

Regular Session, 2010

HOUSE BILL NO. 532

BY REPRESENTATIVE LORUSSO

CORPORATIONS: Provides relative to open records of certain nonprofit corporations

1 AN ACT

2 To enact Chapter 2 of Code Title X of Code Book I of Title 9 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 9:1061 through 1070, relative to nonprofit
4 organizations; to provide for definitions; to provide for maintenance of certain
5 required information and reports; to provide for the designation and responsibilities
6 of treasurers; to provide for the form and limitations of expenditures; to provide for
7 the content and time period for reports; to provide for responses to requests for
8 information; to provide for penalties; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 2 of Code Title X of Code Book I of Title 9 of the Louisiana
11 Revised Statutes of 1950, comprised of R.S. 9:1061 through 1070, is hereby enacted to read
12 as follows:

13 CHAPTER 2. TRANSPARENCY OF NONPROFIT ORGANIZATIONS

14 §1061. Short title

15 This Chapter may be cited as the "Nonprofit Organization Transparency Act".

16 §1062. Statement of purpose

17 The legislature finds that the use of public funds for certain nonprofit
18 organizations should be subject to public scrutiny. Public scrutiny of the use of
19 public funds by nonprofit organizations is dependent upon a knowledgeable public
20 which requires that information regarding the disbursement and use of these funds

1 shall be readily available for inspection by the general public. The legislature,
2 therefore, enacts this Chapter to establish public disclosure of expenditures by
3 nonprofit organizations which receive public funds.

4 §1063. Definitions

5 (1) "Expenditure" means any payment or disbursement of money, funds, or
6 assets of any kind from the nonprofit organization.

7 (2) "Income" means any money, funds, or assets of any kind received by the
8 nonprofit organization from donation, loan, payment of a debt, investment, or any
9 other source.

10 (3) "Nonprofit organization" means any person organized as a Louisiana
11 nonprofit corporation under R.S. 12:201 et seq., or certified as having 26 U.S.C.
12 §501(c) tax exempt status, and who receives public funds during the reporting
13 period.

14 (4) "Person" means any natural or juridical person as provided by Civil Code
15 Article 24.

16 (5) "Public funds" means funds received from a federal, state, political
17 subdivision of the state, or any other governmental source.

18 §1064. Disclosure reports; persons required to maintain

19 Except as otherwise specifically provided, all nonprofit organizations shall
20 maintain a financial report of income and expenditures as provided in R.S. 9:1066.
21 The treasurer of each nonprofit organization shall maintain the records and reports
22 required by the provisions of this Chapter.

23 §1065. Nonprofit organization treasurers; expenditures by check; petty cash fund

24 A. Every nonprofit organization shall designate a treasurer. The name and
25 address of the treasurer shall be made immediately available to any person upon
26 written or verbal request.

27 B.(1) When any officer, director, or employee of a nonprofit organization
28 makes any expenditure of funds or assets for the nonprofit organization, he shall
29 transmit directly to the treasurer all information concerning the expenditure required

1 by the provisions of this Chapter. The treasurer shall be responsible pursuant to the
2 provisions of this Chapter for any errors or omissions in the records or reports of the
3 expenditures or disbursements.

4 (2) For purposes of all reports required by the provisions of this Chapter, all
5 expenditures made by a nonprofit organization shall be considered expenditures of
6 the nonprofit organization.

7 C. Except as provided in Subsection D of this Section, no expenditure shall
8 be made by any nonprofit organization, except by check, credit card, or debit card.
9 Each check shall indicate the objects or services for which the check is drawn and
10 the check shall be maintained as part of the records required by the provisions of
11 R.S. 9:1066.

12 D. A nonprofit organization may maintain a petty cash fund or funds. A
13 petty cash fund shall be maintained on an imprest system, that is, expenditures may
14 be made in cash from the fund, and the fund shall from time to time be restored to
15 its original amount by a transfer of funds from other funds of a sum equal to the
16 aggregate of the sums expended from the fund. No expenditure in excess of one
17 hundred dollars shall be made from the petty cash fund, and no expenditure shall be
18 made from the petty cash fund for any personal services, except for gratuities paid
19 for the serving of food, drink, or transportation. A complete record of petty cash
20 expenditures specifying the date, purpose, and recipient of the expenditure shall be
21 maintained in accordance with the provisions of R.S. 9:1066.

22 §1066. Maintenance of records; valuation of in-kind contributions and expenditures

23 A. Every nonprofit organization receiving public funds shall be responsible
24 for providing and maintaining its financial records as are necessary to comply with
25 and verify the provisions of this Chapter, including but not limited to the records
26 specifically required by this Section.

27 B. The treasurer of every nonprofit organizational shall maintain the
28 following records for the nonprofit organization:

1 (1) The total amount of all income and contributions made to the nonprofit
2 organization, specifying the total received from private sources and the total received
3 from public sources. The total received from public sources shall also identify each
4 particular source of public funds and a total of funds received from that source.

5 (2) Tax exempt application and all supporting attachments and documents.

6 (3) Federal Form 990 Return and all supporting attachments and schedules.

7 (4) Annual report filed with secretary of state, if required to do so by the
8 provisions of R.S. 12:205.1.

9 (5) Records of all expenditures made or contracted, including the full name
10 and address of the person receiving the funds, the date, the amount or value, the
11 purpose of the expenditure, and a description and valuation of all in-kind
12 contributions and expenditures. The valuation of in-kind contributions or
13 expenditures shall be the estimated fair market value at the time of the transaction.

14 (6) All expenditures made from the petty cash fund, for which provision is
15 made in R.S. 9:1065, including the name and address of the person or firm from
16 whom goods or services were purchased or contracted, the amount and the purpose
17 of the expenditure, and a description of the goods or services purchased or
18 contracted. In addition, a receipt shall be kept for each such expenditure in any case
19 in which a receipt would normally be provided in the usual course of business.

20 (7) Each loan made by the nonprofit organization to or from any person,
21 together with the full name and address of the lender, of the recipient of the proceeds
22 of the loan, and of any person who makes any type of security agreement binding
23 himself or his property, directly or indirectly, for the repayment of all or any part of
24 the loan. In addition, a record shall be kept of the repayment of each loan and
25 whether the source of funds expended for repayment was public or private funds.

26 (8) All transfers of funds to or from another nonprofit organization, the name
27 and address of the nonprofit organization to or from which the transfer is made and
28 the date and amount of the transfer.

29 (9) All debts and obligations.

1 (10) All other expenditures, the name and address of the person to whom
2 made, and the date and amount of the expenditure.

3 C. A treasurer shall preserve records required by the provisions of this
4 Chapter for six years.

5 D. The accounts and records kept by a treasurer pursuant to the provisions
6 of this Chapter shall be available for inspection or use by the state, political
7 subdivision, the general public, or by any grand jury or court in connection with any
8 proceeding instituted pursuant to the provisions of this Chapter.

9 E. Failure of any nonprofit organization to timely furnish the information
10 required for compliance with this Chapter shall be grounds for a civil action for
11 damages and for penalties as provided by R.S. 9:1070.

12 §1067. Reports required; reporting times and periods

13 A. The treasurer shall be responsible for maintaining a report containing a
14 summary of all information required in R.S. 9:1066. The treasurer shall certify, in
15 each report, that the information contained in the report is true and correct to the best
16 of his knowledge, information, and belief, that no expenditures have been made and
17 no contributions have been received that are not reported as required by the
18 provisions of this Chapter, and that no information required by the provisions of this
19 Chapter has been deliberately omitted.

20 B. The report shall be prepared, signed by the treasurer, and notarized
21 annually no later than February fifteenth and shall be complete and contain all
22 information required by this Chapter from January first through December thirty-first
23 of the prior year.

24 §1068. Reports; contents

25 A. Unless otherwise specifically provided, each report required by the
26 provisions of this Chapter shall contain the following information: (1) the name and
27 address of the nonprofit organization for whom the report is maintained; (2) the
28 name and address of the treasurer completing the report; and (3) the names and
29 addresses of the principal officers and directors.

1 B. Each report required to be in conformity with this Section shall also
2 contain a summary of the records required to be maintained by R.S. 9:1066.

3 §1069. Delays for response; costs

4 A. If a request is made in writing, the nonprofit organization shall have thirty
5 days to supply the requested records required to be maintained pursuant to the
6 provisions of this Chapter.

7 B. If the request is made in person, the nonprofit organization shall
8 immediately produce for inspection the records required to be maintained pursuant
9 to the provisions of this Chapter.

10 C. A nonprofit organization which makes the report and supporting records
11 required to be maintained pursuant to the provisions of this Chapter available in PDF
12 or similar format on its website shall be deemed to be in compliance with the
13 requirement of records availability pursuant to this Chapter.

14 D. The person requesting copies of the report or supporting documentation
15 shall pay the costs of producing the copies at a rate not to exceed one dollar per page,
16 plus any actual shipping or postage expenses incurred.

17 §1070. Penalties

18 A. Failure by any nonprofit organization to timely furnish the information
19 required by the provisions of this Chapter shall be grounds for a civil action for
20 damages.

21 B. Any nonprofit organization that violates the provisions of this Chapter
22 shall be ineligible to and prohibited from receiving any public funds for a period of
23 three years.

24 C. The treasurer and any officer, director, or employee of a nonprofit
25 organization which continues to receive public funds subsequent to a court finding
26 that the nonprofit organization is in violation of any provision of this Chapter shall
27 be personally subject to a penalty of not more than one thousand dollars. On a
28 second or subsequent offense, the penalty shall be a fine of not more than five
29 thousand dollars.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Lorusso

HB No. 532

Abstract: Enacts the Nonprofit Organization Transparency Act which provides for reporting of expenditures by nonprofit organizations receiving public funds.

Proposed law enacts the "Nonprofit Organization Transparency Act".

Proposed law provides for legislative findings regarding the necessity of public scrutiny of nonprofit organizations receiving public funds.

Proposed law provides definitions for "expenditure", "income", "nonprofit organization", "person", and "public funds".

Proposed law requires all nonprofit organizations to maintain a financial report of income and expenditures as specified by proposed law (R.S. 9:1066), and requires the treasurer of each nonprofit organization to maintain the report.

Proposed law requires every nonprofit organization to designate a treasurer, whose name and address shall be made available to any person.

Proposed law requires that when any officer, director, or employee of a nonprofit organization makes any expenditure of funds, he shall transmit directly to the treasurer all information concerning the expenditure.

Proposed law requires that all expenditures made by any nonprofit organization shall be by check, credit card, or debit card.

Proposed law authorizes a nonprofit organization to maintain a petty cash fund and provides for limitations of the use of the petty cash fund.

Proposed law requires the treasurer of every nonprofit organization receiving public funds to provide and maintain financial records as are necessary to comply with proposed law, which shall include:

- (1) The total amount of all income and contributions made to the nonprofit organization, specifying the total received from private sources and the total received from public sources. The total received from public sources shall also identify each particular source of public funds and a total of funds received from that source.
- (2) Tax exempt application and all supporting attachments and documents.
- (3) Federal Form 990 Return and all supporting attachments and schedules.
- (4) Annual report filed with secretary of state, if required to do so by present law (R.S. 12:205.1).
- (5) Records of all expenditures made or contracted, including the full name and address of the person receiving the funds, the date, the amount or value, and the purpose of the expenditure, and a description and valuation of all in-kind expenditures. The valuation of in-kind contributions or expenditures shall be the estimated fair market value at the time of the transaction.

- (6) All expenditures made from the petty cash fund for which provision is made in proposed law (R.S. 9:1065), including the name and address of the person or firm from whom goods or services were purchased or contracted, the amount and the purpose of the expenditure, and a description of the goods or services purchased or contracted. In addition, a receipt shall be kept for each such expenditure in any case in which a receipt would normally be provided in the usual course of business.
- (7) Each loan made by the nonprofit organization to or from any person, together with the full name and address of the lender, of the recipient of the proceeds of the loan, and of any person who makes any type of security agreement binding himself or his property, directly or indirectly, for the repayment of all or any part of the loan. In addition, a record shall be kept of the repayment of each such loan and of the whether the source of funds expended for repayment was public or private funds.
- (8) All transfers of funds to or from another nonprofit organization, the name and address of the nonprofit organization to or from which the transfer is made, and the date and amount of the transfer.
- (9) All debts and obligations.
- (10) All other expenditures, the name and address of the person to whom made and the date and amount of the expenditure.

Proposed law requires the treasurer to preserve records for six years.

Proposed law provides that the accounts and records kept by a treasurer shall be available for inspection or use by the state, political subdivision, the general public, or by any grand jury or court.

Proposed law provides that failure of any nonprofit organization to timely furnish the information shall be grounds for a civil action for damages and for penalties as provided by proposed law (R.S. 9:1070).

Proposed law requires the treasurer to be responsible for maintaining a report containing a summary of all information required in proposed law (R.S. 9:1066), which report shall be prepared, signed by the treasurer, and notarized annually no later than Feb. 15 and shall contain all information required by proposed law from Jan. 1 through Dec. 31 of the prior year.

Proposed law requires the report to contain the following information:

- (1) The name and address of the nonprofit organization for whom the report is maintained.
- (2) The name and address of the treasurer completing the report.
- (3) The names and addresses of the principal officers and directors.
- (4) A summary of the records required to be maintained by proposed law (R.S. 9:1066).

Proposed law provides that if a request is made in writing, the nonprofit organization shall have 30 days to supply the requested records, and that if the request is made in person, the nonprofit organization shall immediately produce the records for inspection.

Proposed law provides, as an alternative to actual production of the records, that a nonprofit organization may make the report and supporting records available in PDF or similar format on its website.

Proposed law authorizes a nonprofit organization to charge no more than \$1 per page, plus any actual shipping or postage expenses incurred in the production of records.

Proposed law provides that failure by any nonprofit organization to timely furnish the information shall be grounds for a civil action for damages.

Proposed law provides that any nonprofit organization that violates the provisions of proposed law shall be ineligible to and prohibited from receiving any public funds for a period of three years.

Proposed law provides that the treasurer and any officer, director, or employee of a nonprofit organization which continues to receive public funds subsequent to a court finding the nonprofit organization in violation of any provision of proposed law shall be personally subject to a penalty of not more than \$1,000, and that on a second or subsequent offense, the penalty shall be a fine of not more than \$5,000.

(Adds R.S. 9:1061-1070)