

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 629 Charities

SPONSOR(S): Business & Professional Regulation Subcommittee; Boyd and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Butler	Luczynski
2) Appropriations Committee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill amends current law to provide increased oversight of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors. Generally, the bill:

Charitable Organizations and Sponsors

- Authorizes DACS to enter a disqualification order for certain charities not meeting disbursement requirements, which disqualifies the charity from receiving sales or lease tax exemptions;
- Clarifies the requirements related to financial statements;
- Requires charities to adopt conflict of interest policies; and
- Requires supplemental financial disclosures and quarterly statements for certain charities.

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;
- The license fee shall be \$100; and there is a \$10 fee for application updates for processing material changes to an initial or renewal 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, if any; 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 for-profit businesses to display a permanent sign on the receptacle that provides the organization's name, address, and telephone number, and a statement that clarifies the donation receptacle is for a for-profit business.

Prohibited Acts and Penalties

- Prohibits a person from submitting false, misleading, or inaccurate information in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion regardless of whether the person knows it is false, misleading, or inaccurate;
- Generally, increases from \$1,000 to \$5,000 the fine DACS may levy for violations and makes the fine applicable to s. 501(c)(3) organizations; and
- Authorizes a fine up to \$10,000 for a violation that involves fraud or deception.

The bill also updates the definition of "religious institution" to bring it in line with federal tax laws, and it makes a significant appropriation to DACS to implement this bill.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The mission of the Florida Department of Agriculture and Consumer Services (DACS or Department) is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.

The bill includes modifications to regulatory and consumer activities under the jurisdiction of DACS and, specifically, the Division of Consumer Services (division). A charitable organization or sponsor must be registered with the Department before soliciting for charitable contributions, unless otherwise exempt. The Department of Revenue grants charitable organizations tax exemptions on leases and a sales tax exemption based on their exemption from federal income tax by the Internal Revenue Service (IRS).

In Florida, the solicitation of contributions by charitable organizations and sponsors is regulated by the Solicitation of Contributions Act (the SCA), codified in ch. 496, F.S. As of February 4, 2014, there are over 17,000 charitable organizations and sponsors, 367 professional fundraising consultants, and 129 professional solicitors registered in Florida.¹ Of those 129 professional solicitors, about 50 are headquartered outside Florida.

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.²

1. Charitable Organizations and Sponsors³

Registration Statements

Currently, under s. 495.405, F.S., any charitable organization or sponsor⁴ that intends to solicit donations in Florida must annually register with DACS and pay a registration fee⁵ before soliciting donations.⁶

¹ E-mail from Grace Lovett, Office of Legislative Affairs, Department of Agriculture and Consumer Services, FW: Registered Charities, Professional Fundraising Consultants, and Professional Solicitors in Florida, February 13, 2014 (on file with the Business & Professional Regulation Subcommittee)(there is no public listing on these numbers as they must be generated from the Department's internal database and are subject to change).

² Kendall Taggart and Kris Hundley, *America's Worst Charities*, TAMPA BAY TIMES AND THE CENTER FOR INVESTIGATIVE REPORTING, Several related articles published June 6, 2013, June 7, 2013, June 13, 2013, and Nov. 13, 2013, *available at* <http://www.tampabay.com/topics/specials/worst-charities.page> (last visited Feb 13, 2014).

³ 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." s. 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. s. 496.426, F.S.

⁴ As used in this analysis, the term "charity" or "charities" refers to both charitable organizations and sponsors, unless otherwise indicated.

⁵ The registration fee varies from \$10 to \$400 based on the amount of contributions received by the charity. s. 496.405(4), F.S.

Registration includes a financial report,⁷ 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 include a statement related to the charity's activity in other states, including whether the charity is 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.⁸

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.⁹

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.¹⁰ 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.¹¹

After receiving a registration statement, DACS has 15 business days to 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.¹²

Fundraising Restrictions for Individuals with Criminal Records

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.

Conflict of Interest Transactions

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

Financial Statements

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 the Department. The report must include the following: a balance sheet; a statement of support, revenue, and expenses; identification of any charities, professional fundraising consultants, professional solicitors, and commercial co-venturers used and the amounts

⁶ Section 496.405(1)(a), (c), F.S. Certain small charities are exempt from the registration and financial reporting requirements in ss. 496.405 and 496.407, F.S.

⁷ The information that must be included in the financial report is identified in s. 496.407, F.S.

⁸ Section 496.405(2), F.S.

⁹ *Id.* at (3).

¹⁰ *Id.* at (1).

¹¹ *Id.* at (4)(b).

¹² *Id.* at (7).

received from each of them; and a statement of functional expenses that must include program expenses, management and general expenses, and fundraising costs.¹³ 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.

Notice Statements

Section 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.

Tax-Exempt Status and Disqualifying Events

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.¹⁴ 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.¹⁵ 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.

2. Professional Fundraising Consultants

Registration Statements

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.¹⁶ 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.¹⁷

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.¹⁸

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 five days before the consultant begins providing services.¹⁹

¹³ "Fundraising costs" are defined in s. 496.404, F.S., 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." However prior to this bill, ch. 496, F.S., does not define "program expenses" or "management and general expenses."

¹⁴ Section 212.08(7)(p), F.S.

¹⁵ Section 212.084, F.S.

¹⁶ Section 496.409(1), (3), F.S.

¹⁷ *Id.* at (2).

¹⁸ *Id.* at (6).

Restrictions on Individuals with Criminal Records

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.²⁰

3. Professional Solicitor

Registration Statements

Section 496.410, F.S., requires professional solicitors to annually register and pay a \$300 fee to DACS before operating in Florida.²¹ 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 or agents involved in solicitation have been enjoined from violating any law relating to a charitable solicitation.²²

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.²³

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.²⁴ 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.

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.

Licensure of Professional Solicitors

¹⁹ *Id.* at (4).

²⁰ Section 496.409(9), F.S.

²¹ “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.” s. 496.410(3), F.S. Additionally, professional solicitors are required to maintain a \$50,000 bond. *Id.* at (4).

²² Section 496.410 (2), F.S.

²³ *Id.* at (5).

²⁴ *Id.* at (6).

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.

Notice Statements and Requested Information

Section 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 endorsement, approval, or recommendation by the state." The statement must include a toll-free number for DACS.²⁵

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.²⁶

4. 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.²⁷ The businesses use 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.²⁸

5. Prohibited Acts and Penalties

Section 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 Act²⁹ and may also result in a civil action by DACS.³⁰ Additionally, any willful and knowing violation of ch. 496, F.S., is a third-degree felony punishable by up to five years in prison and a fine of up to \$5,000, and any subsequent

²⁵ Section 496.412(1)(c), F.S.

²⁶ *Id.* at (1)(d)-(e).

²⁷ 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 Feb 13, 2014).

²⁸ 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).

²⁹ Chapter 501, part II, F.S.; Section 496.416, F.S.

³⁰ Section 496.420, F.S.

conviction is a second-degree felony punishable by up to 15 years in prison and a fine of up to \$10,000.³¹

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 s. 501(c)(3) organizations, the maximum penalty is limited to \$500 per violation.

B. SECTION DIRECTORY:

The following includes the Effect of the Bill.

The bill amends several aspects of charities, professional fundraising consultants and professional solicitors.

1. Charitable Organizations and Sponsors

Registration Statements (Section 5)

The bill amends the registration requirements of charities 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.³² 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.

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. 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 (Section 5)

The bill further 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 (Section 6)

³¹ Section 496.417, F.S.

³² 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 requires a charity's board of directors, or a board committee, to adopt a policy regarding conflict of interest transactions. A "conflict of interest" is defined as a financial 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.

The bill requires that a charity's conflict of interest policy require annual certification of compliance by all directors, officers, and employees, and to submit this certification to the Department with the annual registration statement required by s. 496.405, F.S.

Financial Statements (Section 7)

The bill changes the name of the financial reporting document required by DACS from "financial report" to "financial statement."³³ 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.³⁴

"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. "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:

- Charities that receive less than \$500,000 in annual contributions, an audit or review is optional;
- Charities that receive at least \$500,000 but less than \$1 million in annual contributions, the financial statement must be reviewed or audited by an independent CPA; and,
- 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 prepared in accordance with generally accepted auditing standards, by an independent certified public accountant, and that reviews must be prepared in accordance with the Statements on Standards for Accounting and Review Services by an independent certified public accountant. Audited and reviewed financial statements must be accompanied by a report signed and prepared by the CPA that performed the audit or review.

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

Supplemental Financial Disclosure (Section 8)

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 in the preceding fiscal year are required 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:

³³ **Section 4** of the bill amends s. 496.405, F.S., to update the phrase "financial report" to "financial statement" to reflect the changes made to s. 496.407, F.S., in **Section 6** of the bill.

³⁴ Definitions of "program service costs" and "management and general costs" are added to s. 496.404, F.S., in **Section 3** of the bill.

- Dollar amount and percent of revenue and contributions spent on:
 - Salaries
 - Fundraising Expenses, including any contributions received from a professional solicitor's campaign
 - Amounts paid to professional solicitors, including the names of such professional solicitors
 - Travel Expenses
 - Overhead and Other Expenses
- Employees or consultants who earned or were paid more than \$100,000;
- 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;
- Details of economic or business transactions between the charity and related parties including, but not limited to, officers, immediate family members, and specified controlled entities.³⁵

Solicitation Related to a Disaster or Crisis (Section 8)

The bill provides requirements for charitable organizations or sponsors that solicit contributions in response to certain events, defined as a "Crisis" or a "Disaster."

The bill defines "Crisis" to mean:

[A]n 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.

The bill defines "Disaster" to mean:

[A] natural, technological, or civil event, including, but not limited to, an explosion, chemical spill, earthquake, tsunami, landslide, volcanic activity, avalanche, wildfire, tornado, hurricane, drought, or flood, which affects one or more countries and causes damage of sufficient severity and magnitude to result in:

- (a) An official declaration of a state of emergency; or
- (b) An official request for international assistance.

A crisis is the type of event that would not require an official declaration of a state of emergency or an official request for international assistance, but would still be of such national importance that charities would likely solicit contributions to assist those affected by the event. The crisis definition is intended to capture events such as the Sandy Hook Tragedy, or the Boston Bombing, neither event having an official declaration that would be considered a disaster under the bill.

Charities that solicit donations related to a specific disaster or crisis and receive at least \$100,000 in donations in response to such solicitations are required to file quarterly disaster relief statements with DACS. The quarterly statement must detail the donations received and how the funds were expended. A charity must file the first quarterly statement three 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.

The Department shall post notice on its website of the disasters and crises subject to the additional reporting requirements within 10 days after the disaster or crisis.

Notice Statements (Section 13)

Charities that are exempt from registration under s. 496.406(1)(d), F.S., are required 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

³⁵ 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.

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 (Sections 1, 2, and 19)

The bill gives DACS the authority to disqualify a charity under certain circumstances from receiving a sales tax exemption. DACS may issue the disqualification order if it determines, based upon the average of functional expenses and program service costs for the three 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 four years are exempt from the disqualification provisions of s. 496.430, F.S. A charity's existence begins when the charity is formed, regardless of when it registered in this state.

A disqualification order must remain in effect for at least one 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 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.

The bill mandates that if a charity is subject to a final disqualification order issued by DACS, the charity is excluded from the sales and use tax exemption for s. 501(c)(3) organizations. A revocation or denial of a tax exempt certificate by DOR may only be challenged under ch. 120, F.S., 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.

Religious Institutions (Section 4)

The definition of "religious institution" includes any separate group or corporation that is an integral part of a religious institution so long as the religious institution is a s. 501(c)(3) organization. The term also includes any religious institution recognized by the Department of Revenue under s. 212.08(7)(m)2., F.S., and any religious organization described in s. 501(c)(3) of the Internal Revenue Code that is exempt from federal income tax under s. 501(a) of the Internal Revenue Code and exempt from filing an annual Form 990, 990-EZ, or 990-N under 26 U.S.C. s. 6033.³⁶ This provision brings the definition of "religious institution" into line with federal law.

Blood Establishments (Section 3)

Blood Establishments, commonly referred to as "Blood Banks," are persons, entities, or organizations operating within the state, which examines an individual for the purpose of blood donation or which collects, processes, stores, tests, or distributes blood or blood components collected from the human

³⁶ 26 U.S.C. § 6033 regulates which organizations are exempt from filing income tax returns, including churches and religious organizations.

body for the purpose of transfusion, for any other medical purpose, or for the production of any biological product.

Blood establishments and their donations are regulated by the Agency for Health Care Administration. The bill amends s. 496.403, F.S., to exclude blood establishments from the application of ss. 496.401-496.424, F.S.

2. Professional Fundraising Consultants

Registration Statements (Section 10)

The bill provides registration requirements for professional fundraising consultants. 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.

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 (Section 10)

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.

3. Professional Solicitor

Registration Statements (Section 11)

When registering with the Department, professional solicitors must include the following additional information in its registration:

- a list of all telephone numbers the solicitor will use to solicit contributions;
- the address associated with each telephone number;
- any fictitious names associated with such addresses;
- 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 also amends s. 496.410(3), F.S., providing that a solicitor's registration and fee is not on behalf of all of the solicitor's 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 the newly created s. 496.4101, F.S., only if they conduct telephonic solicitations.

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.

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 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. 496.410(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, if any, 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 a professional solicitor is related to:
 - Another officer, director, owner, trustee, or employee of the solicitor;
 - An officer, director, owner, trustee, or employee of 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 (Section 11)

The restriction that applies to professional fundraising consultants also applies to professional solicitors 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 Conducting Telephone Solicitations (Section 12)

The bill establishes a licensing scheme for professional solicitors. Each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor conducting telephonic solicitations is required 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. 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; a license automatically expires if it is not renewed. The annual renewal fee is \$100. All fees, less administrative costs, will be deposited into the General Inspection Trust Fund.

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 solicitors criminal history.

Fingerprint Retention and Enrollment in FBI's National Retained Print Arrest Notification System

All fingerprints submitted to FDLE under the bill will be retained for future enrollment in the FBI's national retained print arrest notification system (Retained Print System). FDLE currently does not participate in the FBI's Retained Print System, and fingerprints shall not be enrolled until FDLE begins its participation. The applicant will bear the cost of FDLE and the FBI retaining their fingerprints, under the bill. Arrest fingerprints will be searched against this database by FDLE and the FBI.

For any renewal, DACS shall request FDLE forward any retained fingerprints of an applicant to the FBI should they not be enrolled in the system. The fee for the national criminal history check shall be paid as part of the renewal fee. The bill language is unclear whether this fee is in addition to the renewal fee, or if the national criminal history check will be deducted from the renewal fee.

Notice Statements and Requested Information (Section 14)

Notice statements used by solicitors are expanded by this bill 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.

4. Collection Receptacles Used for Donations (Section 15)

The bill creates regulation for the use of collection receptacles and 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 three 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 by a person not claiming an exemption pursuant to s. 496.406, F.S., the sign must include the name, telephone number, and address of the business and the statement:

³⁷ The \$10 change fee is the same for telemarketers under s. 501.609(2), F.S.

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.

5. Prohibited Acts and Penalties

Prohibited Acts (Section 16)

A person is prohibited by this bill 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 (Section 17)

Administrative fines DACS may levy are increased to \$5,000 for each act or omission and makes this fine applicable to s. 501(c)(3) organizations. The bill limits the fine for 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.

Suspension of Registration (Section 18)

The Department must 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 Florida Department of Law Enforcement, 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 20 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 21 creates s. 496.431, F.S., to create a severability clause. This severability clause states that should any provision be held invalid, that the invalidity would not affect the application of any other provision.

Section 22 appropriates \$235,352 in recurring funds and \$239,357 in non-recurring funds from the General Inspection Trust Fund and 4 full-time equivalent positions with associated salary rate of \$143,264 to implement this act.

Section 23 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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.³⁸

³⁸ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2014 House Bill #629, p. 1 (February 5, 2014) (on file with the Business & Professional Regulation Subcommittee).

DACS did not estimate the revenue impact from the fee charged for fingerprinting applicants for a professional solicitor license or the \$10 change fee.

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.

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. DACS did not provide information related to revenue impacts for the \$10,000 fine or for fines from increased criminal prosecutions or FDUTPA actions. See Tax/Fee Issues.

The impact of this bill on the Department of Legal Affairs or state attorney offices has not been determined; however, it may increase caseloads for these agencies.

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

2. 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.³⁹ 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.⁴⁰ To meet the increased workload, OALE estimates it will require two additional Senior Financial Investigator FTEs as well as vehicles for each investigator.⁴¹

According to DACS, the implementation of this bill will require \$235,352 in total recurring costs, and additional \$239,357 in nonrecurring costs during Fiscal Year 2014 – 2015, and recurring non-operating costs in the amount of \$37,817. This brings the total cost for Fiscal Year 2014 – 2015 to \$512,526, with \$273,169 recurring through Fiscal Year 2015 – 2016 and beyond.⁴²

The new licensing scheme for professional solicitors will likely have an indeterminate expense for the Department for rulemaking. These expenses may be minimized because many of the professional solicitor amendments mirror similar regulations on telemarketers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 of 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.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

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

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 solicitor's license. As part of the application process, they will also have to pay an undetermined fingerprinting fee.⁴³ 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.

Charities, consultants, and solicitors may also incur greater costs due to any fines levied by DACS and any violations prosecuted by the Department of Legal Affairs or state attorney offices.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

Potential Unconstitutional Delegation

In **Section 19**, the bill gives the Department the authority to issue an order to disqualify a charity from receiving a sales tax exemption issued by DOR should the Department find that the charity fails to expend at least 25 percent of its total annual functional expenses on program service costs. The language in the bill states the Department “*may*” do so, without giving sufficient guidelines on what factors the Department should use to weigh its decision.

The Legislature must promulgate standards sufficient to guide administrative agencies in the performance of their duties. *Florida Dep’t. of State, Div. of Elections v. Martin*, 916 So.2d 763 (Fla. 2005); *Avatar Dev. Corp. v. State*, 723 So.2d 199 (Fla. 1998). In *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978), the Florida Supreme Court explained what safeguards were required to support a proper delegation of power. Merely requiring an agency to make complex decisions or weigh complex factors, the court explained, did “not . . . mean that unbridled discretion . . . [had] been conferred on it.” *Id.* at 921 (*quoting CEEED* 43 Cal. App.3d at 327).

Without guidance on how the Department should decide on which charities should or should not be subject to a disqualifying order, this would likely be an unconstitutional delegation. The language should be updated to either provide an appropriate amount of complex factors the Department should weigh when determining whether to subject a charity to a disqualifying order, or amend the wording to remove any discretion over whether to issue a disqualifying order should a charity fail to expend at least 25 percent of its total annual functional expenses on program service costs.⁴⁴

In **Section 7**, prior to the adoption of the strike-all amendment on February 18, 2014, the bill appeared to amend s. 496.407, F.S., to require “a showing of good cause” for the Department to

⁴³ Florida Department of Law Enforcement, Criminal History Record Checks / Background Checks Fact Sheet, *available at* <https://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx#6> (last visited Feb. 15, 2014) (this website details the current cost for fingerprinting and background checks; however, the bill does not set a specific rate that the Department must charge, and if the state or federal fingerprinting fees rise, this may cause the fingerprinting fees here to rise as well).

⁴⁴ The Department has indicated that they would correct this issue with an amendment.

either extend the time for the filing of a financial statement or to require that an audit or review be conducted for any financial statement submitted.

The strike-all amendment reorganized subsection (3) of s. 496.407, F.S., into two subsections, but it included the “showing of good cause” language only with the subsection related to extending the time for the filing of a financial statement. This amendment also put the burden of showing good cause on the charity, not the Department.

In the new subsection (4), the absence of the language requiring a “showing of good cause” requirement for the Department to require an audit or review, could be a potential unconstitutional delegation of legislative authority.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Business & Professional Regulation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute.

The strike-all amendment made the following changes to the filed version of the bill:

- Included “blood establishments” in the list of groups that s. 496.403, F.S., excludes from application of several provisions in ch. 496, F.S.
- A charity’s conflict of interest policy is only required to deal with conflicts of financial interests.
- The charity’s conflict of interest policy must be certified annually by its directors, officers and employees and submitted annually to the Department with the charity’s annual registration statement.
- Audits and reviews must be prepared by an independent certified public accountant.
- A charity’s supplemental financial disclosure, should the charity need to submit one, must include contributions received from a professional solicitor’s campaign, the amounts paid to professional solicitors and the names of such professional solicitors.
- The Department must place a notice on their website when a disaster or crisis occurs.
- The definition of “religious institution” is amended.
- Fingerprints submitted to the Department shall be retained, at the expense of the applicant, for the FBI’s national retained print arrest notification program.
- A severability clause is added to the bill and the appropriation has risen to meet the Department’s latest estimates of the funds required to implement the bill.

The staff analysis is drafted to reflect the committee substitute.