

85th Texas Legislature, 2017 Regular Session

SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS

As of April 30, 2017

Compiled by Richard W. Meyer, Attorney at Law

Legislators race to the finish of session:

With four weeks remaining in the 85th regular session, legislators are scrambling to get bills passed in their house and quickly referred to a friendly committee in the other house for quick action. **There are now more than 7,000 bills and resolutions on file**, depending on how you count them. Bills that passed one house but are not moving this week in the other house are likely dead “by the clock” for this session, unless the legislator is skillful in attaching the key elements of a short bill onto a compatible bill that is moving through the process and to final passage.

Watching committees: The bill text you may be reading at any point in time may only be a glimpse of what develops, whether shorter or longer, and bearing changed content or other surprises. **Committee substitute bills** in the house of origin are common and often surface unexpectedly. When following a committee’s actions, be sure you know whether they are talking about the bill as filed or one or more substitute bills that may be in play at that time. Floor **amendments** are common in the House for controversial or disputed bills.

House and Senate daily calendars: Watch for a bill’s appearance on the various House or Senate intent calendars for a given date. As the lists for each day’s calendar get longer, there is less chance a bill will be called that day or ever.

Access the text of any proposed House bill (HB) or Senate bill (SB) at www.capitol.state.tx.us and use other tracking and analysis tools available on the state’s very useful legislative website. Follow committee agenda postings and track the progress of any bill.

Note on **appropriations:** This summary and later updates do not contain tracking or notations regarding legislative appropriations or riders for any of the issues or bills referenced. The general appropriations bills in the House and 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.

Analysis and commentary below focus on **protecting your right to do good works** through community service in nonprofit organizations or voluntary associations.

“Final 30 days” review of proposed legislation:

The following bills are pending in the 2017 legislature and affect nonprofits, state associations and foundations in the subject areas listed. * Bills that are “moving” along are listed first. “Companion” bills (one in each house) that are identical or carry the same essential terms may be moving at the same time.

Open meetings / open records issues:

SB 408 (=HB 793):** The somewhat obscure language of SB 408 could require thousands of nonprofits and associations to comply with “open records” disclosure to any requestor by declaring them a *government body* because the organization (1) receives or spends public funds, unless the funds are received through an arms-length contract for services, (2) uses real or personal property owned or leased by the state or a political subdivision that is not generally available to the public under an agreement that provides for no or nominal consideration, or (3) receives or spends public funds under an agreement to provide services traditionally provided by a government body. The goal of the bill is to reverse the Texas Supreme Court’s ruling in the *Greater Houston Partnership v. Paxton* case. It is unclear how thousands of small Texas nonprofits without full-time or professional staff and counsel could or would comply with the strict mandates, timelines and penalties for failure to comply with an open records request under the Texas Public Information Act. The affected organizations should also feel uncomfortable being labeled a *government body*.

Status: Passed Senate; awaiting House committee hearing

HB 2674: A tax-exempt nonprofit corporation that receives 25 percent or more of its income from state funding would be required to prepare a report listing the salaries of each of its employees and officers and have it posted regularly on its website and a website maintained by the Secretary of State.

Heard in House committee May 1, left pending

HB 4144: Would establish a process to determine if an entity receiving an open records request is a *government body* within the meaning of the Texas Public Information Act and thereby subject to disclosure requests from the public.

Fundraising activities of nonprofit organizations:

HB 3125 (=SB 1337 - HB 1405): This bill adds more professional sports associations (soccer, hockey, minor league baseball, NASCAR, IndyCar) to the current list of parties with a special exemption from state charitable raffle limitations. Occupations Code §2004.002(2) already provides a special status for fundraising by major league sports teams and permits 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 venues to benefit their charitable purposes through a captive foundation. Related: **SJR 49**, the constitutional amendment that voters will have to approve to enact these provisions.

Awaits House vote

HB 2764: Like SB 1337 above, this bill adds NASCAR, IndyCar and other motorsports racing associations to the raffle exemption list in §2004.002(2).

HB 115: The maximum value of a residence used as a charitable raffle prize would be increased from \$250,000 to \$2 million.

Passed House; awaits Senate committee hearing

HB 4042: Would extend TABC permits for a temporary charitable auction permit to include the registered campaigns of persons seeking or holding public office that report activities and fundraising under Chapter 254, Elections Code.

Passed House; awaits Senate committee hearing

HB 1100: A *charity hunt permit* could be obtained from the Parks and Wildlife Department to conduct a charity hunt on private property to benefit a designated nonprofit organization if occurring within two weeks after the end of the open hunting season.

HB 3344 (=SB 1832): A *temporary charitable festival permit* could be issued by the Texas Alcoholic Beverage Commission (TABC) for on-premises or off-premises alcohol consumption at an auction that is part of a festival, subject to existing local option elections regarding the sale of alcoholic beverages.

SB 1974: Would add raffles to existing temporary charitable auction permit regulations as granted by TABC under Chapter 53, Alcoholic Beverage Code.

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

SB 1518 (=HB 2827): Amends the Bus. Org. Code (BOC) to expressly incorporate Chapter 252 *nonprofit associations* into the merger and conversion procedures of BOC Chapter 10. The bill also amends BOC §22.227 to require that a director's *abstention* from an official action must be entered into the corporation's official records, just like an affirmation or dissent.

SB 1518 passed Senate; HB 2827 set for House vote

Related: **HB 3488:** A for-profit corporation could elect to convert to a *public benefit corporation (PBC)*, which is a for-profit enterprise but one that balances (1) the shareholders' pecuniary interests, (2) the best interests of those persons materially affected by the corporation's conduct, and (3) the public benefit specified in its certificate of formation. Duties of the directors align with these three interests. NOTE: "PBC" corporations, already common in other states, can evolve to appear to be nonprofit, charitable enterprises.

Awaits House vote

SB 2180: Disclosure of a nonprofit organization's latest formal audit would satisfy the financial records disclosure obligations under §22.353, Bus.Org.Code.

Regulatory oversight of nonprofit organizations:

SB 24 (=HB 3956): A governmental unit would not be able to compel the production or disclosure of any record of a sermon delivered during religious worship, or compel a religious leader to testify regarding the sermon, in any civil or administrative proceeding.

Passed Senate; awaits House committee hearing

Limiting legal liability and amendments to Texas charitable immunity statutes:

HB 2779: The “Free to Believe Act” would prevent any Texas government entity from enacting any policy or program, or withholding any state benefit program, that is contrary to the beliefs of religious organization. *Religious organization* is broadly defined to include not only organized, recognized religious groups but also “...a religious group, corporation, association, school or educational institution, ministry, order, society or similar entity, regardless of whether the entity is integrated or affiliated with a church or other house of worship...” Sovereign immunity of covered government entities is waived for a person seeking legal redress under the act.

HB 4250: Would expand the definition of foods that are covered by the food donation immunity provisions of Chapter 76, Civil Practices and Remedies Code.

State tax exemptions granted to nonprofit entities:

HB 518 (=SB 275): A workforce training organization with annual sales of at least \$1 million from donated goods that provides a variety of job training and placement services to persons with a disability may receive from the state comptroller a substantial rebate of its sales taxes collected to fund its approved job training and placement programs.

Passed House; awaits Senate committee hearing

SB 1345: Would add nonprofit organizations that provide free tax return preparation services to the public an exemption from state ad valorem taxes under Tax Code §11.18(d).

Passed Senate; awaits House committee hearing

Nonprofit board governance, officer, employee and volunteer issues:

HB 1978 (=SB 2194): Normal supervision and delegation requirements relating to physician assistants would be waived when volunteering for a charitable organization’s public event, religious event, sporting event or community event.

Passed House; awaits Senate committee hearing

HB 421: Would exempt volunteers who provide security at churches or religious facilities from needing occupational guard licenses.

Awaits House vote

HB 2933: A special military limited volunteer license to practice optometry could be granted to persons who treat indigent patients for no compensation.

Passed House; awaits Senate committee hearing

HB 786: Volunteer emergency responders would be protected from employment discrimination, termination or suspension based on an absence from employment while responding to an emergency, provided that no more than 14 work days a year are affected by such volunteering.

SB 1140: Would assign a new heading and Labor Code §21.143 to the definition of *unpaid intern*, with respect to existing sexual harassment protections for employees. Become familiar with the definition that was passed in the 2015 session.

Public advocacy / Ethics Commission (lobbying) issues:

SB 24 (=HB 3956): The contents of a sermon of a religious leader during religious worship in a religious organization could not be the subject of compelled discovery in any civil action or administrative proceeding in which a governmental entity is a party.

See previous entry, above

Nonprofit social service organizations:

HB 6: Would represent a transition from state agency management and operation of child foster care programs to a community-based model that would involve contracting out these public services to nonprofit organizations and other vendors.

Awaits House vote

HB 367 (=SB 725- SB 755): School districts could elect to donate surplus food to a nonprofit organization directly affiliated with the campus as well as sponsor food donations to be distributed by the school's representatives or volunteers.

HB 367 passed House, awaits Senate committee hearing; SB 725 passed Senate

SB 1488 (=HB 3502): In lieu of performing community service hours, a probationer could be offered the choice of making a contribution to a charitable organization or one engaged primarily in performing charitable functions for veterans in the community. NOTE: This provision appears on pages 287 and 323 of this 305-page "clean-up" bill.

Passed Senate; awaits House committee hearing

SB 723 (=HB 1047): Would permit a *healthy corner store* to be established in a *food desert* funded through a community development financial institution loan and other public financing methods. (Similar: **HB 3299**, would give substantial tax credits to an organization operating such a store.)

HB 1805: A government entity that contracts with a private or nonprofit child welfare service provider may not discriminate or take any adverse action against the provider on the basis that the provider has declined to provide any service that conflicts with the provider's sincerely held religious beliefs.

Quasi-public entities; homeowner and property owner associations:

Note regarding homeowner associations and property owner associations (HOAs and POAs): The proliferation of legislation regulating these associations has taken on a life of its own in Chapters 82, 202 and 209, Texas Property Code, and as a parallel universe to the primary nonprofit organization laws. Governance and regulatory issues affecting these associations often overflow into subjects otherwise covered in the Business Organizations Code and Chapter 22, the Texas nonprofit corporation law. For a summary of current legislation affecting these associations, see www.txlandlaw.com/blog.

HB 3452: *A homestead land trust* could operate as a nonprofit enterprise to own residential properties in a given zone for the purpose of preserving longtime homeowners and maintaining affordability of housing.

HB 906 - HJR 54: Would exempt from ad valorem taxation property owned by or leased to a *university research technology corporation*, which is a special-purpose corporation that develops and commercializes technologies that are owned by universities or medical schools.

SB 1889 (=HB 4031): Would authorize *educational assistance organizations* to channel certain funds to public and charter schools for scholarships and other assistance.

SB 1931 (=HB 3447): A nonprofit organization qualifying as a community land trust could utilize a wholly-owned limited partnership or LLC in covered transactions and still qualify as a trust.

Awaits Senate vote

Other bills:

SCR 8: If passed, this proposal would disappoint some by declaring the cannon the official state gun of Texas.

Passed Senate; awaiting House vote

HCR 32: Probably less controversial, this proposal would declare the Bowie knife the official knife of Texas.

Passed House; awaits Senate vote

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; community development corporations; cemetery corporations; public housing 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 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.

Lessons learned:

More than 25 years of observing the legislature and participating in advocacy has yielded the following perspective:

*Many legislative and regulatory proposals have unintended consequences for nonprofit organizations. Legislators and their staffs are generally uninformed about the real operations of associations and 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.

*A proposal that seems obscure may be a "local bill" (intended to affect only a small area, group of people, or limited subject) or may reflect a particular beef some legislator or constituent had with another party. It's not good policy to clutter the Texas codes and statutes with minutiae, and these enactments represent a lot of dead ink in the law books.

*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 and voluntary associations should preserve an environment that encourages good works by ordinary people in their communities.**

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