

88th Texas Legislature, 2023 Regular Session

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

As of June 20, 2023

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End-of-session summary from the 2023 Texas legislative session:

Boards and managers of nonprofit organizations and state associations, and the professionals and consultants who serve them, are wise to monitor developments during each Texas legislative session that can affect their core interests and missions. This year, 8,046 bills and resolutions were filed, and 1246 were passed in some form. A \$321 billion two-year state budget was adopted. This summary highlights some issues that touched the nonprofit sector.

Bills that passed, were signed by governor and have been enacted into law are marked **PASSED**. Other bills listed that did not pass carry an indication of *Status*, which describes the last action on the bill and its progress through the legislative process. Bills that did not pass are also important in that they carry the issues or controversies that were raised by some legislator or interest group and that may return in a future legislative session. *Important note: The brief summaries below may not convey the full meaning or impact of a particular piece of legislation; read the entire bill text and verify its effective date.*

The pro-or-con response to legislation and policies affecting the Texas nonprofit sector remains disbursed among special interest groups (social service programs, environmental issues, arts and culture, activist and advocacy groups, fundraisers, private schools and universities, churches and faith-based organizations, criminal justice and civil rights, youth sports, local service clubs, trade and professional organizations, charitable hospitals, local tourism and economic development entities), each of which might appear in Austin during the session to signal its own interest in a proposal. Usually there is no unified voice for the nonprofit sector, unlike other states where there is a “one voice” organization as a central point for communications and collaboration on issues common to all nonprofit entities.

Making history, the House of Representatives expelled one of its members for personal misconduct with legislative personnel and, in the last hours of the session, voted 121-23 to begin the impeachment of the Texas Attorney General for official misconduct. With attention to other controversial subjects and to a large state budget surplus available to parcel out, there was little notice taken of the bills listed below that affect the nonprofit sector.

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 activity and track the status of any bill of interest. Bills that have an identical companion bill filed in the other house are notated as **SB 958 (=HB 4585)**.

Note on appropriations: This summary does not contain tracking or notations regarding legislative appropriations or riders for any of the issues or bills referenced. The general appropriations bill, supplemental appropriations bill, and funding in numerous riders attached to those bills 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.

End-of-session 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) PASSED: The bill would clarify that full public disclosure requirements relating to the corporation's financial records under the current Sec. 22.353, Bus.Org.Code would be met if a nonprofit complied with the disclosure requirements of the Internal Revenue Service under its statutes and regulations.

HB 3768: This bill would amend various sections of the Bus.Org.Code to enable 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**

Status: Passed House 140-0; no Senate committee action

SB 1514 PASSED: This is a clean-up bill for numerous provisions of the Bus.Org.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 Chap. 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 or volunteer, or a donor to a Sec. 501(c) entity may not be required by a public agency to be 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.

Passed Senate 29-0; House committee substitute bill did not advance

SB 345: A time-period ban on lobbying by a former legislator would not apply to lobbying for a nonprofit organization that does not represent a political subdivision of the state.

Status: No action in Senate committee; this bill has been filed in previous sessions

HB 3949 PASSED: Arbitration provisions in Chapter 173, Civ.Prac.& Rem.Code clarifies that a written arbitration agreement, or a provision in the bylaws, requiring arbitration between members of a nonprofit is valid and binding. This bill extends the obligation to arbitrate to a dispute between members and the corporation itself.

Passed House 142-1; passed Senate 31-0

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

No House committee action

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

In an unpredictable economic environment, it's wise for nonprofit organizations to look for revenues from 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:

SB 500 (=HB 1024) PASSED: 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 \$750,000 from the current \$250,000 limit.

Passed Senate 31-0; House 109-30

HB 1759 PASSED: Authorizes that a charitable raffle conducted by the charitable foundation of professional sports team or rodeo organization can sell tickets at the team's home venue or online via digital interactive media, during scheduled event times only.

HB 541 PASSED: Expands the range of local nonprofits eligible to receive a donation from a criminal defendant as fulfillment of court-imposed probation conditions under Art. 41A.304(f), Tex.Code Crim.Proc. This provision continues to get legislative attention.

Passed both houses without a single “nay” vote

SB 1621 (=HB 602): This bill was re-filed from previous sessions and would require state contractors and funding grantees to comply with E-Verify, the federal electronic verification employment process for employees.

Failed to get a Senate floor vote; no House action

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

No House committee action

HB 490: Charitable fundraising amounts raised at an event connected to a political campaign, candidate or elected official would not accrue as part of any campaign contribution limit for reporting purposes under a proposed new Sec. 353.054, Election Code.

No House committee action

HB 2138 PASSED/VETOED: A nonprofit wildlife conservation association can sell raffle tickets to identified supporters on its website.

Vetoed by the governor

SB 643 PASSED: Includes adjustments to the bingo regulation statutes under Chap. 2001, Occup.Code, 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.

Passed Senate; did not move to a House vote late in the session

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

No House committee action

Limiting legal liability and the Texas charitable immunity statutes:

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

SB 694 PASSED: Chapter 84 immunity from liability is extended to a religious organization, its volunteers or employees for security services provided to the organization under a new Sec. 84.0067.

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

No committee action

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

No committee action

HB 242 PASSED: Eliminates a donor’s liability when donating or distributing feminine hygiene products for charitable purposes under a new Chapter 89A, Civ.Prac.& Rem.Code.

State tax exemptions granted to nonprofit entities:

There is a “cost” to the state’s taxpayers of various **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 grow. For 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): Would authorize 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.

No committee action

State property tax exemptions granted to Sec. 501(c) entities 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 PASSED: Exempts vehicle registration fees for a nonprofit’s vehicles used in emergency response or disaster relief.

HB 456 PASSED: Ad valorem taxes are waived for a mineral interest and related royalty interest in property owned by a nonprofit entity listed elsewhere in Sec. 11.18.

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

No committee action

Other “11.18” bills filed: **HB 741, HB 3691, HB 4774, HB 4851, SB 2352, SB 2398.**

State associations, advocacy groups and social service organizations:

SB 933: For purposes of compliance with the Public Information Act, the bill would define a nonprofit state association or organization primarily composed of similarly situated political subdivisions as a “governmental body” and thereby subject to information disclosure requests under Chapter 552, Tex.Govt.Code.

No committee action

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.

No committee action

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. Related: **HB 1509:** Higher education institutions must report any financial support to a nonprofit media organization.

No committee action

SB 175 (=HB 3538): 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.

Passed Senate 19-12; no House committee action

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.

No committee action

HB 5130 (=HB 2551): No public funds can be expended to support a nonprofit organization that advocates “managed retreat” in coastal areas.

No committee action

HB 2473 (=SB 2115): The operational capacity of the Texas Information and Referral Network (“Texas 2-1-1”) would be enhanced.

Passed House; no Senate committee action

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

No committee action

“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 or custody 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 earlier 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 period:

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.

No committee action

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 local controversies that result in proposed 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 (PASSED): Requires clear and published policies for enforcement of association fines.

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

Vetoed by the governor

HB 1252: Would require an annual audit of POAs.

No committee action

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

No committee action

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

No committee action

HB 5258: A county attorney would be given authority to institute legal proceedings to address a violation of the governing instruments of a POA by its governing board.

No committee action

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 such a mis-identified fish menu item are provided.

Passed House 134-0; no Senate committee action (the upper house had other fish to fry)

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, or as a grant recipient or 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.

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