

OUT OF THE DARKNESS: REQUIRING GREATER TRANSPARENCY FROM PUBLICLY SUPPORTED ENTITIES

WRITTEN BY **James Quintero**, Taxpayer Protection Project
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KEY POINTS

- Quasi-governmental entities funded mostly or entirely by public monies lack transparency and are not subject to certain open government standards.
- In the absence of meaningful transparency requirements, the opportunity exists for these entities to engage in publicly funded wrongdoing without taxpayer knowledge.
- To illuminate this environment, policymakers should amend the TPIA's definition of "governmental body" to apply to certain publicly supported entities.

"SUNLIGHT IS SAID TO BE THE BEST DISINFECTANT. IF THE BROAD LIGHT OF DAY COULD BE LET IN UPON MEN'S ACTIONS, IT WOULD PURIFY THEM AS THE SUN DISINFECTS."

~ JUSTICE LOUIS BRANDEIS (1891, AS CITED IN FERRIERO, 2012)

INTRODUCTION

Patrick Henry (1788), an American statesman, orator, and leader in the American Revolution, once boldly proclaimed, "The liberties of people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them." Henry's maxim, that liberty requires transparency from the governing elite, informs this analysis and inspires the recommendations to reform Texas policy in ways that are truer to its spirit.

In the present policy environment, serious concerns exist that quasi-governmental entities and nonprofit associations funded mostly or entirely by public monies lack meaningful financial transparency. These publicly supported entities (PSEs) are well-funded, too. PSEs commonly derive revenue from state and local governmental entities through many different avenues, including membership dues, contractual agreements to provide service, and grants. For example, the city of San Antonio's most recent adopted budget for fiscal year (FY) 2025 includes an \$886,376 set aside to pay for "the annual membership dues

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In the absence of any reasonable financial transparency, Texans cannot be certain that these government-adjacent entities are not engaged in questionable conduct, impropriety, or immoral acts before, during, or after the legislative process.

for associations to include the Alamo Area Council of Governments, Texas Municipal League, National League of Cities, U.S. Conference of Mayors, National Forum for Black Public Administrators, and the Downtown Improvement District” ([City of San Antonio, 2024, p. 637](#)). Likewise, Dallas County officials included an appropriation of \$510,242 in their latest budget to pay for “memberships in certain organizations that benefit the County as a whole” ([Dallas County, 2024, p. 588](#)). In total, county officials counts themselves members of 24 separate organizations.¹ In a similar vein, the El Paso independent school district was recently observed to have provided the Texas Association of School Boards (TASB) with ample proceeds from 2018 to 2023, including “for services, such as updating district policies, \$11,000 for membership status, paying for members to participate in the TASB’s ‘Summer Leadership Institute,’ and \$18,000 to carry out surveys” ([PDE, 2023, para. 8](#)). In

just these small number of instances, it is possible to get a sense of the scale of public monies flowing to PSEs. Now consider that Texas is home to more than 4,500 local governmental entities, each of whom is connected to an unknown number of PSEs that extract revenue and resources from the public sector ([Smaldone & Wright, 2024](#)).

Despite this heavy exaction, no real public information exists detailing PSEs’ revenue streams and receipts, their spending and the beneficiaries thereof, or most importantly, the public’s return on investment. These concerns are heightened given that PSEs commonly engage in legislative advocacy, usually in support of pro-government proposals and against conservative-minded reforms. One prominent example of this problem can be observed in the effort to pass the Texas Property Tax Reform and Transparency Act of 2019, which sought to reduce the rollback rate from 8% to 3.5%, create an automatic voter-approval election requirement, and institute a host of other taxpayer-friendly changes. Throughout the deliberative process, the measure was opposed by a sizeable number of PSEs. In fact, during the bill’s first hearing in the Senate Committee on Property Tax, more than 25 PSE representatives² either testified directly against the bill, registered their opposition without testifying, or submitted written testimony seeking to stop its advance ([SB 2 Witness List, 2019](#)). This figure does not include the substantial number of local government officials and lobbyists

1 For FY 2025, Dallas County ([2024, p. 588](#)) intends to provide the organizations listed with the following funding amounts: National Association of Counties (\$49,500); North Central Council of Government (\$26,000); North Central Council—Security (\$12,500); North Central Texas Regional Certification Agency—Certification (\$41,000); Texas Conference of Urban Counties (\$60,000); Dallas Regional Membership Dues (\$15,000); Texas Association of Counties (\$10,000); County Judges and Commissioners Association of Texas (\$15,000); Lexis Nexis (\$20,000); Turnpike Owners Association (\$42,000); UTSW Health Management (\$2,826); Government Finance Officers Association (Auditor’s Office) (\$8,000); CAFR Certificate of Achievement (GFOA) (\$1,100); Keep Texas Beautiful (\$250); Lone Star Park Association (\$3,500); Scofflaw Registration (\$48,000); Scofflaw Batch Inquiry (\$40,000); Henry Wade Association Dues (\$16,000); Cook Chill Association Dues (\$20,000); Westgate Member Services (\$266); Turnpike Association French Settlement (\$35,000); PARS—Trust Benefits (\$30,000); North Texas Commission (\$10,000); and Vision North Texas Project (\$4,300).

2 One or more representatives from the following organizations directly or indirectly opposed Texas’ property tax reform in 2019: 1) County Judges and Commissioners Association of Texas; 2) Texas State Association of Fire and Emergency Districts; 3) Dallas County Fire Chief’s Association; 4) Justice of the Peace and Constables Association of Texas; 5) Texas Conference of Urban Counties; 6) Combined Law Enforcement Association of Texas; 7) Austin Police Association; 8) Texas Fire Marshals Association; 9) Texas State Association of Fire Fighters; 10) American Federation of State, County and Municipal Employees; 11) Texas American Federation of Teachers; 12) Texas Police Chiefs Association; 13) Texas Municipal League; 14) Texas Municipal Police Association; 15) Texas AFL-CIO; 16) Dallas Fire Fighters Association; 17) County and District Clerks’ Association of Texas; 18) Texas Fire Marshals Association; 19) Texas City Management Association; and 20) the North Texas Commission ([SB 2 Witness List, 2019](#)).

nor any public sector union members, who may also have been opposed and reliant on public support.

In the absence of any reasonable financial transparency, Texans cannot be certain that these PSEs are not engaged in questionable conduct, impropriety, or immoral acts before, during, or after the legislative process—or at any point, for that matter. There is simply no reasonable way for an ordinary interested party to know, despite being forced to foot the bill.

It is important to note that the current opaque environment did not come about as an intentional policy decision. In fact, quite the opposite. Consider that the state’s chief transparency law—the Texas Public Information Act (TPIA)—was originally codified in such a way that it was supposed to account for PSEs. In 1973, the 63rd Texas Legislature first enacted the TPIA’s predecessor, the Texas Open Records Act (TORA), with a proviso that defined a governmental body so as to include: “(F) the part, section, portion of every organization, corporation, commission, committee, institution, or agency **which is supported in whole or in part by public funds, or which expends public funds**” [added emphasis] (HB 6, 1973, p. 66).

A very similar but defunct provision still exists today and may be found in [Section 552.003\(1\)\(A\)\(xv\)](#) of the Government Code. At face value, this provision suggests policymakers intended for the state’s transparency law to apply to particular private sector entities who are reliant on or even simply spend public monies.

However, the Texas Supreme Court’s 2015 decision in *Greater Houston Partnership v. Paxton* reinterpreted the law’s plain text meaning in an unfortunate way. In that case, the High Court held that

“Supported” is an undefined term with multiple and varied dictionary definitions. However, only two of the definitions are even remotely possible as applied to the TPIA and only one of those definitions is reasonable when the statute is considered as a whole. Reading the definition of “governmental body” in its contextual environment... reveals that the TPIA applies only to entities acting as the functional equivalent of a governmental body that are “sustained” at least in part, by public funds. (*Greater Houston Partnership v. Paxton*, 2015, pp. 10-11)

DID YOU KNOW?

The Texas Legislature has applied certain transparency standards to nongovernmental actors in the past. Consider that [Section 209.005](#) of the Property Code compels property owners’ associations, like HOAs, to observe certain transparency standards, such as “mak[ing] the books and records of the association, including financial records, open to and reasonably available for examination by an owner, or a person designated in a writing signed by the owner as the owner’s agent, attorney, or certified public accountant.” This requirement was instituted in 2011.

Based on this statute and others, policymakers seem to affirm the importance of and the need for financial transparency from nongovernmental entities, in some instances at least. In the case of property owners’ associations, it is interesting to note that these entities are considered “nonprofits” in many instances ([Texas State Law Library, n.d.](#)).

If an entity's operating budget for the previous calendar year was comprised of 50.1% or more of public money, then it should be required to observe the state's open government standards.

Explaining further, the ruling proposes that under the revised definition a private entity is sustained if a certain dynamic is present. More specifically,

To be “sustained” by public funds suggests the existence of a financially dependent relationship between the governmental body and a private entity or its subdivision redolent of that between a parent and child or principal and agent. Financial dependency need not be absolute, however. Rather, the government could be one of several contributing sources. But sustenance implies that if the government ceased to provide financial support, the entity would be unable to meet its financial obligations. (*Greater Houston Partnership v. Paxton*, 2015, p. 14)

On the basis of this ruling, the High Court rightly or wrongly reinterpreted to whom the TPIA's standards apply and did so in a way that it is no longer obvious which PSEs are presently subject to the law's requirements. Without such clarity, an environment exists today wherein PSEs operate in the dark and largely out of the spotlight of public scrutiny. Such a setting invites illicit activity and promotes questionable conduct.

These dynamics call for the next Texas Legislature to revisit the TPIA's definition of “governmental body” and expand its scope to account for certain types of statewide associations and lobby groups. Specifically, the law's disclosure requirements should be extended to apply to taxpayer-backed nonprofit state associations and organizations that primarily represent local governmental interests to the Legislature, such as TASB. There are several reasons why these statewide entities in particular merit additional transparency, like the amount of tax dollars involved, the level of influence exercised, and the opaqueness of the environment they operate in. The public deserves a reform of this nature to ensure that these PSEs are accountable for their use of taxpayer resources.

The most direct way to accomplish the goal outlined above is to add a definition to [Sec. 552.003 of the Government Code](#) that specifies these types of entities are subject to the TPIA, along with the other 15 categories currently enumerated in the law. Such a reform would go far to bring some of the most suspect activity out of the darkness and into the light, where the public can begin to understand what it is funding and why.

RECOMMENDATION

Amend the definition of governmental body located in [Section 552.003\(1\)\(A\)\(xv\) of the Government Code](#) to clarify that nonprofit state associations and organizations that primarily represent governmental entities are subject to the TPIA's disclosure requirements. ■

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ABOUT THE AUTHOR



James Quintero is the policy director for the Texas Public Policy Foundation's Taxpayer Protection Project. He joined the Foundation in 2008 and his work has generally focused on local government matters, especially where it involves taxes, spending, and debt. His work has been featured in the New York Times, Forbes, Fox News, Breitbart, and more.

Quintero received a B.A. from the University of Texas at Austin and an M.P.A. from Texas State University. He is currently seeking a Ph.D. in public policy from Liberty University. In 2022, he was appointed to serve a three-year term on the Commission for Lawyer Discipline.

Quintero and his wife, Tricia, are blessed with five beautiful children and faithfully attend Bannockburn Baptist Church.

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