

SUBJECT: Limiting disclosure of information for certain charitable organizations

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Deshotel, Bohac, Garza, Giddings, S. Miller, Quintanilla,
Workman

0 nays

1 present, not voting — Orr

1 absent — Solomons

WITNESSES: For — Arlene Wohlgemuth, Texas Public Policy Foundation

Against — Nancy Hentschel

On — Sheryl Johns, Houston Endowment Inc (*Registered, but did not testify*): Irene Adolph, Coalition for HOA Reform and HOADATA.org)

BACKGROUND: To be tax-exempt as a charitable organization under sec. 501(c), Internal Revenue Code, an organization must be not-for-profit and operated exclusively for exempt purposes, including charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. It may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.

Under sec. 509(a), Internal Revenue Code, the term “private foundation” means a domestic or foreign organization described in section 501(c)(3), other than organizations that fall into a list of specific exceptions.

DIGEST: CSHB 3573 would prohibit a governmental entity from requiring certain charitable organizations, charitable trusts, and private foundations to disclose certain information.

The bill would define a charitable organization as one exempt from federal income tax under 501(a) of the Internal Revenue Code of 1986 by its

inclusion as an exempt organization under sec. 501(c), but would exclude a property owners or homeowners association. A grant-making organization would be defined as one that made grants to charitable organizations but was not a private foundation, private foundation trust, or split interest trust. A private foundation would be defined as it is under sec. 509(a), Internal Revenue Code of 1986. A split interest trust would be an irrevocable trust in which income first was dispersed to the beneficiaries of the trust for a specified period and the remainder to a designated charity.

The bill would require that, unless an individual provided written consent, a governmental entity could not require a private foundation, private foundation trust, split interest trust, or grant-making organization to disclose the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration of a benefactor, beneficiary, employee, officer, director, trustee, member, or owner of an entity that received money or in-kind contributions from or contracted with the foundation, trust, or organization.

A governmental entity also could not require the governing board or officers of a charitable organization, private foundation trust, split interest trust, or private foundation to include an individual of any particular race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration.

The governmental entity could not prohibit an individual from serving as a board member or officer of the organization, trust, or foundation based on the member's familial relationship to another board member, officer, or donor to the organization, trust, or foundation. A governmental entity could not require the board to include one or more individuals who did not share a familial relationship with board members or officers or with a donor.

Except as a condition imposed by the donor, a governmental entity could not require a charitable organization, private foundation trust, split interest trust, or private foundation to distribute its funds to or contract with a person or entity based on the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration of:

- the person or an employee, officer, director, trustee, member, or owner of the entity; or
- the populations, locales, or communities served by the person or entity.

The bill would not limit the authority of the attorney general to investigate or enforce laws of this state in accordance with the attorney general 's duty to protect the public interest in charity.

The bill would take effect September 1, 2011, and would not apply to or invalidate a contract in effect before that date.

**SUPPORTERS
SAY:**

CSHB 3573 would preserve an individual's right to donate privately to certain organizations.

Protecting donors. The bill would preserve the private property rights and the privacy of donors to these organizations. Requiring organizations to disclose information about their donors invades donor privacy and discourages individuals from donating to worthy causes. The knowledge that the government could or would require their personally identifying information to be disclosed by the organization influences the gifts made by individuals. A church is able to donate to a mission group without the intrusion of the government, and an individual is entitled to the same level of privacy.

Preventing government overreach. The bill would be a proactive step in preventing government entities from requiring certain compositions of board members for these organizations. The requirement in other states for a specific composition of board members for these types of organizations to "balance" factors such as a race and religion, as well as recent letters from government entities in Texas to private organizations demanding the release of information, indicates the need to preserve the autonomy of private organizations.

Concerns that the bill might allow secretive donations to hate groups or terrorist organizations are unfounded because the Texas and U.S. constitutions fully permit the government to protect the public against criminal actions.

Concerns that the bill would prevent a potential donor from understanding the flow of money to and from a certain organization also are unfounded.

Many watchdog organizations monitor the donations made to and by these organizations and hold them accountable for their actions.

Preserving donations to government entities. Texas has many organizations that donate to cities or states, and CSHB 3573 would ensure that individuals continued to support these organizations. Preserving this revenue stream is important to these entities during the current budget crisis.

Homeowner and property owner associations. The bill is right to exclude homeowner and property owner associations from the definition of a charitable organization because government entities need to have access to the records of those organizations to monitor the legality of their practices, especially with respect to money collected from the resale of a property.

OPPONENTS
SAY:

CSHB 3573 would hinder the public's right to know about the influence of certain organizations. Philanthropy can be used as a weapon and a political tool. As such, the public needs to understand from whom the government receives money, including other donations made by that organization. The government should not knowingly or unknowingly accept money from an organization with ties to a terrorist organization or a hate group, for example.

OTHER
OPPONENTS
SAY:

The bill is unnecessary because the U.S. Constitution and the Texas Constitution already protect the right to raise money and express specific beliefs without government intrusion.

NOTES:

The committee substitute differs from the bill as filed by excluding property owners or homeowners associations from the definition of charitable organization and including a provision stating that the bill would not interfere with the authority and actions of the attorney general.