

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment** ___
Correction ___ **Substitute** ___

Date 1/13/15
Bill No: SB 132-305

Sponsor: Senator Richard Martinez
CHARITABLE
Short Title: SOLICITATIONS AUDIT
REQUIREMENT

Agency Code: Attorney General's Office
Person Writing Elizabeth K. Korsmo
Email ekorsmo@nmag.gov
Phone: 827-4254 .

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: This bill proposes an amendment to the Charitable Solicitations Act (NMSA 1978 Section 57-22-1 et seq.) in order to raise the threshold amount that triggers the requirement for an organization to have an independent audit performed for that fiscal year from \$500,000 to \$1,500,000.

FISCAL IMPLICATIONS : N/A

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES- For the 24 states that require audits to be performed, the income threshold to trigger the audit requirement ranges from \$25,000 to \$2M. The most common trigger amount is \$500,000. If New Mexico adopts an audit threshold of \$1.5M, it would have the second highest in the country, exceeded only by California at \$2M.

The audits serve a number of purposes. They are used by state charity regulators, and the New Mexico Attorney General, in order to assist in the protection of charitable assets, by the public in order to help donors decide which charities should receive their gifts and by the organizations themselves as a tool to review and assess their own practices and effectiveness, and to protect against internal abuse of assets.

Common objections to performing an audit include the fact that any money spent on them (the average amount for a GAAP (Generally Accepted Accounting Principle) audit is about \$10,000) is that much less money available to support the charitable causes. Audits are costly, and require an additional expenditure of time by organizations in order to compile and produce the information necessary that could otherwise be focused upon their missions.

New Mexico statute currently authorizes the NMAG to waive the audit requirement if it is determined that such reports or registration is not necessary for the protection of the public interest. (NMSA 1978, Section 57-22-6(B)(2) The majority of requests for waiver of the audit requirement based upon substantive grounds are granted after review.

PERFORMANCE IMPLICATIONS- Whether the change would result in an overall increase or decrease in the expenditure of AGO resources is unknown. Although the AG staff would have some reduction in the amount of time spent to enforce the requirement, review the audits or make a determination about the propriety of a waiver of the audit requirement, it would increase the complexity of the investigation of complaints and substantive enforcement actions against organizations who would otherwise have provided an audit, which would no longer be instantly available to the AG.

ADMINISTRATIVE IMPLICATIONS- The collection and retention of the documents is conducted entirely electronically at the NMAGO. This change would not have any significant effect.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP- N/A

TECHNICAL ISSUES- N/A

OTHER SUBSTANTIVE ISSUES- Some states have provisions in their statutes that exempt certain types of organizations from their audit requirement, or exclude types of revenue from counting towards the calculation of the amount necessary to trigger an audit. For example, some states exclude organizations from the audit requirement if the bulk of their funding comes from the government. Others have significantly reduced triggering amounts for organizations that pay professional fundraisers, or solicit the public as opposed to those that get their entire funding from program service revenue or from a single family, such as in the case of certain private foundations.

ALTERNATIVES- Alternatives can be crafted in order to exempt specific organizations from the audit requirement based upon a number of different factors, such as the source of their funding, which would provide a more focused exemption from the audit requirement, rather than an exemption based solely upon a numerical threshold increase that would exempt all organizations that fell below it.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL- Status Quo

AMENDMENTS –