

SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS

As of June 17, 2017

Compiled by Richard W. Meyer, Attorney at Law

End-of-session final summary:

The 85th Texas Legislature Regular Session ended on May 29, 2017, featuring more than 6,700 bills and resolutions in both houses that occupied the attention of lawmakers and affected citizens and groups. Compared to controversies and issues in the past, this was a quiet and relatively challenge-free session for the charities, state associations, foundations and other nonprofits that comprise the Texas nonprofit sector. The following summary list of bills and issues includes these highlights:

- **Applying the Texas “open records” laws to certain nonprofits** again received extensive attention and news coverage because of proposals in SB 408 and SB 407, which were championed by media organizations and advocacy groups but shunned or opposed by the thousands of nonprofit organizations that might have been required to comply with the laws. Disappointed sponsors and advocates promise a return to this issue in 2019.
- **Privatizing state government functions to transfer them to nonprofits or vendors** again proved troublesome when human services programs are being “reformed.” HB 6 concerned proposed privatization of state foster care services and burned up an enormous amount of emotional House debate time, only to produce no consensus or final outcome.
- **Special fundraising privileges for powerful sports clubs** were again extended from the opening given in the 2015 session. HB 3125 extends “super-raffle” rights to more professional sports club charities if the voters approve the proposition in November.
- **“B-Corps” come to Texas** through HB 3488, which follows the lead from a score of states that have enacted enabling legislation to permit the formation of for-profit entities that include a commitment to stated public benefits as well as profits for investors.
- **There were only minor amendments to the Texas nonprofit corporation laws** found in Chapter 22, Business Organizations Code. SB 1518 addressed issues relating to Chapter 252 unincorporated nonprofit associations, quorum requirements at board meetings and written demands for an annual meeting

Successful bills that will become law are marked **PASSED** (bold and underlined), with the effective date noted. The final status of bills in the legislative process that did not pass is noted in *italics*. 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 useful legislative website.

Note on **appropriations**: This summary does not contain tracking or notations regarding legislative appropriations or riders for any of the issues or bills referenced. The \$217 billion 2018-19 general appropriations bill (**SB 1**) is voluminous and can be reviewed 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.

End-of-session review of proposed legislation:*

The following bills were considered in the 2017 legislature and affect nonprofits, state associations and foundations in the subject areas listed.

Open meetings / open records issues:

SB 408 (=HB 793):** The somewhat obscure language of SB 408 would have required thousands of nonprofits and associations to comply with "open records" disclosure under the Texas Public Information Act 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 was 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*.

Passed Senate; no House committee hearing. The contents of SB 408 were attached to HB 2328 late in the session but failed to get a vote as the calendar clock tolled.

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, 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.

Heard in House committee, left pending

Fundraising activities of nonprofit organizations:

HB 3125 PASSED (=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: **HJR 100 PASSED**, the constitutional amendment that voters will have to approve to enact these provisions.

On the November statewide ballot and becomes effective if voters approve it

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; no Senate committee action

HB 4042 PASSED: 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.

Effective September 1, 2017

HB 1100: A *charity hunt permit* could be obtained from the Texas 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.

No House committee action

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.

No House committee action

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

No Senate committee action

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

SB 1518 PASSED: Amends the Bus. Org. Code (BOC) to expressly tie Chapter 252 *unincorporated 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 and that a quorum must be present at a board meeting at the time of a vote of directors and not merely at the beginning of the meeting.

Effective September 1, 2017

Related: **HB 3488 PASSED:** 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 similar to nonprofit, charitable enterprises.

Effective September 1, 2017

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

No Senate committee action

Regulatory oversight of nonprofit organizations:

SB 24 PASSED: 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.

Effective May 19, 2017

Limiting legal liability and amendments to Texas charitable immunity statutes:

HB 3859 PASSED: Privatization of the state's child protective services agency and its role in placing children for foster care or adoption advances with this bill, although the receiving agency is granted the option to deny such services on "sincerely held religious beliefs". The bill recognizes an agency's possible ties to a religious institution or religious beliefs as a factor in providing services—issues that others feel have no place where state agency services are to be provided to all with public dollars.

Effective September 1, 2017

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.

No House committee action

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.

No House committee action

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; bill faltered in the Senate because of a fiscal note attached indicating yearly loss in revenue to state

SB 1345 PASSED: 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).

Effective January 1, 2018

Nonprofit board governance, officer, employee and volunteer issues:

HB 1978 PASSED: 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.

Effective September 1, 2017

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

Passed House committee, no House vote

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

Effective September 1, 2017

HB 2007 PASSED: Permits special licensing provisions for military dentists and dental assistants who provide voluntary care.

Effective September 1, 2017

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.

Failed to pass House on third reading

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, now at §21.065, Texas Labor Code.

No Senate committee hearing

Public advocacy / Ethics Commission (lobbying) issues:

SB 24 PASSED: 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.

Effective May 19, 2017

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 service providers or vendors.

No final House floor vote because of extensive debates, procedural tie-ups, and lack of consensus (see HB 1805 below); no companion Senate bill surfaced

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.

No House committee action (see HB 6 and HB 3859 above)

SB 725 PASSED: 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.

Effective June 9, 2017

SB 1488 PASSED: 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 page 323 of this 355-page "clean-up" bill.

Effective September 1, 2017

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.)

No committee action

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 BOC 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.

No House committee action

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.

No House committee action

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

No House committee action

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.

Passed Senate; no House committee action

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

HB 3535 PASSED: Permits the hunting of feral hogs or coyotes from a hot-air balloon with a state permit.

Effective September 1, 2017

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 policy and advocacy have 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.**