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82nd Texas Legislature, 2011 Regular Session SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS (as of 5/11/11)

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Pending legislation—with time running short:

The Texas Legislature is three weeks from the end of its 82nd Regular Session, and numerous bills have been presented that directly or indirectly affect the interests of nonprofit organizations. The following summary lists bills of interest and concern to leaders in the nonprofit sector in Texas. A notation in *italics* following a bill summary indicates the bill's status as it moves through the legislative process. Almost 6,000 bills were filed, and the state's budget shortfall is yet to be addressed because of large differences in the total budget numbers adopted by each house. Committees are now facing long agendas with bills to be considered and testimony to be heard. Bills that do not move out of committee this week are likely doomed, although certain left-for-dead bills can be attached to a similar bill late in the process.

This is a crucial time to express your group's position to elected representatives.

Issues of interest and concern to TANO include:

- Anticipated passage of the bill to continue the state's nonprofit capacity-building task force and inclusion of all stakeholders such as TANO (HB 1965)
- Concern from nonprofit leaders over proposed expansion of the Attorney General's investigatory authority over nonprofits (HB 2921, SB 342)
- Numerous bills that would require employers or government contractors and grantees to document employment eligibility of employees, volunteers or otherwise monitor or document their status (HB 178, HB 202)
- Possible creation of a new permitting process regulating non-commercially produced food items that are prepared for sale at organization fundraising events, gatherings, or farmers' markets (HB 1139, HB 2084, HB 3387)
- State legislation to roll back the imposition by local governments of "PILOT" fees (payments in lieu of taxes) on property owned by nonprofit, charitable and religious organizations (SB 714, HB 1022).

Bills pending in the 2011 legislature affect nonprofits in the following areas:*

Advancing and regulating nonprofit organizations:

HB 1965: The promising nonprofit capacity building initiative from HB 492 enacted in the 2009 legislative session created the Task Force on Strengthening Nonprofit Capacity. Its work would be continued by HB 1965 along with an expanded Interagency Coordinating Group, now expanded to include executives representing 20 large state agencies. Both groups are tasked with improving contracting relationships with state government, cooperating and collaborating with community and faith-based organizations, identifying duplications in nonprofits' activities, and identifying gaps in state services that nonprofits could fill. These efforts establish a long-needed "footprint" in the state government realm and advance the nonprofit sector's importance in public affairs. *Passed the House; voted favorably from Senate Health and Human Services Committee 5/10/11. Senate passage expected.*

HB 2921 (=**SB 342**) **: Would significantly expand the authority of the Attorney General's Office to investigate the internal operations of charitable organizations without bringing formal criminal or civil charges, if the Attorney General has reason to believe that an unlawful act is occurring *or is about to occur*. Any charity or foundation could be required to provide, under oath, answers to questions regarding alleged unlawful activity, produce any document maintained and requested, or have its representative personally questioned and examined under oath by state investigators. *HB 2921 voted favorably from House State Affairs Committee; awaiting House calendar action. SB 342 pending in Senate Business and Industry Committee.*

SB 587 (=**HB 810**): The Attorney General would have venue to bring a Probate Code enforcement or investigatory action in Travis County against a nonprofit entity located anywhere in the state that is claimed to be violating its duties as a charitable trust. *Passed Senate; voted favorably from House Judiciary and Civil Jurisprudence Committee.*

HB 593: The State Auditor would have authority to examine and audit the books and records of any grantee of federal ARRA "stimulus" funds (American Recovery and Reinvestment Act). *No committee action.*

Fundraising activities of nonprofit organizations:

HB 457: Charitable organizations conducting raffles would be permitted to expand their efforts with online solicitations to their supporters. *Passed by House and Senate. Awaiting Governor's consideration.*

HB 1139: Would define and extend state health regulations and permit requirements applicable to a "cottage food production operation"--non-commercial or home-produced food for limited sale--including "...at an event held or sponsored by a religious or nonprofit organization". *Left pending in the House Public Health Committee.* **HB 2084** also defines certain "cottage food production operations" with lesser permitting requirements. *On House consent calendar.* **HB 3387** would regulate similar sales at farmers' markets. *Passed House 5/11/11; referral to Senate pending.*

HB 372 (=**SB 261):** In this proposed repeal of a remnant of the English common law--the Rule Against Perpetuities--charitable giving of high-wealth individuals could be affected. The rule prevents personal wealth from being permanently tied up with trusts or other legal instruments in perpetuity and for the benefit of limited beneficiaries or heirs. *HB 372 reported favorably from House Judiciary and Civil Jurisprudence Committee; awaiting House calendar action.*

HB 1682: Pressuring or coercing school district employees to participate in charitable giving activities would be forbidden. *Passed House; awaiting Senate floor vote.*

HB 1806 (=**SB 897):** Regulation of "fishing tournament fraud" and enforcement actions would be strengthened. *HB 1806 passed House and Senate. Awaiting Governor's consideration.*.

Amendments to the Texas Non-Profit Corporation Law, Chap. 22, Bus. Org. Code:

SB 748 (=**HB 1873**): Would make minor changes to the nonprofit corporation law detailing the procedure for an interested director to disclose a conflict of interest to his/her board before acting on the matter. *SB 748 passed Senate and House*.

Amendments to charitable immunity statutes in Chapter 84, Civil Practices and Remedies Code:

Various professionals and individuals would be added to the list of persons specifically granted Chapter 84 legal immunity while performing voluntary services: Social workers, **HB 823**, *awaiting House floor vote*. Licensed family/marriage therapists, **SB 1336**.

SB 1846: A nonprofit could access additional types of insurance policies, as well as self-insured plans, to comply with the financial responsibility requirements of Chapter 84 that entitle the organization and its leaders to certain immunity against legal claims. *Passed Senate and House. Signed by Governor, eff.* 5/9/11.

Exemptions from state taxes now extended to nonprofit entities, and 'PILOT' fees:

SB 1051 (=**HB 1308**): A select state review commission would periodically review all credits, exemptions and special treatment under the state's tax laws. *SB 1051 heard and Senate Finance Committee action pending. HB 1308*, action pending in House Ways and Means Committee.

HB 3201, HB 784: The Texas Sunset Advisory Commission would periodically undertake a reexamination ("sunset") of all exemptions under the state's tax laws, including the exemptions from property, sales and business taxes enjoyed by charitable organizations. *HB 3201, action pending in House Ways and Means Committee.*

SB 714 (=**HB 1022**): Drainage fees (PILOTs) imposed by the City of Houston on utility-using tax-exempt properties owned by charitable and religious organizations would be banned by state law. *PILOT refers to "payments in lieu of taxes."* SB 714 passed by Senate; awaiting House committee action. On 4/6/2011, the Houston City Council passed an ordinance exempting churches and schools from the previously-enacted drainage fees, in response to the local public outcry and the state legislation referenced above.

See also **HB 3169**.

SB 609 (=**HB 1143**, **HB 1289**): Property-based municipal drainage fees could not be imposed on housing authority properties owned by a municipality. *SB 609 passed Senate; awaiting action in House Natural Resources Committee*.

HB 645: An applicant in behalf of a charitable organization's request for tax exemption will not have to list his/her personal identification information on the State Comptroller's forms. *Passed by House; awaiting hearing in Senate Intergovernmental Relations Committee.*

SB 1757: Amends Tax Code Section 11.18 (which details categories of property uses exempt from property tax) by including academic support for youth, in addition to athletic program support. *Awaiting hearing in Senate Finance Committee*.

Nonprofit board, officer, employment, volunteer and fundraising issues:

- **HB 3252, HB 178, HB 202:** Organizations contracting with the state must clear employee status through a federal government-certified data verification service. *HB 3252 reported favorably from the House State Affairs Committee; HB 178 and 202 left pending.* **HB 878** includes subcontractors in the required verification process. **HB 140,** *has not received committee hearing.* See also **SB 84**.
- **HB 73:** Criminal history checks would be required of all state employees, interns, volunteers, contractors and subcontractors related to state agency contracting and spending. *Pending in House State Affairs Committee*.
- **HB 1553:** Any public agency or nonprofit employer receiving state funds must report the citizenship of any person served by programs. *Pending in House State Affairs Committee*.

Open meetings / open records issues:

- **HB 3573:** Would forbid a government entity from requiring a foundation, trust, or charitable organization from disclosing the race, religion, gender, national origin, age, ethnicity, marital status, sexual orientation, or political affiliation of persons managing or benefitting from the foundation, trust or organization. *Passed House; pending in Senate Business and Commerce Committee.*
- **SB 1571:** Provides that a nonprofit organization that performs a public function is governed by Government Code, Chapter 552 (public information disclosure laws). *Senate passage expected.*
- **SB 1829:** Exempts from the public information laws a chamber of commerce or a nonprofit organization that provides economic development services to a public agency. *Passed Senate; awaiting House committee referral*.

Public advocacy / Ethics Commission (lobbying) issues:

- **HB 508** (= **SB 128**): Former legislators would be forbidden from lobbying for two years, except if lobbying for nonprofit organizations, disabilities, and low-income advocacy groups, and if acting without compensation. *No committee action on either bill*.
- **HB 2973** (=**SB 1565**): Provides for an accelerated court review and possible dismissal of a suit against a person or group advocating for basic free-speech rights. *Passed House; in Senate State Affairs Committee. SB 1565 awaiting Senate floor vote.* See also **HB 2974**, a shorter version.
- **HB 160:** Permits a streamlined court review and dismissal of "slap" suits—a harassing or groundless lawsuit brought against a complaining person or group critical of another interest group, in a public controversy, and determined by the court to be brought to silence the opponent. *No committee action*.

Nonprofit social service organization and property owner association issues:

SB 142: A long and comprehensive bill affecting only property owner associations. *Passed Senate;* awaiting House committee hearing. See also **HB 3347**, Reported favorably from House Business and Industry Committee. **HB 2869**, passed House; awaiting hearing in Senate Intergovernmental Relations Committee. **HB 3348**, reported favorably from House Business and Industry Committee.

HB 2328: Property owner associations would be regulated by the Texas Finance Commission, with annual registration, reporting requirements and governance standards. *Reported favorably from House Business and Industry Committee.*

Other bills:

HB 8 (=**SB 1459**): Would effectively ban "land transfer fees" in Texas. These fees are often recorded as part of permanent subdivision restrictions, which subsequently require payment by the seller of a percentage of the sales price to a designated party each time the parcel is resold. The claim by fee proponents that a small percentage of the fee collected is often passed to benefit a local charitable organization appears outweighed by broad opposition to this hidden fee, which is also the subject of review by federal regulators of residential loans. *Passed House; action pending in Senate Business and Commerce Committee.*

HB 1599: Would permit the Texas Corrections Industries (prison industries) to offer its products and services for sale to nonprofit organizations as well as public agencies. *Pending in House Corrections Committee.*

HB 421: Qualified nonprofit corporations would be eligible to receive ownership of remainder right-of-way properties determined by TXDOT to be unusable for its purposes. *No committee action.*

*The 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