

Texas Association of Nonprofit Organizations (TANO)

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SUMMARY OF ISSUES AFFECTING NONPROFIT ORGANIZATIONS **81st Texas Legislature, 2009 Regular Session**

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60th Day

The 2009 Texas Legislature has reached the 60th day of its 140-day regular session, which means the deadline for filing new or original bills has passed. Legislation can still be altered drastically, however, by substitutes and revisions during committee deliberations, floor amendments in either house when the bill is being debated, by attaching a portion of a bill to another that is moving through the process, or by revisions and compromises inserted by conference committees appointed to reconcile different versions of a bill passed by each house. The status of any bill can be monitored at www.capitol.state.tx.us

Analysis of proposed legislation:

With every session of the Texas Legislature, numerous bills are 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 during the 2009 regular session and takes into account the following factors:

Whether a proposed bill strengthens nonprofit organization 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 disclosure and accountability requirements remain reasonable and balanced.

Bills in the 2009 legislature affect nonprofits in the following areas:*

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

SB 2185 – HB 4515:** Section 501 (c)(3) nonprofits with annual gross revenues exceeding \$50 million would have to purchase services using the state agency request for proposals purchasing methods in *Subtitle D, Title 10, Govt. Code*

SB 2186: Section 501 (c)(3) nonprofits with annual gross revenues exceeding \$50 million that award college scholarships would have to provide detailed reporting to the Secretary of State regarding amounts, geographic distribution of awards, and personal information on recipients

SB 1196 – HB 1955: Requires certain nonprofit organizations in Harris County to comply with the state open records laws, have a board that reflects the diversity of the communities they serve, and make efforts to award its contracts in accordance with the historically-underutilized business (HUB) laws. See also SB 931, below, and HB 4512.

HB 4103: Clarifies that a board management committee of a religious institution could be comprised of non-directors if the certificate of formation or bylaws so provide

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

HB 2787: Removes the immunity given to charitable organizations under Chapter 84 when the nonprofit is accused of negligent hiring, supervision or retention of an employee or agent that results in a sexual offense being committed against a person 18 years or younger who receives benefits or services from the organization

SB 1211: An audiologist or speech pathologist volunteering services would be protected from lawsuits, along with other types of volunteers now listed in Sec. 84.003(5) of the *Civil Practices and Remedies Code*. **HB 3985** adds social workers to the list of exempted volunteer professionals. **HB 1995** is similar but does not amend Chapter 84. Bills of this type add to a long list of professionals and volunteers who receive immunity from suit for acts related to their volunteer work.

Exemptions from state taxes now extended to nonprofit entities:

HB 1402: A state select commission and a joint legislative tax review committee would each make periodic reviews of all state tax laws, including exemptions from taxes, and recommend changes to the legislature; the nonprofit sector would have to be prepared to defend all current exemptions from various state taxes

SB 2305 – HB 2319: Clarifies the sales tax exemption and definition of “occasional” sales or delivery for fundraising activity sales of qualified nonprofits that receive delivery of products from manufacturers or distributors and re-sell them to the public, regardless of the sequence of handling of the product(s)

HB 507: Sales at charitable fundraising events at a state school are exempt from state sales and use tax

SB 475: Property tax exemptions for a Sec. 501(c)(2) nonprofit (that holds property for the benefit of another qualified charitable corporation) are clarified

HB 831 - SB 564: Property used by nonprofit community business development organizations would be exempt from ad valorem taxation.

HB 589: A charitable organization owning and operating a public radio station has its property and equipment exempt from property tax

There are numerous other bills pending that address various specific exceptions to property taxes, based on local situations or circumstances faced by nonprofit entities.

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

HB 1162 - SB 776: Public collection boxes placed to accept donated goods would have to be clearly marked as to the nonprofit organization, if any, benefiting from the proceeds of the sales of collected items, or state that the goods will be sold for profit; door-to-door or mail solicitation of donated goods would require specific notices to the public

HB 3525: Adds additional restrictions on telephone solicitations by law enforcement-related charitable organizations and mandates specific disclosures to the public that the donor will not receive any preferential treatment by any law enforcement officer if a contribution is made

HB 226: Requiring or compelling an employee to make a charitable contribution would constitute an illegal labor practice by the employer; written authorization required to withhold wages or otherwise require the contribution. **HB 4014** would prevent public school teachers from being required or pressured to make a charitable contribution or attend a school-related fundraising event.

HB 4533: Would permit charitable poker runs as fundraisers by qualified charitable organizations and the award of cash prizes for the winning poker hand played at the end of the “run”

SB 918 – HB 2416: Clarifies that the Attorney General may be awarded its attorney’s fees and court costs in a suit brought alleging a breach of a fiduciary duty by a charitable entity. See also **SB 917**.

Open meetings / open records issues:

See **SB 1196 – HB 1955**, above

Public advocacy / Ethics Commission (lobbying) issues:

HB 723 – SB1215: Former legislators would be forbidden from lobbying for two years, except if lobbying for nonprofit organizations, disabilities, and low-income advocacy groups, without being compensated See also **HB2430** and **HB 2089**

HB 2410: Increases the exceptions to the lobby regulation and reporting laws by defining numerous circumstances involving contacts with state officials that would not constitute lobbying

Nonprofit social service organization issues:

HB 492: Would require a group of state agencies to designate a liaison official to improve partnerships with community and faith-based nonprofit organizations and strengthen state government initiatives with local nonprofits; would set up a task force under the Health and Human Services commissioner to advise the state on possible funding of nonprofit undertakings and capacity-building; would create a state fund account to receive legislative appropriations; and create a statewide database of local volunteer opportunities.

SB 159: Permits cities and counties to increase the minimum wage beyond the state and federal minimum wage. *There are numerous other bills to permit the increase of the minimum wage.*

HB 931: An applicant for a grant from a state agency would have to submit a minority impact statement on an approved form about the effect of the grant on minority and disabled individuals. *See also SB 1196, above.*

Other bills:

HB 671: Would add nonprofits as a protected class under the Penal Code by permitting an enhancement (increase) in punishment ranges for a person convicted for theft from a Sec. 501(c) organization

HB 3704: Would require state agency purchasing agents to give preference in state purchases to buy “fair trade certified” goods to the extent they are available

HB 547: A person sued because of a complaint or report given to a government agency is entitled to have the proceedings abated until the outcome of the complaint is resolved by the government agency

HB 1338: Persons involved in filing a good-faith complaint with a government agency would be protected from groundless or harassing lawsuits by a party adversely affected by the complaint; a court could grant an expedited hearing on the case and dismiss it if the complaint had been brought in good faith

*Above list does not include bills introduced relating to the following:

Nonprofit hospitals, health care or nursing institutions and plans; credit unions; electric or rural cooperatives; private and charter schools and colleges; cemetery corporations; insurance plans/HMOs; 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