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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Sen. Duhigg/Rep. Garratt</u>	<b>LAST UPDATED</b> <u>3/16/25</u> <b>ORIGINAL DATE</b> <u>2/19/25</u> <b>BILL</b> <u>Senate Bill</u> <b>NUMBER</b> <u>259/aSTBTC/aSJC/aSFI#1</u>
<b>SHORT TITLE</b> <u>Professional Fundraiser Requirements</u>	<b>ANALYST</b> <u>Chavez</u>

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Fines and Forfeitures	No fiscal impact	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMAG	No fiscal impact	At least \$131.8	At least \$131.8	At least \$131.8	Recurring	General Fund
Courts	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Total	No fiscal impact	At least \$131.8	At least \$131.8	At least \$131.8	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 62

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

State Auditor (OSA)

State Ethics Commission (SEC)

## SUMMARY

### Synopsis of SFI#1 Amendment to Senate Bill 259

The Senate Floor amendment #1 to Senate Bill 259 (SB259) adds that a communication requesting the donation of nonperishable goods falls under the definition of “solicit” or “solicitation”. The amendment requires that a professional fundraiser’s financial report be available to the public and on the New Mexico Attorney General’s (NMAG) website. Finally, the

amendment adds clarifying language for how information required to be on display on collection receptacles should be displayed.

### **Synopsis of SJC amendment to Senate Bill 259**

The Senate Judiciary Committee (SJC) amendment to Senate Bill 259 adds two new subsections to the bill by defining “donation” and “for-profit collection of goods.” The amendment also removes “the donation of nonperishable goods” from the definition of “solicit” or “solicitation.”

### **Synopsis of STBTC amendment to Senate Bill 259**

The Senate Tax, Business and Transportation Committee amendment to Senate Bill 259 removes a section that explains the purpose of the Charitable Solicitation Act and renumbers the remaining sections of the bill.

### **Synopsis of Senate Bill 259**

Senate Bill 259 (SB259) makes several amendments to the Charitable Solicitations Act.

Section 1 amends Section 57-22-3 NMSA 1978 to amend the definitions of “solicit” or “solicitation” to include donating of nonperishable goods. SB259 also defines “third-party solicitor” as a person who contracts with a charitable organization to facilitate the sale of nonperishable goods as a method for fundraising.

Section 2 amends Section 57-22-6.1 NMSA 1978 to add several requirements for professional fundraisers and now third-party solicitors who are contracting to solicit money, nonperishable goods, and other things of value for or on behalf of a charitable organization. SB259 would have professional fundraisers and third-party solicitors pay a registration fee of \$200 to the New Mexico Attorney General (NMAG) and submit disclosures of all officers, employees, agents, and contractors. These new requirements would have to be adhered to within five days of the agreement. SB259 would have professional fundraisers and third-party solicitors file a surety bond of \$25 thousand with NMAG at the time of registration. Professional fundraisers and now third-party solicitors would have to provide NMAG with a copy of any prospective contract intended to permit a solicitation campaign or setting up means of collecting donated nonperishable goods.

This section also would require contracts between a third-party solicitor and a charitable organization to disclose:

- The authority and compensation of the third-party solicitor and the share of money earned on the sale of donated nonperishable goods that does not go to the charitable organization;
- The location of the means of collecting donated nonperishable goods for a charitable organization and, if the means is a store, the store’s telephone number;
- The identities of all officers and agents of the third-party solicitor and of all managers and supervisors in stores in New Mexico, by location;
- Any other information NMAG deems necessary.

Finally, section 2 would authorize NMAG to impose a \$500 fine on third-party solicitors who fail to register with NMAG. It would also have professional fundraisers and third-party solicitors

pay a \$200 administrative penalty if they fail to comply with registration or reporting requirements in addition to the late registration fee.

Section 3 amends Section 57-22-6.3 NMSA 1978 to define and prohibit misleading representations from professional fundraisers and third-party solicitors. The section also clarifies that professional fundraisers and third-party solicitors are prohibited from collecting contributions in person or by courier if the solicitation and collection occur at the same time or if they solicit a contribution through the sale of goods or items and simultaneously collect a contribution while delivering the sold goods or items. It also would restrict professional fundraisers and third-party solicitors from representing that a charitable organization would receive a greater percentage of the revenue than agreed upon in a contract. It also prohibits the entities from not disclosing the market value of the donated nonperishable goods to the charitable organization.

Section 4 amends Section 57-22-6.4 NMSA 1978 to require professional fundraisers to maintain a record of written commitments from recipients of donated tickets and provide those records to NMAG upon request. This section would increase the information included in the professional fundraiser's accounting disclosure to a charitable organization. A professional fundraiser, who conducts solicitation by phone, must have a description of the location and telephone numbers from which the solicitation campaign would be conducted, and the audio recording of each telephone solicitation. The fundraiser must also include the gross revenue received, an itemized list of expenses incurred, and a sworn statement that the campaign records are true and correct.

Section 4 would require professional fundraisers to provide a detailed financial report, including gross revenue and expenses, to the charitable organization and NMAG, 90 days after the completion of the solicitation campaign. It requires third-party solicitors to provide charitable organizations and NMAG with a written account of the market value of the donated goods and a detailed financial report. This disclosure must adhere to the schedule provided in the contract between the third-party solicitor and the charitable organization.

Section 5 creates a new section of the Charitable Solicitations Act, Section 57-22-6.5 NMSA 1978 requiring an operator of a collection receptacle to clearly post on the receptacle:

- The name and contact information of the charitable organization that will receive goods collected in the receptacle.
- The name and contact information of any professional fundraiser or third-party solicitor operating the receptacle, if applicable.
- A statement that "financial arrangements" have been filed with NMAG.

Section 6 amends Section 57-22-9.1 NMSA 1978 to authorize NMAG to require a financial audit, conducted by an independent certified public accountant, for any charitable organization, professional fundraiser, or third-party solicitor.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

The amendments do not change the fiscal implications of the bill.

According to NMAG, it is unclear whether the agency would require additional resources, including full-time employees, to fulfill the additional database maintenance, monitoring, and compliance obligations. Including third-party solicitors into the Charitable Solicitations Act would expand the scope of supervision and enforcement for NMAG, possibly requiring more staff and resources. Additional staff at NMAG would cost an additional \$131.8 thousand per year for FTE, on average. SB259 does not specifically explain what entity would pay for an independent certified public accountant (CPA), if NMAG decides to require a financial audit. If NMAG is required to provide CPA services, then that could also increase operating costs.

New amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus possibly requiring additional resources to handle the increase. The expansion of the scope of the Charitable Solicitations Act to third-party solicitors could lead to increasing caseloads and appeals.

## **SIGNIFICANT ISSUES**

NMAG provides the following:

The bill would require certain disclosures and prohibit certain representations from professional fundraisers and third-party solicitors. Such requirements and prohibitions could implicate the First Amendment. However, the First Amendment “accords a lesser protection to commercial speech than to other constitutionally guaranteed expression” *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 562–63 (1980).

The State Auditor (OSA) states:

SB259 provides that the Attorney General may contract with a CPA to audit a charitable organization, professional fundraiser, or third-party solicitor. Currently, provisions of law at 57-22-6 C NMSA 1978 provide that charitable organizations with greater than \$750 thousand in expenses that do not already file a Form 990, 990EZ or 990PF with the Attorney General, must have a financial audit. However, provisions of law at 57-22-6 B 2 NMSA 1978 also allow the Attorney General to waive audit requirements if not necessary for the protection of the public interest. It is unclear how these provisions of law would interact. Presumably, the Attorney General would use existing statutes for filing forms and audits supplemented with the new provision as needed in instances where a professional fundraiser or third party solicitor is involved in the need for an audit under this new section of law. It is assumed that the Attorney General would continue to be able to waive audit filing, thus continuing to exercise discretion it currently has.

OSA does not have oversight of audits for nongovernmental charitable organizations. It is assumed the Attorney General would either use the OSA approved IPA list or vet the CPA firm themselves.

## **ADMINISTRATIVE IMPLICATIONS**

SB259 adds new oversight as well as additional tasks like receiving and maintaining the additional reports and disclosures, which could require some additional administrative changes to make sure everything is in compliance. The courts would have some additional administrative implications to adhere to any new case proceedings including appeals.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

NMAG provides the following:

The bill relates to House Bill 62 (HB62), which would repeal most of Section 57-22-9.1 (i.e., Subsections A to I). However, because HB62 does not repeal the entirety of Section 57-22-9.1—leaving Subsection J intact—passage of the two bills would likely not create a conflict but would require that SB259’s added subsection be compiled as Subsection B rather than Subsection K.

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