

SENATE BILL 99

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Bill B. O'Neill

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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

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

(3) "post-secondary educational institution" means an educational institution designated in Article 12, Section 11 of the constitution of New Mexico and includes an academic, vocational, technical, business, professional or other school, college or university or other organization or

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person offering or purporting to offer courses, instruction, training or education through correspondence or in person to any individual within this state over the compulsory school attendance age, if that post-secondary educational institution is directly supported in whole or in part by state or local taxation; and

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

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

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

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

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

(4) requirements that the organization:

(a) if its gross annual income exceeds ~~[two hundred fifty thousand dollars (\$250,000)]~~ seven hundred

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fifty thousand dollars (\$750,000), have a financial accounting system considered adequate under customarily and currently accepted accounting standards and that the financial affairs of the organization be audited annually in accordance with generally accepted governmental auditing standards by an independent professional auditor who would be required to furnish to the agency copies of the annual audit, which, exclusive of any lists of donors or donations, shall be a public record, and to make the associated working papers available to the agency for review upon its written request for a period of three years after the audit report date; or

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

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

(6) a provision stating that the agency has

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reviewed the bylaws of the organization and found them acceptable and a provision requiring that the organization furnish copies of the bylaws to the agency;

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

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

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

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

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

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

A. A charitable organization existing, operating or

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soliciting in the state, unless exempted by Section 57-22-4 NMSA 1978, shall register with the attorney general on a form provided by the attorney general; correct any deficiencies in its registration upon notice of deficiencies provided by the attorney general; and provide a copy of its IRS Form 1023 or IRS Form 1024 application for exempt status with its registration.

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

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

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

C. In addition to any other reporting requirements pursuant to the Charitable Solicitations Act, every charitable

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organization that has received tax-exempt status pursuant to Section 501(c)(3) of the federal Internal Revenue Code of 1986, as amended, and that is required to file a Form 990, 990EZ or 990PF pursuant to the Internal Revenue Code of 1986, as amended, shall file that form and the accompanying schedule A annually with the office of the attorney general up to six months following the close of the charitable organization's fiscal year. Extensions of time for filing may be allowed at the discretion of the attorney general for good cause shown. Such forms shall be public records and available for public inspection. Organizations that do not file a Form 990, 990EZ or 990PF pursuant to the Internal Revenue Code of 1986, as amended, shall file an annual report, under oath, on the form provided by the attorney general for that purpose. A charitable organization that received total revenue in excess of [~~five hundred thousand dollars (\$500,000)~~] seven hundred fifty thousand dollars (\$750,000) shall be audited by an independent certified public accountant. Audits shall be performed in accordance with generally [~~acceptable~~] accepted accounting principles. SHPAC→If the attorney general has reason to believe it is in the public interest, the attorney general may, prior to the institution of a civil proceeding, require any charitable organization to submit an audit in accordance with generally accepted accounting principles.←SHPAC A charitable organization shall correct any deficiencies in an

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annual report upon notice of deficiencies provided by the attorney general.

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

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

**SECTION 3. EFFECTIVE DATE.**--The effective date of the provisions of this act is January 1, 2022.