

MOTION BY SUPERVISOR YVONNE B. BURKE

February 8, 2005

In light of numerous high profile private and nonprofit sector fiscal scandals, the State Legislature, in an effort to curb fraud and increase accountability in the nonprofit and charitable giving industry, has adopted the Nonprofit Integrity Act of 2004 (SB 1262). Thus, effective January 1, 2005, SB 1262 has addressed and imposed new mandates in the areas of governance and fundraising for Nonprofit Corporations, Unincorporated Associations, and Charitable Trusts.

Mirroring the Federal Sarbanes-Oxley Act of 2002 which dictates corporate financial disclosure and fiscal accountability in the private sector, SB 1262 extends similar requirements to certain charitable organizations. In summary, SB 1262 requires:

- mandatory audit of annual financial statements by an independent certified public accountant(s) and an appointment of an audit committee for those charitable organizations which receive or accrue a gross annual revenue of \$2 million or more ("...exclusive of grants from, and contracts for services with, governmental entities for which the governmental entities require an

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- accounting of the funds received...”);
- public disclosure of any audited financial statements;
 - review and approval of executive compensations by the Board of Directors;
 - full disclosure and proper representation of intended and actual use of solicited charitable contributions; and
 - numerous revisions, recasts and additions to the pre-existing laws regulating commercial fundraisers and fundraising counsel.

While I fully embrace the intent of this legislation, I am concerned it will be local governments that will be burdened with potential associated consequences and/or costs. Furthermore, this legislation focuses more on the reactive measures, without proactive ones that seek to assist and/or prevent organizations from noncompliance with SB 1262. As seen too often, when an agency faces fiscal mismanagement and/or dissolution, it is ultimately our County residents that are adversely affected. Thus, it is imperative that this Board take every step necessary to ensure our County nonprofit contractors are made aware of these new State requirements, and if feasible, provide guidance and compliance training.

I, THEREFORE, MOVE THAT THE BOARD OF SUPERVISORS:

1. Direct each Department, at the time of granting or renewing contracts to review County contracts to identify and inform those organizations that are subject to SB 1262 regulations; furthermore institute a standardized SB 1262 compliance statement, in a format approved by County Counsel, for

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all existing and future contractors;

2. Direct the CAO to report back in 120 days to:

- a) develop a Countywide and/or Department specific “incubator” type program that seeks to mentor and develop proper organizational capacity for our small to mid-size nonprofit contractors, so they may be better prepared to comply with State, Federal and existing or new County policies;
- b) explore funding and/or cost-effective mechanisms, such as Community Services Block Grant (CSBG) funding and collaborations with State and/or nonprofit entities such as the State Attorney General or Board of Equalization, to fund above said program; and
- c) review and assess the effectiveness of current County contract policies and guidelines; and determine whether additional County requirements similar to SB 1262 are warranted to strengthen existing contract monitoring and accountability;

3. Instruct the County’s State legislative analyst to monitor SB 1262, specifically its implementation and enforcement plan, as they are developed by the Attorney General, and to pursue and support any efforts for fiscal appropriations and/or commitments to this mandate.

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YBB:DR:jt3(SB1262ContractReqNonprofit)