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85th Texas Legislature, 2017 Regular Session

SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS
As of June 17, 2017

Compiled by Richard W. Meyer, Attorney at Law

End-of-session final summary:

The 85th Texas Legislature Regular Session ended on May 29, 2017, featuring more than 7,000 bills and resolutions in both houses that occupied the attention of lawmakers and affected citizens and groups. Compared to controversies and issues in the past, this was a quiet and relatively challenge-free session for the charities, state associations, foundations and other nonprofits that comprise the Texas nonprofit sector. The following summary list of bills and issues includes some highlights:

- **Applying the Texas “open records” laws to certain nonprofits** again received extensive attention and news coverage because of proposals in SB 408 and SB 407, which were championed by media organizations and advocacy groups but shunned or opposed by the thousands of nonprofit organizations that might have been required to comply with the laws. Disappointed sponsors and advocates promise a return to this issue in 2019.
- **Privatizing state government functions to transfer them to nonprofits or vendors** again proved troublesome when human services programs are being “reformed.” HB 6 concerned proposed privatization of state foster care services and burned up an enormous amount of emotional House debate time, only to produce no consensus or final outcome.
- **Special fundraising privileges for powerful sports clubs** were again extended from the opening given in the 2015 session. HB 3125 extends “super-raffle” rights to more professional sports club charities if the voters approve the proposition in November.
- **“B-Corps” come to Texas** through HB 3488, which follows the lead from a score of states that have enacted enabling legislation to permit the formation of for-profit entities that include a commitment to stated public benefits as well as profits for investors.
- **There were only minor amendments to the Texas nonprofit corporation laws** found in Chapter 22, Business Organizations Code. SB 1518 addressed issues relating to Chapter 252 unincorporated nonprofit associations.

Successful bills that will become law are marked **PASSED** (bold and underlined), with the effective date noted. The final status of bills in the legislative process that did not pass is noted in *italics*. Access the 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 useful legislative website.

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 \$217 billion 2018-19 general appropriations bill (**SB 1**) is voluminous and can be reviewed through the Legislative Budget Board, www.lbb.state.tx.us.

Analysis and commentary below focus on **protecting your right to do good works** through community service in nonprofit organizations or voluntary associations.

End-of-session review of proposed legislation:*

The following bills were considered in the 2017 legislature and affect nonprofits, state associations and foundations in the subject areas listed.

Open meetings / open records issues:

SB 408 (=HB 793):** The somewhat obscure language of SB 408 would have required thousands of nonprofits and associations to comply with “open records” disclosure under the Texas Public Information Act to any requestor by declaring them a *government body* because the organization (1) receives or spends public funds, unless the funds are received through an arms-length contract for services, (2) uses real or personal property owned or leased by the state or a political subdivision that is not generally available to the public under an agreement that provides for no or nominal consideration, or (3) receives or spends public funds under an agreement to provide services traditionally provided by a government body. The goal of the bill was to reverse the Texas Supreme Court’s ruling in the *Greater Houston Partnership v. Paxton* case. It is unclear how thousands of small Texas nonprofits without full-time or professional staff and counsel could or would comply with the strict mandates, timelines and penalties for failure to comply with an open records request under the Texas Public Information Act. The affected organizations should also feel uncomfortable being labeled a *government body*.

Passed Senate; no House committee hearing. The contents of SB 408 were attached to HB 2328 late in the session but failed to get a vote as the calendar clock tolled.

HB 2674: A tax-exempt nonprofit corporation that receives 25 percent or more of its income from state funding would be required to prepare a report listing the salaries of each of its employees and officers and have it posted regularly on its website and a website maintained by the Secretary of State.

Heard in House committee May 1, left pending

HB 4144: Would establish a process to determine if an entity receiving an open records request is a *government body* within the meaning of the Texas Public Information Act and thereby subject to disclosure requests from the public.

Heard in House committee, left pending

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