

87th Texas Legislature, 2021 Regular Session

**SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS
AND STATE ASSOCIATIONS**

As of March 17, 2021

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

An early review of the variety of issues of interest before the 2021 Texas Legislature is now possible. The 60th day has passed, which was the last day for senators and representatives to file bills. **There are 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 a million lines of legislative text to manage before session adjournment on May 31.

COVID-era meeting restrictions and ice storm interruptions slow this session:

It remains to be seen whether this will be a “slower” session in terms of bills moving through the legislative process and because of the delays and limitations on committee activity. House and Senate floor meetings may also be abbreviated as the clock runs down on the 140-day session. Unexpected developments such as attention to the state’s electricity grid failure and pandemic issues are at the front of the line.

Watching committees: The bill text you may be reading at any point in time may only be part of what develops, whether it becomes shorter or longer, and it could later carry 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 reason given. 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 (a bill is “left pending”). Groups of bills are then voted on by the committee as a group at a later date, often when the interested parties are absent.

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 of interest.

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.

This commentary focuses on **promoting good works by involved volunteers and organizations** through participation in state associations, nonprofit organizations, churches or community-based voluntary associations.

“60th day” review of proposed legislation:

The following bills are pending in the 2021 legislature and affect nonprofits, state associations and foundations in the following areas:*

Governance, oversight and regulation of nonprofit entities; Chapter 22 amendments

HB 3100: The Texas Nonprofit Corporation Law is found primarily in Chapter 22, Texas Business Organizations Code, and any amendments to it are worth watching along with other regulatory changes that affect the governance of Texas nonprofits. This bill would, however, amend the state’s procurement statutes and cover a contract between any state or local agency and any 501(c)(3) organization and provide as follows: *A government entity may not enter into a contract with a nonprofit corporation unless the contract contains a written verification from the organization that the organization will not use more than 20 percent of the money provided under the contract for an administrative purpose, including for payment of the organization’s employee or officer salaries.*

HB 3503: A “clean-up” bill that updates statutory references to the Texas Nonprofit Corporation Law and charitable trusts. Similar provisions are in **SB 1938**.

HB 1875: This proposal is for a new trial-level “business court” and a “business court of appeals” that would have jurisdiction over corporate governance disputes in excess of \$10 million and includes nonprofit corporations in the bill’s provisions. A “member” of a nonprofit entity is given standing under the proposal.

HB 4275 (=SB 1678):** Would ban the disclosure of a nonprofit’s donors or supporters as a condition of contracting, grantee or other relationship with a government entity. Donor information would also be exempt from disclosure under the Public Information Act, Chapter 552, Tex.Govt.Code. There are exceptions for litigation and enforcement situations.

SB 2118: The bill would add a new Subchapter U to Chapter 21, Tex.Bus.Orgs.Code, and references the non-discrimination provisions of federal civil rights statutes. It then provides that no director, officer or official of a corporation “...*may establish or enforce any quota or set-aside in the selection of board members that depends in any way upon an individual’s race, sex, religion, sexual orientation or sexual practices, or gender identity of gender-nonconforming*

behavior.” In addition, corporations would be banned from imposing similar provisions on their vendors or contractors.

HB 1575 (=SB 712): A person identified as an officer, employee, or paid consultant of a “Texas trade association” would be restricted from service on a related state agency policymaking body under proposed conflict of interest restrictions in the bill, which would be added to Texas Sunset Advisory Commission review guidelines in Chapter 325, Tex.Govt.Code.

Property owner association (POA) bills are worth watching because these nonprofits exist in a legal parallel universe with all others and are regulated under Chapters 209 and 89 Tex.Prop. Code. Their operations affect a huge percentage of the state’s residential properties and fulfill quasi-governmental functions within their communities. Specific governance provisions are frequently addressed by the legislature in response to local issues:

SB 1951: Contains detailed provisions regarding owner/member voting rights and governance procedures.

Pending bills to amend Chapter 82 regulations include **HB 3502, SB 318** and **SB 1939**.

Other bills to amend Chapter 209 governance provisions include **HB 1467, 1970, 2447, 2912, 3367** and **3857**; also **SB 749, 1588, 1939** and **1951**.

Fundraising, revenue-generating opportunities and state grants and contracting:

In an unpredictable economic environment, it’s wise for nonprofit organizations to look for revenues, contracting opportunities, funding, contributions and fiscal relationships in unusual places. In recent years the legislature has authorized various programs and relationships that can direct revenues to charitable organizations, often just by qualifying as an eligible recipient or participant. Some examples in this session:

HJR 143: Participation by charities in high-dollar raffles at public sports events was approved by the legislature in prior years and approved by the voters as constitutional amendments. HJR would add professional rodeo events and their designated charities as eligible to conduct a high-dollar raffle, as was previously authorized for professional football, basketball, baseball, soccer and auto racing events. Passage by the legislature would authorize a statewide vote on this issue.

HB 2168: Adds restrictions on sports event-related raffles involving interactive media ticket sales and out-of-state participants. Also, **HB 3012** and **SB 919**. See Chapter 2004, Tex.Occup.Code.

HB 669: This bill is a minor revision to language in Art. 42A.304(f), Tex.Code Crim.Proc., that authorizes a court-approved cash contribution to a designated local charity in lieu of a community service probation sentence or fine. The list of eligible recipient charities is always open to be expanded by legislation. Also **HB 3766**.

HB 3959: This proposal expands earlier legislative dedications of certain state tax revenues to a cause related to the item or service taxed. The bill would authorize the State Comptroller to establish a fund, up to a maintained balance of \$15 million, to support financial assistance to local agricultural youth auctions of show animals and funded from sales taxes collected on animal feed and related animal grooming supplies.

HB 3708/SB 678: A small business disaster recovery program would be funded by the state to assist small businesses affected by disaster declarations. Nonprofit enterprises could receive funding to assist in the process, an important recognition of the nonprofit sector's role in the economy. See §481.401, Tex.Govt.Code. This follows the inclusion of nonprofit enterprises as eligible under the 2020-21 federal Payment Protection Program (PPP) to receive federal small businesses loans.

HB 4305 (=SB 2133): These “local” bills are reminders that nonprofit organizations of many types are eligible to share the local government portion of the state’s hotel occupancy tax (HOT) to advance their programs that qualify under Chapters 156 and 351, Tex.Tax Code. Also, **HB 2155, 3091, 3234, 3345, 3682, 4027 and 4305;** and **SB 1469 and 1565.**

Advancing mission and operations in a disaster-declaration environment:

Opportunities for formalizing the role of nonprofit and faith-based organizations in disaster response activities were authorized in the 2019 session. See **HB 3616, HB 2305 and HB 1294.** A task force managed by the Texas Division of Emergency Management (TDEM) conducted interim work in anticipation of additional legislation in 2021. Members are representatives of faith-based organizations with the duty to develop a plan to improve data collection regarding faith-based disaster response activities, develop best practices for communicating and collaborating in disaster scenarios, and identify inefficiencies and opportunities to address gaps in the state’s disaster response capacity. See §418.251, Tex.Govt.Code.

This legislative activity in 2019 did not contemplate a new kind of disaster experience for Texas: a unique coronavirus pandemic challenge. Early in 2020 it became clear that community-based nonprofits or statewide organizations were a quick and efficient resource for putting federally-funded coronavirus response monies into the hands of the persons or organizations intended. Since then, state agencies, cities and counties continue to channel large sums of relief funds to and through local nonprofits, charities and faith-based organizations. Given the scale and massive funding of coronavirus relief programs, most nonprofits would be wise to re-examine their mission statements, business plans and budgets to accommodate a new “line of business” called public disaster response and relief. Large statewide nonprofits or alliances of social service or faith-based agencies already have a broad footprint on the ground to facilitate government relief programs or funding. Related bills are:

HB 3492: Suspends or credits certain state fees for businesses and nonprofit organizations during a declared disaster. Also **HB 3501.**

HB 3708/SB 678: See above.

HB 1367: Exemptions for certain disaster relief organizations from state fees.

HB 1510 (=SB 1783): A state-chartered nonprofit corporation would be formed and authorized to administer utility system restoration financing and securitization options.

HB 3460: The State Comptroller could contract with nonprofits to administer a state disaster relief fund to benefit needy eligible residents.

Limiting legal liability and the Texas charitable immunity statutes:

The legislature has consistently strengthened legal immunities or limitations on the liability of volunteers, volunteer organizations, first responders and health professionals found in Chapters 84 and 79, Tex.Civ.Prac. & Rem.Code, and other statutes:

HB 3659 (=SB 6): Limits the liability of volunteer health care providers during a declared state of disaster or emergency declaration period. The bills would add a new code Chapter 148 addressing liability of various parties during a pandemic emergency and provide some general legal immunity for schools and child-care facilities from claims of pandemic-related injury claims. Also **HB 3747**.

SB 1857: Provides for a temporary license for out-of-state health care practitioners for charitable volunteer activities.

State tax exemptions granted to nonprofit entities:

There is a “cost” to the state’s taxpayers of **tax exemptions granted under current law**. The total value of longstanding exemptions granted to nonprofit entities of all varieties from the state’s property taxes, business revenue taxes, sales and other fees continues to increase. To state budget analysts, legislators and critics, these uncollected taxes are a cost to state government in that they represent revenues that could be collected if taxing schemes were applied without exemptions or waivers for some. What is the current “cost”? The State Comptroller’s most recent report, entitled *Tax Exemptions and Tax Incidence* (November 2020), reported to legislators that approximately \$58.6 billion in potential state tax revenue is bypassed due to previously enacted exemptions, credits, exclusions, deductions, waivers and preferences granted to commercial businesses, nonprofit organizations and quasi-governmental entities. Legislators taking the long view of the state’s fiscal health have filed the following bills to examine and evaluate tax exemptions and the policies behind them—all of which should be of concern to the nonprofit sector as a beneficiary of these policies.

Periodic tax review bills pending in this session:

HB 1335: The bill would establish a select commission that would develop a periodic review of all state and local tax exemptions and preferences and recommend changes.

HB 3328: The State Comptroller and Legislative Budget Board would establish a review schedule of all state and local tax exemptions and preferences and periodically recommend changes to the legislature.

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

In this legislative session, as before, there are scores of bills to 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, Tex. Tax Code. These bills are often “local” bills addressed to a particular situation or place and can be reviewed at www.capitol.texas.gov. Simply search under “Tax Code 11.18” for the 87th legislative session.

HB 349/SB 671: Property tax exemption would be granted for properties owned by a charitable organization used to provide shelter for homeless persons. Also **HB 115**.

HB 649/SB 613: Tax exemption would be granted for property owned by a charitable organization to rent property at below-market rates to low-income individuals.

SB 330: Property tax exemption would be available for venues owned by charitable organizations that provide services to persons with substance use disorders.

Nonprofit social service and faith-based organizations:

HB 2405 (=SB 46): A municipal zoning or land use policy could not prohibit a religious organization from using its facilities for housing homeless individuals.

HB 3596 (=SB 1681): A person may assert an actual or threatened violation of religious rights under the Texas Constitution as a claim or defense in a judicial or administrative proceeding.

HB 4054: The state would provide financial assistance for healthy food stores in recognized food desert areas.

HB 209/SB 358: Franchise tax credits would be granted to entities operating a healthy food store in a food desert.

Numerous bills to increase the state’s minimum wage are a reflection of similar initiatives pending in the 107th U.S. Congress:

HB 60, 224, 731, 1917, 4484 and SB 389.

Other bills would require payment of a **living wage or federal prevailing wage** as a condition of a contracting or grantee relationship with a state or local government agency.

HB 863: The bill would enhance enforcement of current prevailing wage rules.

Monument removal, changing place names and cultural-historical issues:

The abrupt or unauthorized removal of historic monuments, markers and statues and the changing of street, building, bridge and other place names by local governments generate strong feelings from those who swiftly amplify these controversies. There have been numerous highly-publicized incidents nationwide and in Texas. These included the multi-year dispute over reconfiguring the historic Alamo plaza in San Antonio and moving the 1936 memorial cenotaph, as well as certain monuments standing for decades on the Capitol grounds in Austin.

Determining the exact ownership rights over a certain physical monument is not always an easy process after the passage of decades. Often such historic objects were placed on public or private property with express donor restrictions or reverters, or by the formal declarations or ordinances of government entities. The placement of certain art objects owned or in the custody of public cultural institutions has been questioned. As legislators seek to address these situations, some would diminish the authority of local elected or appointed officials to decide these issues without a formal process with a deliberative time frame:

HB 446: An act of vandalism in which the property damaged or destroyed is a “public monument” is elevated to a third-degree felony under §28.03(f), Tex. Penal Code.

HB 3584 (=SB 1501): Historic markers or medallions placed by state agencies may not be altered or removed without permission.

SB 1416: An advisory committee administered by the Texas Historical Commission would review the appropriateness of retaining, altering or removing public monuments and memorials on the State Capitol grounds and limit the authority of a single official to do so. Only the governing board of a higher education institution could alter or remove a monument or memorial on its properties. Municipal and county governments would have similar restrictions. Also, **HB 4538** affects municipal or county properties only.

HB 2713: Restrictions on removing or altering monuments or memorials on state properties would also cover changes to a bridge name, park name, area name or street name that honors an event or person of historic significance.

Other bills:

HCR 61: The resolution would declare *Chorioactis geaster* the official state mushroom of Texas (subject to committee hearings and verifications that the scientific name designated is exactly appropriate and correct). Known as the Texas star or the devil’s cigar, it is found only in Texas and Japan. Encountering mushrooms bearing other scientific names can lead to serious medical or legal consequences for the uninformed.

SCR 28: Legislators may struggle with this proposal, which is to settle on a definition of the term “native Texan”, because some say it is currently vague or often a status casually claimed by ineligible persons.

Bills and issues from past sessions absent from this 2021 session:

- **Public Information Act (“open records”) disclosure** legislation that directly affects nonprofit organizations was included in **SB 943**, which passed in the 2019 session. Similar issues affecting nonprofits have not surfaced to date.
- 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 with legislative proposals to characterize 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 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; economic or 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 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 many 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.

There are always a variety of revenue-enhancing opportunities for nonprofit enterprises with expertise and resources to contract with state and local agencies, to qualify for substantial grants, to access federal funding administered by state agencies, or to partner with public entities to perform services, but one must know where to look for them.

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.

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.**