

**FOR IMMEDIATE RELEASE:**

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## **AG Balderas, NMFOG Announce New Legislation Aimed at Promoting Transparency in Government**

*Albuquerque, NM* – Today, Attorney General Hector Balderas and the New Mexico Foundation for Open Government announced new legislation aimed at increasing transparency in government, and reducing access barriers to New Mexico’s citizens and members of the press in their pursuit of public information. HB 26 would limit the amount that public agencies can charge the public following a request for public records. HB 29 would require that organizations who exist solely to provide funds or property to government agencies be subject to the Inspection of Public Records Act and Open Meetings Act.

“We want citizens to have access to critical public information, in order to build a state government that is fair and open to all New Mexico citizens,” said Attorney General Hector Balderas. “My office is committed to transparency and partnering with citizen watchdogs for public accountability across New Mexico.”

HB 26, sponsored by Rep. Bill Pratt, reduces the amount of money that public entities may charge for public records from \$1.00 per page, to \$0.10 per page, for printed copies. The legislation also puts a cap on the amount of money an agency may charge for digital information placed on storage disks, at a maximum of \$10.

“Today, this bill will cap the fee that state government or any agency can charge for IPRA requests. Records are only public if they are affordable to the public,” said Rep. Pratt (D-Albuquerque) “I am very proud to collaborate with the Attorney General on this commonsense legislation to improve transparency in our state government.”

HB 29, sponsored by Rep. Akhil, requires organizations who exist solely to provide funds or property to government agencies be subject to the Inspection of Public Records Act and Open Meetings Act.

“Recent events have demonstrated the perils of opaque foundations enmeshed with public institutions,” said Rep. Abbas Akhil (D-Albuquerque). “It is critical that foundations that exist solely to serve the interests of public institutions meet the basic minimum standards of transparency and openness. This bill will take steps to prevent future financial negligence like what occurred at UNM Athletics.”

“The New Mexico Foundation for Open Government is in full support of the proposed legislation,” said Executive Director of the New Mexico Foundation for Open Government, Melanie Majors. “NMFOG continually works to protect and strengthen every New Mexican’s right to know. We support greater access to information. We work to protect and strengthen laws and policies. We believe that openness is the rule and the ability to inspect public records keeps officials accountable.”

“We appreciate the Attorney General’s efforts to eliminate outrageous costs for paper copies and electronic records and record searches. These bills also make it very clear that entities that operate on behalf of public agencies must allow all of their records to be open for inspection.”

Please see attached for the referenced bills.

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HOUSE BILL 26

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

William B. Pratt

AN ACT

RELATING TO PUBLIC RECORDS; ALLOWING A CUSTODIAN OF PUBLIC RECORDS TO CHARGE A REASONABLE FEE FOR ELECTRONIC DOCUMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 14-2-9 NMSA 1978 (being Laws 1993, Chapter 258, Section 6, as amended) is amended to read:

"14-2-9. PROCEDURE FOR INSPECTION.--

A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing public records or information may be furnished in lieu of an entire database.

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1 Exempt information in an electronic document shall be removed  
2 along with the corresponding metadata prior to disclosure by  
3 utilizing methods or redaction tools that prevent the recovery  
4 of exempt information from a redacted electronic document.

5 B. A custodian shall provide a copy of a public  
6 record in electronic format if the public record is available  
7 in electronic format and an electronic copy is specifically  
8 requested. However, a custodian is only required to provide  
9 the electronic record in the file format in which it exists at  
10 the time of the request.

11 C. Unless otherwise provided by law, a custodian:

12 (1) may charge ~~[reasonable fees for copying~~  
13 ~~the public records, unless a different fee is otherwise~~  
14 ~~prescribed by law]~~ a fee for providing a copy of a public  
15 record, but such fee shall not exceed the actual cost to the  
16 public body to provide the copy of the public record;

17 (2) shall not charge fees in excess of [~~one~~  
18 ~~dollar (\$1.00)] ten cents (\$0.10) per printed page for  
19 documents eleven inches by seventeen inches in size or smaller;~~

20 (3) may charge the actual costs associated  
21 with downloading copies of public records to a computer disk or  
22 storage device, including the actual cost of the computer disk  
23 or storage device; however, such charge shall not exceed ten  
24 dollars (\$10.00);

25 (4) may charge the actual costs associated

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1 with transmitting copies of public records by mail, electronic  
2 mail or facsimile;

3 (5) may require advance payment of the fees  
4 before making copies of public records;

5 (6) shall not charge a fee for the cost of  
6 determining whether any public record is subject to disclosure;  
7 and

8 (7) shall provide a receipt, upon request.

9 D. As used in this section, "actual cost" does not  
10 include labor costs or overhead costs.

11 [~~D.~~] E. Nothing in this section regarding the  
12 provision of public data in electronic format shall limit the  
13 ability of the custodian to engage in the sale of data as  
14 authorized by Sections 14-3-15.1 and 14-3-18 NMSA 1978,  
15 including imposing reasonable restrictions on the use of the  
16 database and the payment of a royalty or other consideration."

17 **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
18 provisions of this act is July 1, 2019.

HOUSE BILL **29**

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Abbas Akhil

AN ACT

RELATING TO PUBLIC RECORDS AND OPEN MEETINGS; REQUIRING THAT ORGANIZATIONS PROVIDING FUNDS OR PROPERTY TO GOVERNMENTAL ENTITIES BE SUBJECT TO THE INSPECTION OF PUBLIC RECORDS ACT AND THE OPEN MEETINGS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 6-5A-1 NMSA 1978 (being Laws 1992, Chapter 27, Section 1, as amended) is amended to read:

"6-5A-1. DEFINITIONS--REQUIREMENTS FOR GOVERNMENTAL ENTITIES THAT RECEIVE FUNDS OR PROPERTY FROM CERTAIN ORGANIZATIONS.--

A. As used in this section:

(1) "agency" means any state agency, department or board, any public institution of higher education or public post-secondary educational institution and any

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1 county, municipality or public school district;

2 (2) "organization" means an organization that  
3 has been granted exemption from the federal income tax by the  
4 United States commissioner of internal revenue as an  
5 organization described in Section 501(c) of the Internal  
6 Revenue Code of 1986, as amended or renumbered, and whose  
7 principal and authorized purpose is to complement, contribute  
8 to and support or aid the function of or forward the purposes  
9 of a single agency through financial support or contribution of  
10 services, goods, data or information that help or aid the  
11 agency in carrying out its statutory purpose and goals,  
12 including ~~[but not limited to]~~ the provision of scholarships to  
13 students of educational institutions and the provision of  
14 grants to supplement ongoing research or to provide funds for  
15 research and programs being carried out by an agency;

16 (3) "post-secondary educational institution"  
17 means an educational institution designated in Article 12,  
18 Section 11 of the constitution of New Mexico and includes an  
19 academic, vocational, technical, business, professional or  
20 other school, college or university or other organization or  
21 person offering or purporting to offer courses, instruction,  
22 training or education through correspondence or in person to  
23 any individual within this state over the compulsory school  
24 attendance age, if that post-secondary educational institution  
25 is directly supported in whole or in part by state or local

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1 taxation; and

2 (4) "transferred" means given or otherwise  
3 transferred, with or without consideration.

4 B. Prior to an agency accepting property or funds  
5 that have been transferred to an agency by an organization, the  
6 agency and the organization shall enter into a written  
7 agreement that includes at least the following:

8 (1) a concise statement of the organization's  
9 purpose and of how that purpose is supportive of the agency's  
10 statutory responsibilities and authority;

11 (2) provisions explicitly describing the  
12 relationship of the agency to the organization in connection  
13 with such issues as authority, autonomy and information sharing  
14 and reporting;

15 (3) provisions defining the extent to which  
16 the organization may complement and support functions that are  
17 the statutory responsibility of the agency;

18 (4) requirements that the organization:

19 (a) if its gross annual income exceeds  
20 two hundred fifty thousand dollars (\$250,000), have a financial  
21 accounting system considered adequate under customarily and  
22 currently accepted accounting standards and that the financial  
23 affairs of the organization be audited annually in accordance  
24 with generally accepted governmental auditing standards by an  
25 independent professional auditor who would be required to

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1 furnish to the agency copies of the annual audit, which,  
2 exclusive of any lists of donors or donations, shall be a  
3 public record, and to make the associated working papers  
4 available to the agency for review upon its written request for  
5 a period of three years after the audit report date; or

6 (b) if its gross annual income is two  
7 hundred fifty thousand dollars (\$250,000) or less, file a  
8 statement with the agency in the form of a balance sheet  
9 showing the assets of the organization, its liabilities, its  
10 income, classified by general source, and its expenditures,  
11 classified by object;

12 (5) a provision requiring that any funds or  
13 property transferred to the agency by the organization be  
14 considered subject to all state laws and regulations governing  
15 the disbursement and administration of public funds and public  
16 property, except to the extent of any specific conditions of  
17 the transfer that are acceptable to the agency and do not  
18 require actions that are punishable as crimes under state law;

19 (6) a provision stating that the agency has  
20 reviewed the bylaws of the organization and found them  
21 acceptable and a provision requiring that the organization  
22 furnish copies of the bylaws to the agency;

23 (7) a provision requiring specification of the  
24 consideration that the agency received from the organization  
25 for any agency services provided in support of the

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organization; and

(8) a provision requiring the application by the organization of the standard described in Section 6-8-10 NMSA 1978 as the standard for evaluating investments of the organization.

C. The written agreement required by Subsection B of this section is not required for each transfer but is a precondition of an agency's acceptance of any transfers. The agreement may be amended by mutual written agreement of the agency and the organization.

D. ~~[Nothing in this section subjects an organization to the provisions of the Open Meetings Act or makes its records, other than the annual audit required under this section, public records within the purview of Section 14-2-1 NMSA 1978]~~ An organization that exists solely to serve the interests of an agency is subject to the provisions of the Open Meetings Act and the Inspection of Public Records Act."

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.