

Senate Judiciary Committee

Jennifer Horgan 271-7875

SB 375-FN, relative to requirements for charitable organizations.

Hearing Date: January 12, 2022

Time Opened: 1:15 p.m.

Time Closed: 1:46 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill prohibits New Hampshire state agencies and officials from imposing filing or reporting requirements that are more stringent than those established in RSA 7:19 through RSA 7:32-1.

Sponsors:

Sen. Gannon

Sen. Hennessey

Sen. Perkins Kwoka

Sen. French

Sen. Daniels

Sen. Giuda

Rep. Espitia

Rep. Alexander Jr.

Rep. Potucek

Who supports the bill: Senator Gannon; Senator Perkins Kwoka; Senator Giuda; Senator Daniels; Senator French; Senator Hennessey; Elizabeth McGuigan, Philanthropy Roundtable

Who opposes the bill: Tom Donovan, NH AG; Diane Quinlan, DOJ; Kathleen Reardon, NH Center for Nonprofits; Patrick Carr

Summary of testimony presented in support:

Senator Gannon

- This is the Charity Protection Act, and it is prohibiting a state agency or government officer from imposing onerous filing fees or ones that are more stringent than state or federal law.
- Does not want charities to be overburdened when they are already providing the required information.
- Across the country there have been examples of charities being overly burdened.
- This is necessary because you don't want to need it, but if you need it and don't have it, it is already too late.
- Willing to work with the Charitable Trusts Unit to ensure they can do their job.
- There are already avenues for investigation for fraud and he does not want to prohibit that.

- Senator Kahn asked if he has any specifics about the additional burdens some of the charitable organizations face.
 - Will defer that to the Philanthropy Roundtable.
- Senator Kahn asked if Senator Gannon would believe that some of his constituents feel that some of the financial audits required of smaller charities are a burdensome requirement for them.
 - He said he can see that. The burden on smaller charities is obviously going to have a much higher affect than on larger charities.

Elizabeth McGuigan (Philanthropy Roundtable)

- This bill allows philanthropic organizations to fulfill their missions without the fear of future government overreach.
- This bill requires any new requirements on 501(c)(3)s to be deliberated and approved by the legislature.
- This protects private foundations and charitable organizations and ensures the Department of Justice still maintains full authority over regulations for charities.
- This is a commonsense reform that honors the transparency of the legislative process.
- This bill allows charities to focus on their missions rather than on increased government mandates.
- They are open to an amendment to address the concerns of the DOJ; wants to ensure the DOJ has the full authority to do the work that they do with a narrow tailoring of language.
- This bill does not apply to what is already authorized under NH statute and does not limit communications or investigations.
- The bill explicitly limits annual filing and reporting requirements and exempts investigations of fraud and enforcement.
- This change is for if a future regulator were to overstep current authorizations without going through the legislative process.
- This is a proactive, protective bill that sends a message to charities that NH will not overreach.
- If overreach becomes a problem in NH, it will be too late to address through proactive legislation.
- Nationwide charitable organizations are faced with calls to disclose more information that does not improve organizational effectiveness.

Summary of testimony presented in opposition:

Tom Donovan and Diane Quinlan (Charitable Trusts Unit) (provided written testimony)

- This bill is focused on the Charitable Trusts Unit, and it talks about no reporting requirements unless they are set forth in statute.

- The Unit's fees are set in statute, and they have not been raised since the 1990s.
- The unit is self-funded.
- This bill does not prevent them from doing fraud investigations or enforcement actions.
- There are things the Unit does that fall short of that, which involve regulation of charities.
- NH was the first state to start this kind of unit in 1943.
- The Attorney General has always had oversight authority over charities.
- Just because something isn't specifically stated in RSA7 does not mean it is something the Attorney General should not have oversight over in respect to a charity.
- For example, towns hold charitable funds and file not with the Unit but with the DRA.
- Sometimes the Unit hears about improper spending or investing of those trust funds by the town and the Unit may require the towns to report about that.
- They do not want to cause expense by opening a formal investigation.
- This falls under the Unit's common law authority.
- Churches are exempt from reporting, but if Mr. Smith left money for flowers and the church wants to use it for a new furnace, the Unit is the one that enforces that, and they will require some reporting.
- Their fear is that under this bill, the Unit is going to be so pigeonholed that donors that left money for specific purposes are not going to have those purposes fulfilled.
- If we want to encourage charitable giving, part of that is ensuring the confidence that 50-100 years from now the Attorney General will be there to ensure the proper use of that purpose.
- The statute already ensures that the charities are not burdened by the required reporting.
- RSA 7:28, III already provides that annual reports shall not unreasonably add to the expense of the administration of charitable trusts.
- State law already allows the Attorney General to suspend the reporting requirement for particular charitable trusts when it becomes a financial burden. This has been done several times.
- The filing requirements do not impose burdens on charities.
- The most significant portion of the reporting is the financial report, and all the Unit asks for is a copy of the 990 form already being submitted federally.
- For smaller charities that do not file 990s, the Unit has developed a very simple financial form that is significantly easier than anything they would file with the IRS.
- Last year they revised filing forms with input from the charitable sector to simplify the forms and clarify the process.
- The Unit has received many compliments in the last year from multi-state filers regarding how easy it is to file in NH.

- The bill does say this will not prohibit the Attorney General from adopting rules regarding charitable trusts, but rules and regulations cannot possibly address all the circumstances the Unit requires information from charitable organizations to do the Unit's work.
- Senator Whitley explained how in Hopkinton a building was given to the town long ago for a certain purpose, the purpose of the building has changed, but when the town tried to sell the building there was an outcry from citizens. She believes the Unit did provide guidance in that situation. She asked if this bill passed would the Unit not have been able to do that.
 - Director Donovan answered that was correct; the Unit could only bring an enforcement action after the fact.
- Senator Whitley asked if the Unit had not been able to intervene would the situation have likely resulted in costly litigation.
 - They know that problems involving donor properties with restrictions on them exist in many towns. Unless issues are dealt with early, the property would get sold, people would get sued, and it would get very expensive.
- Senator Gannon asked if the flower example would be a fraud investigation.
 - Asst. Director Quinlan answered that the Unit would not want to get to the point of an investigation. Currently, the Unit would contact the church in that situation and talk to them about their responsibilities to comply with the donor's wishes to the extent that they can. They would work with them to petition the court for cy-près. They would not want to get to the point of enforcement action because it is very expensive for the charitable organization.
- Senator Kahn asked if they would consider working on this bill to make it more customized.
 - Director Donovan answered that the Unit is always willing to have a conversation.

Kathleen Reardon (NH Center for Nonprofits) (provided written testimony)

- They have concerns about hampering reasonable regulation and transparency of nonprofits.
- They do not think this bill is needed.
- The Unit has a long history of reasonable restraint in appropriate filing requirements.
- The Unit has never required donor lists or schedule b information.
- The annual reports are easily available online and it is reasonable.
- This reporting does not create an unreasonable burden on nonprofits.
- The charitable sector does want its privacy but understands the need for public trust and accountability that these annual reports provide.
- NH relies on the charitable sector to manage their finances well, have transparency, and to avoid self-dealing, and the annual report is a part of that.

- Senator Kahn asked if she would support a more targeted approach with this bill.
 - She would look at it but would have to know what that looked like.
- Senator Kahn asked about limiting the audits for charitable organizations to revenues less than \$2million.
 - She thinks the organization is interested in maintaining that balance right now. While there may be changes over time to some organizations in terms of size, the issues with this bill are much more expansive. There is a balance to that transparency and accountability.

Neutral Information Presented:

None

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Date Hearing Report completed: January 14, 2022