

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 638

INTRODUCER: Commerce and Tourism Committee and Senator Brandes

SUBJECT: Charities

DATE: February 10, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	Fav/CS
2.	_____	_____	AFT	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 638 updates the Solicitation of Contributions Act to provide increased oversight by the Department of Agriculture and Consumer Services (DACS) for charitable organizations and sponsors, professional fundraising consultants, and professional solicitors.

The bill generally:

- Requires that any changes to information in a registration statement be submitted to DACS within 10 days of the change;
- Requires automatic suspension of a registration for failure to disclose any information related to certain criminal or administrative actions;
- Permits increased processing times for DACS if the applicant discloses any information related to certain criminal or administrative actions against it;
- Authorizes DACS to deny or revoke an application if the applicant or its agent has had certain criminal or administrative action taken against it;
- Prohibits the employment of persons with certain criminal history;¹
- Requires notices to be provided for all solicitations and confirmations; and
- Requires professional fundraising consultants and professional solicitors to only enter into contract with charitable organizations and sponsors registered under ch. 496, F.S.

¹ Disqualifying crimes include fraud, theft, larceny, embezzlement, fraudulent conversion, and misappropriation of property.

Specifically, the bill:

Charitable Organizations and Sponsors

- Authorizes DACS to enter a disqualification order for certain charities not meeting expense requirements, which disqualifies the charity from receiving sales tax exempt status for at least a year;
- Clarifies the requirements related to financial statements;
- Requires certain charities to adopt conflict of interest policies; and
- Requires certain charities to file supplemental financial disclosures and quarterly disaster relief statements.

Professional Solicitors

- Creates a new, annual license for officers, directors, trustees, and owners of a professional solicitor and any employee of the solicitor conducting telephone solicitations;
- Updates the definition of “professional solicitor” to include solicitors located in Florida that solicit outside of Florida;
- Creates a license fee of \$100 and a \$10 fee, similar to telemarketers, for application updates for the professional solicitors license;
- Requires professional solicitation businesses to include additional application information, such as all the telephone numbers the solicitor will use and a copy of any script, presentation, or sales literature used;
- Requires professional solicitors to include additional information in the notice required before beginning a solicitation campaign, such as a statement of the minimum percentage of gross receipts from contributions that will be remitted to the charity; and
- Prohibits a professional solicitor from failing to remit to a charity the disclosed guaranteed minimum percentage of gross receipts from the solicitation campaign.

Donation Collection Receptacles

- Requires collection receptacles operated by charities to display a permanent sign that provides the name, address, telephone number, and registration number of the charity; and
- Requires collection receptacles operated by other organizations (such as for-profit businesses) to display a permanent sign on the receptacle that provides the organization’s name, address, and telephone number, and the statement: “This is not a charity. Donations made here support a for-profit business and are not tax deductible.”

Prohibited Acts and Penalties

- Prohibits a person from submitting false, misleading, or inaccurate information regardless of whether the person knows it is false, misleading, or inaccurate;
- Increases from \$1,000 to \$5,000 the fine DACS may levy for violations of the chapter and makes the fine applicable to 501(c)(3) organizations; and
- Authorizes a fine up to \$10,000 for any violation that involves fraud or deception.

The bill updates the definition of “religious institution” to bring it in line with federal tax laws, and it provides a severability clause.

Lastly, the bill appropriates \$235,352 in recurring funds and \$239,357 in nonrecurring funds to DACS and authorizes 4 full-time equivalent positions to DACS to implement this act.

II. Present Situation:

In Florida, the solicitation of contributions by charitable organizations and sponsors is regulated by the Solicitation of Contributions Act (the SCA).² There are currently over 18,000 charitable organizations and sponsors, 404 professional fundraising consultants, and 87 professional solicitors registered in Florida. Of those 87 professional solicitors, 54 are headquartered outside Florida.³

The SCA contains basic registration, financial disclosure, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors. Recent news reports suggest current regulations under the SCA may be insufficient to effectively monitor and regulate these entities to ensure they are fulfilling their purpose as charitable entities.⁴

III. Effect of Proposed Changes:

Charitable Organizations and Sponsors⁵

Registration Statements

Currently, under s. 495.405, F.S., any charitable organization or sponsor⁶ that intends to solicit donations in Florida must annually register with DACS and pay a registration fee⁷ before soliciting donations.⁸ Registration includes a financial report,⁹ a statement of the purpose of the charity, how donations will be used, names of individuals in charge of solicitation activities, and proof of federal tax exempt status. The charity must also identify any professional solicitors and fundraising consultants the charity will use, along with the terms of the arrangements for compensation to be paid to the consultant and solicitor. The registration must also include a statement related to the charity's activity in other states, including whether the charity is

² Chapter 496, F.S. The majority of the provisions in the SCA “do not apply to bona fide religious institutions, educational institutions, and state agencies or other government entities or persons or organizations who solicit or act as professional fundraising consultants solely on their behalf.” Section 496.403, F.S. Nor do the majority of the provisions in the SCA apply to political contributions solicited in accordance with election laws. *Id.*

³ Conversation with Amy Topol, Assistant Director, Division of Consumer Services, DACS, Jan. 4, 2014.

⁴ The Tampa Bay Times, in conjunction with the CNN and The Center for Investigative Reporting, recently published a number of articles related to charities. *America's Worst Charities*, Tampa Bay Times website, available at <http://www.tampabay.com/topics/specials/worst-charities.page> (last visited Feb. 4, 2014).

⁵ A “sponsor” is “a group or person which is or holds itself out to be soliciting contributions by the use of any name which implies that the group or person is in any way affiliated with or organized for the benefit of emergency service employees or law enforcement officers and which is not a charitable organization.” Section 496.404(21), F.S. For a sponsor to solicit contributions in this state, it must be a membership organization that, among other things, has a membership that consists of at least 10 percent or 100 members, whichever is less, who are employed as law enforcement officers or emergency services employees. Section 496.426, F.S.

⁶ As used in this analysis, the term “charity” or “charities” refers to both charitable organizations and sponsors, unless otherwise indicated.

⁷ The registration fee varies from \$10 to \$400 based on the amount of contributions received by the charity. Section 496.405(4), F.S.

⁸ *Id.* at (1)(a) and (c), F.S. Certain small charities are exempt from the registration and financial reporting requirements in ss. 496.405 and 496.407, F.S. *See id.*; s. 496.406, F.S.

⁹ The information that must be included in the financial report is identified in s. 496.407, F.S. *See “Financial Statements”* section below.

authorized to operate in another state; whether the charity's registration has been denied, suspended, or revoked in another state; and whether the charity or any person associated with the charity has been subject to any adverse administrative actions or criminal convictions in any state.¹⁰

Each affiliate of a parent charity required to register under s. 495.405, F.S., must either file a separate registration and financial report or provide the information to the parent organization to file a consolidated registration. The consolidated registration must include financial reports for the parent organization and each of its Florida affiliates. However, if all contributions received by the affiliates are remitted directly into a single account with the parent organization, the parent organization may submit one consolidated financial report.¹¹

A charity must renew its registration annually; if any information submitted on the original registration statement changes, the charity must update that information on its renewal registration. DACS may extend the time for filing an annual renewal statement or financial report for up to 60 days, during which time the charity's previous registration remains in effect. However, a charity's registration may not continue in effect after the date the charity should have filed its financial report, the charity may not file its renewal statement until it has filed its financial report.¹² Failure to file a renewal statement by the date on which the statement and financial report were due may result in a late filing fee of \$25 per month.¹³

After receiving a registration statement, DACS has 15 business days to either approve, deny, or notify the charity that it must provide additional information. If, after 15 days, no additional information is requested, and DACS has not approved or denied the registration, it is deemed approved. If additional information is requested, DACS has 15 days after the information is received to either approve or deny the registration.¹⁴

Section 4 amends s. 496.405, F.S., to require that any changes to the information in a charity's registration statement related to the charity's activity in other states, including criminal, administrative, or other actions against the charity, must be reported to DACS within 10 days of the change occurring. If the charity discloses any information related to criminal, administrative, or other actions against the charity in its initial registration statement or annual renewal statement, the bill gives DACS additional time to process the applications under the processing time limits in ch. 120, F.S.¹⁵ Additionally, if a charity fails to disclose any information related to criminal, administrative, or other actions against the charity, its registration will be automatically suspended until the charity submits the required information related to those actions to DACS.

¹⁰ Section 496.405(2), F.S.

¹¹ *Id.*

¹² *Id.* at (1).

¹³ *Id.* at (4)(b).

¹⁴ *Id.* at (7).

¹⁵ The time limits for processing a registration under ch. 120, F.S., are longer than those in ch. 496, F.S. For example, under ch. 120, F.S., an agency has 30 days to request additional information from an application, and the agency has 90 days after receipt of a completed application to approve or deny a registration.

The bill also requires that the consolidated financial statements filed by charities with affiliates must reflect the activities of each affiliate, including all contributions received by each entity, all payments made to each entity, and all administrative fees assessed to each entity.

The bill repeals DACS' authority to extend the time for filing an annual renewal statement or financial statement. The bill also provides that a charity's registration will expire with no further action required by DACS if the charity fails to timely file its renewal statement or it fails to provide a financial statement within the extension periods under s. 496.407, F.S.,¹⁶. Additionally, DACS will have the authority to deny or revoke a charity's registration if the charity or any of its officers, directors, or trustees, has agreed with another state to cease soliciting contributions within that state or has been ordered by any court or agency to cease contributions in any state.

Lastly, the bill requires a charity to immediately notify DACS in writing when it ceases solicitation activities or participation in charitable sales promotions in Florida.

Fundraising restrictions for individuals with criminal records

Currently, under s. 496.405(8), F.S., charities are prohibited from allowing any of its officers, directors, trustees, or employees to solicit contributions on behalf of the charity if he or she has, within the last 10 years, been convicted of or pled guilty to any felony or any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or has been enjoined from violating any law relating to a charitable solicitation.

Section 4 of the bill also amends s. 496.405(8), F.S., to clarify that in addition to the charity, no officer, director, trustee, or employee of the charity may allow any of its officers, directors, trustees, or employees to solicit contributions on behalf of the charity if he or she has a criminal history as described above. The bill also clarifies that the applicable criminal history includes crimes or events that occurred in other states and any misdemeanor in another state that constitutes a disqualifying felony in Florida.

Conflict of Interest Transactions

Currently, ch. 496, F.S., does not regulate conflict of interest transactions involving charities.

Section 5 creates s. 496.4055, F.S., to require the board of directors, or a board committee, of a charity required to register with DACS pursuant to s. 496.405, F.S., to adopt a policy regarding conflict of interest transactions. A "conflict of interest" is defined as a transaction between a charity and another party in which a director, officer, or trustee of the charity has a direct or indirect interest. The term includes the sale, lease, or exchange of property to or from the charity; the lending to or borrowing of money from the charity; and the payment for services provided to or from the charity.

Financial Statements

Currently, under s. 496.407, F.S., a charity that is required to register with DACS must file an annual financial report for the preceding year with DACS. The report must include the following: a balance sheet; a statement of support, revenue, and expenses; identification of any

¹⁶ See "Financial Statements" section below.

charities, professional fundraising consultants, professional solicitors, and commercial co-venturers used and the amounts received from each of them; and a statement of functional expenses that must include program expenses, management and general expenses, and fundraising expenses.¹⁷ A charity may choose to include a financial report that has been audited by an independent certified public accountant (CPA) or an audit with an opinion by an independent CPA. In lieu of the financial report a charity may submit a copy of its IRS Form 990 or Form 990-EZ.

Section 6 amends s. 496.407, F.S., to change the name of the financial reporting document required by DACS from “financial report” to “financial statement.”¹⁸ The bill clarifies and adds new information that must be included in the required financial statement. Specifically, the financial statement must include a statement of functional expenses that must include program service costs, management and general costs, and fundraising costs.¹⁹ “Management and general costs” are defined in the bill as all costs of a charity that are not identifiable with a single program or fundraising activity but which are necessary to conducting the charity’s programs and activities and necessary to the charity’s existence. The term includes expenses for business management, salaries, and overhead. “Program service costs” are defined in the bill to mean all expenses incurred primarily to accomplish the charity’s purposes; however, the term does not include fundraising costs.

The bill also limits the option for charities to submit a copy of its IRS Form 990 or Form 990-EZ in lieu of a financial statement to only those charities that receive less than \$500,000 in annual contributions. The bill also repeals the option for charities to include an audited financial report and replaces it with a requirement that financial statements be audited or reviewed. The type of audit or review required varies based on the amount of annual contributions received by the charity: for charities that receive less than \$500,000 in annual contributions, an audit or review is optional; for charities that receive at least \$500,00 but less than \$1 million in annual contributions, the financial statement must be reviewed or audited by an independent CPA; and for charities that receive \$1 million or more in annual contributions, the financial statement must be audited by an independent CPA. The bill also requires that audits must be performed by an independent CPA in accordance with generally accepted auditing standards and that reviews must be performed by an independent CPA in accordance with the Statements on Standards for Accounting and Review Services. Audited and reviewed financial statements must be accompanied by a report signed and prepared by the independent CPA that performed the audit or review.

¹⁷ “Fundraising costs” are defined in current law as “those costs incurred in inducing others to make contributions to a charitable organization or sponsor for which the contributors will receive no direct economic benefit. Fundraising costs include, but are not limited to, salaries, rent, acquiring and obtaining mailing lists, printing, mailing, and all direct and indirect costs of soliciting, as well as the cost of unsolicited merchandise sent to encourage contributions.” Section 496.404(11), F.S. However, ch. 496, F.S., currently does not define “program expenses” or “management and general expenses.”

¹⁸ Section 4 of the bill updates the phrase “financial report” to “financial statement” in s. 496.405, F.S., to reflect the changes made to s. 496.407, F.S., in section 6 of the bill.

¹⁹ Definitions of “program service costs” and “management and general costs” are added to s. 496.404, F.S., in Section 3 of the bill.

Lastly, the bill authorizes DACS, upon a showing of good cause by a charity, to extend the time for filing a financial statement up to 180 days. DACS is also authorized to require that an audit or review be conducted for any financial statement submitted by a charity.

Section 7 creates s. 496.4071, F.S., to require charities with more than \$1 million in total revenue that spent less than 25 percent of the charity's total annual functional expenses on program service costs to file a supplemental financial disclosure in addition to the financial statement required under s. 496.407, F.S. The supplemental financial disclosure must be filed within 30 days of receiving a request by DACS to provide such information and must include:

- The dollar amount and the percentage of total revenue and charitable contributions allocated to administrative functions related to managing and administering the charity.
- The name of and amount earned by or paid to all employees or consultants who earned or were paid more than \$100,000.
- The name of and amount paid to all service providers who were paid \$100,000 or more and a description of the services provided.
- The amount and percentage of total revenue and charitable contributions allocated to programs.
- The details of any transactions between the charity and an officer, trustee, or director of the charity or his or her immediate family; any entity controlled by an officer, trustee, or director of the charity or his or her the immediate family; and any entity that employed or engaged for consultation an officer, trustee, or director the charity or his or her immediate family.²⁰

Section 8 creates s. 497.4072, F.S., to require charities that solicit donations related to a specific disaster or crisis and receive at least \$100,000 in donations in response to such solicitations to file quarterly disaster relief statements with DACS. A "crisis" is defined in the bill as an event that garners widespread national or global media coverage due to an actual or perceived threat of harm to an individual, a group, or a community. Likewise, a "disaster" is defined in the bill as a natural, technological, or civil event, including an explosion, chemical spill, wildfire, tornado, hurricane, drought, or flood, which affects one or more countries and causes sufficient damage to result in an official declaration of a state of emergency or an official request for international assistance.²¹ The bill requires DACS to provide a list on its website of disasters and crises that are subject to the quarterly disaster relief statement within 10 days of the disaster or crisis occurring.

The quarterly statement must detail the donations received and how the funds were expended. A charity must file the first quarterly statement 3 months after it has received at least \$100,000 in donations following commencement of solicitations for the specific disaster or crisis, and the charity must continue to file quarterly statements until the quarter after all donations raised in response to the solicitation are expended.

Notice statements

²⁰ The term "immediate family" is defined in section 7 of the bill to mean a parent, spouse, child, sibling, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.

²¹ Definitions of "disaster" and "crisis" are added to s. 496.404, F.S., in Section 3 of the bill.

Currently, s. 496.411(3), F.S., requires every charity that is required to register under s. 496.405, F.S., to conspicuously display the following statement in capital letters on every printed solicitation, written confirmation, receipt, or reminder of a contribution: “A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free within the state. Registration does not imply endorsement, approval, or recommendation by the state.” The statement must also include a toll-free number for DACS.

Section 12 amends s. 496.411(3), F.S., to require charities that are exempt from registration under s. 496.406(1)(d), F.S., to provide a notice statement. Additionally, the notice statement must be included with all solicitations and confirmations regardless of form. The notice statement must also include a DACS website address where registration information can be obtained. If the solicitation is done through a website, the notice statement must be conspicuously displayed on the webpage where donations are requested.

Tax-Exempt Status and Disqualifying Events

Currently, organizations that are exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code, such as charities, are exempt from Florida’s sales and use tax.²² To receive an exemption, the organization must submit to the Florida Department of Revenue (DOR) a copy of the Internal Revenue Service’s (the IRS) letter determining the organizations 501(c)(3) status.²³ After receiving the IRS determination letter and making a determination that the organization is actively engaged in an exempt endeavor, DOR issues a certificate of exemption to the organization. Under current law, DACS is not part of determining whether a charity operating in Florida should be exempt from sales tax. Specifically, DACS does not have authority to disqualify a charity from receiving any sales tax exemption based on the charity’s allocation of expenses to accomplish the charity’s stated purpose.

Section 18 creates s. 496.430, F.S., to give DACS authority to disqualify a charity from receiving a sales tax exemption certificate from DOR. DACS may issue the disqualification order if it determines, based upon the average of functional expenses and program service costs for the 3 most recent years, that the charity has failed to expend at least 25 percent of its total annual functional expenses on program service costs. DACS may decline to issue a disqualification order if the charity establishes that payments were made to affiliates that should be considered in calculating the program service costs, that revenue was accumulated for a specific program purpose consistent with the representations it made in solicitations, or any other mitigating circumstances. Additionally, charities that are not required to register under ch. 496, F.S., or have been in existence less than 4 years are exempt from the disqualification provisions of s. 496.30, F.S.

A disqualification order must remain in effect for at least 1 year and until DACS receives sufficient evidence from the charity that demonstrates it expends at least 25 percent of its total annual functional expenses on program service costs. The charity may not submit such evidence to DACS earlier than 1 year after the disqualification order becomes final and may not submit such information to DACS more than once a year. DACS must also consider any financial

²² Section 212.08(7)(p), F.S.

²³ Section 212.084, F.S.

statement that was submitted by the charity pursuant to s. 496.407, F.S., after the disqualification order became final.

DACS must submit a disqualification order to DOR within 30 days after the order becomes final, and DOR must revoke or refuse to grant a sales tax exemption certificate within 30 days after receiving the final order. A final disqualification order is conclusive as to the charity's entitlement to any sales tax exemption, and a charity may not appeal the revocation or denial of a sales tax exemption certificate by DOR if the revocation or denial is based upon a final disqualification order from DACS. A charity may appeal a disqualification order from DACS by requesting a hearing within 21 days of being notified the order has been issued. The hearing will be conducted pursuant to ch. 120, F.S.

Sections 1 and 2 of the bill amend ss. 218.08 and 218.084, F.S., to exclude from the sales and use tax exemption for 501(c)(3) organizations, any charity that is subject to a final disqualification order issued by DACS. DOR's revocation or denial of a tax exempt certificate may be challenged under ch. 120, F.S., only as to whether a disqualification order is in effect. If a charitable organization wishes to challenge the validity of a disqualification order issued by DACS, it must do so pursuant to the procedures under s. 496.430(2), F.S.

Professional Fundraising Consultants

Registration

Currently, professional fundraising consultants are required to annually register and pay a \$300 fee to DACS pursuant to s. 496.409, F.S., before operating in Florida.²⁴ In addition to name and address information, the registration must also indicate whether any of the owners, directors, officers, or employees of the consultant are related to any other directors, officers, owners, or employees, any charity under contract to the consultant, or any supplier or vendor providing goods or services to any charity under contract with the consultant. Additionally, the registration must indicate and explain whether the consultant or any of its officers, directors, trustees, or employees have been convicted or pled guilty within the past 10 years to any felony or a crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity. Finally, the registration must indicate and explain whether the consultant or any of its officers, directors, trustees, or employees have been enjoined from violating any law relating to a charitable solicitation.²⁵

After receiving the registration statement, DACS has 15 business days to either approve the registration or notify the consultant that the registration requirements are not satisfied. If, after 15 days DACS has not notified the consultant, the registration is deemed approved.²⁶

In addition to the registration requirement, every agreement between a fundraising consultant and a charity must be in writing and signed by two authorized officials of the charity and must be filed with DACS at least 5 days before the consultant begins providing services.²⁷

²⁴ Section 496.409(1)(3), F.S.

²⁵ *Id.* at (2).

²⁶ *Id.* at (6).

²⁷ *Id.* at (4).

Sections 9 amends s. 496.409, F.S., to provide that professional fundraising consultants who enter into agreements with charities may do so only if the charity has complied with ch. 496, F.S. If the consultant discloses in its initial registration or renewal application any information related to criminal, administrative, or other actions against the consultant, its officers, directors, trustees, or employees, the bill gives DACS additional time to process the application under the processing time limits in ch. 120, F.S.²⁸ Additionally, if a consultant fails to disclose any information related to criminal, administrative, or other actions against the consultant, its officers, directors, trustees, or employees, its registration will be automatically suspended until the consultant submits required information to DACS. DACS will also have the authority to deny or revoke a consultant's registration if the consultant or any of its officers, directors, or trustees, has had the right to solicit contributions revoked in any state, has entered into an agreement with any state to cease soliciting contributions within that state, or has been ordered by any court or agency to cease soliciting contributions.

Restrictions on individuals with criminal records

Currently, under s. 495.409(9), F.S., a person may not act as a professional fundraising consultant, and a professional fundraising consultant may not employ any person, if, within the last 10 years, the person has been convicted of or pled guilty to any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or has been enjoined from violating any law relating to a charitable solicitation.²⁹

Section 9 also amends s. 495.409(9), F.S., to clarify that in addition to the consultant, no officer, director, trustee, or employee of the consultant may employ anyone with a criminal history as described above. The bill also clarifies that the applicable criminal history includes crimes or events that occurred in other states.

Professional Solicitor

Registration

Currently, s. 496.410, F.S., requires professional solicitors to annually register and pay a \$300 fee to DACS before operating in Florida.³⁰ Information that must be provided for registration includes the address of the business, the names and addresses of owners, officers, and directors, and the names of anyone in charge of any solicitation activity. The registration must also indicate whether any of the owners, directors, officers, or employees of the solicitor are related to any other directors, officers, owners, or employees of the solicitor, any charity under contract to the solicitor, or any supplier or vendor providing goods or services to any charity under contract with the solicitor. Additionally, the registration must indicate and explain whether the solicitor or any of its officers, directors, trustees, or employees or agents involved in solicitation have been convicted or pled guilty within the past 10 years to any felony or a crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charity. Finally, the registration must indicate and explain, if applicable, whether the solicitor or any of its officers, directors, trustees, or employees

²⁸ *Supra* note 15.

²⁹ Section 496.409(9), F.S.

³⁰ "A professional solicitor that is a partnership or corporation may register for and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees." Section 496.410(3), F.S. Additionally, professional solicitors are required to maintain a \$50,000 bond. *Id.* at (4).

or agents involved in solicitation have been enjoined from violating any law relating to a charitable solicitation.³¹

After receiving the registration statement, DACS has 15 business days to either approve the registration or notify the solicitor that the registration requirements are not satisfied. If, after 15 days DACS has not notified the solicitor, the registration is deemed approved.³²

In addition to being required to register, solicitors must also file a solicitation notice with DACS at least 15 days before beginning a solicitation campaign or event.³³ Section 496.410(6), F.S., requires the notice to include a description of the solicitation campaign; each location and telephone number from which the solicitation will be conducted; the name and address of each person responsible for supervising the campaign; a statement as to whether the solicitor will have custody of donations; the account information for each account where receipts from the campaign are to be deposited; a description of the charity for which the campaign is being carried; the fundraising methods to be used; and copy of the contract between the solicitor and charity.

Section 3 of the bill amends s. 496.404, F.S., to update the definition of “professional solicitor” to include professional solicitors located in Florida that solicit outside of Florida.

Section 10 amends s. 495.410, F.S., to require professional solicitors to include the following additional information in its registration: a list of all telephone numbers the solicitor will use to solicit contributions and the address associated with each telephone number and any fictitious names associated with such address; a copy of any script, outline, or presentation used by the solicitor; and a copy of sales information or literature provided to a donor or potential donor.

The bill also clarifies that under s. 496.410(3), F.S., a solicitor’s registration and fee is not completed or paid by a professional solicitor on behalf of all of the solicitors partners, members, officers, directors, agents, and employees. Instead of falling under the solicitor’s registration, these individuals will now be required to obtain a solicitor’s license under s. 496.4101, F.S., which is created in section 11 of the bill.³⁴

If a solicitor discloses in its initial registration or renewal application any information related to criminal, administrative, or other actions against the solicitor, its officers, directors, trustees, or employees or agents, the bill gives DACS additional time to process the application under the processing time limits in ch. 120, F.S.³⁵ If a solicitor fails to disclose any information related to criminal, administrative, or other actions against the solicitor, its officers, directors, trustees, employees, or agents, its registration will be automatically suspended until the solicitor submits the required information to DACS. DACS will also have the authority to deny or revoke a solicitor’s registration if the solicitor or any of its officers, directors, trustees, or agents has had the right to solicit contributions revoked in any state, has entered into an agreement with any

³¹ *Id.* at (2).

³² *Id.* at (5).

³³ *Id.* at (6).

³⁴ Conversation with Amy Topol, Assistant Director, Division of Consumer Services, DACS, Jan. 5, 2014.

³⁵ *Supra* note 15.

state to cease soliciting contributions within that state, or has been ordered by any court or agency to cease soliciting contributions.

The bill requires professional solicitors to include the following additional information in the solicitation notice required under s. 495.410(6), F.S., before beginning a solicitation campaign:

- A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charity, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price which will be remitted to the charity.
- The percentage of a contribution that may be tax-deductible.
- A statement as to whether any owner, director, officer, trustee, or employee of the solicitor is related to another officer, director, owner, trustee, or employee of the solicitor, a charity under contract with the solicitor, or any supplier or vendor providing goods or services to a charity under contract with the solicitor.
- The beginning and ending dates of the campaign.
- A copy of any script, outline, or presentation used by the solicitor.
- A copy of sales information or literature provided to a donor or potential donor.

The bill provides that professional solicitors who enter into agreements with charities may do so only if the charity has complied with ch. 496, F.S.

Restrictions on individuals with criminal records

Under s. 496.410(14), F.S, a person may not act as a professional solicitor, and a solicitor may not employ any person, who has been convicted or pled guilty within the last 10 years to a felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or has been enjoined from violating any law relating to a charitable solicitation.

Section 10 also amends s. 495.410(14), F.S., to clarify that in addition to the solicitor, no officer, director, trustee, or employee of the solicitor may employ anyone with a criminal history as described above. The bill also clarifies that the applicable criminal history includes crimes or events that occurred in other states and any misdemeanor in another state that constitutes a disqualifying felony in Florida.

Licensure of professional solicitors

Beyond the registration and notice provisions for professional solicitors in s. 496.410, F.S., current law does not require solicitors or their employees to be licensed to operate in Florida.

Section 11 creates s. 496.4101, F.S., to establish a licensing scheme for professional solicitors. The bill requires each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor conducting telephonic solicitations to obtain a solicitor license from DACS. A license can be obtained by paying a \$100 application fee and completing an application that includes the following information:

- The name, address, date of birth, and identification number of a government-issued ID of the applicant.

- Indicate whether the applicant has been convicted of or pled guilty in any state to any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined from violating any law relating to a charitable solicitation.
- Indicate whether the applicant is involved in pending litigation in any state or has had entered against her or him an injunction, a temporary restraining order, a final judgment or order, or any similar document, in any civil or administrative action involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property.

Applicants must also submit a set of fingerprints along with payment of a fee equal to the federal and state fingerprint processing costs for a criminal background check and fingerprint retention.³⁶ The Florida Department of Law Enforcement (FDLE) must retain the fingerprints and enroll them in the Federal Bureau of Investigation's (FBI) national retained print arrest notification program once FDLE begins participating in the program. DACS is required to screen background results to determine if an applicant meets licensure requirements. When a person is no longer licensed, DACS must notify FDLE. Additionally, DACS must adopt rules that allow applicants to temporarily engage in solicitation activities while the solicitor license is being processed.

Any material change to the information submitted in the licensing application must be reported to DACS within 10 days of the change along with payment of a \$10 fee.³⁷ A license must be renewed annually; an un-renewed license automatically expires. The annual renewal fee is \$100. All fees, less administrative costs, will be deposited into the General Inspection Trust Fund. Fingerprint fees are forwarded by DACS to FDLE for fingerprint processing and retention.

The bill also makes it a violation of ch. 496, F.S., to provide inaccurate or incomplete information in the initial or renewal application for a solicitor license; for any person to fail to maintain a license; and for a solicitor to allow, require, permit, or authorize an employee without an active license to conduct telephonic solicitations.

Additionally, DACS may deny or revoke a solicitor's license if the solicitor has had the right to solicit contributions revoked in any state, has entered into an agreement with any state to cease soliciting contributions, or is subject to any disqualification specified in s. 496.410(14), F.S., which relates to the solicitor's criminal history.

Notice statements and requested information

Currently, s. 496.412(1), F.S., requires that in the course of requesting a donation, a solicitor must clearly disclose the name of the solicitor, the name and state of the principal place of business of the charity, and a description of how the contributions raised by the solicitation will be used. Like charities, solicitors are also required to conspicuously state the following in capital letters on every written solicitation, written confirmation, receipt, or reminder of a contribution: "A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free within the state. Registration does not imply

³⁶ The fee for fingerprint processing is \$24. Section 943.053(3)(b), F.S.

³⁷ The \$10 change fee is also charged to telemarketers under s. 501.609(2), F.S.

endorsement, approval, or recommendation by the state.” The statement must include a toll-free number for DACS.³⁸

Additionally, if a person being solicited requests the percentage of the gross revenue that the charity will receive from the solicitation campaign or requests the percentage of the contribution which may be tax-deductible, the solicitor must provide the requested information in writing within 14 days of the request.³⁹

Section 13 amends s. 496.412(1), F.S., to expand the use of notice statements by solicitors to all solicitations rather than only on written solicitations and confirmations. The notice statement must also include a DACS website where registration information can be obtained. If the solicitation is done through a website, the notice statement must be conspicuously displayed on the webpage where donations are requested.

The bill also provides an alternate to the written response required when a person being solicited requests the percentage of the gross revenue that the charity will receive from the solicitation campaign or requests the percentage of the contribution which may be tax-deductible as a charitable contribution. The solicitor may immediately notify the person that the information is available on DACS’ website or by calling the division’s toll-free number.

Collection Receptacles Used for Donations

Some charities utilize collection receptacles located in parking lots or along roads as a place for people to donate clothing and other goods. Recent reports indicate that for-profit businesses have begun using collection receptacles that look similar to those used by charities.⁴⁰ The business uses the receptacles to collect clothes and sell them at a profit. Current law does not regulate the use of collection receptacles either by charities or by for-profit businesses.⁴¹

Section 14 creates s. 496.4121, F.S., to regulate the use of collection receptacles. The bill defines a “collection receptacle” as a receptacle used to collect donated clothing, household items, or other goods for resale. The bill requires all collection receptacles to display a permanent sign on each side of the receptacle. The information on the sign must be printed in letters that are at least 3 inches in height and no less than one-half inch in width, in a color that contrasts with the color of the receptacle. For receptacles used by a charity required to register under ch. 496, F.S., the sign must provide the name, address, telephone number, and registration number of the charity. For receptacles placed by an organization not required to register under ch. 496, F.S., or not claiming an exemption pursuant to s. 496.406, F.S., the sign must include the name, telephone

³⁸ Section 496.412(1)(c), F.S.

³⁹ *Id.* at (d)-(e).

⁴⁰ See Evan Williams, *Recycling companies co-opt the look of charity for profit*, FORT MYERS FLORIDA WEEKLY, Jan. 23, 2013, available at http://fortmyers.floridaweekly.com/news/2013-01-23/Top_News/Recycling_companies_coopt_the_look_of_charity_for_.html (last visited Jan 30, 2014).

⁴¹ In response to the rapid increase in the number of collection receptacles used by for-profit businesses, some Florida cities have enacted restrictions on their use. See Ariel Barkhurst, *Deerfield Beach passed a law allowing nonprofit clothing bins*, SUN SENTINEL, Feb. 22, 2013, available at http://articles.sun-sentinel.com/2013-02-22/news/fl-deerfield-donation-bins-20130218_1_donation-bins-salvation-army-commissioner-bill-ganz (last visited Jan. 30, 2014); Heather Carney, *Miramar cracks down on clothing donations bins*, SUN SENTINEL, Nov. 11, 2013, available at http://articles.sun-sentinel.com/2013-11-11/news/fl-miramar-regulates-clothing-donations-bins-20131110_1_for-profit-bins-reuse-clothes-donations (last visited Jan. 30, 2014).

number, and address of the business and the statement: “This is not a charity. Donations made here support a for-profit business and are not tax deductible.” The bill also requires a charity using a collection receptacle to provide a donor with documentation of its tax-exempt status and registration, if requested.

Prohibited Acts and Penalties

Prohibited Acts

Currently, s. 496.415, F.S., contains a list of seventeen acts that are prohibited for any person when done in connection with any solicitation or charity sales promotion. Examples of prohibited acts include: violating any of the requirements in ch. 496, F.S.; knowingly submitting false, misleading, or inaccurate information in a document that is filed with DACS, provided to the public, or offered in response to a request or investigation by DACS, the Department of Legal Affairs, or the state attorney; and representing that a charity will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign greater than that identified in filings with the department, or that a charity will receive an actual or estimated dollar amount or percentage of goods or services purchased or used in the charity sales promotion that is greater than that agreed to with a vendor.

Civil and Criminal Penalties

Any violation of ch. 496, F.S., including engaging in any of the prohibited acts identified in s. 496.415, F.S., is a violation of the Florida Deceptive and Unfair Practices Act⁴² and may also result in a civil action by DACS.⁴³ Additionally, any willful and knowing violation of ch. 496, F.S., is a third-degree felony punishable by up to 5 years in prison and a fine of up to \$5,000, and any subsequent conviction is a second-degree felony punishable by up to 15 years in prison and a fine of up to \$10,000.⁴⁴

Section 15 amends s. 496.415, F.S., to prohibit a person from submitting false, misleading, or inaccurate information in a document that is filed with DACS, provided to the public, or offered in response to a request or investigation by DACS, the Department of Legal Affairs, or the state attorney regardless of whether the person knows he or she is submitting false, misleading, or inaccurate information. The bill also prohibits a person from failing to remit to a charity the disclosed guaranteed minimum percentage of gross receipts from contributions as indicated with its agreement with a charity, or, if the solicitation involved the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price as agreed to in the agreement.

Administrative Penalties

Currently, under s. 496.419, F.S., after DACS has investigated and found that a person or entity has violated ch. 496, F.S., it can enter an order imposing a range of administrative penalties, including imposing an administrative fine up to \$1,000 for each act or omission. However, for 501(c)(3) organizations, the maximum penalty is limited to \$500 per violation.

Section 16 amends s. 496.419, F.S., to increase the fine DACS may levy to \$5,000 for each act or omission and makes this fine applicable to 501(c)(3) organizations. The bill limits the fine for

⁴² Chapter 501, part II, F.S.; Section 496.416, F.S.

⁴³ Section 496.420, F.S.

⁴⁴ Section 496.417, F.S.

501(c)(3) organizations that fail to register under s. 496.405, F.S., or file an exemption under s. 496.406(2), F.S., to \$500 per violation. DACS may also levy a fine up to \$10,000 for any violation of ch. 496, F.S., that involves fraud or deception.

Section 17 creates s. 496.4191, F.S., to require DACS to immediately suspend the registration or the processing of a registration of any organization if DACS receives written notification and verification by law enforcement, a court, a state attorney, or the FDLE, that the registrant, applicant, or any officer or director of the registrant or applicant is charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor. The suspension will remain in effect until final disposition of the case or removal or resignation of the officer or director.

Section 3 of the bill amends s. 496.404, F.S., to update the definition of “religious institution” to include any separate group or corporation that is an integral part of a religious institution so long as the religious institution is a 501(c)(3) organization, is exempt from filing an annual tax return under 26 U.S.C. s. 6003,⁴⁵ and is primarily supported by funds from its own membership or congregation. This provision brings the definition of “religious institution” into line with federal law.

Section 19 amends s. 741.0305, F.S., to correct a cross-reference due to the amendments to s. 496.404, F.S., in section 3 of the bill.

Section 20 creates s. 496.431, F.S., to provide a severability clause for ch. 496, F.S.

Section 21 appropriates \$235,352 in recurring funds and \$239,357 in nonrecurring funds from the General Inspection Trust Fund to DACS, and authorizes 4 full-time equivalent positions with associated salary rate of \$143,264 to DACS to implement this act.

Section 22 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴⁵ 26 U.S.C. s. 6003 regulates which organizations are exempt from filing income tax returns, including churches and religious organizations.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill creates a \$100 application fee for a professional solicitor license and a \$10 fee to report material changes. DACS estimates that the \$100 application and renewal fee for a professional solicitor license will result in an estimated recurring revenue increase of \$250,000 annually.⁴⁶ DACS did not estimate the revenue impact from the \$10 change fee.

The cost for a state and national criminal history record check is \$40.50, which goes into the FDLE Operating Trust Fund. From that amount, \$16.50 is transferred from the trust fund to the FBI, the remaining \$24 stays in the trust fund for state processing. Additionally, the fee for lifetime federal fingerprint retention is \$13.⁴⁷ FDLE estimates that 2,500 people per year will apply for a professional solicitor's license; accordingly, FDLE believes the fees for criminal record checks and federal lifetime finger print retention fees will cost \$133,750 per year from first-time licensure applicants.⁴⁸

Applicants for licensure renewal will only have to pay an annual state fingerprint retention fee of \$6. This fee is not charged for the initial license. FDLE estimates that after the first year the solicitor licensure requirement is enacted, there will be 2,500 solicitors seeking license renewal; accordingly, FDLE believes the fee for state fingerprint retention will cost \$15,000 per year for license renewals, with each subsequent year's cost expected to increase due to the growth in renewal applications.⁴⁹

The impact of losing sales tax exempt status by a charity is unknown at this time.

The bill has not been evaluated by the Revenue Estimating Conference.

B. Private Sector Impact:

Charities may likely incur increased administrative and record keeping costs to comply with the provisions of the bill including the updated requirements for reporting, notice, registration, financial statement, auditing and review, and establishment a conflict of interest policy. Similarly, some charities that raise funds in response to a specific disaster or crisis will incur additional administrative costs associated with filing quarterly relief statements. Additionally, charities and for-profit entities may incur increased costs to comply with the signage requirement for collection receptacles.

Professional fundraising consultants may incur minimal administrative and record keeping costs to comply with the updated registration and reporting requirements.

⁴⁶ DACS Analysis, SB 638, 5, Feb. 5, 2014, on file with the Committee on Commerce and Tourism. DACS estimates 2,500 licenses at \$100 per license, but did not provide a breakdown of renewal applicants versus new applicants in outlying years. DACS has not yet submitted an analysis of the CS at this time.

⁴⁷ FDLE Analysis, SB 638, 6, Feb. 11, 2014, on file with the Committee on Commerce and Tourism.

⁴⁸ *Id.* 2,500 applicants at \$40.50 per background check and \$13.00 per lifetime federal fingerprint retention fee.

⁴⁹ *Id.* 2,500 license renewals at \$6 per state fingerprint retention fee.

Officers, directors, trustees, or owners of a professional solicitor and any employee of a solicitor conducting telephonic solicitations will have to annually apply and pay a \$100 fee for a solicitors license. Additionally, solicitors may likely incur increased administrative and record keeping costs to comply with the updated reporting and disclosure requirements, to comply with updated financial statement requirements, and to comply with the updated notice statement requirements.

A new applicant for licensure as a professional solicitor will pay \$53.50 in total; for annual renewal of a license, an applicant will only have to pay the \$6 state fingerprint retention fee.

Charities, consultants, and solicitors may also incur greater costs due to any fines levied by DACS and any violations prosecuted by the Attorney General or the State Attorney.

C. Government Sector Impact:

Expenditures

DACS anticipates the additional regulations and licensing required in the bill will necessitate the hiring of two Regulatory Consultant FTEs and the development of new software in the Division of Consumer Services.⁵⁰ Similarly, DACS anticipates the bill will result in an additional 500 cases that will be referred to the department’s Office of Agriculture Law Enforcement (OALE) for regulatory investigation.⁵¹ To meet the increased workload, OALE estimates it will require two additional Senior Financial Investigator FTEs as well as vehicles for each investigator.⁵² DACS projects it will need \$474,709 in additional funding in FY 2014-2015.

Expenditures – General Inspection Trust Fund	<u>FY 14-15</u>	<u>FY 15-16</u>
1. Recurring – Consumer Services		
a. Salaries and Benefits		
Regulatory Consultant (2)	97,606	97,606
b. Expenses		
Professional Expense Package (2)	12,522	12,522
c. Special Category		
Human Resources Allocation (2)	688	688
2. Recurring – Agricultural Law Enforcement		
a. Salaries and Benefits		
Senior Financial Investigator (2)	111,326	111,326
b. Expenses		

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

Professional Expense Package (2)	12,522	12,522
c. Special Category		
Human Resources Allocation (2)	<u>688</u>	<u>688</u>
TOTAL RECURRING COST	235,352	235,352
3. Non-Recurring – Consumer Services		
a. Expenses		
Professional Expense Package (2)	7,546	0
b. Contracted Services		
Software – develop, test, deploy		
2,059 hrs @ \$85	175,015	0
4. Non-Recurring – Agricultural Law Enforcement		
a. Expenses		
Professional Expense Package (2)	7,546	0
b. Special Categories		
Acquisition of Motor Vehicles (2)	<u>49,250</u>	<u>0</u>
TOTAL NONRECURRING COST	239,357	0
TOTAL RECURRING/NONRECURRING COST	474,709	235,352
5. Non-Operating Cost		
a. Information Technology Support	4,845	4,845
b. Administrative/Indirect Cost	12,972	12,972
c. General Revenue Service Charge	<u>20,000</u>	<u>20,000</u>
TOTAL NON-OPERATING COST	37,817	37,817
EXPENDITURES GRAND TOTAL	512,526	273,169

The Criminal Justice Impact Conference has not yet determined the impact of this bill on prison beds.

Revenues

DACS states that it expects annual revenues of an additional \$112,000 due to the increase in administrative fines from \$1,000 to \$5,000.⁵³ DACS did not provide information

⁵³ *Id.* This amount was calculated by multiplying the number of administrative fines (28) levied in FY 2013 by the \$4,000 increase fines.

related to revenue impacts for the \$10,000 fine or for fines from increased criminal prosecutions or FDUTPA actions. See Tax/Fee Issues.

According to FDLE, it expects annual revenues in year 1 of \$60,000 from the collection of the \$24 fee for state criminal history record checks. The amount does not include the \$6 state fingerprint retention fee because it is only paid for by annual license renewals. FDLE expects annual revenues in years 2 and 3 to increase to \$75,000 and \$90,000, respectively to account for the payment of the state fingerprint retention fee by licensure renewal applicants.⁵⁴

Total FDLE Estimated Revenue:

- Year 1: \$60,000
- Year 2: \$75,000
- Year 3: \$90,000

The impact of this bill on the Attorney General or State Attorney has not been determined; however, it may increase caseloads for these agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

FDLE recommended in its bill analysis that the fingerprinting provisions be amended to required that the fingerprints be taken by an authorized entity and clarify that fingerprint fees are paid by the applicant.⁵⁵

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.08, 212.084, 496.404, 496.405, 496.407, 496.409, 496.410, 496.411, 496.412, 496.415, 496.419, 741.0305.

This bill creates the following sections of the Florida Statutes: 496.4055, 496.4071, 496.4072, 496.4101, 496.4121, 496.4191, 496.430, 496.431.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on February 10, 2014:

The committee substitute:

- Updates the definition of a professional solicitor regulated by ch. 496, F.S., to include professional solicitors located in Florida that solicit outside of Florida.

⁵⁴ FDLE Analysis at 6.

⁵⁵ *Id.* at 7.

- Provides that only those charities that are required to register under s. 496.405, F.S., must enact a conflict of interest policy.
- Requires that audits and reviews of a charity's financial statement be prepared by an independent CPA.
- Clarifies that a charity must show good cause before DACS can grant an extension of time to file a financial statement.
- Authorizes DACS to require a charity to have its financial statement audited or reviewed.
- Replaces the words "ancestor" and "descendant" with "grandparent" and "grandchild."
- Requires DACS to provide a list of disasters and crises that are subject to the additional financial reporting requirement.
- Updates the fingerprinting requirements for professional solicitor licenses to:
 - Specify that the state cost for fingerprinting paid by the applicant is the statutory cost of \$24;
 - Require FDLE to retain the fingerprints and enroll them in the FBI's national arrest notification program once FDLE begins participating in the program;
 - Require DACS to notify FDLE when a person loses his or her license; and
 - Require DACS to screen background results to determine if an applicant meets licensure requirements.
- Clarifies that the signage requirement for collection receptacles operated by for-profit businesses does not apply to charities.
- Clarifies that a sales tax exemption certificate is issued by DOR.
- Adds a severability clause.
- Updates the amount appropriated to DACS to implement the bill.
- Makes technical corrections.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
