

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 29

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Abbas Akhil

AN ACT

RELATING TO PUBLIC RECORDS AND OPEN MEETINGS; REQUIRING THAT ORGANIZATIONS PROVIDING FUNDS OR PROPERTY TO GOVERNMENTAL ENTITIES BE SUBJECT TO THE INSPECTION OF PUBLIC RECORDS ACT AND THE OPEN MEETINGS ACT.

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

underscoring material = new
[bracketed material] = delete

1 county, municipality or public school district;

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

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

.213720.2

1 taxation; and

2 (4) "transferred" means given or otherwise
3 transferred, with or without consideration.

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

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

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

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

18 (4) requirements that the organization:

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

.213720.2

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

23 (7) a provision requiring specification of the
24 consideration that the agency received from the organization
25 for any agency services provided in support of the

.213720.2

underscored material = new
[bracketed material] = delete

1 organization; and

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

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

11 D. ~~[Nothing in this section subjects an~~
12 ~~organization to the provisions of the Open Meetings Act or~~
13 ~~makes its records, other than the annual audit required under~~
14 ~~this section, public records within the purview of Section~~
15 ~~14-2-1 NMSA 1978]~~ An organization that exists solely to serve
16 the interests of an agency is subject to the provisions of the
17 Open Meetings Act and the Inspection of Public Records Act."

18 SECTION 2. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2019.