

BILL ANALYSIS

Senate Research Center
79R9319 DWS-F

S.B. 1215
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Business & Commerce
4/4/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Approximately 18 states have passed laws to increase the accountability of charitable nonprofit corporations. Public interest in charitable activity, particularly the use of donated funds, has increased since September 11, 2001. The Texas attorney general's office has handled at least three major cases during the last two years involving charitable corporations in which lax accounting procedures and lack of board oversight over the charity's finances were major issues. Current law does not require audits or reviews of nonprofit organizations; therefore, the attorney general was hindered in his ability to investigate those cases.

S.B. 1215 requires charitable organizations to commission certain types of audits depending on their size. According to the attorney general's office, this legislation will only affect about 12 percent of charities, many of which are already performing audits because they receive state or federal funding. Others voluntarily commission audits because they routinely apply for grant funding. The attorney general's office has a small staff dedicated to charity enforcement in relation to the approximately 54,000 public charities and 6,200 private foundations organized in this state. S.B. 1215 would help the office of the attorney general investigate complaints and allegations of wrongdoing.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections A and B, Article 2.23A, Texas Non-Profit Corporation Act (Article 1396-2.23A, V.T.C.S.), as follows:

A. Requires a corporation to maintain current true and accurate financial records with full and correct entries made with respect to all financial transactions of the corporation, including all revenue, rather than income, and expenditures, in accordance with generally accepted accounting principles, rather than practices.

B. Requires the board of directors, based on these records, to annually prepare and approve the financial statements, rather than prepare or approve a report of the financial activity, of the corporation for the preceding year. Requires the financial statements to conform with generally accepted accounting principles, rather than to accounting standards as promulgated by the American Institute of Certified Public Accountants, and to include a statement of financial position and the related statements of activities by functional classifications, a cash flow statement, and a statement of functional expenses, rather than a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses, and balance sheets for all funds.

SECTION 2. Amends the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., V.T.C.S.), by adding Article 2.23C, as follows:

Art. 2.23C. FINANCIAL STATEMENTS AND AUDIT OF CERTAIN CHARITABLE CORPORATIONS. A. Requires a charitable corporation that receives or accrues a total gross revenue of \$250,000 or more, not including grants from and proceeds of contracts with a governmental agency or entity that requires an accounting for money received, to

have the corporation's financial statements required by Section B, Article 2.23A, of this Act, for the preceding fiscal year audited by an independent certified public accountant in accordance with generally accepted accounting principles. Authorizes a charitable organization not required by this section to have its financial statements audited to choose to have such an audit conducted.

B. Authorizes the controlling corporation, if a charitable corporation is under the control of another corporation, to prepare consolidated financial statements to satisfy the requirements of Section B, Article 2.23A, of this Act, for the controlled corporation.

C. Requires a charitable corporation required to have an audit of the corporation's financial statements under Section A of this article to make the financial statements and the audit report available for inspection by the attorney general and the public at the corporation's registered office or principal office in this state as provided by Article 2.23A of this Act and in the manner prescribed for Internal Revenue Service form 990 by Section 6104(d), Internal Revenue Code of 1986. Requires the financial statements to be completed and made available before or by a specific deadline.

D. Requires the board of directors of a charitable corporation required to have an audit of the corporation's financial statement's under Section A of this Article to appoint an audit committee. Authorizes an audit committee of the controlling corporation, if charitable corporation is under the control of another corporation, to serve as the audit committee of the controlled corporation. Authorizes the audit committee to include persons who are not members of the board of directors, but prohibits the audit committee from including an officer or employee of the corporation. Sets forth the duties and requirements of the audit committee.

E. Provides that a corporation that does not have an audit conducted as provided by Section A of this Article commits an offense, that an offense under this section is punishable by a fine of not less than \$100 or more than \$1,000, and that each day the violation continues constitutes a separate offense.

SECTION 3. Amends Section 22.352, Business Organizations Code, to require financial statements required under this section to include a statement of financial position, rather than support, revenue, and expenses, a statement of activities by functional classifications, rather than a statement of changes in fund balances, a cash flow statement, and a statement of functional expenses, rather than a balance sheet for each fund. Makes conforming changes.

SECTION 4. Amends Subchapter H, Chapter 22, Business Organizations Code, by adding Section 22.3551, as follows:

Sec. 22.3551. FINANCIAL STATEMENTS AND AUDIT OF CERTAIN CHARITABLE CORPORATIONS. (a) Requires a charitable corporation that receives or accrues a total gross revenue of \$250,000 or more, not including grants from and proceeds of contracts with a governmental agency or entity that requires an accounting for money received, to have the corporation's financial statements required by Section 22.352 for the preceding fiscal year audited by an independent certified public accountant in accordance with generally accepted accounting principles. Authorizes a charitable organization not required by this section to have its financial statements audited to choose to have such an audit conducted.

(b) Authorizes the controlling corporation, if a charitable corporation is under the control of another corporation, to prepare consolidated financial statements to satisfy the requirements of Section 22.352 for the controlled corporation.

(c) Requires a charitable corporation required to have an audit of the corporation's financial statements under Subsection (a) to make the financial statements and the audit report available for inspection by the attorney general and the public at the corporation's registered office or principal office in this state

as provided by Section 22.352 and in the manner prescribed for Internal Revenue Service form 990 by Section 6104(d), Internal Revenue Code of 1986. Requires the financial statements to be completed and made available before or by a specific deadline.

(d) Requires the board of directors of a charitable corporation required to have an audit of the corporation's financial statement's under Subsection (a) to appoint an audit committee. Authorizes an audit committee of the controlling corporation, if charitable corporation is under the control of another corporation, to serve as the audit committee of the controlled corporation. Authorizes the audit committee to include persons who are not members of the board of directors, but prohibits the audit committee from including an officer or employee of the corporation. Sets forth the duties and requirements of the audit committee.

(e) Provides that a corporation that does not have an audit conducted as provided by Subsection (a) commits an offense, that an offense under this section is punishable by a fine of not less than \$100 or more than \$1,000, and that each day the violation continues constitutes a separate offense.

SECTION 5. Makes application of this Act prospective.

SECTION 6. (a) Effective date: September 1, 2005, except as provided by Subsection (b).

(b) Provides that Sections 3 and 4 of this Act take effect January 1, 2006.