

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 **Agency Code:** Attorney General's Office

Short CHARITABLE **Person Writing** Elizabeth K. Korsmo

Title: SOLICITATIONS AUDIT **Email**

REQUIREMENT **Phone:** 827-4254 . ekorsmo@nmag.gov

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. See attached table.

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 –

State Audit Thresholds For Charitable Organizations

State	Present Requirements	Proposed Legislation/Comments
Arkansas	\$500,000 in gross revenue	
California	\$ 2 million in gross revenue as reported on 990 form ..."exclusive of grants from, and contracts for services with, governmental entities <i>for which the governmental entity requires an accounting of the funds received.</i> "	
Colorado	None.	
Connecticut	\$500,000 in gross revenue	
Delaware	Non	Proposed Legislation (2014) Audit required for revenue over \$1 million Review for revenue over \$500,000 to \$1 Million
Florida	500K less than \$1M review by independent CPA \$1M + audit by independent CPA	
Georgia's	\$1 million in gross revenues \$500,000 to \$1 million financial statement reviewed by auditor	
Hawaii	\$500,000 in gross revenue (excluding government grants and funds held in trust for the org)	Effective January 1, 2009
Illinois	The Illinois audit threshold is \$300,000 in contributions for those who do not use a professional solicitor---\$25,000 for those charities who do use a professional solicitor	
Maine	None, if it does not exist.	
Kansas	Over \$500,000 in contributions	

Maryland	Over \$500,000 in contributions audited financial. Over \$200,000 in contributions, reviewed statement.	
Massachusetts	\$500,000 revenue threshold for audit \$200,000 revenue threshold for reviewed financials.	
Michigan	\$500,000 audit threshold \$250,000 threshold for Reviewed financial	These thresholds automatically increase by \$25,000 every 5 years.
Minnesota	\$350,000 in gross revenues.	
Mississippi	\$500,000 and a review is required if contributions are in excess of \$250,000.	
Missouri	None.	
Montana	None (no registration requirements)	
New Hampshire	\$1 million in gross annual revenue	
New Jersey	\$250,000 threshold for audit if contribution component exceeds \$25,000.	New Jersey requires audited financials for organizations with gross revenue in excess of \$250,000 (recently increased from \$100,000). We also require submission of management letters prepared by the auditor commenting on the internal accounting controls or management practices of the organization. (N.J.S.A. 45:17A-24d(2))
New Mexico	\$500,000 in gross revenue	
New York	See Table at bottom)	
North Carolina	Either a 990 form or audited financial statement with \$25,000 in contributions,	
Ohio	None.	

Oregon	Only if it exists.	
Pennsylvania	\$300,000 audit threshold \$100,000 to less than \$300,000, t option of submitting reviewed or audited statements \$50,000 to less than \$100,000, the organization has the option of submitting compiled, reviewed or audited statements	
South Carolina	No audit requirement.	
Rhode Island	\$500,000 or more in gross revenues \$500,000 or less can comply by providing 990 form or compiled financial statement “reviewed” by an auditor.	
Tennessee	\$500,000 in gross revenues, excluding government grants.	
Utah	no audit requirement	
Virginia	Organizations having \$25,000 in gross revenues must file either a 990 form or an audited financial statement	
Washington	None.	Legislation under discussion: \$3 million or more averaged over three years \$1 million “reviewed” financial statement
West Virginia	\$100,000 to \$200,000 Financial Review \$200,000 and above audit requirement (threshold excludes Government grants and private foundation grants)	
Wisconsin	\$400,000 in contributions	

New York	Current - June	July 1, 2014 -	July 1, 2017 -	Effective July 1,
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	30, 2014	June 30, 2017	June 30, 2021	2021
CPA Audit Report Required	Gross revenue and support over \$250,000	Gross revenue and support over \$500,000	Gross revenue and support over \$750,000	Gross revenue and support over \$1,000,000
CPA Review Report Required	Gross revenue and support of \$100,000 to \$250,000	Gross revenue and support of \$250,000 to \$500,000	Gross revenue and support of \$250,000 to \$750,000	Gross revenue and support of \$250,000 to \$1,000,000
CPA Audit or Review Not Required	\$250,000 or less	\$250,000 or less	\$250,000 or less	\$250,000 or less