

88th Texas Legislature, 2023 Regular Session

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

As of March 10, 2023

Compiled by Richard W. Meyer, Attorney at Law

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

An early review of the variety of issues of interest before the 2023 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 8,000 bills and resolutions on file**, depending on how you count them. Even though a bill may have a duplicate or companion bill filed in the other chamber, there remain a million lines of legislative text to review or manage before session adjournment on May 29.

An existing state budget surplus exceeding \$30 billion makes for an upbeat mood and opportunities for filed bills to carry new ideas and also the possibility of funding them! All bills soon will have been referred to committees, and the real work will begin.

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 in the legislative process, 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 have evolved. Floor amendments late in the process are common in the House for complex 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 when bills are “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, faith-based or community-based voluntary associations.

“60th day” review of proposed legislation:

The following bills are pending in the 2023 legislature and affect nonprofits, state associations and foundations in the following areas:*

Governance, oversight and regulation of nonprofit entities; Chapter 22 changes:

The Texas Nonprofit Corporation Law is found primarily in Chapter 22, Texas Business Organizations Code, and other parts of that code. Any amendments to it are worth watching along with other regulatory changes that affect the governance of Texas nonprofits, associations or other corporate entities.

HB 1957 (=SB 835):**The bill would clarify that full public disclosure requirements under the current Sec. 22.353 would be met if a nonprofit obtained an annual audited financial statement and made it available to the public.

HB 3768: This bill enables a new vehicle for commerce and innovation by authorizing a legal entity called a *decentralized unincorporated association* to promote blockchain (*distributed ledger technology*) operations through *smart contracts*; provides for *governing principles and established practices*; rights of a *member*; ownership of assets; no personal liability to members or the *administrator*; and winding-down procedures. Related: **HB 5209**

SB 1514 (=HB 4279): This is a clean-up bill for numerous provisions of the Business Organizations Code with a number of additions affecting various legal entities. Items affecting nonprofit corporations include clarification of board actions conducted via consent in lieu of a meeting (Sec. 22.220) and those providing for reinstatement of a nonprofit corporation’s active status after suspension by the Secretary of State.

SB 958 (=HB 4585): This bill would add a new Chapter 3001 to Tex.Govt.Code and provide that “personal affiliation information” (a list, record, roster or other data) that directly or indirectly identifies a person as a member, supporter of volunteer, or a donor to, a Sec. 501(c) entity may not be required by a public agency or disclosed to others; that such information may not be required of a nonprofit contractor or grantee; and that information regarding other organizations that have received financial or nonfinancial support cannot be required by an agency. There are numerous exceptions to these restrictions on a public agency. Personal affiliation information would be exempted from public disclosure under the Public Information Act, Chapter 552, Tex.Govt.Code.

SB 1309 (=HB 2501): This bill limits certain contracting rights of a nonprofit state association that primarily represents school boards and their trustees.

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

In an unpredictable economic environment, it's wise for nonprofit organizations to look for revenues, contracting opportunities, fundraising, contributions and fiscal relationships in unusual places. Bills often originate with community-based organizations and would authorize various programs and relationships that could direct revenues to charitable organizations. Some examples in this session:

HB 1024 (=SB 500): The maximum value of a residential dwelling offered or awarded as a prize at a raffle by a charitable organization or for which the organization provides any consideration is increased to \$1 million from the current \$250,000.

HB 1509: Texas institutions of higher education must annually report any financial support, membership, sponsorship or advertising paid to a *nonprofit media corporation*.

HB 1759: Authorizes that a charitable raffle conducted by the charitable foundation of professional sports team can sell tickets at the team's home venue or online via digital interactive media.

HB 2138 (=SB 1582): A nonprofit wildlife conservation association could sell raffle tickets to identified supporters on its website.

HB 834: Would permit text message donations to assist local homeless relief programs in major cities.

HB 541: Would expand the range of nonprofits eligible to receive a donation from a criminal defendant as fulfillment of probation conditions under Art. 41A.304(f), Tex.Code Crim.Proc.

SB 643 (=HB 431): Includes adjustments to the bingo regulation statutes for the number of annual temporary bingo licenses, increased prize values and other issues.

SB 829: The current health and safety regulations governing a cottage food operation are expanded to include nonprofit organizations as eligible vendors of such products.

SB 1463: State agencies may contract with nonprofit organizations to operate a behavioral health crisis response program.

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 3926: A nonprofit that contracts with the state to provide community-based care would have Chapter 84 immunity.

HB 3933: Authorizes Chapter 84 immunity for a contracted nonprofit entity providing child welfare services.

HB 242: Eliminates a donor's liability when donating or distributing feminine hygiene products.

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 businesses and 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* (February 2023) reported to legislators that approximately \$78.03 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 repeatedly filed 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 953 (=HJR 60): Creates a select commission to review all tax preferences and exemptions on a six-year cycle, to recommend termination of certain ones, and send periodic reports to the legislature.

State property tax exemptions granted to Sec. 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 Sec. 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 88th legislative session.

HB 53 (=SB 479): Exempts vehicle registration fees for a nonprofits vehicles used in emergency response or disaster relief.

HB 1118: Provides a state tax credit for grocery businesses that operate in certain “food desert” communities.

Other “11.18” bills filed: **HB 3691, HB 4774, HB 4851, SB 2352, SB 2362, SB 2398.**

State associations, activist groups and social service organizations:

HB 170: A “public entity” (any that collects a tax) could not contract directly or indirectly with a lobbyist to influence legislation unless it conducts a public hearing and discloses the details of the engagement; enforcement is by the Texas Ethics Commission.

HB 845: An institution of higher education could not use funds from any source to provide financial support to a media organization that is exempt from federal taxation.

HB 3538 (=SB 175): A political subdivision may not spend public funds to hire a registered lobbyist or pay funds to a nonprofit state association that primarily represents political subdivisions or hires lobbyists to represent its members.

SB 425: A public school district may not use its funds to pay fees, dues or any compensation to a nonprofit state association that advocates for or influences legislation on behalf of school boards.

SB 2115 (=HB 2493): The operational capacity of the Texas Information and Referral Network (“Texas 2-1-1”) would be enhanced.

SB 4900: A state-funded grant program would be established to support community-based clinics for underserved populations.

“Culture war”, 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. Nonprofit and volunteer organizations are often at the center of these debates. 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 1512: Provides additional restrictions on the removal, relocation or alteration of monuments or memorials on state-owned lands, the State Capitol Complex in Austin, and the Alamo Cenotaph and plaza in San Antonio.

Similar to **HB 1512:** **SB 1560, HB 3279:**

Property owner association governance issues:

The structure, authority and governance of property owner associations (POAs) and condominium owner associations (COAs) are regularly the subjects of legislation. These

nonprofit organizations exist under a regulatory scheme mostly found in Chapters 82, 202 and 209, Tex.Prop.Code in addition to the Texas Nonprofit Corporation Law. Current bills:

HB 614: Requires clear and published policies for enforcement of association fines.

HB 1252: Requires an annual audit of POAs.

HB 2450 (=SB 468): Prohibits enforcement by an association of a regulation that inhibits free speech or assembly.

HB 3064: Guarantees the right of a POA member to speak at any association meeting.

SB 1668: Requires more POA transparency and certainty regarding the authority of a management company or POA architectural review committee to enforce regulations.

HB 5258: Violation of the governing instruments of a POA by its governing board is addressed.

Other issues to ponder and resolve:

HB 1349: The Texas restaurant menu delicacy known as “catfish” would be defined to mean only the specie *Ictaluridae*, and not any imitation or similar Asian import (such as the *pangasianodon gigas*, which can grow to 600 pounds). Penalties for a mis-stated fish menu description are provided.

Bills and issues from past sessions absent from this 2023 session:

- **COVID-era legislation** providing temporary authority to government entities or nonprofit relief and response organizations; limitations on liability for volunteers or first-responders; and focusing government-private-nonprofit ventures for pandemic response.
- Proposals directed at clarifying the role of **faith-based organizations** in government operated or funded programs, as a grant recipient and as a vendor/contractor.
- Bills to regulate “dark money” and **activist Sec. 501(c)(4) advocacy organizations** by compelling disclosure of their contributions; advocacy expenditures; membership and contributor lists; legislative proposals to characterize them as a political committee (PAC) because of certain activities or expenditures; making them subject to the Public Information Act.
- **“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.
- 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 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 beneficial 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 community leaders who otherwise might be inclined to serve 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 that engage in visible advocacy activities. Sadly, some reforms often land hard on good people doing good work in local communities.

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. **Government policies that affect the nonprofit sector and voluntary associations should preserve an environment that encourages good works by ordinary people in their communities.**

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