

SB254_ApraMaryland_Fav.pdf

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Position: FAV

February 14, 2023

Testimony on Senate Bill 254
Business Regulation - Charitable Contribution - Definition
Senate Judicial Proceedings Committee

Position: Favorable

Apra Maryland is the professional development and networking resource for Maryland-area fundraising professionals who harness information and data to drive philanthropy. With our 160 members, we urge your support of Senate Bill 254 / House Bill 72, to exempt certain organizations from the audit or financial review requirement under §6-402(b)(7) and §6-408(c)(2) of the Maryland Solicitations Act.

Amendments forthcoming from the bill sponsors and Office of the Secretary of State would exclude “charitable contributions of personal property, including household goods, furniture, appliances, or clothing, that was solicited for redistribution by the charitable organization to individuals residing in Maryland without charge” from determination of the audit or financial review requirement under §6-402(b)(7) and §6-408(c)(2) should certain criteria be met. Most notable of these criteria is that the submitting organization “Has cash receipts from charitable contributions amounting to less than 10% of the organization’s gross income from charitable contributions in the preceding fiscal year...”

Under current law, organizations with substantial charitable contributions of personal property for redistribution may be required to submit an audit or financial review. The costs of retaining a Certified Public Accountant for the execution of such an audit or financial review may be exceptionally onerous for such organizations with limited cash contributions.

Apra Maryland supports Senate Bill 254 / House Bill 72 with forthcoming sponsor amendment. We would likewise support exempting organizations with cash receipts from charitable contributions amounting to less than 25% of the organization’s gross income from charitable contributions in the preceding fiscal year.

Thank you,
Theresa Clark

President
Apra Maryland

ECFC letter of Support for HB0072_SB 0254_2-13-202

Uploaded by: Jason Herring

Position: FAV

To Whom it May Concern,

Equipment Connections for Children (<https://www.equipforchildren.org>) is a 501(c)(3) nonprofit that was established in 2009 to serve children living with disabilities in the greater Washington Metropolitan area by collecting and refurbishing costly adaptive equipment and redistributing it to other children who need it free of charge.

There are children living with disabilities who cannot get the adaptive equipment they need to help them live, learn, and thrive. These children are at high risk of further developmental delays and other negative health outcomes due to unreasonably long waiting periods, insurance rejections, and/or their families not having the ability to afford the devices. Some items such as adaptive strollers, car seats, and therapy bikes are not covered by insurance at all yet are very expensive and needed items.

Some examples of adaptive equipment are a standing frame to help children to stand, a walker or gait trainer to help with walking, an adapted seat to eat and play or a bath seat to hold them when they are bathing.

Adaptive equipment helps a child to be more independent, play and interact with their siblings or peers, move more independently, improve their learning, and have more independence in their personal skills such as eating, dressing and bathing. All of these lead to a happier child and healthier family life.

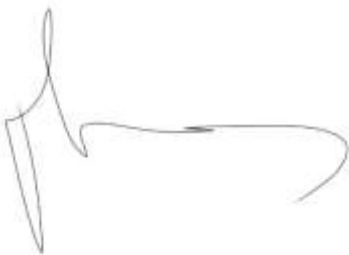
Our 2019 Gross revenue, excluding government grants, was \$827.6K, of which \$715K was in the form of noncash contributions (the equipment we refurbish and give away), and just \$112K, or 13.5%, was in the form of cash donations. We have maintained approximately this ratio of noncash donations to cash donations since our founding, although in earlier years, the amount of our available cash was even smaller.

While we have substantial gross revenues because of how the noncash donations need to be recorded, our small cash budget makes it difficult for us to meet Maryland's independent audit requirement. Further, recently revised accounting principles mean that continuing to include noncash contributions in Maryland's threshold for independent audits will remain an impediment to the growth of our services to serve larger numbers of children in need.

We therefore support the passage of SB0254, and urge that the threshold proportion of cash to total revenue be set to at least 25% to accommodate nonprofits like ours that collect, sort, refurbish, and redistribute goods to disabled Maryland children.

Thank you for your consideration of this important legislation.

Jason Herring, MBA, MPH



Executive Director
Equipment Connections for Children

SB 254 - Support with Amendment.pdf

Uploaded by: Henry Bogdan

Position: FWA

February 15, 2023

Testimony on Senate Bill 254
Business Regulation – Charitable Contribution Defined
Senate Judicial Proceedings Committee

Position: Favorable with Amendments

Maryland Nonprofits is a statewide association of more than 1500 nonprofit organizations and institutions.

As submitted this bill would have amended the definition of charitable ‘contributions’ in a way that may have unintentionally harmed the effectiveness of the state’s regulation of certain misleading solicitations.

With the amendments that we understand the sponsor and the Secretary of State’s Office are presenting, the bill would deal with a very limited set of circumstances and correct a real problem for organizations performing very valuable services in communities working with primarily volunteers, but distributing donated items in a volume that would otherwise require financial reporting out of all proportion to their actual cash flow and fiscal resources.

We urge you to give Senate Bill 254 a favorable report with the Sponsor’s amendments.



SB0254_Free_Bikes_4_Kidz_FAV.pdf

Uploaded by: Ted Cochran

Position: FWA



FB4K
FREE BIKES 4 KIDZ
MARYLAND

5178 Downwest Ride
Columbia, MD 21044

13 February 2023

Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Greetings,

Attached please find our testimony in favor of SB0254 as amended.

Thank you for your time and attention,

Best regards,

Ted Cochran
President, Free Bikes 4 Kidz Maryland
ted@fb4kmaryland.org
612 670 9103



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2023

Candid.

Free Bike 4 Kidz Maryland is testifying in favor of SB0254, as amended with language provided by the Secretary of State's office, and is requesting one small additional amendment described below.

Free Bike 4 Kidz Maryland is an all-volunteer 501(c)(3) non-profit organization geared toward helping all children ride into a happier, healthier childhood by providing bicycles to those most in need. The public donates gently used bikes, we organize hundreds of volunteers to clean and refurbish them, and then in December we give them away with new helmets to children that are referred to us by schools, churches, nonprofit organizations, and government agencies. Since our establishment in 2019, we have given away more than 6100 bicycles—nearly 2800 of them last year alone.



We are writing to describe why recent changes to Generally Accepted Accounting Principles (GAAP), combined with existing Maryland regulations, put an undue burden on nonprofits like ours that collect, refurbish, and redistribute physical property such as food, furniture, sporting equipment, books, and computers to underserved communities. SB0254 as amended would reduce this burden.

Effective in 2021, Generally Accepted Accounting Practices were revised¹ to require that noncash contributions of physical property be more fully reported as revenue on financial statements. Further, the value of the property is now required to be determined by current prices for similar property on the open market. As a result, we do a market study every year to determine the average cost of used bikes for every size we collect, from tricycles to adult bikes needed by high school students. As bikes of different sizes are donated to us, we inventory them and count their value as revenue. When we give them away, we count the same value as an expense, with no net impact on our balance sheet. These practices drive our reported revenue and expenses up, as GAAP requires, to better reflect our financial impact on the community.

While the IRS does not require nonprofits to follow GAAP², we can all agree that these practices give everyone the most accurate information about the activities and efficiency of nonprofits, and it eases the enforcement burden on regulators to have nonprofits all following the same rules.

However, the changes to GAAP have now significantly increased our gross revenue: It will exceed the thresholds for required annual reviews as defined by current Maryland statute, even though our cash receipts remain very much lower, and our noncash property contributions are passed on to our clients, not sold. We'd like to see the requirements for reviews and audits of nonprofits like ours be more focused on cash budgets and less strongly driven by noncash donations that do not generate cash revenue.

For example, in calendar year 2022³, we collected 3079 bikes valued at \$291,000, and had other noncash contributions by helmet, tool, parts, and supplies vendors of over \$50,000. We refurbished and gave away 95% of the bicycles we received, and bought new helmets to go with them, for an average gift to a Maryland child in need of over \$117. This was a significant impact, adding up to a benefit to the community of about \$327,000 derived from cash revenue of just \$53,000—of which \$18,200 was spent on helmets.

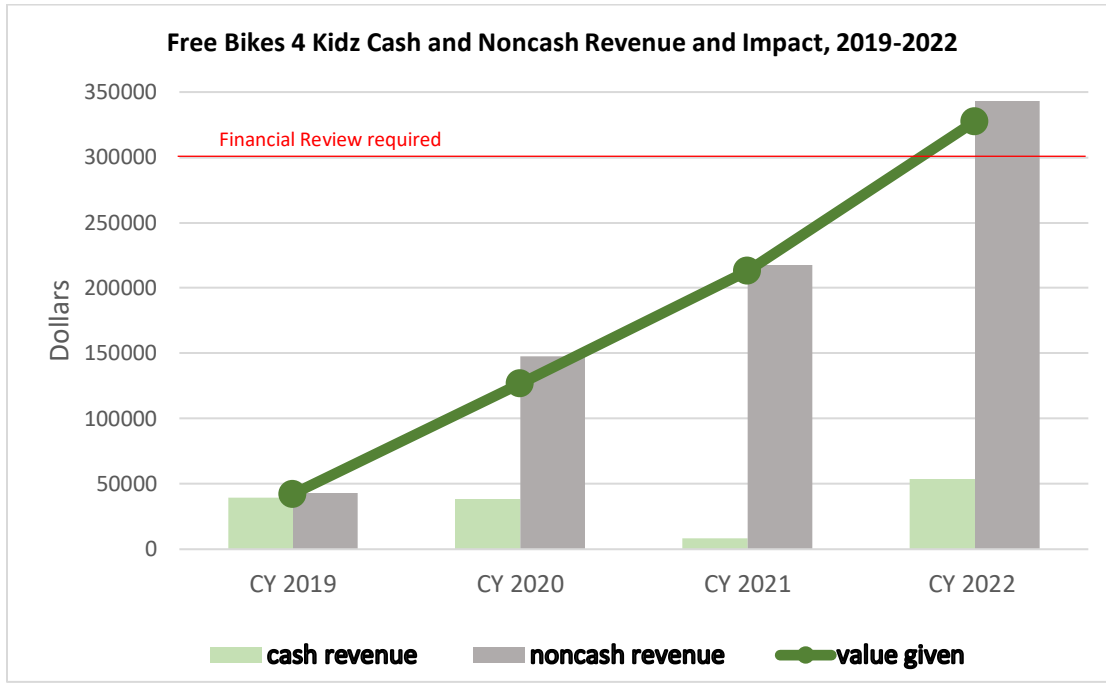
Our problem is that Maryland requires an independent financial review when gross revenue exceeds \$300,000, and an independent financial audit when gross revenue exceeds \$750,000. Thus, given the revisions to accounting standards, our GAAP-compliant treatment of noncash property contributions will require us to conduct an independent financial review at the end of our fiscal year that will cost as much as \$10,000 even though our FY 2023 cash receipts will be less than about \$50,000. As we grow, the problem will continue, and in two years we may have gross revenue of over \$750,000, requiring an independent financial audit costing as much as

¹ FASB Accounting Standards Update (ASU) No. 2020-07, *Presentation and Disclosures by Not-for-Profit Entities for Contributed Nonfinancial Assets*.

² From IRS 990 instructions: "The Financial Accounting Standards Board (FASB) Accounting Standards Codification 958 (**ASC 958**) provides standards for external financial statements certified by an independent accountant for certain types of nonprofit organizations.... While some states may require reporting according to ASC 958, the IRS doesn't. However, a Form 990 return prepared according to ASC 958 will be acceptable to the IRS."

³ Our nonprofit uses a July-June fiscal year, so the calendar year numbers above are interpolated.

\$20,000, even though our cash revenues then will likely still well under \$100,000. For comparison, we could use the \$10,000 we might need to spend on a financial review to buy and give away 1100 new Bell bicycle helmets, or to pay the incremental expenses to refurbish and give away an additional 1500 bicycles.



Maryland’s current thresholds for financial review of \$300,000, and for an audit of \$750,000, appropriately balance the cost of these assessments with the benefits to the public of ensuring that a nonprofit is properly collecting donations from the public and managing its funds. But they were established in an accounting environment in which noncash contributions were often ignored by nonprofits unless sold. We think that there is minimal benefit to the public of an audit requirement that consumes 20% of the cash budget of a nonprofit that has cash revenues that are in turn only 20% of the revenue threshold for the audit requirement, especially when the remaining 80% of the revenue consists of property that will be given away in underserved communities.

We’d have no problem complying with review and audit requirements if our *cash* budget was close to those thresholds—for example if we sold contributed property to raise funds for our work—but given that our actual cash budget is less than 15% of our total revenue according to GAAP, we think the current regulations need to be changed.

This issue currently only affects a small number of Maryland charities—those that already adhere to the revised GAAP standards, that efficiently redistribute physical property without charge, and that are small enough that they do not have cash budgets that already meet audit requirements. Based on IRS filings, these include nonprofits such as

- Equipment Connections for Children, which collects and redistributes specialized medical equipment for children with disabilities, which in 2019 had a revenue of \$827,577, only \$111,608 of which (13.5%) was cash.
- Leveling the Playing Field, which collects and redistributes sports equipment to expand access and equity within youth sports and recreation programs in under-resourced communities, which in 2019 had revenue of \$1.902M, of which \$305K (16%) was cash.
- New Life Food Pantry, which collects and distributes food to people in need, which in 2019 had revenue of \$882K, of which \$204K (23.1%) was cash.
- The Maryland Book Bank, which collects and redistributes books to children in under-resourced neighborhoods, which in 2019 had revenue of \$4.275M, of which \$264K (6.2%) was cash.

If we wish to encourage nonprofits to adopt the revised GAAP standards, we need to ensure that they are not encumbered by disproportionate regulatory costs. This bill is well-targeted toward protecting smaller nonprofits that have large impacts through the redistribution of property. If we wish to help these kinds of nonprofits grow to serve more of Maryland's families in need, we need to reduce the need for expensive financial assessments when they are still cash-poor.

The Secretary of State's office has provided language for the amendment to HB0027 that indicates general agreement that the issue described above should be addressed, but that changes the method of implementation and adds additional requirements. They would require nonprofits that exclude noncash property contributions from audit thresholds to be in good standing, to not employ fund raising professionals, to practice Generally Accepted Accounting Principles, to have independent and well-trained governing bodies, and to distribute the excluded contributions without charge to Maryland residents.

We can support all of these requirements.

However, the proposed amendment language also limits the ability of nonprofits to exclude noncash donations to those nonprofits that have less than 10% of their gross revenue in cash contributions. This is too low. Nonprofits that collect and redistribute property need cash contributions to cover the costs of transportation, cleaning, storage, sorting, repair, and refurbishing of donated property. These cash requirements typically exceed 10% of the value of the property collected, and additional expenses unique to the donation of property may also be required. For example, Free Bikes 4 Kidz buys a new helmet for every bike we give away; that cash cost alone amounts to about 10% of the value of a contributed bicycle.

The amendment language is especially limiting to smaller nonprofits: An organization with \$250,000 of donated property and cash expenses of just \$28,000 would nevertheless be required to conduct a financial review costing \$5,000 or more. Small nonprofits with large noncash contributions, such as ours, are also more subject to swings in the cash donations we require as grant funds are carried over from year to year. We have had one year out of four since our finding when we would have fallen within the proposed amendment's restriction, and that was due to cash carried over from the previous year. Of the charities listed above, only

one, the Maryland Book Bank, has consistently been able to conduct operations with cash contributions that are less than 10% of gross revenue.

We respectfully request that the legislation be further amended to change the amendment language in 6-402 (e)(4) such that the 10% limitation on cash revenue be raised to 25%, which is still stringent—it would require the nonprofit in our example above to limit their cash budget to \$69,500 or be required to conduct a financial review. And, of course, if a property-redistributing nonprofit actually had a cash budget of \$300,000, they would (and should) be required to conduct a financial review regardless.

This bill should have minimal impact on the effort required to review nonprofits. The cash and noncash revenue and distribution numbers are easily verified by state regulators—they are in Part VIII and Part IX of the IRS 990 form that is required to be submitted with our annual renewal, with details provided in Schedules I and M. We expect that the effort to review submissions by nonprofits using the provisions in this legislation would be less than that required to review the financial reviews or audits that would otherwise have to be submitted.

The second issue addressed by both SB0254 and the amendment language provided by the Secretary of State's office is that Maryland statutes currently include the donation of the use of services, materials, equipment, and facilities in the definition of charitable contributions, while the IRS does not⁴. Nevertheless, Maryland's instruction to nonprofits regarding thresholds for financial reviews and audits has been to follow the IRS rules, and SB0254 as amended finally changes the Maryland's legal definition of revenue to be consistent with this longstanding practice. We support this change for the sake of consistency and ease of reporting.

In conclusion, we'd like the statutes to officially recognize the current practice of excluding the same types of noncash contributions from revenue that are already excluded by the IRS. We'd like Maryland to recognize that while the value of donated property that is later redistributed without cost to Maryland residents should be treated as revenue, it should not be included in the thresholds for expensive financial reviews or audits.

We'd like to continue to adhere to GAAP and reflect the true value of the noncash contributions we receive and give away. We'd like to give away every refurbishable bike we receive, rather than sell some to help pay for financial reviews and audits. We'd like to spend more time fixing bikes for children in need and less time fundraising.

For all of these reasons, we support SB0254 as amended, especially if the legislation is amended as we request to incorporate more reasonable proportions of cash to noncash donations.

⁴ GAAP, unlike longstanding IRS practice, also now requires reporting the donated use of space and services as noncash income, but, like noncash contributions of property, accountants and auditors can easily exclude this income from IRS and Maryland reporting.