

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 Appropriations

BILL: SB 950

INTRODUCER: Senator Mayfield

SUBJECT: State Employment

DATE: January 30, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|------------|-----------------------------|
| 1. | <u>Caldwell</u> | <u>Caldwell</u> | <u>GO</u> | Favorable |
| 2. | <u>Davis</u> | <u>Betta</u> | <u>AGG</u> | Recommend: Favorable |
| 3. | <u>Davis</u> | <u>Hansen</u> | <u>AP</u> | Pre-meeting |

I. Summary:

SB 950 eliminates the Florida State Employees Charitable Contribution Campaign (FSECC), and provides that an organization, entity, or person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, the bill does not prohibit:

- State-approved communications by entities with whom the state has contracted to provide employee benefits or services;
- Noncoercive, voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

The Department of Management Services (DMS) may realize cost savings by no longer being required to procure services of a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations for the FSECC. The actual cost savings are indeterminate.

The bill has an effective date of July 1, 2018.

II. Present Situation:

The FSECC is an annual charitable fundraising drive funded by state employees and maintained by the DMS in coordination with the payroll system of the Department of Financial Services.¹ It is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours for which the state provides a payroll deduction.² Universities are

¹ Section 110.181(1)(a), F.S.

² *Id.*

permitted to participate in the campaign but are also authorized to conduct their own charitable fundraising drives for employees.³

Employees' participation in the campaign is entirely voluntary, and officers and employees are required to designate a charitable organization to receive their contributions, unless the contributions are collected as part of a campaign event.⁴ Each agency is responsible for conducting campaign events to promote and generate awareness of the campaign. Prior to 2016, agencies were authorized to collect cash donations at campaign events, however, in 2016, only payroll deductions were collected as part of the campaign as a cost saving measure.⁵

Organizations' participation in the annual campaign is limited to any nonprofit charitable organization that has as its principal mission:⁶

- Public health and welfare;
- Education;
- Environmental restoration and conservation;
- Civil and human rights; or
- The relief of human suffering and poverty.

Additionally, organizations ineligible to participate in the campaign include those:⁷

- Whose fundraising and administrative expenses exceed 25 percent;
- Whose activities contain an element that is more than incidentally political in nature or are primarily political, religious, professional, or fraternal in nature;
- That discriminate on account of race, color, religion, sex, national origin, age, handicap, or political affiliation;
- Not properly registered as a charitable organization as required by law;⁸ and
- That have not received tax-exempt status under s. 501(c)(3) of the Internal Revenue Code.

Over 1,000 charities have been approved to participate in the FSECC through the application process established by the DMS's Division of Human Resources.⁹ Charitable organizations participating in the campaign must be audited annually by an independent public accountant whose examination conforms to generally accepted accounting principles.¹⁰

Current law requires the DMS to competitively procure a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations,¹¹ and provides for the establishment of a Florida State Employees Charitable Campaign Steering Committee (committee) to make recommendations relating to the

³ Section 110.181(5), F.S.

⁴ Section 110.181(1)(b), F.S.

⁵ Email from Samantha Ferrin, Department of Management Services, Deputy Director of Legislative and External Affairs (March 30, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

⁶ Section 110.181(1)(c), F.S.

⁷ Section 110.181(1)(e), F.S.

⁸ See the Solicitation of Contributions Act, ss. 496.401-496.424, F.S.

⁹ Department of Management Services, *HB 1141 Legislative Bill Analysis* (March 14, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

¹⁰ Section 110.181(1)(d), F.S.

¹¹ Section 110.181(2)(a), F.S.

administration of the campaign.¹² The committee is made up of seven members appointed by the Administration Commission¹³ and two members appointed by the Secretary of the DMS.¹⁴ The committee meets periodically, usually once or twice each year.¹⁵

The DMS historically awarded the fiscal agent contract to a nonprofit charitable organization that participated in the FSECC, but in 2010, the fiscal agent selection process was opened and services were competitively procured through Solix Grant Management Solutions (Solix) for the period January 1, 2013, through December 31, 2015.¹⁶ The initial contract with Solix provided for tiered compensation, with a minimum of \$546,415 for year one of the contract and actual documented costs for years two and three.¹⁷

In 2015, the DMS entered into a new three-year contract with Solix for the period January 1, 2016, through December 31, 2018.¹⁸ For this contract period, fixed fees were initially agreed to for \$389,297 in year one, \$399,769 in year two, and \$411,631 in year three.¹⁹ However, on April 15, 2016, the DMS and Solix agreed to amended contract terms that provided for a fixed \$180,000 fee for each year of the contract.²⁰

In May 2016, the State of Florida Auditor General published an operational audit of the FSECC finding that during the time period covered by the initial contract with Solix the DMS did not ensure FSECC fiscal agent fees were supported by adequate documentation and did not adequately verify that employee contributions were appropriately distributed to participating charitable organizations.²¹ Prior to publication of the audit, the renewed contract with the fiscal agent had been modified to provide for a fixed fee, and the DMS had implemented a procedure for verifying the distributions—therefore the need for corrective action was eliminated.²²

On December 5, 2016, the Secretary of the DMS notified state agencies that the campaign was being suspended because it had only raised approximately \$282,000, which was its lowest amount in the campaign's history.²³

¹² Section 110.181 (4), F.S.

¹³ *Id.* Also see s. 20.03(1), F.S. The Administration Commission is composed of the Governor and Cabinet.

¹⁴ Section 110.181(4), F.S.

¹⁵ See *supra* note 5.

¹⁶ State of Florida Auditor General's Operational Audit of the Department of Management Services Florida State Employees' Charitable Campaign Report No. 2016-194. Available at https://flauditor.gov/pages/pdf_files/2016-194.pdf (last visited January 3, 2018).

¹⁷ Contract for FSECC Fiscal Agent Services Between the State of Florida Department of Management Services and Solix, Inc. Contract No.: DMS 11/12-018 (on file with the Senate Committee on Governmental Oversight and Accountability).

¹⁸ Contract for FSECC Fiscal Agent Services Between the State of Florida Department of Management Services and Solix, Inc. Contract No.: DMS 14/14-030. Available at:

<https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=HRM01> (last visited January 3, 2018).

¹⁹ *Id.*

²⁰ Amendment NO.:1 to Contract No.: DMS 14/15-030. Available at

<https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=HRM01> (last visited January 3, 2018).

²¹ See *supra* note 16.

²² *Id.*

²³ *State scraps Solix contract, suspends charity campaign*, Tallahassee Democrat, December 8, 2016, available at <http://www.tallahassee.com/story/news/2016/12/08/state-suspends-beleagured-fsecc/95139288/> (last visited January 3, 2018).

During its 36 year history, the FSECC raised over \$94 million.²⁴ However, over the last ten years contributions have declined sharply, as illustrated by the table below.²⁵

| Campaign Year | Fiscal Agent | Charitable Contributions | Amount withheld by Fiscal Agent | Net Amount to Participating Charities | Fiscal Agent Costs as % of Contributions |
|---------------|--------------|--------------------------|---------------------------------|---------------------------------------|--|
| 2005-2006 | United Way | \$ 4,963,346 | \$ 691,065 | \$ 4,272,281 | 13.9% |
| 2006-2007 | United Way | \$ 4,959,059 | \$ 703,479 | \$ 4,255,580 | 14.2% |
| 2007-2008 | United Way | \$ 4,869,270 | \$ 706,683 | \$ 4,162,587 | 14.5% |
| 2008-2009 | United Way | \$ 4,362,662 | \$ 923,931 | \$ 3,438,731 | 21.2% |
| 2009-2010 | United Way | \$ 4,171,177 | \$ 850,877 | \$ 3,320,300 | 20.4% |
| 2010-2011 | United Way | \$ 3,739,355 | \$ 801,032 | \$ 2,938,323 | 21.4% |
| 2011-2012 | United Way | \$ 2,688,902 | \$ 796,616 | \$ 1,892,286 | 29.6% |
| 2012-2013 | Solix, Inc. | \$ 1,762,030 | \$ 546,415 | \$ 1,215,615 | 31.0% |
| 2013-2014 | Solix, Inc. | \$ 982,387 | \$ 470,470 | \$ 511,917 | 47.9% |
| 2014-2015 | Solix, Inc. | \$ 869,004 | \$ 453,599 | \$ 415,405 | 52.2% |
| 2015-2016 | Solix, Inc. | \$ 546,186 | \$ 180,000 | \$ 366,186 | 33.0% |
| 2016-2017 | Solix, Inc. | \$ 282,000 | \$ 180,000 | \$ 102,000 | 63.8% |

III. Effect of Proposed Changes:

Section 1 repeals s. 110.181, F.S., to eliminate the FSECC.

Section 2 creates s. 110.182, F.S., to prohibit an organization, entity, or person from intentionally soliciting a state employee through any means for fundraising or business purposes within work areas during work hours. However, the section does not prohibit:

- State-approved communications by entities with whom the state has contracted to provide employee benefits or services;
- Noncoercive, voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

Section 3 provides the bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁴ Department of Management Services, *Donor Frequently Asked Questions*, question 1, page 2, available at <http://www.dms.myflorida.com/content/download/128373/798921/FAQ-Donor-2016.pdf> (last visited January 3, 2018).

²⁵ Figures provided in an email from Taylor Hatch, Department of Management Services, Senior Director of Policy and Legislative Affairs (November 17, 2016) (on file with the Senate Committee on Governmental Oversight and Accountability).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Charitable organizations will no longer receive contributions through the FSECC as a result of the bill. However, the DMS noted that technology advancements have allowed individuals the opportunity to donate directly to charities through a variety of methods that are easy, convenient and accessible, thereby reducing the need for payroll deduction-based giving.²⁶

C. Government Sector Impact:

The DMS may realize cost savings by no longer being required to procure services of a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations for the FSECC; however, the level of cost savings is indeterminate.

In addition, according to the DMS, an outright prohibition on solicitations of state employees within work areas during work hours will avoid the potential costs associated with these solicitations. The costs avoided include the costs associated with the workload necessary to review and respond to solicitations, the use of public space and other resources, potential legal expenses relating to issues of equitable access.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁶ Department of Management Services *2018 Agency Legislative Bill Analysis*, dated December 20, 2017 (on file with the Senate Committee on Governmental Oversight and Accountability).

²⁷ *Id.*

VIII. Statutes Affected:

This bill creates section 110.182 of the Florida Statutes.

This bill repeals section 110.181 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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