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TEXAS LEGISLATIVE UPDATE 2019

Issues affecting nonprofit organizations active in the public arena

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INTRODUCTION

The dynamic Texas economy, a growing and diversifying population and shifting political forces make for interesting times and require a keen eye for opportunities, challenges and change. Well-informed leaders in the nonprofit sector must guide nonprofit organizations, state and national associations, advocacy groups, foundations and similar groups into new areas of civic involvement. A changing legal, regulatory and political/legislative environment is a big part of the picture. Begin year 2020 with a 20/20 focus on what lies ahead.

ATTACHED TO THIS PAPER

- **Excerpts from *Built for Texas: The Impact and Opportunity of Our Nonprofit Sector* (2019), by the United Ways of Texas, www.uwtexas.org .**

- **Texas Legislative Summary, end-of-session final report (June 2019) available with updates at www.nonprofitlawandpolicy.com .**

- **Texas State Comptroller letter summarizing state tax exemptions (November 2018).**

20/20 VISION: ISSUES AND OPPORTUNITIES FOR THE NONPROFIT SECTOR

Note: In the following, **HB** refers to a House Bill and **SB** a Senate Bill in the legislative session indicated. Bill numbers are in **BOLD,** and passed bills are **underlined** and **BOLD** (example: **SB 378**).

1. Tax-exempt status of nonprofits is a growing "cost" to state government revenues

The total value of longstanding exemptions enjoyed by nonprofit entities 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 "cost"? The State Comptroller's most recent report, entitled *Tax Exemptions and Tax Incidence* (November 2018), reported to legislators that approximately $59.8 billion in potential state tax revenue is bypassed due to previously enacted exemptions, waivers and preferences granted to commercial businesses, nonprofit organizations and quasi-governmental entities. Legislators taking the long view of the state's fiscal health have filed the following bills to examine and evaluate tax exemptions and the policies behind them—all of which should be of concern to the nonprofit sector as a beneficiary of these policies:

- In the 2019 session, **HB 3298**, **HB 4482** and **HB 3968** revived the legislative revenue reforms summarized in the earlier bills listed here (see Legislative Summary, attached).
- **HB 1003** (84th Legislature, 2015) would have required the periodic "sunset" or automatic repeal of all state tax exemptions, credits or other exceptions unless re-authorized by the legislature after a review of the costs and benefits to the state. This bill got attention because it was the subject of a hearing by the House Ways and Means Committee, meaning the idea is gaining support.
- **SB 868** and **SJR 38** (84th Legislature, 2015) would have granted the legislature broad authority to review all state and local tax exemptions and preferences. All such breaks in the Tax Code would have had a six-year shelf life unless re-authorized by legislation.
- **HB 3201** (82nd Legislature, 2011) would have granted the Sunset Advisory Commission authority to review periodically all exemptions under the state's tax laws, which would lapse ("sunset") unless re-authorized by the legislature.
- **HB 440** (83rd Legislature, 2013) would have required a religious organization to file with its local appraisal district a public annual report of its tax-exempt real property holdings, its current use and the income derived from each parcel.
- Counties and school districts can donate their surplus property to nonprofit organizations under certain circumstances. **HB 970** and **HB 1633** (78th Legislature, 2003)
- "PILOT" initiatives by local government entities have diminished in Texas although they continue to rage in other states. "Payment-in-lieu-of-taxes" (PILOT) proposals abound elsewhere and are simply creative ways to tax the property or activities of entities that have tax-exempt status under federal, state or local law. These can include public improvement user fees, public service/safety fees, utility assessments and special assessments that are applied to nonprofits as well as all others, without exemptions. A simple solution for many other state legislatures has been to disown the user fee idea for the state government tax revenues but give local government entities the local option of imposing these kinds of fees on nonprofits. For a snapshot of national developments, see https://www.lincolninst.edu/publications/policy-briefs/nonprofit-pilots-payments-lieu-taxes .
- In every session there are numerous bills to expand or clarify nonprofits' property tax exemptions under §11.18, Tex.Tax Code. The regular additions to §11.18 grow longer and longer and are often "local" bills addressing a specific situation or unpopular ruling by a local tax appraisal board or court. At some point this invites a holistic review of the significant tax revenues bypassed by state and local government. It also offers a critical look at the vast real estate holdings of nonprofits and whether they directly advance a charitable purpose. As local taxing authorities face new legislative limitations on tax revenue increases (**SB 2**, 86th Legislature, 2019), local tax appraisal districts and appraisal review boards will take a closer look at exemptions claimed under §11.18 and related provisions of the Tax Code.

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