

87th Texas Legislature, 2021 Regular Session

SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS

June 2021

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Variety of issues unfold during 2021 Texas Legislative Session:

The 2021 legislative session featured a number of bills reflecting issues and policies that leaders in the Texas nonprofit sector should consider. There were few bills that appeared contra to the interests of nonprofit organization operations and governance or that impose new regulations on nonprofits. Despite COVID restrictions when the session began plus the February ice storm, legislators warmed up things later in the session and left several contested subjects for a planned special session later in 2021: redistricting, criminal bail reform, voting procedures and whatever else the governor directs. Among the unpassed bills listed below are seeds of opportunity for subsequent sessions. There were 6,927 total bills and resolutions filed in the House and Senate, and 1073 passed or were adopted in some form.

Bills that passed are underscored and marked as **PASSED**. The last pending action for non-passed bills is indicated in *italics* following each bill. 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 actions 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 along with special riders, as passed, can be monitored through the Legislative Budget Board, www.lbb.state.tx.us or the Senate Finance Committee website.

This commentary focuses on policies and legislation that **promote good works by community leaders and volunteers** through participation in state associations, nonprofit organizations, faith-based and community-based associations.

Final end-of-session review of adopted and proposed legislation:

The following bills were considered in the 2021 legislature and affected nonprofits, state associations and foundations in the following areas:*

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

HB 3100: Governance provisions of the Texas Nonprofit Corporation Law are found primarily in Chapter 22, Tex.Bus.Org.Code, and any amendments to it are worth watching along with other regulatory changes that affect the governance of Texas nonprofits. This bill, however, would have amended the state's procurement statutes in Chapter 2252, Tex.Govt.Code, and covered a contract between any state or local agency and any 501(c)(3) organization. It provided 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.*

Status: No House committee hearing.

HB 3503: A "clean-up" bill that updates statutory references to the Texas Nonprofit Corporation Law and charitable trusts in Chapter 112, Tex.Prop.Code, among other provisions.

Status: Passed House; Senate took no floor action on last day of session

HB 1875: This proposal was to establish a new statewide trial-level "business court" and a "business court of appeals" that would have jurisdiction over corporate authority, governance, transactional and investment disputes in excess of \$10 million and includes nonprofit corporations in the bill's provisions. To accommodate non-business disputes, a board member or a member of a nonprofit entity is given standing under the proposal.

Set for House vote, no floor action taken

SB 1678 (=HB 4275): Would ban the disclosure of a §501(c) nonprofit's donors or supporters as a condition of contracting, grantee or other relationship with a state or local 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.

Passed Senate by a 30/0 vote; no House committee action

SB 2118: The bill would add a new Subchapter U to Chapter 21, Tex.Bus.Org.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." An additional proposal was that corporations would be banned from imposing similar provisions on their vendors or contractors.

No Senate committee action

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. This restriction would be added to Texas Sunset Advisory Commission review guidelines in Chapter 325, Tex.Govt.Code, that customarily become part of the enabling legislation template for Texas state agencies. Status as a registered lobbyist in a field related to an agency's operations would also disqualify that person from service on a board or policymaking body.

HB 1575 passed House; no Senate committee action

SB 1879: Spending by political subdivisions (cities, counties, ISDs, special districts) on advocacy or legislative lobbying activities would be strictly limited and disclosed in public reports to the Texas Ethics Commission. One of the reporting requirements would be to disclose the amount of public money spent for membership fees or dues of any nonprofit state association or organization that directly or indirectly seeks to influence the outcome of state legislation. Memberships in these statewide associations held by public officials and agencies is quite common, and “indirectly influencing legislation” was the issue with the bill.

Passed Senate; no House committee action

Property owner association (POA) and condominium association bills are worth watching because these nonprofits exist in a parallel legal universe with other nonprofit entities and are extensively regulated under Chapters 82, 202, 204, 207, 209 and 215, Tex.Prop.Code. Their operations affect a huge percentage of the state’s residential properties, directly affect the personal lives of residents, and often fulfill quasi-governmental functions in their communities. Specific governance provisions are frequently addressed by the legislature in response to local issues that are incorporated into statewide legislation:

SB 1588 (PASSED): A something-for-everyone bill amending various chapters of Tex.Prop.Code, including governance and rulemaking restrictions on POA and COA boards.

Passed, eff. 9-1-2021

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

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

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

In an unpredictable economic environment, it’s wise for nonprofit organizations to look for new revenue sources, contracting opportunities, grant or funding programs, donor 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. Some examples in this session:

HB 3012/HJR 143 (PASSED): 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. HB 3012 adds 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.

Passed, subject to voters’ approval in November 2021 elections

HB 2168 (PASSED): Removes certain restrictions on sports event-related raffles and methods of payment for raffle tickets; repeals §§2004.002(1-a) and 2004.009(a), Tex.Occup.Code.

Passed, eff. 9-1-2021

HB 2757 (PASSED): Increases the maximum value of a charitable raffle prize from \$50,000 to \$75,000 under §2002.056(b)-(c), Tex.Occup.Code.

Passed, eff. 9-1-2021

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 such legislation. Also, **HB 3766**.

No House committee action

HB 3959 (PASSED): The original version of this bill tracked other legislative dedications of certain state sales tax revenues to fund a cause (agricultural youth programs) related to the item or service taxed. As originally proposed, the HB 3959 estimated tax revenue diverted from the state's treasury to this proposed fund was \$3 million per year. However, as passed, the bill would authorize the governor to establish a fund from donations, grants and public appropriated funds to support financial assistance to local agricultural youth auctions of livestock show animals.

Passed, eff. 9-1-2021.

HB1863 (PASSED): New Make-a-Wish license plates are authorized, with the fees generated to be distributed to a charity or foundation that supports critically-ill children.

Passed, eff. 9-1-2021

HB 1756: A county could appropriate money from its general funds to a historical foundation or nonprofit organization to purchase, construct, restore or maintain historic landmarks, buildings and furnishings of significance to the county.

Passed House; no Senate action

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. HB 4305 was directed at financing special tourism initiatives related to spacecraft launches at the South Texas coastal spaceport; the bill passed both houses but did not receive final action in the last hours of the session.

Also, **HB 2155, 3091, 3234, 3345, 3682, 4027 and 4305**; and **SB 1469 and 1565**.

Advancing mission and operations in a disaster-declaration environment:

The February ice storm and the vulnerability of the Texas electrical power grid were another reminder of the important role charities, nongovernmental organizations and faith-based groups play in disaster response and relief. 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 fully contemplate new disaster experiences facing public agencies: (1) 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 federal pass-through coronavirus response monies into the hands of the persons or organizations that could address immediate emergencies or needs. 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”, perhaps called public disaster response and relief. (2) Cybersecurity of public and social service agencies in a public safety scenario or a direct attack by outsiders on state data and cloud systems. (3) Durability of public and social service agency data capabilities in a natural disaster environment. 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. Opportunities to partner with state and local governments should not be overlooked. Related bills are:

HB 1510 PASSED: The bill creates a “special purpose public corporation...that is a nonprofit corporation and instrumentality of the state for the essential public purpose of providing at lower-cost, supplemental financing mechanism ...to attract low-cost capital to finance system restoration costs”. The Texas Electric Utility System Restoration Corporation may issue bonds and other debt instruments which are not a debt or pledge of the faith and credit of the state; “has a legal existence as a public corporate body and instrumentality of the state separate and distinct from the state”; and is self-funded and receives no legislative appropriations. It is to be organized under Chapter 22, Tex.Bus.Org.Code, and there are detailed governance provisions in the bill.

Passed, eff. 9-1-2021 (House vote, 145/0; Senate vote 31/0)

SB 475 (PASSED): In a bill to address the cybersecurity of the state's data and cloud computing systems, included is a provision creating the Texas Volunteer Incident Response Team. The skills of approved individuals or groups could be deployed in disaster scenarios to respond to cybersecurity events that affect multiple public entities. Their status is strictly as a volunteer although compensation for actual expenses is authorized.

Passed, eff. 9-1-2021 (Senate vote, 31/0; House vote 147/0)

HB 3492: Suspends or credits certain state fees for businesses and nonprofit organizations during a declared disaster. Also, **HB 3501**, **HB 1367**

Left pending in committee

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

Left pending in committee

HB 1487: The bill would shield certain religious activities from state or local restrictions in a disaster declaration environment and declare a religious organization an “essential business”. Early in the 2020 COVID emergency response period, a number of the governor’s orders contained exemptions for “essential businesses” and were unclear as to the applicability to nonprofit enterprises and charities conducting important response and relief operations.

Left pending in committee

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 various licensed professionals that are found in Chapters 75A, 76, 79, 84, 91 and 94, Tex.Civ.Prac. & Rem.Code, Title 4, and other statutes:

SB 6 (PASSED): Limits the liability of volunteer health care providers during a declared state of disaster or emergency declaration period. The bill would add a new code Chapter 148 addressing liability of various parties during a pandemic emergency and provide some general legal immunity against medical products liability claims related to such situations.

Passed, eff. 6-14-2021

HB 2850 (PASSED): Licensed veterinarians and their assistants performing volunteer professional services would be included in the liability limitations of Chapter 91, Tex.Civ. Prac.& Rem.Code, when serving without compensation and in an emergency or declared disaster environment.

Passed, eff. 9-1-2021

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 very real but unspoken “cost” to the state’s taxpayers of numerous 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 visible 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.

No committee action

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.

No committee action

HB 3799 (PASSED): The bill expands the definition of a “county fair” for the purpose of exempting collection of sales taxes at such events; the bill adds arts and crafts events and “a state fair” to the organizational events where sales taxes are not collected.

Passed, eff. 9-1-2021

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. A number of bills focused on tax incentives for affordable housing projects, but there was no significant committee activity on this subject. Simply search under “Tax Code 11.18” for the 87th legislative session.

HB 1197 (PASSED): Expands to ten years the period of time a property may be exempt from property taxes if contiguous to the primary property where religious services are conducted.

Passed, eff. 1-1-2022

HB 115 (PASSED): A local bill to ensure that property tax exemption would be granted for properties owned by certain charitable organizations and used to provide shelter for homeless persons.

Passed, eff. 9-1-2021

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 1239 (PASSED): No public official in Texas could issue a disaster declaration or order that closes or has the effect of closing a place of worship. The bill is yet another addition to the “Texas RFRA”, the Religious Freedom Restoration Act in Chapter 110, Tex. Civ. Prac. &

Rem.Code. There were numerous bills in this session on this subject, and the RFRA is a common place to attach this type of legislation.

Passed, eff. 6-16-2021

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.

Passed House; no Senate committee action

HB 3596 (=SB 1681): A religious organization could assert an actual or threatened violation of religious rights under the Texas Constitution as a claim or defense in a judicial or administrative proceeding without exhausting available administrative remedies.

No committee action

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, 1827, 1917, 4484** and **SB 389**.

Left pending or not heard by committee

Other bills would clarify 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.

SB 518: The proposal would clarify computation methods for prevailing wage rates used by local public entities on improvement projects.

Passed both houses but died in the last hours due to procedural rules

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

Not heard by committee

HB 3767 (PASSED): In this bill, which creates a tri-agency task force to examine the state's long-term educational and workforce initiatives and strategies, there is a directive to establish a "**self-sufficient**" wage for each county in the state, as a goal for persons transitioning or entering the workforce. The term "living wage" was removed from the original version of the bill.

Passed, eff. 9-1-2021

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 proposed move of the Alamo

Cenotaph, as well as reconsidering certain monuments standing for decades on the Capitol grounds in Austin. Determining the exact ownership rights or decision-making authority over a certain physical monument is not always an easy process after the passage of decades. Often these 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 proposals would diminish the authority of local elected or appointed officials to decide these issues without a formal process with a deliberative time frame:

HB 3584 (PASSED): Historic markers or medallions placed by state agencies may not be altered or removed without permission. Most common are the markers placed by the Texas Historical Commission and its predecessor agencies under §442.806, Tex.Gov.Code.

Passed, eff. 9-1-2021

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.

No Senate committee action

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. Cities, counties and institutions of higher education would have similar restrictions.

Passed House committee; no House floor action

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(b), Tex. Penal Code.

Left pending in committee

Other bills that kept things interesting:

HCR 61 (PASSED): The resolution declares *Chorioactis geaster* the official state mushroom of Texas. Known as the Texas star or the “devil’s cigar”, it is found only in Texas and Japan. Encountering other mushrooms bearing different scientific names can lead to serious medical or legal consequences for the uninformed.

SCR 7 (PASSED): Without much controversy in the House or Senate, the Bowie knife is designated as the official knife of Texas.

SCR 28: Some legislators apparently choked on this proposal, which was to settle on a definition of the term “native Texan”, because some say it is currently vague or often a status casually claimed by well-intentioned but ineligible newcomers.

Left pending in committee, to be debated another day

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 did not surface.
- 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, training programs 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 associations; 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.**