

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 428

50th Legislature, 1st Session, 2011

Tracking Number: .185022.1

Short Title: Raise Organization Income Subject to Audit

Sponsor(s): Representatives Cathrynn N. Brown and Bill B. O'Neill

Analyst: Eilani Gerstner

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Bill Summary:

HB 428 amends the provisions in law relating to public finances to raise to \$250,000 (from \$100,000) the audit threshold amount of gross annual income of an organization¹ that transfers money to state agencies, including public school districts and institutions of higher education.

Fiscal Impact:

HB 428 does not contain an appropriation.

Substantive Issues:

According to the Higher Education Department,

- Under current law, a nonprofit organization that receives \$100,000 per year in income must be willing to undergo a formal audit in order to make a donation to the state agency. Such a nonprofit organization must also be willing for its finances to become a matter of public record if it makes a donation, although donations and donors do not have to be disclosed.
- HB 428 provides that a nonprofit seeking to make a donation to a state agency would be required to undergo an audit and open its books to the public if it receives \$250,000 or more in income.
- Nonprofit entities can contribute to public institutions of higher education and other state agencies and entities through transfers of gifts. Sometimes nonprofits are formed for family trusts and estates specifically for the purpose of making gifts, including gifts to government institutions such as colleges and universities.

¹ According to this section of law, "organization" means an organization that:

- has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c) of the *Internal Revenue Code of 1986*, as amended or renumbered; and
- whose principal and authorized purpose is to complement, contribute to and support, aid the function of or forward the purposes of a single agency through financial support, the contribution of services, goods, data, or information that help or aid the agency in carrying out its statutory purpose and goals, including, but not limited to, the provision of scholarships to students of educational institutions and the provision of grants to supplement ongoing research or to provide funds for research and programs being carried out by an agency.

- The current requirement that a nonprofit making a donation to the state open its books to the public may be a barrier to making a gift. A nonprofit that has only \$100,000 in income during any one year may be reluctant to use that income to pay for an audit in order to make a gift to a state entity. Further, it may not wish to expose its revenue and expenses to the public in order to make a gift.

According to the Office of the State Auditor's analysis of an identical bill, HB 118, *Threshold for Audits of Nonprofits*, raising the threshold for nonprofits that make donations to state agencies may result in some nonprofits that are currently required to have an audit not being audited, which may create less transparency.

Related Bills:

HB 118 *Threshold for Audits of Nonprofits* (Identical)