

SENATE NO. 949

AN ACT PROMOTING THE FINANCIAL INTEGRITY OF PUBLIC CHARITIES

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Section 8A of chapter 12 of the General Laws, as appearing in the 2002 Official
2 Edition, is hereby amended by:

3 (a) striking out, in lines 1 and 2, the words “sections B to eight M” and inserting in
4 place thereof the following words:- “sections eight B to eight Q”.

5 (b) inserting a new paragraph at the end of the section:-
6 “Related party” shall have the same meaning as the term “disqualified person”
7 under section 4958 of the Internal Revenue Code and the treasury regulations
8 promulgated thereunder.”

9 SECTION 2. Section 8E of chapter 12 of the General Laws, as appearing in the 2002 Official
10 Edition, is hereby amended by:

11 (a) striking out the word “corporations” in the title and inserting in place thereof the
12 following word:- “organizations”.

13 (b) striking out the phrase “filing of information” in the title and inserting in place
14 thereof the following word:- “registration”.

15 (c) striking out, in line 21, the word “hundred” and inserting in place thereof the
16 following word:- “thousand”.

17 SECTION 3. Section 8F of chapter 12 of the General Laws, as appearing in the 2002 Official
18 Edition, is hereby amended by:

19 (a) striking out, in line 1, the word “every” and inserting in place thereof the
20 following word:- “any”.

21 (b) inserting after the words “public charity”, in line 2, the following words:-
22 “subject to the registration requirement of section eight E”.

23 (c) striking out, in line 5, the words “such financial” and inserting in place thereof
24 the following words:- “the information required herein and such additional
25 financial, governance,”.

26 (d) inserting after the words “covered by its report”, in line 14, the following words:-
27 “or held more than five million dollars in net assets at the close of its fiscal year”.

28 (e) striking out, in line 18, the word “and” and inserting in place thereof the
29 following words:- “(GAAP) and nonprofit financial”.

30 (f) inserting after the fourth sentence of the second paragraph, the following
31 sentence:-

32 “For any non-audit services performed by the firm conducting the audit or
33 review, the firm and its individual accountants and auditors shall adhere to the
34 standards for auditor independence set forth in the latest revision of the
35 Government Auditing Standards, issued by the Comptroller General of the
36 United States (the Yellow Book).”

37 (g) inserting after the second paragraph the following paragraphs:-

38 “The annual reports for any public charity which received more than one
39 hundred thousand dollars but not more than five hundred thousand dollars in
40 gross support and revenue during the fiscal year covered by its report shall be
41 signed by the chair, president or principal officer of the governing board and by
42 the chief executive officer, executive director or the most senior employee in the
43 public charity. Where there are no employees of the organization, the annual
44 report shall be signed by the chair, president or principal officer of the governing
45 board and by the treasurer or board member or trustee acting as chief financial
46 officer of the public charity. The individuals who sign the annual report shall
47 each verify under oath as to the board’s review and acceptance of such report.

48 The annual reports for any public charity which is required to submit audited
49 financial statements and received more than five hundred thousand dollars in
50 gross support and revenue during its fiscal year or held more than five million
51 dollars in net assets at the close of its fiscal year shall be signed by the chair,
52 president or principal officer of the governing board and by the chief executive
53 officer, executive director or the most senior employee in the public charity.

54 Where an organization has no employees, the annual report shall be signed by
55 the chair, president, principal officer of the governing board and by the treasurer
56 or board member or trustee acting as chief financial officer of the public charity.
57 The individuals who sign the annual report shall each verify under oath as to the
58 board’s review and acceptance of such report and of the audit required pursuant
59 to this section.

60 Nothing contained in this section shall be construed as creating a private right
61 of action against any signing officer, board member, director, trustee or audit
62 committee member based upon a certification made pursuant to this section,
63 provided that this paragraph shall not preclude any private right of action which
64 would exist regardless of such certification.”

65 (h) striking out the first sentence of the third paragraph.

66 (i) striking out the word “hundred”, in line 53, and inserting in place thereof the
67 following word:- “thousand”.

68 (j) adding after the fifth paragraph the following new paragraph:-

69 “The director may, by regulation, establish fees for public charities that fail
70 to file in a timely manner.”

71 SECTION 4. Chapter 12 of the General Laws, as appearing in the 2002 Official Edition, is
72 hereby amended by:

73 (a) inserting after section eight N the following sections:-

74 “Section 8O. Whistleblower complaints

75 Any public charity, with the exception of charities with no paid employees,
76 required to file an annual report pursuant to section eight F shall comply with the
77 requirements of this section.

78 A public charity shall not retaliate against any employee of the public charity
79 who has filed a complaint with the governing board, directors or trustees, the
80 attorney general or any other government agency pertaining to the following: (a)
81 dissipation of the charity’s assets; (b) the mishandling or misuse of restricted
82 funds; (c) related party transactions; (d) compliance with state or federal

83 reporting requirements; (e) overriding or circumventing of the charity's internal
84 controls; (f) private inurement; and (g) fraud.

85 All records pertaining to any complaint that falls under this section and its
86 resolution shall be retained by the public charity for four years from the date the
87 complaint was filed and shall also be made available to the attorney general upon
88 request of the attorney general. These documents shall not constitute public
89 records subject to section eight M or section ten of chapter sixty-six of the
90 general laws.

91 If a public charity or the responsible officer or agent willfully retaliates
92 against an employee for a complaint that falls under this section, the attorney
93 general, in addition to any other statutory or common law remedies, may seek:

94 (a) compensation for the employee; (b) back pay for the employee; or (c) any
95 appropriate order prohibiting the reoccurrence of the unlawful conduct.

96 Section 8P. Audit committee policies and procedures

97 Any public charity, with the exception of testamentary or inter vivos trusts,
98 required to file an annual report pursuant to section eight F shall comply with the
99 requirements of this section.

100 If a public charity is required to file an audit with its annual report pursuant
101 to section eight F, the trustees or governing board shall appoint an audit
102 committee of not fewer than three persons. The audit committee may include
103 persons who are not members of the board so long as the majority of the audit
104 committee is made up of members of the board, but the members of the audit
105 committee shall not include any employees of the public charity. Members of

106 the audit committee may not receive any compensation from the organization in
107 excess of the standard compensation, if any, received by all trustees or members
108 of the board in exchange for their service as trustees or as members of the board.
109 No member of the audit committee shall have any material financial interest in
110 any entity doing significant business with the public charity, nor have engaged in
111 any related party transactions within the three years preceding appointment to the
112 audit committee. The board may designate its finance committee or other
113 permanent committee of the board to perform the audit committee function, so
114 long as it is in compliance with all of the audit committee membership
115 requirements of this paragraph. If a charitable corporation that is required to
116 have an audit committee is under the control of another charitable corporation,
117 the controlled organization's audit committee may be the audit committee of the
118 controlling corporation, so long as that audit committee complies with all of the
119 requirements of this section.

120 Subject to the supervision of the board, the audit committee, or other such
121 committee functioning as the audit committee, shall be responsible for making
122 recommendations to the board regarding: (a) the selection, retention and
123 termination of an independent auditor; (b) the compensation of the auditor; (c)
124 measures to ensure that the internal controls are documented by management and
125 evaluated as part of the audit; (d) the process by which the audit committee shall
126 review the audit and the management letter, if any, with the auditor and work
127 with the auditor and management of the organization to resolve or recommend
128 resolution to the board of any issues of concern arising from the audit or the

129 management letter; and (e) measures to ensure that any non-audit services
130 provided by the auditing firm conform with the standards of independence
131 required in section eight F. Prior to the board’s consideration of and action on
132 the independent auditor’s report, the audit committee shall report to the board on
133 the results of the audit.

134 Section 8Q: Related party contracts, transactions and compensation

135 In the administration and operation of any public charity, the following acts
136 shall be prohibited: (a) engaging in any act that the Internal Revenue Service
137 determines constitutes an “excess benefit transaction” under section 4958 of the
138 Internal Revenue Code; and (b) engaging in any act that would constitute an
139 “excess benefit transaction” under the standards of section 4958 of the Internal
140 Revenue Code.

141 The documentation required by 26 C.F.R. section 53.4958-6(a)(3) shall be
142 maintained for at least four years after the transaction was approved and shall be
143 made available to the attorney general upon request of the attorney general.

144 These documents shall not constitute public records subject to section eight M or
145 section ten of chapter sixty-six of the general laws.

146 If the attorney general determines that any contract, compensation
147 arrangement or transaction is an excess benefit under this section or constitutes
148 “self-dealing” under chapter sixty-eight A, section (1)(a), the attorney general
149 may, in addition to any other remedies available under statutory or common law,
150 bring an action in superior court to: (a) impose a fine equal to the value of what
151 the Internal Revenue Code permits as a fine if the contract, compensation

152 agreement or transaction was an Internal Revenue Code sanctioned transaction;
153 (b) recover restitution from the related party; and/or (c) obtain any other
154 appropriate legal or equitable relief in the public interest, including removal of
155 trustees, directors or officers.

156 References to the Internal Revenue Code and the regulations promulgated
157 thereunder in this section and in section eight A shall mean the United States
158 Internal Revenue Code of 1986, as amended, and the regulations promulgated
159 thereunder as such are in effect on the effective date of this section.

160 If said Internal Revenue Code or said regulations are amended after the
161 effective date of this section, then, unless the director shall determine otherwise,
162 by regulation, said references shall mean the Internal Revenue Code and
163 regulations as so amended.

164 The director may exempt certain de minimis contracts, transactions or
165 compensation from the requirements of this section if the director determines that
166 such exemptions are in the public interest.”

167 SECTION 5: Chapter 12 of the General Laws, as appearing in the 2002 Official Edition, is
168 hereby amended by:

- 169 (a) striking out in section eight B, in line 4, the words “section eight to eight M,
170 inclusive” and inserting in place thereof the following words:- “A section eight
171 to eight Q, inclusive”.
- 172 (b) striking out in section eight G, in line 3, the words “sections eight to eight M,
173 inclusive” and inserting in place thereof the following words:- “sections eight to
174 eight Q, inclusive”.

- 175 (c) striking out in section eight J, in line 3, the words “sections eight to eight M,
176 inclusive” and inserting in place thereof the following words:- “sections eight to
177 eight Q, inclusive”.
- 178 (d) striking out in section eight M, in line 3, the words “sections eight to eight M,
179 inclusive” and inserting in place thereof the following words:- “sections eight to
180 eight Q, inclusive”.
- 181 (e) striking out in section 8N, in lines 2 and 3, the words “sections eight through
182 eight M” and inserting in place thereof the following words:- “sections eight
183 through eight Q”.

