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Texas Legislative and Public Policy Update

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TEXAS LEGISLATIVE AND PUBLIC POLICY UPDATE

Issues affecting nonprofit organizations in the 2021 session

By **Richard W. Meyer**

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INTRODUCTION

Can nonprofit organizations, state associations and foundations find new opportunities in the coronavirus era? Can 2021 be a year of accomplishments to be remembered?

Nonprofit organizations and state associations that serve a growing and diversifying population and a dynamic Texas economy continue to be challenged by the events of the 2020 coronavirus era. While fulfilling their missions and assuring their own sustainability, they should not neglect the public policy and legislative arena, where new opportunities and new revenue streams will emerge to serve and operate in new ways. The 2021 Texas Legislature regular session begins January 12. Those organizations and persons who pay close attention to their interests, recognize beneficial opportunities, form alliances, and speak up can emerge stronger. In each session, bills and proposals impacting the nonprofit sector—positively or negatively—are heard and enacted, often without input from the parties and stakeholders most affected. Following are some policy, legislative, legal and regulatory issues that deserve attention and response in 2021:

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 previously passed bills are underlined and BOLD (example: **SB 378**).

I.

Executive, judicial and local government authority will generate legislative attention

1. Emergency powers and pandemic-era declarations of the governor will be examined

Beginning in February 2020, the Texas governor issued a succession of executive orders and disaster declarations in response to the coronavirus emergence, most under his authority granted in the Texas Disaster Act of 1974, Chapter 418, Tex.Govt.Code. These 30-day declarations can be extended repeatedly. The legislature can terminate a declaration but, obviously, must be in session to do so (not the case in year 2020). Those unfamiliar with his authority were surprised to find that the governor can also suspend any regulatory statute or agency rule, and the limits of that power may be restrained only by challenges in the courts on constitutional grounds. Texas Const., Art. I §28, generally forbids the suspension of laws except by the legislature. A score of lawsuits was filed across the state reflecting various private and business interests that were affected but none has succeeded to date. The Texas Supreme Court determined it could not issue

a writ of mandamus to the governor in response to a petition to do so. These emergency executive powers have taken the following form:

- Executive Orders
- Disaster Declarations (and numerous extensions)
- Coronavirus Emergency Supplemental Funds (CSEF) Program
- Select Waivers Issued by the Governor

Emergency orders and declarations of the governor can be found at www.gov.texas.gov/coronavirus-executive-orders .

Early-filed bills on this subject include: **HB 905**, **HB 906**—restrictions on disaster declarations; **HJR 47**—convening the legislature in special session during disaster declaration periods

2. Emergency rules and orders by state agencies came from all directions in 2020

To adapt to the coronavirus conditions, many state agencies followed the governor’s lead. For months, the *Texas Register* has been full of proposed emergency rules by various state agencies covering a variety of topics: regulation of practice procedures of licensed healthcare professionals; practices and conditions in jails and prisons; access to public buildings and state employees; temporary changes to administrative hearing procedures; and changed operations of the Texas Workforce Commission to manage the overwhelming task of passing on federally-funded unemployment compensation benefits to millions of eligible persons affected by economic conditions. Within the governor’s executive orders and declarations were various exceptions. One common exception that benefitted many parties was that “essential government services” performed by a person, business or organization could exempt that party from a restriction or regulation. Various state agencies issued guidances or other written policy declarations defining available exceptions, and some provided written waivers to their vendors, contractors, suppliers or other essential support entities. Examples:

- The Texas Department of Health and Human Services has broad regulatory authority over social welfare programs and pandemic response programs involving child care facilities, nursing homes, Medicaid; see <https://hhs.texas.gov/services/health/coronavirus-covid-19/coronavirus-covid-19-provider-information> .
- The Department of State Health Services provides an up-to-date listing of various orders. See www.dshs.state.tx.us/coronavirus/execorders.aspx .
- The Texas Workforce Commission (TWC) has carried the brunt of responding to job insecurity and unemployment relief during the 2020 pandemic conditions. Its local workforce commissions can partner with local social service organizations to serve vulnerable populations. See www.twc.texas.gov/jobseekers/disaster-unemployment-assistance .

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