F I S C A L   I M P A C T   R E P O R T

SPONSOR Cravens **DATE TYPED** 03/10/05 **HB**

SHORT TITLE Audit Requirements for Donation to Agencies **SB** 1034/aSEC

ANALYST Chabot

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Education Department (PED)
State Auditor (SA)

Responses Not Received From
Commission of Higher Education (CHE)

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee amendment to Senate Bill 1034 makes several changes:

- The title is changed to delete the phase "raising the amount of gross annual income requiring audits" and adds to organizations "donating to an agency." The title is now: RELATING TO AUDITS; REVISING STANDARDS FOR FINANCIAL REVIEWS OF CERTAIN ORGANIZATIONS DONATING TO AN AGENCY.
- It adds five new provisions to Subsection B of Section 6-5A-1 which requires prior to an agency accepting money from an organization, the agency shall enter into a written agreement which includes additional requirements:
    - Defining the extent to which the organization may complement and support functions of the statutory responsibility of the agency;
    - If the organization is considered a component of the agency, a provision requiring an audit in accordance with generally accepted auditing standards;
    - If the organization is not considered a component of the agency and has gross an-

nual income of $150 thousand or more, the organization be reviewed annually in accordance with standards for attestation engagements;

- If it is not considered a component of the agency and has gross annual income of $150 thousand or less, the organization shall annually file with the agency a statement showing assets, liabilities, income classed by sources and expenditures by object; and
- The requirement that the organization provide to the agencies copies of any audit or review and to make the working papers available for a three years following the audit or review.

The State Auditor has reviewed the amendment and it addresses issues raised in the original bill, and recommends deleting item 4 sub-paragraph (4) because it duplicates subsection (3).

Synopsis of Original Bill

Senate Bill 1034 amends Section 6-5A-1 NMSA 1978 (Requirements for Governmental Entities that Receive Funds from Certain Organizations) to require any public educational institution (in lieu of post-secondary institution) if its gross annual income exceed $150 thousand (an increase from $100 thousand) to be reviewed annually by a certified public accountant using American Institutes of Certified Public Accountants Standards.

Significant Issues

PED assesses "the provisions of the state proposed for amendment apply to 501(c) organizations whose principal purpose is to aid a single agency through financial support, contributions of services, goods, data or information or aid the agency in carrying out its statutory purposes and goals."

PED cites a potential conflict with the legislation by referencing the "American Institute of certified public accountants standard". It states Article IV, Section 18 of the New Mexico Constitution provides that no law shall be revised or amended by reference. Section 18 specifically excepts references to the federal tax code from it provisions.

FISCAL IMPLICATIONS

There may be additional costs to organizations in hiring a certified public accountant to perform the audits.

CONFLICTS

SA states the bill conflicts with Government Accounting Standards Board (GASB) Statement No. 39, *Determining Whether Certain Organizations Are Component Units* and Section 2.2.2.10.A.(1) of 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies*, as promulgated by the Office of the State Auditor under the authority of Section 12-6-12, NMSA 1978.

It further states "the law as currently written in Section 6-5A-1 NMSA 1978 and the changes proposed in SB 1034 conflict with GASB 39, *Determining Whether Certain Organizations Are Component Units*. GASB 39 paragraph 5 requires a tax-exempt organization to be reported as a component unit of an agency if the following criteria are met: the economic resources received or held by the not-for-profit are entirely or almost entirely for the direct benefit of the agency, its component units, or its constituents; the agency or its component units is entitled to, or has the ability to otherwise access, a majority of the economic resources received or held by the not-for-profit; and the economic resources received or held by a not-for-profit, that the agency or its component units is entitled to or has the ability to otherwise access, are significant to the agency. If accounting principles generally accepted in the United States, and *Government Auditing Standards* require a not-for-profit to be included as a component unit in the audited financial statements of the agency they must be included, whether the gross annual income exceeds $100 thousand or $150 thousand or any other amount.

"Section 2.2.2.10.A.(1) of 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies*, states "Entities must be included as component units within the financial statements of the primary government, if the primary government is financially accountable for the entity (GASB 14 paragraph 10) or if the nature and significance of the entity to the primary government warrants inclusion (GASB 39 paragraphs 5 and 6). The primary government and/or its auditors must determine whether an operation is a components unit of the primary government, as defined by GASB Statements No.14 and No.39. …All agencies that meet the criteria of GASB 14 or GASB 39 to be a component unit of the primary government must be included in the financial reports of the primary government, etc. …The State Auditor requires the component unit(s) to be audited by the same auditor who audits the primary government."

TECHNICAL ISSUES

SA states in Section 6-5A-1.B.(4)(a) that the financial affairs of the organization be reviewed annually. However, later in the sentence in line 7, the "review" is referred to as the annual audit which, exclusive of any lists of donors or donations, shall be a public record, etc. The word "review" is incorrectly used interchangeably with the word "audit". They are not the same thing.

ALTERNATIVES

SA recommends the proposed legislation be rewritten to remove any references requiring an audit or review of these not-for profit entities because accounting principles generally accepted in the United States, and *Government Auditing Standards* have already addressed when such entities should be included in the audited financial statements of the agencies for which they raise funds.

GAC/lg