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SENATE BILL 240

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Bill B. O'Neill and Art De La Cruz

AN ACT

RELATING TO TAX-EXEMPT ORGANIZATIONS; REVISING REQUIREMENTS FOR AUDITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 6-5A-1 NMSA 1978 (being Laws 1992, Chapter 27, Section 1, as amended) is amended to read:

"6-5A-1. DEFINITIONS--REQUIREMENTS FOR GOVERNMENTAL ENTITIES THAT RECEIVE FUNDS OR PROPERTY FROM CERTAIN ORGANIZATIONS.--

A. As used in this section:

(1) "agency" means any state agency, department or board, any public institution of higher education or public post-secondary educational institution and any county, municipality or public school district;

(2) "organization" means an organization that

1 has been granted exemption from the federal income tax by the
2 United States commissioner of internal revenue as an
3 organization described in Section 501(c) of the Internal
4 Revenue Code of 1986, as amended or renumbered, and whose
5 principal and authorized purpose is to complement, contribute
6 to and support or aid the function of or forward the purposes
7 of a single agency through financial support or contribution of
8 services, goods, data or information that help or aid the
9 agency in carrying out its statutory purpose and goals,
10 including, but not limited to, the provision of scholarships to
11 students of educational institutions and the provision of
12 grants to supplement ongoing research or to provide funds for
13 research and programs being carried out by an agency;

14 (3) "post-secondary educational institution"
15 means an educational institution designated in Article 12,
16 Section 11 of the constitution of New Mexico and includes an
17 academic, vocational, technical, business, professional or
18 other school, college or university or other organization or
19 person offering or purporting to offer courses, instruction,
20 training or education through correspondence or in person to
21 any individual within this state over the compulsory school
22 attendance age, if that post-secondary educational institution
23 is directly supported in whole or in part by state or local
24 taxation; and

25 (4) "transferred" means given or otherwise

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1 transferred, with or without consideration.

2 B. Prior to an agency accepting property or funds
3 that have been transferred to an agency by an organization, the
4 agency and the organization shall enter into a written
5 agreement that includes at least the following:

6 (1) a concise statement of the organization's
7 purpose and of how that purpose is supportive of the agency's
8 statutory responsibilities and authority;

9 (2) provisions explicitly describing the
10 relationship of the agency to the organization in connection
11 with such issues as authority, autonomy and information sharing
12 and reporting;

13 (3) provisions defining the extent to which
14 the organization may complement and support functions that are
15 the statutory responsibility of the agency;

16 (4) requirements that the organization:

17 (a) if its [~~gross annual income exceeds~~
18 ~~two hundred fifty thousand dollars (\$250,000)] total annual
19 expenses exceed seven hundred fifty thousand dollars
20 (\$750,000), have a financial accounting system considered
21 adequate under customarily and currently accepted accounting
22 standards and that the financial affairs of the organization be
23 audited annually in accordance with generally accepted
24 governmental auditing standards by an independent professional
25 auditor who would be required to furnish to the agency copies~~

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1 of the annual audit, which, exclusive of any lists of donors or
2 donations, shall be a public record, and to make the associated
3 working papers available to the agency for review upon its
4 written request for a period of three years after the audit
5 report date; or

6 (b) if its [~~gross annual income is two~~
7 ~~hundred fifty thousand dollars (\$250,000)~~] total annual
8 expenses are seven hundred fifty thousand dollars (\$750,000) or
9 less, file a statement with the agency in the form of a balance
10 sheet showing the assets of the organization, its liabilities,
11 its income, classified by general source, and its expenditures,
12 classified by object;

13 (5) a provision requiring that any funds or
14 property transferred to the agency by the organization be
15 considered subject to all state laws and regulations governing
16 the disbursement and administration of public funds and public
17 property, except to the extent of any specific conditions of
18 the transfer that are acceptable to the agency and do not
19 require actions that are punishable as crimes under state law;

20 (6) a provision stating that the agency has
21 reviewed the bylaws of the organization and found them
22 acceptable and a provision requiring that the organization
23 furnish copies of the bylaws to the agency;

24 (7) a provision requiring specification of the
25 consideration that the agency received from the organization

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1 for any agency services provided in support of the
2 organization; and

3 (8) a provision requiring the application by
4 the organization of the standard described in Section 6-8-10
5 NMSA 1978 as the standard for evaluating investments of the
6 organization.

7 C. The written agreement required by Subsection B
8 of this section is not required for each transfer but is a
9 precondition of an agency's acceptance of any transfers. The
10 agreement may be amended by mutual written agreement of the
11 agency and the organization.

12 D. Nothing in this section subjects an organization
13 to the provisions of the Open Meetings Act or makes its
14 records, other than the annual audit required under this
15 section, public records within the purview of Section 14-2-1
16 NMSA 1978."

17 SECTION 2. Section 57-22-6 NMSA 1978 (being Laws 1983,
18 Chapter 140, Section 6, as amended) is amended to read:

19 "57-22-6. FILING OF REQUIRED DOCUMENTS.--

20 A. A charitable organization existing, operating or
21 soliciting in the state, unless exempted by Section 57-22-4
22 NMSA 1978, shall register with the attorney general on a form
23 provided by the attorney general; correct any deficiencies in
24 its registration upon notice of deficiencies provided by the
25 attorney general; and provide a copy of its IRS Form 1023 or
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1 IRS Form 1024 application for exempt status with its
2 registration.

3 B. The attorney general shall notify each
4 charitable organization required to register within ten
5 business days of [~~his~~] receipt of the registration form of any
6 deficiencies in the registration and may make rules in
7 accordance with the State Rules Act, as are necessary for the
8 proper administration of this section, including:

9 (1) requirements for filing additional
10 information, including disclosure of professional fundraising
11 counsel retained by the charitable organization; and

12 (2) provisions for suspending the filing of
13 reports or granting an exemption from the registration and
14 reporting requirements of this section for a charitable
15 organization subject to audit, registration, charter or other
16 requirements of a statewide, regional or national association
17 and if it is determined that such reports or registration is
18 not necessary for the protection of the public interest.

19 C. In addition to any other reporting requirements
20 pursuant to the Charitable Solicitations Act, every charitable
21 organization that has received tax-exempt status pursuant to
22 Section 501(c)(3) of the federal Internal Revenue Code of 1986,
23 as amended, and that is required to file a Form 990, 990EZ or
24 990PF pursuant to the Internal Revenue Code of 1986, as
25 amended, shall file that form and the accompanying schedule A

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1 annually with the office of the attorney general up to six
2 months following the close of the charitable organization's
3 fiscal year. Extensions of time for filing may be allowed at
4 the discretion of the attorney general for good cause shown.
5 Such forms shall be public records and available for public
6 inspection. Organizations that do not file a Form 990, 990EZ
7 or 990PF pursuant to the Internal Revenue Code of 1986, as
8 amended, shall file an annual report, under oath, on the form
9 provided by the attorney general for that purpose. A
10 charitable organization [~~that received total revenue~~] with
11 total expenses in excess of [~~five hundred thousand dollars~~
12 ~~(\$500,000)~~] seven hundred fifty thousand dollars (\$750,000)
13 shall be audited by an independent certified public accountant.
14 Audits shall be performed in accordance with generally
15 [~~acceptable~~] accepted accounting principles. If the attorney
16 general has reason to believe it is in the public interest, the
17 attorney general may, prior to the institution of a civil
18 proceeding, require a charitable organization to submit an
19 audit in accordance with generally accepted accounting
20 principles. A charitable organization shall correct any
21 deficiencies in an annual report upon notice of deficiencies
22 provided by the attorney general.

23 D. A charitable organization that fails to register
24 before a solicitation is made or fails to timely file its tax
25 filings with the attorney general pursuant to Subsection C of
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1 this section may be assessed a late filing fee of one hundred
2 dollars (\$100).

3 E. The attorney general may accept information
4 filed by a charitable organization with another state or the
5 federal government in lieu of the registration and reporting
6 requirements of the Charitable Solicitations Act if such
7 information is determined by the attorney general to be in
8 substantial compliance with the registration and reporting
9 requirements of that act."

10 SECTION 3. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is January 1, 2024.