



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 174

HOUSE BILL 428

Introduced by

REPRESENTATIVE CATHRYNN NOVICH BROWN AND REPRESENTATIVE BILL B. O'NEILL



Chapter 174

1 AN ACT

2 RELATING TO PUBLIC FINANCE; RAISING THE THRESHOLD AMOUNT OF
3 GROSS ANNUAL INCOME SUBJECT TO AUDIT OF AN ORGANIZATION THAT
4 TRANSFERS MONEY TO A STATE AGENCY.

5
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 SECTION 1. Section 6-5A-1 NMSA 1978 (being Laws 1992,
8 Chapter 27, Section 1) is amended to read:

9 "6-5A-1. DEFINITIONS--REQUIREMENTS FOR GOVERNMENTAL
10 ENTITIES THAT RECEIVE FUNDS OR PROPERTY FROM CERTAIN
11 ORGANIZATIONS.--

12 A. As used in this section:

13 (1) "agency" means any state agency,
14 department or board, any public institution of higher
15 education or public post-secondary educational institution and
16 any county, municipality or public school district;

17 (2) "organization" means an organization
18 that has been granted exemption from the federal income tax by
19 the United States commissioner of internal revenue as an
20 organization described in Section 501(c) of the Internal
21 Revenue Code of 1986, as amended or renumbered, and whose
22 principal and authorized purpose is to complement, contribute
23 to and support or aid the function of or forward the purposes
24 of a single agency through financial support or contribution
25 of services, goods, data or information that help or aid the

1 agency in carrying out its statutory purpose and goals,
2 including, but not limited to, the provision of scholarships
3 to students of educational institutions and the provision of
4 grants to supplement ongoing research or to provide funds for
5 research and programs being carried out by an agency;

6 (3) "post-secondary educational institution"
7 means an educational institution designated in Article 12,
8 Section 11 of the constitution of New Mexico and includes an
9 academic, vocational, technical, business, professional or
10 other school, college or university or other organization or
11 person offering or purporting to offer courses, instruction,
12 training or education through correspondence or in person to
13 any individual within this state over the compulsory school
14 attendance age, if that post-secondary educational institution
15 is directly supported in whole or in part by state or local
16 taxation; and

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

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

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

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

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

8 (4) requirements that the organization:

9 (a) if its gross annual income exceeds
10 two hundred fifty thousand dollars (\$250,000), have a
11 financial accounting system considered adequate under
12 customarily and currently accepted accounting standards and
13 that the financial affairs of the organization be audited
14 annually in accordance with generally accepted governmental
15 auditing standards by an independent professional auditor who
16 would be required to furnish to the agency copies of the
17 annual audit, which, exclusive of any lists of donors or
18 donations, shall be a public record, and to make the
19 associated working papers available to the agency for review
20 upon its written request for a period of three years after the
21 audit report date; or

22 (b) if its gross annual income is two
23 hundred fifty thousand dollars (\$250,000) or less, file a
24 statement with the agency in the form of a balance sheet
25 showing the assets of the organization, its liabilities, its

1 income, classified by general source, and its expenditures,
2 classified by object;

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

10 (6) a provision stating that the agency has
11 reviewed the bylaws of the organization and found them
12 acceptable and a provision requiring that the organization
13 furnish copies of the bylaws to the agency;

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

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

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

1 agency and the organization.

2 D. Nothing in this section subjects an
3 organization to the provisions of the Open Meetings Act or
4 makes its records, other than the annual audit required under
5 this section, public records within the purview of Section
6 14-2-1 NMSA 1978."

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Ben Lujan

BEN LUJAN, SPEAKER
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LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 8th day of April, 2011

Susana Martinez

SUSANA MARTINEZ, GOVERNOR
STATE OF NEW MEXICO

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GOVERNOR

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