

86th Texas Legislature, 2019 Regular Session

**SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS
AND STATE ASSOCIATIONS
As of March 17, 2019**

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Bill filing deadline has passed on the “60th day” of session:

An early review of the variety of issues of interest before the 2019 Texas Legislature is now available. The 60th day has passed, which is the last day for senators and representatives to file bills. **There are now almost 7,000 bills and resolutions on file**, depending on how you count them. A bill may have a duplicate or companion bill filed in the other chamber, but there remain millions of lines of legislative text to manage before session adjournment on May 27.

Watching committees: The bill text you may be reading at any point in time may only be part of what develops, whether shorter or longer, and it could bear changed content or other surprises. **Committee substitute bills** in the house of origin are common. If 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 been introduced. Floor amendments late in the process are common in the House for controversial or disputed bills.

Committee calendars: Each bill is posted in advance for committee hearing but may be passed over that day without any stated reason. Committees often hear testimony on a number of bills and call scores of interested witnesses, only to disappoint visitors by taking no action at the end of the hearing (“left pending”). Groups of bills are then voted on by the committee as a group at a later date, often when the crowd of interested parties is absent.

Bills have been said to fall into three categories: **the good, the bad and the ugly**. Good bills address a concern that attracts general positive agreement and makes almost everyone feel good about supporting it, voting for it and declaring it to be an example of *good government*. A bad bill can be on any topic or of any variety but generally is...the bill you and your supporters oppose. An ugly bill—also known as a “BOB”, or *bad ol’ bill*—is one that most members wish would just go away without a public hearing before a committee or much media attention.

Access the text of any proposed House bill (HB) or Senate bill (SB) at www.capitol.texas.gov . Use other tracking and analysis tools available on this 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 or the Senate Finance Committee website.

Analysis and commentary below focus on **protecting your right to do good works** through participation in state associations, nonprofit organizations, churches or local voluntary associations.

“60th day” review of proposed legislation:

The following bills are pending in the 2019 legislature and affect nonprofits, state associations and foundations in the following areas:*

Disclosure, transparency and open records issues:

SB 943 (=HB 2189):** Labeled the “contracting transparency bill”, these proposals are the return chapter from SB 408 which failed to pass the House in 2017 after extensive debates and bill revisions. The creates a classification of *contracting information* and requires any entity receiving or expending public funds to comply with the Texas Public Information Act, Chapter 122, Government Code (PIA). Retained are exceptions for proprietary business information, but the bill excludes from those exceptions any information or data related to the public funds held or received by the responding party. The real issue with the bill, for nonprofit membership groups and trade associations, are provisions in the bill that specify whether a requestor (any person on the planet) must direct the open records request to the government body that directed the funds to the organization, or whether a requestor can direct the open records request directly to the recipient organization or association. The latter scenario will increase compliance costs for unsuspecting organizations in responding—or objecting—to requests, or increasing the risk of inadvertent non-compliance with the strict disclosure procedures and timelines in the PIA.

SB 988 (=HB 2192): As sweetener for SB 943 and HB 2189, SB 988 provides for an award of attorney’s fees in a suit against an entity not complying with the proposed records disclosure mandates. Related: **SB 944**.

Fundraising activities of nonprofit organizations:

HB 3483: The bill facilitates donations of alcoholic beverages from a manufacturer or wholesaler directly to a charitable organization for use at a fundraising event on the premises of a permitted retailer. There is a \$5000 donation limit per event, and a permitted retailer participating may host no more than 12 such charitable events per year.

HB 4244: Previous legislation authorized a defendant receiving community supervision (probation or a deferred sentence) to make a donation to specified charities in lieu of community service hours. This bill broadens the eligible recipient charities to include a charitable organization primarily engaged in performing charitable functions in the community in which the defendant resides *for defendants under community supervision or for veterans*. See Art. 42A.304(f), Tex.Code of Crim.Procedure.

SB 773 (=HB 3044): This bill continues a trend of permitting the combination of a political fundraising event with an attached charitable contribution sweetener for the attendee. The bill would permit a registered political action committee (PAC) to solicit contributions to the PAC by also offering a type of matching contribution to a designated charitable organization. See §253.100(b), Tex.Election Code.

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

HB 3606 (=SB 1969): The bill presents solutions to a common problem encountered by organizations: the discovery later of activities, elections, spending, missed deadlines, authorizations, or other actions that were not properly considered, adopted, authorized, or documented by the board of a nonprofit or association. Such a *defective corporate act* can be ratified and validated with subsequent board actions as specified in the proposed statute. Organizations governed by members with voting rights can also utilize the ratification process.

HB 3602 (=SB 1971): Another common wrinkle in nonprofit governance is covered by this bill: defining the differences between a properly elected and sitting *director*, versus an *ex-officio director* or an *honorary director*. The bill also streamlines the option to conduct board or committee meetings by teleconference, video conference or group Internet connection.

SB 1463 (=HB 2147): This proposal would clarify the nonprofit corporation public disclosure requirements in §22.353, Tex.Bus.Org.Code, by specifying that an organization's public disclosure of its latest audited financial statements complies with the language in §22.353.

Limiting legal liability and amendments to Texas charitable immunity statutes:

HB 4345: A charitable organization has legal immunity from actions resulting from an employee's or volunteer's reporting sexual misconduct or sexual harassment.

HB 3365: Charitable organizations engaged in disaster relief operations are immune from civil liability under Chapter 84.

SB 752: A volunteer health care provider is immune from civil liability relating to service in disaster relief operations.

HB 1931:

HB 1035: The "Free to Believe Act" would prevent any Texas government entity from enacting any policy or program, or withholding any state benefit program, affecting a religious organization that is contrary to *sincerely held religious beliefs or moral convictions*. *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 an affected government entity is waived for a person seeking legal redress under the act.

State tax exemptions granted to nonprofit entities:

HB 3298 (=HJR 106): A broad-based appointed select commission would review all exemptions, credits, exclusions, abatements, and similar preferences in the Texas Tax Code and local codes to establish the need for these tax policies and the justification for continuing them. Every state tax preference and each type of local tax preference would be reviewed once during each six-year period. Tax preferences found not to accomplish the intended purpose could expire unless re-authorized by the legislature.

HB 4482: The Sunset Advisory Commission would undertake a periodic review of all state tax preferences and similar waivers in the Texas Tax Code and recommend the elimination, amendment or retention of such policies.

HB 3968: The Texas Comptroller of Public Accounts would undertake a state and local tax preference review of each preference once every six years along with the Legislative Budget Board. They would recommend the continuation or elimination of each. Any new tax preference enacted would carry a provision giving it a six-year shelf life.

State property tax exemptions granted to §501(c) entities and other organizations:

In this legislative session, as before, there are scores of bills modify the state tax exemptions granted to nonprofits, particularly with respect to real property taxes and the numerous exemptions enacted over the years under §11.18, Tax Code. These bills are often “local” bills addressed to a particular situation or place and can be reviewed at www.capitol.texas.gov . Simple search under “Texas Tax Code 11.18” for the 86th legislative session.

Public advocacy and lobbying issues:

SB 82: A political subdivision or private entity that receives state funds may not pay lobbying expenses or pay funds to a person engaged in lobbying activities. The bill does not carry the usual language clarifying that only the public funds may not be used for such lobbying.

SB 490: A former member of the legislature may not engage in lobbying activities for a two-year period after leaving office, unless lobbying for certain charitable organizations and without compensation.

HB 2730 (=SB 2162): The bill changes the current “anti-SLAPP” statute (Chapter 27, Tex.Civil Prac. and Remedies Code) by redefining the circumstances in which a person seeking protection of the statute could seek dismissal of a suit that allegedly is without merit, is brought for the purpose of silencing an opponent in a public controversy, and infringes on constitutional rights. (Similar: **HB 3547**).

HB 1035: See above.

Nonprofit social service organizations:

HB 1017: Public schools could donate excess food to an organization that would direct it to students in need.

HB 3389: The office of *nonprofit agency services coordinator* could be created in the Department of Family and Protective Services. This would continue a trend in prior legislation that required designation of a senior-level staff position in major state agencies as the active liaison to charitable, faith-based and community volunteer organizations.

HB 1758: Authorizes creation of a *recovery community organization* to address substance abuse and addiction issues with supporting programs from a number of state agencies.

SB 574 (=HB 605): Authorizes franchise tax credits for a business or entity that establishes a *healthy corner store* in a *food desert*, where public food assistance programs are heavily used.

Homeowner and property owner associations and quasi-public entities:

Today, the hundreds of Texas nonprofit homeowner associations (HOAs) and property owner associations (POAs) affect the daily lives of millions and perform quasi-governmental functions such as neighborhood maintenance, refuse collection, recreational programs, road maintenance and safety. Well-intentioned volunteers serve on their boards, and when enforcement activities lead to disputes, these organizations appear in court or before the legislature to resolve issues relating to their authority (see www.txcommunityassociationadvocates.org or www.txlandlaw.com/blog). They are regulated generally under Chapters 82 and 89, Tex.Prop.Code, and function in a realm separate from other nonprofits although they are often created and governed under the Texas nonprofit corporation law in Chapter 22, Tex.Bus.Org.Code. In every legislative session problems identified by POA/HOA residents and critics beg for legislative or regulatory solutions, resulting in well-intentioned bills that inadvertently may also extend to charities and other groups.

Other bills:

SB 824 (=HB 234): These bills would resolve a longstanding law enforcement dilemma by forbidding any local government entity from adopting or enforcing any law, order or policy that prohibits an individual younger than 18 years of age from temporarily selling lemonade or other non-alcoholic beverages from a stand on private property.

Numerous bills to increase the state minimum wage above the federal minimum wage: Of potential impact on social services groups and small businesses are scores of bills (not listed here) proposing to increase the current minimum wage beyond the current federal minimum wages in several steps and over time to \$15 per hour.

Bills and issues from past sessions absent from this 2019 session:

- Bills to regulate “dark money” and **activist §501(c)(4) advocacy organizations** by compelling disclosure of their contributions, funding, advocacy expenditures or

membership and contributor lists, or legislative proposals characterizing them as a *political committee* (PAC) because of certain activities or expenditures.

- **“PILOT” legislation**, to expand or limit the trend by local government authorities to apply various assessments, user fees, public service fees, or property-related assessments on nonprofit or charitable organizations traditionally exempted from such costs.
- Legislation to revise bingo operations by nonprofits or to permit or limit innovative, high-dollar raffles, contests or **gambling-type fundraising events**.
- Proposals to address and clarify the legal and employment status and rights of **unpaid interns** working in nonprofits, schools and businesses.

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.texas.gov.*

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:

Monitoring the Texas Legislature for more than 25 years yields a perspective about the legislative process and government regulation of nonprofit organizations, state associations and foundations. Some observations:

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

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

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

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

*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.**