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SENATE BILL

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

INTRODUCED BY

Bill B. O'Neill

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

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

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

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

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

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

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

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

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

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

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

17 "57-22-6. FILING OF REQUIRED DOCUMENTS.--

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

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

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

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

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

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1 fiscal year. Extensions of time for filing may be allowed at
2 the discretion of the attorney general for good cause shown.
3 Such forms shall be public records and available for public
4 inspection. Organizations that do not file a Form 990, 990EZ
5 or 990PF pursuant to the Internal Revenue Code of 1986, as
6 amended, shall file an annual report, under oath, on the form
7 provided by the attorney general for that purpose. A
8 charitable organization that received total revenue in excess
9 of [~~five hundred thousand dollars (\$500,000)~~] seven hundred
10 fifty thousand dollars (\$750,000) shall be audited by an
11 independent certified public accountant. Audits shall be
12 performed in accordance with generally [~~acceptable~~] accepted
13 accounting principles. A charitable organization shall correct
14 any deficiencies in an annual report upon notice of
15 deficiencies provided by the attorney general.

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

21 E. The attorney general may accept information
22 filed by a charitable organization with another state or the
23 federal government in lieu of the registration and reporting
24 requirements of the Charitable Solicitations Act if such
25 information is determined by the attorney general to be in

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1 substantial compliance with the registration and reporting
2 requirements of that act."

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

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