

LFC Requester:	Connor Jorgenson
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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: Date 3/7/15
Original **Amendment** **Bill No:** 698
Correction **Substitute** **SCONC**

Sponsor: Wirth **Agency Code:** Attorney General's Office
Short Private Foundations Audit **Person Writing** Elizabeth Korsmo
Title: Exemption **Phone:** 660-7593 **Email** 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)

Conflicts with: SB 132
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: Amends Section 57-22.6 to exempt private foundations from the audit requirement of the Charitable Solicitations Act.

FISCAL IMPLICATIONS

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 Currently, charitable organizations that receive a total revenue of \$500,000 in a fiscal year, private foundations, are required to perform an independent audit compliant with generally accepted accounting principles.

Pro: Private foundations would no longer be required to expend the resources necessary to perform an audit. That money, which is credited as a qualified charitable expenditure, could then be passed on to the charitable purpose.

Cons: Private foundations and their boards will not receive the preventative, educational and self-policing opportunities provided by an external examination. As they are often run by a related group of individuals, familial dynamics can interfere with the board members’ fiduciary duties and create an environment that enables mismanagement. Moreover, charity regulators would not have access to that information for review of the organization, or to investigate a complaint unless it expended the taxpayer resources necessary to request a court to compel the production of an audit. Since the majority of investigations result in no finding of violation once the information is reviewed, organizations without audits may then be subjected to proceedings which could have been avoided had an audit been available for the regulatory entity to review.

PERFORMANCE IMPLICATIONS NA

ADMINISTRATIVE IMPLICATIONS NA

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SB 132 which exempts organizations that do not use a professional fundraiser

from the audit requirement triggered at \$500,000 and instead requires those organizations that receive a total revenue of between \$800,000 and \$1.2 mil to perform a lesser review. Private Foundations do not generally utilize professional fundraisers, and as such, would be subject to the lesser provisions of SB 132.

TECHNICAL ISSUES Changes the word ‘acceptable’ to ‘accepted’ to track with the phrase of ‘generally accepted accounting principles’ - a term of art indicating a specific standard.

OTHER SUBSTANTIVE ISSUES Private foundations, due to the nature of the source of their income from single or familial donor, are sometimes unaware of, or unconcerned with public interests that attach to their activities in exchange for the tax exemption.

ALTERNATIVES Accept the relief from the audit requirement provided to private foundations by SB 132.

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

AMENDMENTS