 200** carried the repeal of Gov. Code Section 535.055, which created the **Texas Nonprofit Council**, an advisory board with cross-agency responsibilities to promote the nonprofit sector generally. The final version of **SB 200** removed this repealer language and, thus, the council will continue its role.

Status: Effective 9-1-15

Comment: Condominium and property owner associations—COAs and POAs: *There are extensive regulatory provisions covering the governance of nonprofit COAs and POAs in Property Code Chapters 82 and 209. These statutes and agency rules are in addition to the*

general Texas nonprofit laws that govern most nonprofit entities. For a summary of COA and POA developments in the 2015 legislation session see www.txlandlaw.com or www.caiaustin.org or www.txcommunityassociationadvocates.org. Some bills of interest:

SB 1168 PASSED: A POA “omnibus bill” with numerous regulatory changes for owner associations and their boards. See also **HB 1455** and **HB 1072**.

Status: Effective 9-1-15

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 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).

Status: Reported favorably from House Business and Industry Committee

Limiting legal liability and amendments to Texas charitable immunity statutes:

SB 378 PASSED (=HB 1116): Social workers performing voluntary professional services could 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.

Status: Effective 9-1-15

HB 262 PASSED: 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.

Status: Effective 9-1-15

HB 2119 PASSED: Chapter 84 immunity could be extended to a charitable organization engaged exclusively in wildfire mitigation, range management or prescribed burning if it complied with other requirements in Chapter 153, Natural Resources Code, relating to such activities supporting government agencies.

Status: Effective 9-1-15

HB 1040 PASSED: Persons officiating or managing a community or interscholastic “athletic competition” (including a rodeo or livestock show) could 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.

Status: Effective 6-9-15

SB 610 PASSED: Liability for injuries or occurrences during “agri-tourism” events on private land could be limited if the required warning notice was posted and the “agri-tourism participant” had signed the required consent form. A new Chapter 75A is added to the Civil Practices and Remedies Code.

Status: Effective 6-19-15

SB 381 PASSED: Volunteers operating motorized equipment or vehicles on properties of the Texas Parks and Wildlife Department could be protected from legal liability to third parties.

Status: Effective 9-1-15

HB 1050 PASSED: 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”.

Status: Effective 6-16-15

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

Comment: The following tax revision proposals come in all flavors. The “good government” idea behind them is that periodically the tax laws of the state should be given a top-to-bottom review by the legislature or select committees. This would include possible erasing of tax exemptions enjoyed by charitable nonprofit corporations, tax credits for taxpayers, and other “benefits” carried in the Texas Tax Code for generations, such as exemptions from the property tax, sales/use tax, franchise (business) tax and other state taxes now enjoyed by tax-exempt nonprofits.

HB 1003: 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.

Status: Reported favorably from House Ways and Means Committee; no House vote

SJR 38: Provides for a constitutional amendment that, if passed, would grant the Legislature broad authority to review all state and local “tax preferences” under Texas law and provide for expiration dates for all such existing tax preferences. Presumably, this idea contemplates a thorough review of the state tax codes and procedures, including exemptions from taxes enjoyed by nonprofits and various tax credits, exemptions and deductions available to for-profit taxed entities and persons. **Related: SB 868** would grant the State Comptroller authority to periodically review all state and local tax preferences, evaluate their impact, and recommend to the legislature continuation, amendment or repeal. All tax preferences would have only a six-year shelf life and would expire unless reauthorized.

Status: SJR 38 referred to Senate Finance Committee

HB 2378 (=HJR 107): Similar to SJR 38, above, except that a select commission would review the tax preferences and exemptions and make recommendations.

Status: Referred to House Ways and Means Committee

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.

Status: Reported favorably from House Natural Resources Committee

Comment: "PILOT" means payments-in-lieu-of-taxes and is an increasingly popular means for local 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 and volunteer issues:

HB 1151 PASSED: Unpaid volunteer interns 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.

Status: Effective 9-1-15

HB 1561: A person providing volunteer security services at a school, church or "the regular meeting place of a nonprofit organization for the duration of a meeting..." would be exempt from state licensing laws regulating private security services.

Status: Reported favorably from House Homeland Security Committee, no House vote

SB 289 (=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.

Status: Passed Senate, reported favorably from House Licensing and Admin. Procedures Committee

HB 889 (=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 have been impacted by these proposals. Other similar bills: **HB 88, HB 630, HB 997, HB 2834, HB 3584, SB 1841.**

Status: None of these bills moved during the session; SB 974 PASSED but applies only to state agency new hires after 9-1-15

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.

Status: Left pending in House Government Transparency and Operations Committee

Public advocacy / Ethics Commission (lobbying) issues:

Comment: The three bills below signaled a repeat of so-called "dark money" controversies from the 2013 legislative session that resulted in Governor Perry's veto of SB 346. Despite longstanding I.R.S. laws and rules regulating advocacy and political activities of tax-exempt organizations, state legislators have again attempted to craft legislation that would treat certain nonprofits (mostly of the 501(c)(4) variety) as political committees that are then subjected to

extensive regulations and reporting requirements under state elections laws. Significant constitutional law issues overshadow these legislative proposals and have generated federal court litigation, highly-disputed I.R.S. rulemaking proposals that were withdrawn, and ongoing Texas Ethics Commission deliberations on these issues.

HB 37: Provides that a *group of persons* (presumably a nonprofit organization) that accepts contributions or dues that the *donor knows or has reason to know may be used to make a political contribution or political expenditure, or may be commingled* with political expenditure funds, must comply with the political committee reporting requirements of Chapter 254, Elections Code. In addition, a member or donor who signs a statement that the donor's payment may not be used for political expenditures *does not have reason to know* it is or will be used for a political expenditure or contribution. An Elections Code report would be required when the organization's aggregate twelve-month receipts of these donor *political contribution* funds exceed \$25,000; the report must name donors whose aggregate contributions exceed \$1,000 for the reporting period.

Status: Reported favorably from House State Affairs Committee

HB 38: Inserts into the Texas Nonprofit Corporation Law (Chapter 22, Bus.Org.Code) a new section regulating that part of a member's or donor's contribution that may be characterized as a *political contribution* because of a *political expenditure* made by the nonprofit organization, as defined in the extensive political action regulations in the Elections Code. The organization soliciting or receiving the contribution would have to provide for specific opt-out notices for the donor or member to elect that no part of the contribution shall be used by the organization to make a political contribution or political expenditure. Depending on its activities, an organization could be treated the same as a political committee for Elections Code reporting and compliance purposes.

Status: Pending in House State Affairs Committee

HB 3773: This bill is a shorter version of **HB 38** and simply removes the dollar-amount thresholds in **HB 38** that would trigger mandatory reporting as a political committee by a nonprofit organization making a political contribution or expenditure.

*Important note: In the final week of the legislative session, the key provisions of **HB 37** were inserted by House floor amendments into **SB 19**, an omnibus ethics reform bill with broad support. Again, the lobby-reporting wording included was intended to rope in political fundraising or advocacy conduct by "persons or groups" into the election-law reporting requirements. This approach was hotly contested on First Amendment grounds and opposed because of required disclosure of donor names. **SB 19** died for these reasons in the 138th day of the 140-day legislative session, but these issues will live on.*

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.

Status: Pending in House General Investigating Committee

SB 1528: States the terms under which, per the Election Code, a corporation's donation to a charitable organization can be tied to a contribution by another party to a general purpose political committee.

Status: Pending in House County Affairs Committee

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.

Status: Reported favorably from House Elections Committee

Nonprofit social service organizations and property owner associations:

HB 583 PASSED: 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 adds veterans charitable organizations as eligible recipients under §42.12, Section 16(f), Code of Criminal Procedure.

Status: Effective 9-1-15

HB 2718 PASSED (=SB 1332): Permits recipients under state benefits programs (financial assistance, medical assistance and nutrition assistance/food) to receive supplemental assistance from non-government community-based and faith-based organizations that would contract with the Health and Human Services Commission and be subject to existing program practices.

Status: Effective 9-1-15

HB 1558 PASSED: Prevents a city from enacting an ordinance that prevents a religious organization from maintaining an overnight shelter program in a church for homeless children.

Status: Effective 9-1-15

HB 2305: Clarifies the characteristics of a "nonprofit community business organization" under Tax Code §11.233.

Status: Reported favorably from House Ways and Means Committee

HB 1685: Like **HB 583** above, the bill would permit a sentencing judge to order a defendant to make a contribution to a tax-exempt organization that "...provides services...to needy individuals and families in the community in which the defendant resides".

Status: Reported favorably from House Corrections Committee

Other bills:

HCR 35 PASSED: Makes official what everyone already knows: the cowboy hat is the official hat of the State of Texas.

Status: Effective 6-17-15

HCR 101: Would make Texas vodka with ruby red grapefruit juice the official mixed drink of this legislative session.

Status: No committee action (indicating that the martini lobby prevailed)

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; “local” bills; 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 .*

What to look for in proposed legislation:

The bills listed here during the session 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.