

By: Hughes

H.B. No. 3417

A BILL TO BE ENTITLED

AN ACT

1
2 relating to financial records and audits of certain charitable
3 nonprofit corporations; providing a penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Sections A and B, Article 2.23A, Texas
6 Non-Profit Corporation Act (Article 1396-2.23A, Vernon's Texas
7 Civil Statutes), are amended to read as follows:

8 A. A corporation shall maintain current true and accurate
9 financial records with full and correct entries made with respect
10 to all financial transactions of the corporation, including all
11 revenue [~~income~~] and expenditures, in accordance with generally
12 accepted accounting principles [~~practices~~].

13 B. Based on these records, the board of directors shall
14 annually prepare and [~~or~~] approve [~~a report of~~] the financial
15 statements [~~activity~~] of the corporation for the preceding year.
16 The financial statements [~~report~~] must conform with [~~to~~] generally
17 accepted accounting principles [~~standards as promulgated by the~~
18 ~~American Institute of Certified Public Accountants~~] and must
19 include a statement of financial position and the related
20 statements of activities by functional classifications, a cash flow
21 statement [~~support, revenue, and expenses and changes in fund~~
22 ~~balances~~], and a statement of functional expenses [~~, and balance~~
23 ~~sheets for all funds~~].

24 SECTION 2. The Texas Non-Profit Corporation Act (Article

1 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by
2 adding Article 2.23C to read as follows:

3 Art. 2.23C. FINANCIAL STATEMENTS AND AUDIT OF CERTAIN
4 CHARITABLE CORPORATIONS. A. A charitable corporation that receives
5 or accrues a total gross revenue of \$250,000 or more, not including
6 grants from and proceeds of contracts with a governmental agency or
7 entity that requires an accounting for money received, shall have
8 the corporation's financial statements required by Section B,
9 Article 2.23A of this Act for the preceding fiscal year audited by
10 an independent certified public accountant in accordance with
11 generally accepted accounting principles. A charitable
12 corporation not required by this Section to have the corporation's
13 financial statements audited may choose to have such an audit
14 conducted.

15 B. If a charitable corporation is under the control of
16 another corporation, the controlling corporation may prepare
17 consolidated financial statements to satisfy the requirements of
18 Section B, Article 2.23A of this Act for the controlled
19 corporation.

20 C. A charitable corporation required to have an audit of the
21 corporation's financial statements under Section A of this Article
22 shall make the financial statements and the audit report available
23 for inspection by the attorney general and the public at the
24 corporation's registered office or principal office in this state
25 as provided by Article 2.23A of this Act and in the manner
26 prescribed for Internal Revenue Service Form 990 by Section
27 6104(d), Internal Revenue Code of 1986. The financial statements

1 and audit report must be completed and made available before or by
2 the following deadline:

3 (1) for financial statements, not later than six
4 months subsequent to the end of the fiscal year for which the
5 financial statements relate; and

6 (2) for the audit report, not later than six months
7 subsequent to the end of the second fiscal year for which the audit
8 report relates.

9 D. The board of directors of a charitable corporation
10 required to have an audit of the corporation's financial statements
11 under Section A of this Article shall appoint an audit committee. If
12 a charitable corporation is under the control of another
13 corporation, an audit committee of the controlling corporation may
14 serve as the audit committee of the controlled corporation. The
15 audit committee may include persons who are not members of the board
16 of directors, but may not include an officer or employee of the
17 corporation. The audit committee shall:

18 (1) recommend to the board of directors whether a
19 particular auditor should be appointed or retained and the amount
20 of the auditor's compensation;

21 (2) confer with the auditor to satisfy the board of
22 directors that the financial affairs of the corporation are in
23 order;

24 (3) review and determine whether to accept the audit;
25 and

26 (4) approve any services performed by the auditor
27 other than an audit and assure that those services conform to

1 standards for auditor independence.

2 E. A corporation that does not have an audit conducted as
3 provided by Section A of this Article commits an offense. An offense
4 under this Section is punishable by a fine of not less than \$100 or
5 more than \$1,000. Each day the violation continues constitutes a
6 separate offense.

7 SECTION 3. Section 22.352, Business Organizations Code, is
8 amended to read as follows:

9 Sec. 22.352. FINANCIAL RECORDS AND ANNUAL REPORTS. (a) A
10 corporation shall maintain current and accurate financial records
11 with complete entries as to each financial transaction of the
12 corporation, including revenue [~~income~~] and expenditures, in
13 accordance with generally accepted accounting principles.

14 (b) Based on the records maintained under Subsection (a),
15 the board of directors of the corporation shall annually prepare or
16 approve [~~a~~] financial statements [~~report~~] for the corporation for
17 the preceding year. The financial statements [~~report~~] must conform
18 to generally accepted accounting principles [~~standards as adopted~~
19 ~~by the American Institute of Certified Public Accountants~~] and must
20 include:

21 (1) a statement of financial position [~~support,~~
22 ~~revenue, and expenses~~];

23 (2) a statement of activities by functional
24 classifications [~~of changes in fund balances~~];

25 (3) a cash flow statement; and

26 (4) a statement of functional expenses[, ~~and~~

27 [~~(4) a balance sheet for each fund~~].

1 SECTION 4. Subchapter H, Chapter 22, Business Organizations
2 Code, is amended by adding Section 22.3551 to read as follows:

3 Sec. 22.3551. FINANCIAL STATEMENTS AND AUDIT OF CERTAIN
4 CHARITABLE CORPORATIONS. (a) A charitable corporation that
5 receives or accrues a total gross revenue of \$250,000 or more, not
6 including grants from and proceeds of contracts with a governmental
7 agency or entity that requires an accounting for money received,
8 shall have the corporation's financial statements required by
9 Section 22.352 for the preceding fiscal year audited by an
10 independent certified public accountant in accordance with
11 generally accepted accounting principles. A charitable
12 corporation not required by this subsection to have the
13 corporation's financial statements audited may choose to have such
14 an audit conducted.

15 (b) If a charitable corporation is under the control of
16 another corporation, the controlling corporation may prepare
17 consolidated financial statements to satisfy the requirements of
18 Section 22.352 for the controlled corporation.

19 (c) A charitable corporation required to have an audit of
20 the corporation's financial statements under Subsection (a) shall
21 make the financial statements and the audit report available for
22 inspection by the attorney general and the public at the
23 corporation's registered office or principal office in this state
24 as provided by Section 22.352 and in the manner prescribed for
25 Internal Revenue Service Form 990 by Section 6104(d), Internal
26 Revenue Code of 1986. The financial statements and audit report
27 must be completed and made available before or by the following

1 deadline:

2 (1) for financial statements, not later than six
3 months subsequent to the end of the fiscal year for which the
4 financial statements relate; and

5 (2) for the audit report, not later than six months
6 subsequent to the end of the second fiscal year for which the audit
7 report relates.

8 (d) The board of directors of a charitable corporation
9 required to have an audit of the corporation's financial statements
10 under Subsection (a) shall appoint an audit committee. If a
11 charitable corporation is under the control of another corporation,
12 an audit committee of the controlling corporation may serve as the
13 audit committee of the controlled corporation. The audit committee
14 may include persons who are not members of the board of directors,
15 but may not include an officer or employee of the corporation. The
16 audit committee shall:

17 (1) recommend to the board of directors whether a
18 particular auditor should be appointed or retained and the amount
19 of the auditor's compensation;

20 (2) confer with the auditor to satisfy the board of
21 directors that the financial affairs of the corporation are in
22 order;

23 (3) review and determine whether to accept the audit;
24 and

25 (4) approve any services performed by the auditor
26 other than an audit and assure that those services conform to
27 standards for auditor independence.

1 (e) A corporation that does not have an audit conducted as
2 provided by Subsection (a) commits an offense. An offense under
3 this subsection is punishable by a fine of not less than \$100 nor
4 more than \$1,000. Each day the violation continues constitutes a
5 separate offense.

6 SECTION 5. This Act applies to a nonprofit corporation
7 beginning on the date of the end of the corporation's first fiscal
8 year ending on or after September 1, 2005.

9 SECTION 6. (a) Except as provided by Subsection (b) of this
10 section, this Act takes effect September 1, 2005.

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