

**DEVELOPMENTS AFFECTING NONPROFITS
IN THE 2015 TEXAS LEGISLATURE**

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Richard W. Meyer is an attorney practicing in Austin, Texas, with 30 years' experience with nonprofit organizations, statewide associations and quasi-governmental entities. His background is in business ventures and investments, state government agency operations and contracting, legislative analysis and general corporate/business/real estate practice.

As the former public policy advisor and past board chair for the Texas Association of Nonprofit Organizations (TANO), he monitored pending legislation involving the interests of nonprofit entities in the Texas Legislature and U.S. Congress and is the Texas liaison to the National Council of Nonprofits (NCN) in Washington, D.C. Rick serves as counsel for a network of nonprofit enterprises that contract with government entities for goods and services, and he advises boards on regulatory, legislative and compliance matters. He represented state agencies in federal courts across the nation while with the Law Enforcement Division of the Texas Attorney General's Office (1981-85) and served as a special prosecutor and investigator of nonprofit organization misconduct. Always involved in cultural and historic preservation efforts, he was counsel for the Texas Historical Commission (1981-85), was the first counsel for the State Preservation Board (which restored and enlarged the State Capitol), was the first counsel for the highly-successful Texas Main Street Program, was a founder of Preservation Texas (a statewide advocacy organization), and served as chair of the Austin City Historic Landmark Commission for six years and vice chair of the Austin Downtown Commission. He has founded and served on the boards of numerous nonprofit and faith-based organizations, has lectured and written articles for nonprofit managers and for legal and accounting continuing education seminars, and was an advisor in the M.B.A. program at St. Edward's University of Austin for graduate student consulting projects. He practiced in Los Angeles from 1975 to 1981.

Rick is a graduate of The University of Texas School of Architecture (1970) and the School of Law (1974), and is a lifelong supporter of UT Austin including active participation in the Texas Exes, Chancellor's Council, Friar Society, various fundraising initiatives, Friends of the University PAC and annual legislative lobbying day. He is licensed in Texas and California, serves as an arbitrator, and is a Texas registered lobbyist.

PRESENTATIONS (Partial List):

"Expanding the Nonprofit Purpose", for State Bar of Texas, Governance of Nonprofit Organizations CLE Course, Austin, Texas, August 22, 2014

"Developments Affecting Nonprofits in the 2013 Texas Legislature", for State Bar of Texas, Governance of Nonprofit Organizations CLE Course, Austin, Texas, August 22, 2013

"Public Policy Update: Nonprofit Organizations", for State Use Program Association, New York, N.Y., June 25, 2013, *one hour*

30th Annual Nonprofit Organizations Institute, for The University of Texas School of Law/Conference of Southwest Foundations, January 16, 2013, *seminar presiding officer, four hours; seminar planning committee*

"Public Policy, Regulatory and Legislative Issues on the Horizon", for State Bar of Texas, Governance of Nonprofit Organizations CLE Course, Austin, Texas, August 23, 2012, *50 minutes*

29th Annual Nonprofit Organizations Institute, for The University of Texas School of Law / Conference of Southwest Foundations, January 19, 2012, *seminar moderator/presiding officer, four hours; seminar planning committee member since 2007*

"What Policies Does My Organization Need?", for State Bar of Texas, Governance of Nonprofit Organizations CLE Course, Austin, Texas, August 18, 2011, *50 minutes*

“Legislative Update 2011”, for Nonprofit Texas 2011 Seminar, Texas Association of Nonprofit Organizations - Constant Contact, Houston, Texas, June 22, 2011, *45 minutes*

“Legislative and Regulatory Surprises Coming Our Way”, for Planned Giving Council of Texas, Austin, Texas, August 23, 2010, *75 minutes*

“Public Policy, Legal and Regulatory Issues Facing Nonprofit Organizations”, for the Texas Association of Museums annual conference, College Station, Texas, March 18, 2010, *90 minutes*

“Public Policy and Nonprofits: Emerging Issues”, for the Governor’s Nonprofit Leadership Conference, Dallas, Texas, December 9, 2009, *90 minutes*

“Federal and State Public Policy, Legislative and Regulatory Issues Affecting Nonprofit Organizations”, for the Texas Society of Certified Public Accountants conference, Dallas, Texas, May 18, 2009, *one hour*

26th Annual Nonprofit Organizations Institute, “Public Policy, Legislative and Regulatory Issues Affecting Nonprofit Organizations”, for The University of Texas School of Law/Conference of Southwest Foundations, Austin, Texas, January 16, 2009, *one hour*

“Public Policy and Legislative Issues Affecting Nonprofit Organizations”, for State Use Programs Association Conference, Las Vegas, Nevada, February 12, 2009, *two hours*

“Influencing Public Policy Through Advocacy”, for Nonprofit Leadership Management Institute at Austin Community College, January 24, 2009, *two hours*

“Transforming a Nonprofit to Social Enterprise: Legal and Public Policy Issues”, for OneStar Foundation and Nonprofit Resource Center Workshop, San Antonio, Texas, August 22, 2008, *one hour*

25th Annual Nonprofit Organizations Institute, January 17-18, 2008, for The University of Texas School of Law and Conference of Southwest Foundations, *seminar and continuing education, served as presiding officer/moderator, four hours*

“State and Federal Regulatory Issues Affecting Nonprofits”, December 14, 2007, for 17th Annual NPRC Legal & Accounting Institute, *continuing education for attorneys, CPAs and nonprofit managers*, San Antonio, Texas, *one hour*

“Understanding the Nonprofit Sector”, September 29, 2007, for Nonprofit Leadership and Management Institute, Austin Community College, *90 minutes*

“Federal and State Government Pressures on Nonprofit Entities: Accountability, Transparency and Improved Corporate Governance”, February 14, 2007, at Austin Community College for attorney continuing education series for Austin Bar Association and Texas Association of Nonprofit Organizations, *90 minutes*

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DEVELOPMENTS AFFECTING NONPROFITS IN THE 2015 TEXAS LEGISLATURE

I. INTRODUCTION

Nonprofit organizations of all sizes and varieties play an important role in public life and are a significant force in the economy. With the growth of the nonprofit sector, government officials, regulators and elected officials increasingly thrust the activities of nonprofits into the public arena. Leaders and stakeholders in the nonprofit sector must identify issues that affect their welfare and sustainability and be prepared to take stands as opportunities or challenges are presented.

A number of participants in the state legislative process, including this writer, strive to identify, articulate and protect the interests of the Texas nonprofit sector before the Texas Legislature and regulatory agencies. Unfortunately, the policy and lobby presence of the Texas nonprofit community is diverse, disconnected and often passive.

The Texas Legislature ended its 84th Regular Session on June 1, 2015, and numerous bills were presented as listed here that directly or indirectly affect the interests of nonprofit organizations and state associations. APPENDIX 2 is the final end-of-session summary that lists bills and issues that should be of concern to leaders in the nonprofit sector in Texas and is regularly updated at

www.nonprofitlawandpolicy.com.

Of the almost 6,300 bills filed, 1,332 were passed and sent to the Governor, who vetoed only a few. This indicates a 21% chance of passage in the 2015 session, although the substantive elements of non-moving or dead bills are often inserted into other bills in committee or by House or Senate floor amendment. The state's budget, agency consolidation, procurement ethics, education and growth challenges occupied most of the legislators' attention during the 140-day Regular Session.

In this summary, "**HB**" refers to a House Bill, and "**SB**" refers to a Senate Bill.

Bills that passed are underlined in bold and are effective September 1, 2015, unless otherwise noted.

This summary references only the issues and content of the 84th Regular Session bills included and does not reflect tracking of appropriations bill deliberations or state funding requested or received relating to issues, parties or organizations discussed. Comprehensive state budget data can be obtained from the Legislative Budget Board, www.lbb.state.tx.us.

The text of any bill, its legislative history and end-of-session status can be reviewed at Texas Legislature Online, www.capitol.state.tx.us, or background from

other sources (see APPENDIX 1, *Resources and Information*).

II. BILLS AND ISSUES IN THE 2015 TEXAS LEGISLATURE AFFECTING NONPROFITS

A. 2015 Regular Legislative Session

The Texas Legislature ended its 84th Regular Session on June 1, and numerous bills were presented that deserve attention. Overall, this session presented more opportunities than threats or challenges to the interests of the Texas nonprofit sector.

There were two amendments to the Texas Nonprofit Corporation Law, which appears in Chapter 22, Texas Business Organizations Code:

SB 860 contains three minor amendments to the Texas Nonprofit Corporation Law (Chapter 22, Bus.Orgs.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, winding-up (dissolving) the corporation's affairs or acting on similar matters requiring a formal vote.

SB 1233: The current prohibition on distributing the assets of a nonprofit corporation to its members on dissolution or winding-up would be waived, under a new exception in §22.054, Bus.Orgs.Code, by 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 kinds of bills.)

No major new nonprofit board governance requirements were passed, and regulation of charitable fundraising activities was not expanded (bingo, charity auctions, poker runs, fishing tournaments). Legislators devoted attention to limiting the liability of volunteers, persons and entities engaging in social assistance programs or disaster relief efforts. Attempts to extend public agency "open meetings" and "open records" laws to nonprofit entities did not surface. Proposals requiring more organizations to conduct criminal background checks or employment-eligibility verifications did not pass. There was no overt conflict between the "small business" lobby and nonprofit enterprises over the perceived competitive advantage nonprofits get from their tax-exempt status.

Other developments:

- **Civil Practices and Remedies Code, Chapter 84, immunity** bills again appeared in response to situations and concerns where volunteers or volunteer nonprofit board members were seen to

be subject to personal liability: **SB 378** for social workers, **HB 2119** for volunteer wildfire fighters.

- **SB 610 adds a new Chapter 75A to the Civil Practices and Remedies Code** to limit liability for “agri-tourism” activities.
- The **Texas Nonprofit Council** escaped a near-death when it was included in an early long list of state agency advisory commissions and committees that were to be repealed in **SB 200**.
- **HB 2718** seeks to permit receipt by persons and families of certain charitable assistance without jeopardizing their existing public benefit eligibility under TANF, SNAP and other assistance programs.
- **Dogs that didn’t bark:** Contested proposals from earlier sessions relating to further regulation of bingo, poker runs, high-dollar charity auctions and related fundraising methods were absent. Few “PILOT” bills surfaced, and applying the state’s open records/open meetings laws to additional nonprofits got little attention.

Overall, it was a legislative session where opportunities outweighed challenges and threats. The general regulatory environment for nonprofit entities in Texas remains relatively “light” when compared to other states.

B. Texas Issues to Watch

Some bills and issues deserve special attention. Even those bills that did not pass are worth noting because a large percentage of them may reappear in the next legislative session. It is said that a good idea won’t go away—but the same applies equally to a bad idea! In every session, there are clusters of proposed bills that reflect the public’s heightened interest in certain causes.

Special fundraising privileges for organizations or causes that have friends in the legislature deserve attention. **HB 975** provides a special status for fundraising by major league sports teams and creates an entirely new chapter in the Occupations Code for professional sports clubs—from the NFL, NBA, MLB, MLS—that maintain §501(c)(3) tax-exempt charitable foundations. If the voters approve the accompanying constitutional amendment in **HJR 73** in November, these clubs will be permitted to conduct raffles at every home game in their venues to benefit their charitable causes, an exception to the limitations on raffles elsewhere in the law. (In related news, the National Football League forfeited its IRS §501(c)(6) tax-exempt status with great fanfare in April 2015. See “NFL Gives Boot to Tax Exemption”, The Wall Street Journal, April 29, 2015. For background see, Eleanor Hunt, “The ethics of a billion-dollar sports league

operating as a nonprofit”, Baylor Business Review, Spring 2015.)

Along the same lines, **SB 31** permits volunteer firefighter or EMS organizations to hold up to ten fundraising sales or auctions per year that are tax-exempt events, amending Tax Code §151.310 that permits fewer events.

What’s the problem with these well-intentioned bills? When enacted, these laws would put certain groups ahead of others in the competition for the public’s donation dollars and indicate the state giving certain groups a preference, to the exclusion of other charitable groups or causes. With the passage of these bills, expect to see other groups with friends in the legislature asking for their own exceptions to the current Tax Code limits on raffles, auctions and tax-free sales events.

State agency fee collections will advance charitable donations for preferred groups. Texans can probably brag that their state has more varieties of auto license plates than all of the governments in the known universe combined. This is because the legislators have permitted add-on fees at the time of the license renewal that offer customized “specialty plates” with an image or message supporting a cause, college or university, public landmark, sports team or lovable creature such as the Texas horned lizard. Three bills expand this concept to various state agency forms that citizens use to pay fees by providing extra space on the form for an additional donation to a specified cause. Examples:

- When registering a vehicle at DMV, use the form to make an additional donation to Special Olympics (**SB 272**).
- When applying for a license to carry a concealed handgun, check the box to make a donation to a veteran’s assistance fund managed by the state (**HB 3710**).
- When applying for a hunting license, indicate an extra amount that goes to a fund to manage the distribution of legally-harvested deer meat to groups that provide food assistance (**SB 1978**).

Why would any legislator vote against these kinds of proposals? Because they can capture a good amount of citizen donation dollars for particular causes or groups, to the exclusion of other groups. Without more thoughtful policy discussions regarding the fairness of these well-intentioned proposals, state government likely should not be picking winners and losers among the hundreds of organizations and causes that compete for the public’s dollars. An additional concern is that, in past years, the legislature has not directed all the donated dollars specified by each license plate donor to the designated cause. Instead, the state has taken

substantial amounts from these various funds into the general treasury to cover the state's general expenditures.

Unpaid interns get some legal rights. Many organizations rely heavily on volunteers and unpaid interns—usually college students or community service assignments—to manage operational duties. These unpaid assistants or trainees often are the backbone of smaller organizations. It's fair to ask, how much is too much dependence on well-intentioned unpaid interns, and what might result when there's an unhappy ending to the relationship that sends an intern to an attorney's office? **HB 1151** was not expected to pass but did, possibly because there are more intern grievances out there among organizations than we know. The bill adds provisions to the Texas Labor Code granting unpaid interns the same legal protection against on-the-job sexual harassment as paid employees. Most interesting of all, the bill provides a definition of what is an unpaid internship, with new Labor Code §21.1065.

The Texas Nonprofit Council was blind-sided by an unexpected repealer. The council, created by the legislature four years ago, survived a legislative repeal. **SB 200** taught an important lesson: *never abandon the watch*. The bill was an omnibus house cleaning bill generated by the Sunset Advisory Commission, Health and Human Services Commission and other state agencies to eliminate scores of advisory boards, commissions or committees established by the legislature or executive order over the years. Buried in the bill was the repeal of the council's enabling statute, §535.055, Government Code, which vigilant stakeholders spotted.

The Texas Nonprofit Council was established within state government to continue the earlier work of a task force of nonprofit leaders and state agency officials. This legislation is recognition of the important role of the nonprofit sector in the economic and public fabric of the state. The 14-member council will continue to make recommendations to improve contracting and collaboration relationships between state agencies and community-based and faith-based organizations, and to prepare a biennial report to the legislature in December of even-numbered years.

Legislators devoted attention to breaks for volunteers and relief efforts. Legislators recognized the important role of volunteers, first-responders, and ad hoc relief groups in assisting people and communities in disasters or with pressing social needs. A group of bills sought to make it easier for certain licensed persons to assist with disaster relief, allow social service facilities to escape strict permitting in certain situations, or give legal immunity or limited liability to persons, groups and facilities where socially beneficial work is conducted by volunteers. See APPENDIX 2 legislative summary.

Special-purpose corporations and quasi-governmental entities are increasing in number. Special-purpose corporations are a common tool of legislators to advance or accommodate a local situation. They are often hard to describe and evolve in unexpected forms when the legislature crafts an entity to perform specific functions, or are considered "local" bills on the legislative calendars. For example, **HB 2557** provides that 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).

The Cancer Prevention and Research Institute of Texas (CPRIT) weathered additional scrutiny again this session. In its 2013 bill, SB 895, it was demonstrated that a separately chartered nonprofit organization like CPRIT that exists solely to support a public entity is, at the end of the day, often deemed to be a quasi-governmental entity and thereby becomes subject to the open meetings/open records laws that must be observed by government agencies. Legislators and critics have difficulty appreciating that, as with for-profit entities, receipt of public funding through arms-length contracting or grant funding does *not* necessarily convert private nonprofit organizations into government instrumentalities.

Note that passage of these kinds of special-purpose or local bills continues to spread statutes regarding nonprofit entities across the Texas codes, separate from the Texas Nonprofit Corporation Law in Chapter 22, Bus.Orgs.Code.

The **political food chain** at the Texas Capitol during the legislative session is not kind to the meek or unprepared. Leaders from the nonprofit sector have traditionally been too unorganized, discreet and passive to advocate effectively for their stakeholders and for ordinary people in local communities who seek to go about doing work for the public good without excessive government regulation, legal liability or undeserved scrutiny.

III. SECTION 501(C)(4) ORGANIZATIONS GET SPECIAL STRUTINY

A. Defeated Proposals to Regulate Activist 501(c)(4) Organizations Crash Related Ethics Reform Bills

Ethics reform legislation was a stated goal of Governor Abbott, and almost everyone in the Pink Building agreed that an omnibus ethics bill would evolve and pass. **Senate Bill 19** became the lead ethics bill, but one lingering difference between the House and Senate versions was never resolved: additional statutory regulation of donations to nonprofit

organizations (primarily §501(c)(4) tax-exempt entities) that might later be directed to public advocacy or political activities.

The House version of **SB 19** was returned to the Senate with language from earlier bills, **HB 37** and **HB 38** (see APPENDIX 2 legislative summary), requiring that names of some donors would have to be disclosed, and that the “persons or groups” receiving these funds could be characterized as a political committee, whether called that or not, and thus subject to filing and other regulations under the Texas Elections Code.

Senate sponsors of the bill signaled that this language was not acceptable to them on First Amendment constitutional grounds. On the 138th day of the session, House and Senate conference committee conferees could not agree on this point, and SB 19 was not returned to the floor of either house. News accounts generated after the session debates may paint a picture of secretive, non-transparent nonprofit organizations that need reforming, but the issues run much deeper.

The Texas debate over SB 19 mirrored ongoing inquiries and investigations on the national level that involved hearings before the U.S. Congress, criminal investigations and considerable debate regarding IRS oversight of tax-exempt groups that engage in advocacy. Expect the entire exempt organizations scheme under §501(c) to continue to be examined in the future by legislators in Washington and Austin.

The SB 19 proponents sought to make it clear they are strictly observing the advocacy rights specified in the U.S. Supreme Court’s 2010 *Citizens United* case by merely requiring public disclosure of the Texas nonprofits’ funding activities and political expenditures while avoiding outright restrictions on fundraising, advocacy activities or political expenditures. Transparency is the goal, the Senate and House sponsors emphasized. There are varying estimates of the total amount of nonprofits’ funds spent on direct advocacy by a range of nonprofit groups in the last Texas election cycle, but all agree it is not small and is growing.

B. Property and Condominium Owner Association Regulation and Oversight

Property owner associations again took the heat from critics. Controversy and criticism of one group often spills over and affects the interests of others. This is a valid concern, as yet another legislative session featured bills, hearings and unpleasant media coverage regarding the operations of the thousands of Texas property owner associations (POAs), also called home owner associations (HOAs), and condominium owner associations (COAs). Hundreds of thousands of Texans pay monthly fees to these nonprofit community associations as a condition of their ownership of a residential property. The POAs

are not IRS §501(c)(3) charitable nonprofits but are organized under the same Texas Nonprofit Corporation Law as charities but usually with IRS §501(c)(4) tax-exempt status.

There were a score of POA-specific bills pending in this legislative session, with many others affecting COAs and timeshare associations. Of most concern was **SB 1168**, the omnibus POA bill. A summary of legislative developments relating to POAs and COAs can be found at www.caiatexas.org or www.txcommunityassociationadvocates.org or www.texaslaw.com.

The *Austin Business Journal* reported that there are 25,000 or more such nonprofit associations in Texas, directly affecting as many as 5 million Texas residents. This network of nonprofits and their managers is represented nationally by the Community Associations Institute. The CAI monitors legislation and regulatory developments in all states, and seeks to retain the associations’ right to collect monthly owner assessments in a timely manner and to increase the flexibility of associations to operate and borrow money within federal and state regulations. The CAI reports that ten states currently have licensing or professional requirements for association managers (Texas has none).

Many large POAs cover thousands of residential units and perform quasi-governmental functions such as neighborhood maintenance, refuse collection, recreation facilities, traffic control and issues related directly to the residential units themselves. Most serious is the legal power of an association to foreclose on a residential unit when a lien for unpaid assessments has been properly filed and perfected. The scale of nonprofit POA operations in Texas and their direct effect on the lives of so many citizens means these issues will remain active. As is often the case, the role of well-intentioned volunteers who serve on the boards and committees of POAs is drawn into question, and burdensome or threatening government regulations will likely discourage their participation. Controversies regarding charitable nonprofits often boil down to issues of governance, best practices, transparency, accountability, compliance with the law and sound fiscal management of the funds of others. It’s no different with the thousands of local owners associations operating in Texas.

These POAs and COAs are the first cousins of nonprofit charitable organizations and are regulated under Chapters 82 and 209 of the Property Code. If future legislative “reform” continues to regulate and pressure COAs and POAs, it is reasonable to speculate that this interest could be a pretext also to further regulate *all* Texas nonprofit organizations in the future. The problems identified by POA/COA residents and critics constantly beg for legislative or regulatory

solutions, and these discussions could have unintended consequences for §501(c)(3) organizations in Texas.

IV. RECURRING ISSUES FOR THE 2017 LEGISLATIVE SESSION AND 2016 INTERIM ACTIVITIES

Tax exemption review and reform bills did not move, a repeat of former sessions. Several bills filed represented a trend nationwide to initiate periodic top-to-bottom reviews of the tax structure of state government and, in particular, to question any tax credit, preference, incentive, exemption or other tax benefit conferred under state law. This approach not only impacts the state tax laws relating to private interests, industry and business groups, but it also puts into question the tax exemptions traditionally enjoyed by nonprofit charitable organizations. In Texas, the exemptions are from property taxes, sales and use taxes, and the business (franchise) tax. Under this legislative analysis, *all tax exemptions are viewed as a “cost” to state government* in that they represent tax revenues not received but that may be available to tap in times of tight government budgets. Charitable tax exemptions are seen as the same, and some critics are unhappy with the “cost” of these lost revenues that are not collected from tax-exempt entities and their properties.

- **HB 1003** would provide that all state tax exemptions, credits or other exceptions would “sunset”, or be automatically repealed, every six years unless re-authorized by the legislature after a review of the costs and benefits of these tax exemptions and policies. This idea sends chills through the nonprofit sector and charitable organizations and also other special-interest groups in the private sector.
- **SB 868** and **SJR 38** would grant the legislature broad authority to review all state and local “tax preferences”, or require the State Comptroller to periodically review all state and local tax preferences to evaluate their impact. All tax preferences would have a six-year shelf life unless re-authorized.
- A bill proponent asserted that more than \$44 billion in potential state tax revenue is by-passed in this biennium due to current tax exemptions and preferences, with tax-exempt entities taking a large share of the breaks. *See Texas Comptroller of Public Accounts, Tax Exemptions and Tax Incidence*, March 2015.

These bills received polite committee hearings but did not move. As a noteworthy warning that this type of review and reform will gather legislative momentum in future sessions, HB 1003 was reported favorably from

the House Ways and Means Committee, a significant step.

Property tax exemptions available to nonprofit entities are found generally in §11.18, *et seq.*, Tax Code. Unlike previous sessions, few 11.18 amendment bills were presented in this legislative session (see APPENDIX 2 summary). Over time, there have been so many exemptions expressly written into 11.18 that the original property tax exemption policy expressed is becoming muddled and bottom-heavy with numerous specific and local exemptions. At some point this issue will generate a thorough review and legislative reform proposals.

“PILOT” means payments-in-lieu-of-taxes and reflects a growing trend by state and local governments nationwide to impose various kinds of taxes, assessments and user fees on properties owned by tax-exempt charitable organizations—without calling them taxes. The end result would be to tax the assets of tax-exempt entities, an illogical result (nonprofit advocates argue) because it directly diminishes the resources and the public benefit provided by charitable organizations. In the 2011 session, Texas legislators filed numerous bills to clarify which tax-exempt properties or owners were to be free of locally-imposed PILOT fees, such as the Houston area drainage fees that raised such vocal opposition from charities, private schools, faith-based organizations and universities. There was very little “PILOT” activity in the 2015 legislative session, unlike what is occurring in other states.

V. LESSONS LEARNED

- * **Many legislative and regulatory proposals have unintended consequences for nonprofit organizations. Legislators and their staffs are generally uninformed about the operations and real interests of nonprofits.**
- * **Most “reform” proposals mean more reporting, compliance and governance time and administrative expense for nonprofits. Nonprofits 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. Criminal penalties attached to reform legislation scare away 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 missteps by large nonprofits or national associations. But reforms often land hard on good people doing good work in local communities across America.**

- * The burgeoning *social enterprise* sector is comprised of innovators and risk-takers who are investing in new ideas, new markets, and new forms of nonprofit operations based on a hybrid business model. These leaders should be given breathing room by government regulations.
- * Complex governmental regulations will discourage start-ups and the efforts of good people with good ideas. True, there may be redundancies and duplications of nonprofit efforts in any community, but every successful and acclaimed nonprofit organization probably started with one person with one idea...and it grew and grew...and now serves the common good. All our efforts should be to that end.

APPENDIX 1

Resources and Information

Texas Legislature Online
www.capitol.state.tx.us

Legislative Budget Board
www.lbb.state.tx.us

Nonprofit Law and Policy Blog
www.nonprofitlawandpolicy.com

Texas Association of Nonprofit Organizations
www.tano.org

Texas Tribune
www.texastribune.org

Texas Impact
www.texasimpact.org

Texas C-Bar
www.texascbar.org

National Council of Nonprofits
www.councilofnonprofits.org

The Urban Institute
www.urban.org

Board Source
www.boardsource.org

Council on Foundations
www.cof.org

Nonprofit Risk Management Center
www.nonprofitrisk.org

Independent Sector
www.independentsector.org

Internal Revenue Service
www.irs.gov

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APPENDIX 2

www.NonprofitLawandPolicy.com

84th Texas Legislature, 2015 Regular Session

SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS

June 25, 2015 Final Report

Compiled by Richard W. Meyer, Attorney at Law

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 an 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 §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 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 on 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.

