

SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS

As of April 1, 2015

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Mid-session report indicates bills that are moving along:

With the passing of the halfway point of the Texas legislative session, bills and issues that are moving, or not, through the process can be identified. Only eight weeks of time remain, and committees are experiencing longer agendas and extended meetings that can threaten anyone's patience, attention span, caffeine tolerance and lumbar endurance.

A first snapshot of the range of issues before the 2015 Texas Legislature was available when 60th day passed two weeks ago. It was the last day for senators and representatives to file bills. **There are now more than 6,200 bills on file.** The summary below has been re-ordered to list first the bills that appear to be moving, and a *Status* note has been added for some.

Watching committees: The bill text you may be reading at any point in time may only be a glimpse of what it can become, whether shorter or longer, and bearing altered content. **Committee substitute bills** in the house of origin are common and often surface unexpectedly. When 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 in play that day. **Floor amendments** 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 day—"left pending". Groups of bills are then voted on by the committee as a group at a later date, often when the earlier interested crowd is absent.

Access the status and text of any proposed House bill (HB) or Senate bill (SB) at www.capitol.state.tx.us and use other tracking and analysis tools available on the state's 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, HB 1 in the House and SB 2 in the 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 .

Analysis and commentary below focus on **protecting your right to do good works.**

Mid-session review of proposed legislation:

The following bills are pending in the 2015 Legislature and affect nonprofits, state associations and foundations in the following areas:*

Fundraising activities of nonprofit organizations:

HB 975 (=SB 898):** This bill provides a special status for fundraising by major league sports teams and would create an entirely new chapter in the Occupations Code to permit professional sports clubs—from the NFL, NBA, MLB, MLS—that maintain §501(c)(3) tax-exempt charitable foundations to conduct raffles at every home game in their venues to benefit their charitable purposes. Related: **SJR 39**.

Status: HB 975 pending in House Licensing and Admin. Proc. Committee

SB 31 (=HB 103, HB 105): Volunteer firefighter or EMS organizations would be able to hold up to ten fundraising sales or auctions per year that are tax-exempt sales events (amending Texas Tax Code §151.310 that permits fewer such events).

Status: SB 31 passed Senate, received in House

HB 2313 (=SB 1933): A vending machine could be used to sell and dispense products sales-tax-free if operated by a person with special needs who is supported by a qualified nonprofit organization.

HB 3093: The value of a residential dwelling offered or awarded as a prize at a raffle conducted by a charitable organization would be increased from \$250,000 to \$2 million.

HB 2642: The bill contains a number of technical changes to the regulation of charitable bingo operations.

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

HB 38, HB 37 and HB 3773: These bills expand existing state regulation of contributions to a nonprofit organization that may be seen as or have been intended for “political expenditures”, as governed by the Elections Code. See *Public Advocacy* heading below.

HB 1120: Adds a definition of “integrated auxiliary of a church” (as found in the Internal Revenue Code) to the church-related provisions of Chapter 22 of the Texas Business Organizations Code. The bill specifies that the board of an incorporated church must approve the creation of such an integrated auxiliary.

SB 1233 (=HB 3479): The current prohibition on distributing the assets of a nonprofit corporation to its members on dissolution or winding-up would be waived, with a new exception in §22.054, Bus. Org. Code, providing that the assets of the corporation may be distributed to a similar 501(c)(3) nonprofit that is a member of the dissolving nonprofit, while also observing the purposes of both organizations and exercising board fiduciary obligations, such as safeguarding of restricted funds.

SB 860 (=HB 2142): Contains three minor amendments to the Texas Nonprofit Corporation Law (Chapter 22, Business Organizations Code) to clarify circumstances in which a vote by the corporation’s members or organizers can occur with regard to restating its certification of formation (charter), winding-up (dissolving) the corporation’s affairs or acting on similar matters requiring a formal vote.

Status: Passed committee, on Senate calendar

HB 590: A special-purpose corporation could be chartered by a public or private university to develop or commercialize technologies developed and would be exempt from most state taxes. This corporation would be authorized under the Education Code (under the higher education provisions) rather than in the Business Organizations Code, where most Texas business entities are authorized and defined. A participating university could license technology it owns to the corporation.

Status: Passed House Gov. Transparency and Operations Committee

HB 3420: Specifies that a “nonprofit community business organization” is *governed by* rather than *organized under* the Texas Nonprofit Corporation Law as described by §1.008, Bus.Org.Code.

HB 2557: A charitable organization created by a hospital district may enter into a joint venture or other agreement with a public or private entity, including holding an ownership interest in another entity; may operate or manage a captive insurance company, and; is specifically not a political subdivision because of its connection to a unit of local government (the hospital district).

Status: Pending in House County Affairs Committee

Regulatory oversight of nonprofit organizations:

HB 971: Board members or officers of condominium owner associations (COAs) or property owner associations (POAs) would be legally liable as fiduciaries for misconduct or illegal acts. If passed, this would drastically raise the risk level of volunteer residents serving on these boards and enhance their liability beyond the standards for nonprofit directors in Chapter 22, Texas Business Organizations Code (the Texas Nonprofit Corporation Law).

Limiting legal liability and amendments to Texas charitable immunity statutes:

SB 378 (=HB 1116): Social workers performing voluntary professional services would be exempt from legal liability for their actions, except for intentional misconduct, when acting as a “volunteer healthcare provider” under Chapter 84, Civil Practices and Remedies Code, known as the Charitable Immunity and Liability Act.

Status: SB 378 on Senate intent calendar; HB 1116 pending in House Judiciary Committee

HB 262: Limits the legal liability of an owner, lessee or occupant of land used as a cooperative community garden for occurrences or injuries to users of the property.

HB 2119: Chapter 84 immunity would be extended to a charitable organization engaged exclusively in wildfire mitigation, range management or prescribed burning if it complied with other requirements in Chapter 153, Natural Resources Code, relating to such activities supporting government agencies.

HB 1040: Persons officiating or managing a community or interscholastic “athletic competition” (including a rodeo or livestock show) would be immune from liability for injuries to participants, except for gross negligence or intentional misconduct, under a new Chapter 94 to the Civil Practices and Remedies Code. The sponsoring organization is also given the same liability protection.

Status: Pending in House Judiciary Committee

HB 1203 (=SB 610): Liability for injuries or occurrences during “agri-tourism” events on private land would be limited if the required warning notice was posted and the “agri-tourism participant” had signed the required consent form.

Status: Pending in House Agriculture Committee

SB 381 (HB 323): Volunteers operating motorized equipment or vehicles on properties of the Texas Parks and Wildlife Department would be protected from legal liability to third parties.

Status: Passed Senate, received in House; HB 323 on House consent calendar

HB 1050: Clarifies that under the Good Faith Food Donor Act (Chapter 76, Civil Practices and Remedies Code), donors of unused food or surplus meals would not be liable to others if the condition of the food was apparently “wholesome at the time of donation”.

Status: Pending in House Judiciary Committee

Exemptions from state taxes now extended to nonprofit entities; local ‘PILOT’ fees:

Comment: The following tax revision proposals come in all flavors. The “good government” idea behind them is that periodically the tax laws of the state should be given a top-to-bottom review by the legislature or select committees. This would include possible erasing of tax exemptions enjoyed by charitable nonprofit corporations, tax credits for taxpayers, and other “benefits” carried in the Texas Tax Code for generations, such as exemptions from the property tax, sales/use tax, franchise (business) tax and other state taxes now enjoyed by tax-exempt nonprofits.

HB 1003: Every six years all exemptions, credits or other exceptions granted under the Texas Tax Code would “sunset” (be automatically repealed) and could be re-authorized by the Legislature only after the costs and benefits of such tax exemptions and policies had been reviewed and justified by the Texas Sunset Commission in reports to the legislature. This would include exemptions from the property tax, sales/use tax, franchise (business) tax and other state taxes now enjoyed by tax-exempt nonprofits.

Status: Pending in House Ways and Means Committee

SJR 38: Provides for a constitutional amendment that, if passed, would grant the Legislature broad authority to review all state and local “tax preferences” under Texas law and provide for expiration dates for all such existing tax preferences. Presumably, this idea contemplates a thorough review of the state tax codes and procedures, including exemptions from taxes enjoyed by nonprofits and various tax credits, exemptions and deductions available to for-profit taxed entities and persons. **Related: SB 868** would grant the State Comptroller authority to periodically review all state and local tax preferences, evaluate their impact, and recommend to the legislature continuation, amendment or repeal. All tax preferences would have only a six-year shelf life and would expire unless reauthorized.

HB 2378 (=HJR 107): Similar to SJR 38, above, except that a select commission would review the tax preferences and exemptions and make recommendations.

HB 2914: Residential properties developed or owned by a charitable organization for the purpose of leasing to low-income veterans would be exempt from property taxes.

HB 960, HB 961: Would add independent school districts (ISDs) to other public agencies listed as exempt from certain local PILOT-type water drainage and control fees.

Comment: “PILOT” means payments-in-lieu-of-taxes and is an increasingly popular means for local public agencies to tax collect fees or assessments from other public agencies or tax-exempt organizations for public services received, without calling the fee a tax.

Nonprofit board governance, officer, employee and volunteer issues:

HB 1151: Unpaid volunteer interns would receive the same legal protection against on-the-job sexual harassment under the Texas Labor Code as paid employees. The bill reflects growing use of unpaid internships that can generate increased employer legal liability and also creates a six-part analysis of what conditions constitute an unpaid internship.

Status: Pending in House Business and Industry Committee

HB 1561: A person providing volunteer security services at a school, church or “the regular meeting place of a nonprofit organization for the duration of a meeting...” would be exempt from state licensing laws regulating private security services.

SB 289 (=HB 237): A member of a volunteer firefighting department could not be required to obtain a license or certification as a firefighter in order to serve.

Status: Passed Senate, received in House

HB 1620 (=SB 612): An employer could not penalize or discriminate against an employee for missed (unpaid) work time during a public emergency.

HB 889 (=SB 401): E-Verify is a federal government online program to verify the employment eligibility of an employer’s new hire and is very popular with legislators. This bill and others would require use of E-Verify by entities having a contract with the state or with local governments and school or special districts. A nonprofit receiving a grant from a public agency

has a contract with that agency and likely would be impacted by these proposals. Other similar bills: **HB 88, HB 630, HB 997, HB 2834, HB 3584, SB 1841.**

Open meetings / open records issues:

HB 649: Creates an exception to the Texas open records laws in that public disclosure could not be required of a state contractor's (vendor's) confidential trade secrets, methods, formulas, work product or research provided to the agency as part of requirements under the contract.

Public advocacy / Ethics Commission (lobbying) issues:

HB 37: Provides that a *group of persons* (presumably a nonprofit organization) that accepts contributions or dues that the *donor knows or has reason to know may be used to make a political contribution or political expenditure, or may be commingled* with political expenditure funds, must comply with the political committee reporting requirements of Chapter 254, Elections Code. In addition, a member or donor who signs a statement that the donor's payment may not be used for political expenditures *does not have reason to know* it is or will be used for a political expenditure or contribution. An Elections Code report would be required when the organization's aggregate twelve-month receipts of these donor *political contribution* funds exceed \$25,000; the report must name donors whose aggregate contributions exceed \$1,000 for the reporting period.

Status: Pending in House State Affairs Committee

HB 38: Inserts into the Texas Nonprofit Corporation Law (Chapter 22, Bus.Org.Code) a new section regulating that part of a member's or donor's contribution that may be characterized as a *political contribution* because of a *political expenditure* made by the nonprofit organization, as defined in the extensive political action regulations in the Elections Code. The organization soliciting or receiving the contribution would have to provide for specific opt-out notices for the donor or member to elect that no part of the contribution shall be used by the organization to make a political contribution or political expenditure. Depending on its activities, an organization could be treated the same as a political committee for Elections Code reporting and compliance purposes.

Status: Pending in House State Affairs Committee

HB 3773: This bill is a shorter version of HB 38 and simply removes the dollar-amount thresholds in HB 38 that would trigger mandatory reporting as a political committee by a nonprofit organization making a political contribution or expenditure.

Comment: The three bills above signal a repeat of so-called "dark money" controversies from the 2013 legislative session that resulted in Governor Perry's veto of SB 346. Despite longstanding I.R.S. laws and rules regulating advocacy and political activities of tax-exempt organizations, state legislators have again attempted to craft legislation that would treat certain nonprofits (mostly of the 501(c)(4) variety) as political committees that are then subjected to extensive regulations and reporting requirements under state elections laws. Significant constitutional law issues overshadow these legislative proposals and have generated federal

court litigation, highly-disputed I.R.S. rulemaking proposals that were withdrawn, and ongoing Texas Ethics Commission deliberations on these issues.

HB 213, HB 314, SB 319: A ban on lobbying by former legislators for two years after leaving office would not apply to such person's lobbying on behalf of charitable organizations for no fee.

SB 1528: States the terms under which, per the Election Code, a corporation's donation to a charitable organization can be tied to a contribution by another party to a general purpose political committee.

HB 487: A former office holder cannot now expend unused campaign contribution funds as a lobbying expense. An exception under the bill would enable such funds to be devoted to lobbying for a tax-exempt charitable organization or cause.

Status: Pending in House Elections Committee

Nonprofit social service organizations and property owner associations:

HB 583: Judges can now require a criminal defendant to make a contribution to food bank charitable organizations in lieu of performing community service work hours as a condition of probation sentencing. The bill would add veterans charitable organizations as eligible recipients under §42.12, Section 16(f), Code of Criminal Procedure.

Status: Reported from committee, on House consent calendar

HB 2718 (=SB 1332): Would permit recipients under state benefits programs (financial assistance, medical assistance and nutrition assistance/food) to receive supplemental assistance from non-government community-based and faith-based organizations that would contract with the Health and Human Services Commission and be subject to existing program practices.

HB 1558: Would prevent a city from enacting an ordinance that prevents a religious organization from maintaining an overnight shelter program in a church for homeless children.

HB 269: A community "healthy corner store" business operating in a "food desert" can be funded through a community development financial institution.

HB 2305: Clarifies the characteristics of a "nonprofit community business organization" under Tax Code §11.233.

HB 1685: Like HB 583 above, the bill would permit a sentencing judge to order a defendant to make a contribution to a tax-exempt organization that "...provides services...to needy individuals and families in the community in which the defendant resides".

Other bills:

HCR 35: Would make official what everyone already knows: the cowboy hat is the official hat of the State of Texas.

HCR 101: Would make Texas vodka with ruby red grapefruit juice the official mixed drink of this legislative session.

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; cemetery corporations; quasi-public nonprofit entities.

***Many bills have an identical “companion” bill in the other house, bearing a different bill number. Access bills, background information, and current status at Texas Legislature Online, www.capitol.state.tx.us*

What to look for in proposed legislation:

The bills listed here during the session 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:

This writer has been monitoring the Texas Legislature for almost 20 years and has developed a perspective about the legislative process and government regulation of nonprofit organizations, state associations and foundations:

**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.

*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 should preserve an environment that **encourages good works by ordinary people in their communities.**

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