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# Appropriations Committee

Thursday, March 13, 2014  
2:00 PM – 5:00 PM  
212 Knott Building

Meeting Packet



# The Florida House of Representatives

## Appropriations Committee

**Will Weatherford**  
Speaker

**Seth McKeel**  
Chair

### AGENDA

Thursday, March 13, 2014

212 Knott Building


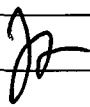
2:00 PM – 5:00 PM

- I. Call to Order/Roll Call
- II. Opening Remarks by Chair McKeel
- III. **Consideration of the following bills:**
  - HB 515** Public Assistance Fraud by Smith
  - CS/HB 629** Charities by Business & Professional Regulation Subcommittee, Boyd
  - HB 7041** Trust Funds/Re-creation/Federal Grants Trust Fund/DBPR by Government Operations Appropriations Subcommittee, Ingram
  - HB 7043** Trust Funds/Re-creation/Federal Grants Trust Fund/DFS by Government Operations Appropriations Subcommittee, Ingram
  - HB 7053** Trust Funds/Re-creation/State Economic Enhancement & Development Trust Fund/DEO by Transportation & Economic Development Appropriations Subcommittee, Hooper
  - HB 7059** Trust Funds/Termination/Department of Economic Opportunity by Transportation & Economic Development Appropriations Subcommittee, Hooper
  - HB 7067** Trust Funds/Re-creation/Welfare Transition Trust Fund/DOE by Education Appropriations Subcommittee, Fresen
  - HB 7079** Trust Funds/Termination & Administration/DOACS by Agriculture & Natural Resources Appropriations Subcommittee, Albritton
- IV. **Consideration of the following proposed committee substitute:**
  - PCS for CS/CS/HB 851 -- Postsecondary Education Tuition and Fees
- V. Closing Remarks and Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 515 Public Assistance Fraud  
**SPONSOR(S):** Smith and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1084

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Jones	Cunningham
2) Healthy Families Subcommittee	10 Y, 2 N	Entress	Brazzell
3) Appropriations Committee		Pridgeon 	Leznoff 
4) Judiciary Committee			

### SUMMARY ANALYSIS

Section 414.39, F.S., establishes a variety of crimes involving public assistance fraud. Public assistance fraud includes fraud involving temporary cash assistance, food assistance, Medicaid, or optional state supplementation program. The criminal penalties that apply to these offenses are based on the value of the public assistance involved in the offense. For example, s. 414.39(5)(b), F.S., specifies that if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more, in any 12 consecutive months, such person commits a third degree felony.

The bill amends the aggregate value amount in s. 414.39(5)(b), F.S., to make it a third degree felony if the value of the public assistance fraud or identification is of an aggregate value of \$200 or more *but less than \$20,000* in any 12 consecutive months. The bill also creates s. 414.39(5)(c) and (d), F.S., which:

- (c) Makes it a second degree felony if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months.
- (d) Makes it a first degree felony if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$100,000 or more in any 12 consecutive months.

The bill requires the Department of Children and Families (DCF), subject to available funding, to pay a reward to a person who reports original information relating to a violation of the state's public assistance fraud laws. The bill provides specifications that must be met before the reward money is paid.

The bill also amends s. 414.095(14), F.S., to add the following prohibitions and restrictions that apply to persons applying for or receiving Temporary Cash Assistance (TCA) benefits:

- Use of TCA benefits out-of-state is limited to 30 consecutive days. The TCA benefits of a recipient using his or her benefits out-of-state for more than 30 days shall be terminated.
- A parent or caretaker relative who has been disqualified due to fraud must have a protective payee designated to receive TCA benefits for an eligible child. An individual disqualified for fraud cannot be designated as a protective payee. In a two-parent household, if only one parent is disqualified, the other parent may be designated as the payee of the benefit.

The bill creates new first and second degree felony offenses relating to public assistance fraud. The Criminal Justice Impact Conference met on March 3, and determined this bill will have an insignificant impact on state prison beds.

The bill has a significant fiscal impact on DCF and the Department of Financial Services (see fiscal section).

The bill is effective October 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Assistance Fraud**

"Public assistance" refers to benefits paid on the basis of the temporary cash assistance,<sup>1</sup> food assistance,<sup>2</sup> Medicaid,<sup>3</sup> or optional state supplementation program.<sup>4,5</sup> Section 414.39, F.S., establishes the following crimes involving public assistance fraud, which are investigated by the Division of Public Assistance Fraud within the Department of Financial Services (DFS)<sup>6</sup>:

Section 414.39(1), F.S., provides that a person commits a crime if he or she:

- Fails, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to such person's qualification to receive public assistance under any state or federally funded assistance program;
- Fails to disclose a change in circumstances in order to obtain or continue to receive any such public assistance to which he or she is not entitled or in an amount larger than that to which he or she is entitled; or
- Aids and abets another person in the commission of any such act.

Section 414.39(2), F.S., provides that a person commits a crime if he or she:

- Uses, transfers, acquires, traffics, alters, forges, or possesses;
- Attempts to use, transfer, acquire, traffic, alter, forge, or possess; or
- Aids and abets another person in the use, transfer, acquisition, traffic, alteration, forgery, or possession of, a food assistance identification card, an authorization, including, but not limited to, an electronic authorization for the expenditure of food assistance benefits, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law.

Section 414.39(3), F.S., specifies that any person having duties in the administration of a state or federally funded public assistance program or in the distribution of public assistance, or authorizations or identifications to obtain public assistance, under a state or federally funded public assistance program commits a crime if he or she:

- Fraudulently misappropriates, attempts to misappropriate, or aids and abets in the misappropriation of food assistance, an authorization for food assistance, a food assistance identification card, a certificate of eligibility for prescribed medicine, a Medicaid identification card, or public assistance from any other state or federally funded program with which he or she has been entrusted or of which he or she has gained possession by virtue of his or her position, or if they knowingly fail to disclose any such fraudulent activity; or
- Knowingly misappropriates, attempts to misappropriate, or aids or abets in the misappropriation of, funds given in exchange for food assistance program benefits or for any form of food assistance benefits authorization.

Section 414.39(4), F.S., provides that a person commits a crime if he or she:

- Knowingly files, attempts to file, or aids and abets in the filing of, a claim for services to a recipient of public assistance under any state or federally funded public assistance program for services that were not rendered; knowingly files a false claim or a claim for nonauthorized items or services under such a program; or if they knowingly bill the recipient

<sup>1</sup> Temporary cash assistance provides cash assistance to families with children to help families become self-supporting.

<sup>2</sup> The Food Assistance Program helps people with low-income, buy healthy food.

<sup>3</sup> Medicaid provides medical coverage to low-income individuals and families.

<sup>4</sup> Optional State Supplementation provides monthly cash payments to indigent elderly or disabled individuals.

<sup>5</sup> Section 414.0252(10), F.S.

<sup>6</sup> Section 414.411, F.S.

of public assistance under such a program, or his or her family, for an amount in excess of that provided for by law or regulation;

- Knowingly fails to credit the state or its agent for payments received from social security, insurance, or other sources; or
- In any way knowingly receives, attempts to receive, or aids and abets in the receipt of, unauthorized payment or other unauthorized public assistance or authorization or identification to obtain public assistance as provided herein.

Section 414.39(5), F.S., establishes criminal penalties that apply to all of the above-described offenses. The criminal penalties are based on the value of the public assistance involved in the offense.

Currently, s. 414.39(5), F.S., provides:

- (a) If the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is less than an aggregate value of \$200 in any 12 consecutive months, such person commits a first degree misdemeanor;<sup>7</sup> or
- (b) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more in any 12 consecutive months, such person commits a third degree felony.<sup>8</sup>

In Fiscal Year 2012-2013, TCA served 209,142 people, food assistance served 4,879,342 people, and Medicaid served 3,744,588 people.<sup>9</sup>

#### Effect of the Bill

The bill amends the aggregate value amount in s. 414.39(5)(b), F.S., to make it a third degree felony if the value of the public assistance fraud or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more *but less than \$20,000* in any 12 consecutive months.

The bill creates s. 414.39(5)(c) and (d), F.S., which:

- (c) Makes it a second degree felony<sup>10</sup> if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months.
- (d) Makes it a first degree felony<sup>11</sup> if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$100,000 or more in any 12 consecutive months.

The bill requires the Department of Children and Families (DCF) or the director of DCF's Office of Public Benefits Integrity to pay a reward to a person who furnishes and reports original information relating to a violation of the state's public assistance fraud laws, unless the person declines the reward. The information and report must:

- Be made to DCF, DFS, or the Florida Department of Law Enforcement;
- Relate to criminal fraud upon public assistance program funds or a criminal violation of public assistance fraud laws by another person; and
- Lead to the recovery of a fine, penalty, or forfeiture of property.

The reward requirement is subject to availability of funds and may not exceed 10 percent of the amount recovered or \$500,000, whichever is less, in a single case. The reward must be paid from the state share of the recovery in the Federal Grants Trust Fund from moneys collected pursuant to s. 414.41,

<sup>7</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>8</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> DCF 2013 Annual Report, Florida Department of Children and Families.

<sup>10</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>11</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

F.S.<sup>12</sup> The bill specifies that a person who receives a reward for providing information about Medicaid fraud is not eligible to receive funds pursuant to the Florida False Claims Act.<sup>13</sup>

### **Temporary Cash Assistance**

"Temporary Case Assistance" (TCA) is defined as cash assistance provided under the state program certified under Title IV-A of the Social Security Act, as amended.<sup>14</sup> TCA is a program under the Temporary Assistance for Needy Families block grant.<sup>15</sup> DCF administers Florida's TCA Program, which provides cash assistance to families with children under the age of 18 or under age 19 if full time high school students, that meet specified technical, income, and asset requirements. The program helps families become self-supporting while allowing children to remain in their own homes.<sup>16</sup>

Section 414.095, F.S., establishes the technical, income, and asset requirements that must be met before becoming eligible to receive TCA benefits,<sup>17</sup> sets forth criteria for determining how much TCA a person is entitled to, and establishes how TCA may be calculated and paid. For example, the statute requires that an applicant register for work and engage in work activities, be a resident of Florida, and have a minor child. The statute also contains a multitude of prohibitions and restrictions, such as:

- A family without a minor child living in the home is not eligible to receive TCA. However, a pregnant woman is eligible for TCA in the ninth month of pregnancy if all eligibility requirements are otherwise satisfied;
- An individual is ineligible to receive TCA during any period when the individual is fleeing to avoid prosecution, custody, or confinement after committing a crime, attempting to commit a crime that is a felony under the laws of the place from which the individual flees or a high misdemeanor in the State of New Jersey, or violating a condition of probation or parole imposed under federal or state law; and
- The parent or other caretaker relative must report to the department within a specified period that a minor child will be absent from the home for 30 or more consecutive days. A parent or caretaker relative who fails to report this information to DCF shall be disqualified from receiving TCA for 30 days for the first occurrence, 60 days for the second occurrence, and 90 days for the third or subsequent occurrence.<sup>18</sup>

Currently, eligible recipients may use benefits out of state, but there are no regulations relating to determining the length of absence that is permissible.<sup>19</sup>

In the event that TCA is terminated due to noncompliance with work requirements, DCF will establish a protective payee to receive cash assistance or food assistance funds on behalf of any children in the home who are under the age of 18.<sup>20</sup> The protective payee shall be designated by DCF and may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children.

<sup>12</sup> Section 414.41, F.S., requires DCF to take all necessary steps to recover overpayment whenever it becomes apparent that any person or provider has received any public assistance to which she or he is not entitled, through either simple mistake or fraud on the part of DCF or on the part of the recipient or participant.

<sup>13</sup> Under Florida's False Claims Act (ss. 68.081-68.092, F.S.), people who blow the whistle on Medicaid Fraud are entitled to share in any funds recovered by the state. <http://myfloridalegal.com/pages.nsf/Main/ebc480598bbf32d885256cc6005b54d1> (last visited on January 29, 2014). See s. 68.085(3), F.S.

<sup>14</sup> S. 414.0252(12), F.S.

<sup>15</sup> Title IV-A of the Social Security Act.

<sup>16</sup> *Temporary Cash Assistance*, The Department of Children and Families, *accessible at*: <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/temporary-cash-assistance-tca> (last visited on February 23, 2014).

<sup>17</sup> DCF determines if the families meet such requirements. Section 414.095(1), F.S.

<sup>18</sup> Section 414.095(14), F.S.

<sup>19</sup> DCF's Bill Analysis of HB 515 (2014) (on file with the Healthy Families Subcommittee).

<sup>20</sup> Section 414.095(4), F.S.

- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children.
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and utilize the assistance in the best interest of the child or children.<sup>21</sup>

#### Effect of the Bill

The bill amends s. 414.095(14), F.S., to add two additional prohibitions and restrictions. The first limits the out-of-state use of TCA benefits to 30 consecutive days and requires termination of the TCA benefits if used out-of-state for more than 30 days. The bill directs DCF to adopt rules providing for the determination of temporary absence and a recipient's intent to return to the state.

The second requires a parent or caretaker relative who has been disqualified due to fraud to have a protective payee designated to receive the TCA benefits for an eligible child. The requirements for designation of a protective payee are the same as provided in s. 414.065(2)(b), F.S.<sup>22</sup> The bill specifies that an individual disqualified for fraud cannot be designated as a protective payee and in a two-parent household; if only one parent is disqualified, the other parent may be designated as the payee of the benefit.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 414.39, F.S., relating to fraud.

Section 2. Amends s. 414.095, F.S., relating to determining eligibility for temporary cash assistance.

Section 3. Provides an effective date of October 1, 2014.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

- DCF reports that reducing annual TCA expenditures by terminating the benefits received by recipients no longer residing in the state of Florida may result in an estimated annual savings of \$1.8 million (based on repeated out of state use and averages).<sup>23</sup>
- DFS and DCF report that possible increased revenues if the reward provisions result in increased numbers of fraud violations reported that may generate a repayment to the state. According to DFS, the state retains between 20% and 35% of recoveries.<sup>24</sup>

##### 2. Expenditures:

The Criminal Justice Impact Conference met on March 3, and determined this bill will have an insignificant impact on state prison beds.

<sup>21</sup> Section 414.065(2), F.S.

<sup>22</sup> Section 414.065, F.S., requires all TCA applicants to register for work and engage in work activities in accordance with s. 445.024, F.S. Those who do not comply with the work requirements are subject to penalties. Upon the second or third occurrence of noncompliance, TCA for a child or children in a family who are under age 16 may be continued. However, any payments must be made through a protective payee. Protective payees must be designated by DCF and may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children;
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children; or
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and to utilize the assistance in the best interest of the child or children.

<sup>23</sup> DCF's Bill Analysis of HB 515 (2014)(on file with the Healthy Families Subcommittee).

<sup>24</sup> DFS's Bill Analysis of HB 515 (2014)(on file with the Healthy Families Subcommittee).



According to DCF:

- Funding for rewards will be taken from moneys collected pursuant to s. 414.41, F.S.,<sup>25</sup> in the Federal Grants Trust Fund, which is a significant source of funding for DCF's Public Benefit Integrity (PBI) program. Reduction of these funds may have an impact on the trust fund balance which is used for the PBI operation.
- Additional staff would be needed to receive and investigate the tips and complaints received through the reward program. The Florida Office of the Attorney General experienced a 286% increase in calls relating to Medicaid fraud in the first year of a new reward program. DCF's Office of Public Benefit Integrity currently receives an average of 26,400 online and telephonic fraud reports annually. Assuming a similar increase in reports, an additional 7 staff would be needed to process the increase in complaint volume, investigative leads, and oversee the administration of the program.

Current call/ complaint volume	26,400
Additional anticipated volume (286% increase)	75,504
Minutes to log and process each complaint	8
Hours of additional workload	10,067
Contract staff to handle workload (10,067 hrs / 2,000 hrs per yr)	5.03

Expected additional cost (\$16.10/hr \* 2,000 hrs \* 5 staff)      \$161,000

Additional DCF Staffing Need

1 FTE: Rewards Program Manager	
1 OPS ACCESS Integrity Investigator	
Salaries and Benefits	\$48,003
Other Personnel Services	\$35,601
Nonrecurring Expenses (furniture for FTE, Equipment for OPS & Contract Staff)	\$9,473
Recurring Expenses (Rent, Supplies, telephone, postage)	\$9,761
Technology (Software Programming)	\$85,000
Contracted Services (6 Financial Specialists)	\$161,000
DMS-Human Resources Services Contract	\$344
<u>Mailing Costs for Notification to TCA recipients</u>	<u>\$3,500</u>
<b>Total—FY 2014-15</b>	<b>\$352,682<sup>26</sup></b>

According to DFS:

- Implementation of the cash reward process provided by this bill will likely generate a significant increase in the number of complaints received, based on the 286% increase in public complaints received when a similar reward system began by the Attorney General's Medicaid Fraud Unit.<sup>27</sup> Given current Division staffing and the lack of sufficient administrative support positions, additional personnel resources would be needed along with dedicated telephone lines.
- DFS estimates the need for additional funding of:

Salaries and Benefits	\$187,140
Recurring Expenses	\$25,257
Nonrecurring Expenses	\$17,785
<u>DMS - Human Resources Service Contract</u>	<u>\$1,720</u>
<b>Total—FY 2014-15</b>	<b>\$231,920<sup>28</sup></b>

<sup>25</sup> S. 414.41 allows DCF, in conjunction with the Food and Nutrition Service and the Internal Revenue Service, to intercept federal income tax refunds when clients owe food assistance or temporary cash assistance debt to the state.

<sup>26</sup> DCF's Bill Analysis of HB 515 (2014)(on file with the Health Care Appropriations Subcommittee).

<sup>27</sup> See DFS's Bill Analysis of HB 515 (2014)(on file with the Healthy Families Subcommittee).

<sup>28</sup> DFS's Bill Analysis of HB 515 (2014)(on file with the Government Operations Appropriations Subcommittee).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because:

- Portions of the bill are criminal law; and
- The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill limits the out-of-state use of TCA benefits to 30 consecutive days and requires termination of the TCA benefits if used out-of-state for more than 30 days. DCF is required to adopt rules providing for the determination of temporary absence and a recipient's intent to return to the state. Section 414.45, F.S., also gives DCF the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement and enforce the provisions of ch. 414, F.S. Therefore, adequate rulemaking authority appears to exist to implement any rules necessitated by the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

A bill to be entitled

An act relating to public assistance fraud; amending s. 414.39, F.S.; providing enhanced criminal penalties if the value of public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value exceeding specified amounts; providing for a reward for a report of original information relating to a violation of the state's public assistance fraud laws if the information and report meet specified requirements; amending s. 414.095, F.S.; limiting to a specified period the use of temporary cash assistance benefits out of state; requiring rulemaking; requiring that a parent or caretaker relative who has been disqualified due to fraud have a protective payee designated to receive temporary cash assistance benefits for eligible children; providing requirements for protective payees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) through (5) of section 414.39, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

414.39 Fraud.—

(1) Any person who knowingly:

27 (a) Fails, by false statement, misrepresentation,  
 28 impersonation, or other fraudulent means, to disclose a material  
 29 fact used in making a determination as to such person's  
 30 qualification to receive public assistance under any state or  
 31 federally funded assistance program;

32 (b) Fails to disclose a change in circumstances in order  
 33 to obtain or continue to receive any such public assistance to  
 34 which he or she is not entitled or in an amount larger than that  
 35 to which he or she is entitled; or

36 (c) Aids and abets another person in the commission of any  
 37 such act,

38  
 39 commits ~~is guilty of~~ a crime and shall be punished as provided  
 40 in subsection (5).

41 (2) Any person who knowingly:

42 (a) Uses, transfers, acquires, traffics, alters, forges,  
 43 or possesses; or ~~or~~

44 (b) Attempts to use, transfer, acquire, traffic, alter,  
 45 forge, or possess; or

46 (c) Aids and abets another person in the use, transfer,  
 47 acquisition, traffic, alteration, forgery, or possession of,  
 48  
 49 a food assistance identification card, an authorization,  
 50 including, but not limited to, an electronic authorization, for  
 51 the expenditure of food assistance benefits, a certificate of  
 52 eligibility for medical services, or a Medicaid identification

53 card in any manner not authorized by law commits a crime and  
 54 shall be punished as provided in subsection (5).

55 (3) Any person having duties in the administration of a  
 56 state or federally funded public assistance program or in the  
 57 distribution of public assistance, or authorizations or  
 58 identifications to obtain public assistance, under a state or  
 59 federally funded public assistance program and who:

60 (a) Fraudulently misappropriates, attempts to  
 61 misappropriate, or aids and abets in the misappropriation of,  
 62 food assistance, an authorization for food assistance, a food  
 63 assistance identification card, a certificate of eligibility for  
 64 prescribed medicine, a Medicaid identification card, or public  
 65 assistance from any other state or federally funded program with  
 66 which he or she has been entrusted or of which he or she has  
 67 gained possession by virtue of his or her position, or who  
 68 knowingly fails to disclose any such fraudulent activity; or

69 (b) Knowingly misappropriates, attempts to misappropriate,  
 70 or aids or abets in the misappropriation of, funds given in  
 71 exchange for food assistance program benefits or for any form of  
 72 food assistance benefits authorization,

73  
 74 commits ~~is guilty of~~ a crime and shall be punished as provided  
 75 in subsection (5).

76 (4) Any person who:

77 (a) Knowingly files, attempts to file, or aids and abets  
 78 in the filing of, a claim for services to a recipient of public

79 assistance under any state or federally funded public assistance  
 80 program for services that were not rendered; knowingly files a  
 81 false claim or a claim for nonauthorized items or services under  
 82 such a program; or knowingly bills the recipient of public  
 83 assistance under such a program, or his or her family, for an  
 84 amount in excess of that provided for by law or regulation;

85 (b) Knowingly fails to credit the state or its agent for  
 86 payments received from social security, insurance, or other  
 87 sources; or

88 (c) In any way knowingly receives, attempts to receive, or  
 89 aids and abets in the receipt of, unauthorized payment or other  
 90 unauthorized public assistance or authorization or  
 91 identification to obtain public assistance as provided herein,

92  
 93 commits ~~is guilty of~~ a crime and shall be punished as provided  
 94 in subsection (5).

95 (5) (a) If the value of the public assistance or  
 96 identification wrongfully received, retained, misappropriated,  
 97 sought, or used is less than an aggregate value of \$200 in any  
 98 12 consecutive months, such person commits a misdemeanor of the  
 99 first degree, punishable as provided in s. 775.082 or s.  
 100 775.083.

101 (b) If the value of the public assistance or  
 102 identification wrongfully received, retained, misappropriated,  
 103 sought, or used is of an aggregate value of \$200 or more, but  
 104 less than \$20,000 in any 12 consecutive months, such person

105 | commits a felony of the third degree, punishable as provided in  
 106 | s. 775.082, s. 775.083, or s. 775.084.

107 |       (c) If the value of the public assistance or  
 108 | identification wrongfully received, retained, misappropriated,  
 109 | sought, or used is of an aggregate value of \$20,000 or more, but  
 110 | less than \$100,000 in any 12 consecutive months, such person  
 111 | commits a felony of the second degree, punishable as provided in  
 112 | s. 775.082, s. 775.083, or s. 775.084.

113 |       (d) If the value of the public assistance or  
 114 | identification wrongfully received, retained, misappropriated,  
 115 | sought, or used is of an aggregate value of \$100,000 or more in  
 116 | any 12 consecutive months, such person commits a felony of the  
 117 | first degree, punishable as provided in s. 775.082, s. 775.083,  
 118 | or s. 775.084.

119 |       (e)~~(e)~~ As used in this subsection, the value of a food  
 120 | assistance authorization benefit is the cash or exchange value  
 121 | unlawfully obtained by the fraudulent act committed in violation  
 122 | of this section.

123 |       (f)~~(d)~~ As used in this section, "fraud" includes the  
 124 | introduction of fraudulent records into a computer system, the  
 125 | unauthorized use of computer facilities, the intentional or  
 126 | deliberate alteration or destruction of computerized information  
 127 | or files, and the stealing of financial instruments, data, and  
 128 | other assets.

129 |       (11)(a) Subject to availability of funds, the department  
 130 | or the director of the Office of Public Benefits Integrity

131 shall, unless the person declines the reward, pay a reward to a  
 132 person who furnishes and reports original information relating  
 133 to a violation of the state's public assistance fraud laws if  
 134 the information and report:

135 1. Are made to the department, the Department of Financial  
 136 Services, or the Department of Law Enforcement.

137 2. Relate to criminal fraud upon public assistance program  
 138 funds or a criminal violation of public assistance fraud laws by  
 139 another person.

140 3. Lead to the recovery of a fine, penalty, or forfeiture  
 141 of property.

142 (b) The reward may not exceed 10 percent of the amount  
 143 recovered or \$500,000, whichever is less, in a single case.

144 (c) The reward shall be paid from the state share of the  
 145 recovery in the Federal Grants Trust Fund from moneys collected  
 146 pursuant to s. 414.41.

147 (d) A person who receives a reward pursuant to this  
 148 subsection is not eligible to receive funds pursuant to the  
 149 Florida False Claims Act for Medicaid fraud for which the reward  
 150 was received.

151 Section 2. Paragraphs (k) and (l) are added to subsection  
 152 (14) of section 414.095, Florida Statutes, to read:

153 414.095 Determining eligibility for temporary cash  
 154 assistance.—

155 (14) PROHIBITIONS AND RESTRICTIONS.—

156 (k) Use of temporary cash assistance benefits out of state



157 is limited to 30 consecutive days. The temporary cash assistance  
 158 benefits of a recipient using his or her benefits out-of-state  
 159 for more than 30 days shall be terminated. The department shall  
 160 adopt rules providing for the determination of temporary absence  
 161 and a recipient's intent to return to the state.


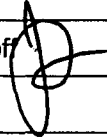
162 (1) A parent or caretaker relative who has been  
 163 disqualified due to fraud must have a protective payee  
 164 designated to receive temporary cash assistance benefits for an  
 165 eligible child. The requirements for designation of a protective  
 166 payee shall be the same as the requirements for designation of a  
 167 protective payee for work sanctions in s. 414.065(2)(b). An  
 168 individual disqualified for fraud cannot be designated as a  
 169 protective payee. In a two-parent household, if only one parent  
 170 is disqualified, the other parent may be designated as the payee  
 171 of the benefit.

172 Section 3. This act shall take effect October 1, 2014.



**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		Lolley 	Leznoff 
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.
- Updates the definition of "religious institution" to bring it in line with federal tax laws.

**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;
- Authorizes an initial and renewal license fee of \$100; and a \$10 fee for application updates;
- Requires professional solicitation businesses to include additional application information, including telephone numbers the solicitor will use and a copy of any script, presentation, or sales literature;
- 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 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;
- Increases the fine for violations from \$1,000 to \$5,000; clarifies 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 results in a significant fiscal impact for state government and the private sector (see Fiscal Analysis and Economic Impact Statement section for more detail). The bill appropriates 4 positions and \$474,709 from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services to implement the provisions of the bill.

This bill has not been heard by the Criminal Justice Impact Conference, but a preliminary, unofficial estimate by the Office of Economic and Demographic Research determined this bill will have an insignificant impact on state prison beds. The bill may have an indeterminate, negative jail bed impact.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0629b.APC.DOCX

DATE: 3/11/2014

## 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.<sup>1</sup> 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.<sup>2</sup>

#### 1. Charitable Organizations and Sponsors<sup>3</sup>

##### Registration Statements

Currently, under s. 495.405, F.S., any charitable organization or sponsor<sup>4</sup> that intends to solicit donations in Florida must annually register with DACS and pay a registration fee<sup>5</sup> before soliciting donations.<sup>6</sup>

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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.

Registration includes a financial report,<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

#### 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.

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

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

<sup>6</sup> 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.

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

<sup>8</sup> Section 496.405(2), F.S.

<sup>9</sup> *Id.* at (3).

<sup>10</sup> *Id.* at (1).

<sup>11</sup> *Id.* at (4)(b).

<sup>12</sup> *Id.* at (7).

### 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 received from each of them; and a statement of functional expenses that must include program expenses, management and general expenses, and fundraising costs.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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<sup>13</sup> "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."

<sup>14</sup> Section 212.08(7)(p), F.S.

<sup>15</sup> Section 212.084, F.S.

<sup>16</sup> Section 496.409(1), (3), F.S.

<sup>17</sup> *Id.* at (2).

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.<sup>18</sup>

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.<sup>19</sup>

#### 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.<sup>20</sup>

### **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.<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup>

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.<sup>24</sup> 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.

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<sup>18</sup> *Id.* at (6).

<sup>19</sup> *Id.* at (4).

<sup>20</sup> Section 496.409(9), F.S.

<sup>21</sup> "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).

<sup>22</sup> Section 496.410 (2), F.S.

<sup>23</sup> *Id.* at (5).

<sup>24</sup> *Id.* at (6).

### 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

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.<sup>25</sup>

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.<sup>26</sup>

## **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.<sup>27</sup> 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.<sup>28</sup>

## **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

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<sup>25</sup> Section 496.412(1)(c), F.S.

<sup>26</sup> *Id.* at (1)(d)-(e).

<sup>27</sup> 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](http://fortmyers.floridaweekly.com/news/2013-01-23/Top_News/Recycling_companies_coopt_the_look_of_charity_for_.html) (last visited Feb 13, 2014).

<sup>28</sup> 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](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](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).



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 Act<sup>29</sup> and may also result in a civil action by DACS.<sup>30</sup> 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 conviction is a second-degree felony punishable by up to 15 years in prison and a fine of up to \$10,000.<sup>31</sup>

#### 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.<sup>32</sup> 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.

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<sup>29</sup> Chapter 501, part II, F.S.; Section 496.416, F.S.

<sup>30</sup> Section 496.420, F.S.

<sup>31</sup> Section 496.417, F.S.

<sup>32</sup> 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.

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)

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."<sup>33</sup> 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.<sup>34</sup>

"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.

<sup>33</sup> 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.

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

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:

- 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.<sup>35</sup>

### 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.

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<sup>35</sup> 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.

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 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.<sup>36</sup> 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 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;

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

- 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.<sup>37</sup> 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.

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

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:

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:

##### **DACS**

General Inspection Trust Fund

<b>Recurring</b>	<b>FY 14-15</b>	<b>FY 15-16</b>
Solicitor Licenses (2,500@\$100)	\$250,000	\$250,000
Administrative Fines (\$4,000 increase x 28)	<u>\$112,000</u>	<u>\$112,000</u>
<b>Total Revenues</b>	<b>\$362,000</b>	<b>\$362,000</b>

The bill creates a \$100 application fee for a professional solicitor license and a \$10 fee to report material changes. DACS did not estimate the revenue impact from the fee charged for fingerprinting applicants for a professional solicitor license or the \$10 change fee.<sup>38</sup>

The bill has not been evaluated by the Revenue Estimating Conference. The impact of losing sales tax exempt status by a charity is unknown at this time.

This bill has not been heard by the Criminal Justice Impact Conference, but a preliminary, unofficial estimate by the Office of Economic and Demographic Research determined this bill will have an insignificant impact on state prison beds.

##### **FDLE**

Operating Trust Fund

Criminal History Record Checks	\$60,000	\$45,000
Annual Retention Fee	<u>0</u>	<u>\$3,750</u>
<b>Total Revenues</b>	<b>\$60,000</b>	<b>\$48,750</b>

<sup>38</sup> 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).  
**STORAGE NAME:** h0629b.APC.DOCX  
**DATE:** 3/11/2014

The department estimates 2,500 new applications for FY 14-15 and 1,875 new applications and 625 renewal applications for ensuing years. The \$24 fee for criminal history record checks is for new applications and the \$6 annual retention fee is added to the renewal application.

2. Expenditures:

**DACS**

General Inspection Trust Fund

<b>Recurring</b>	<b>FY 14-15</b>	<b>FY 15-16</b>
Salary Rate           143,264		
Salaries & Benefits		
(2FTE) Regulatory Consultant	\$97,606	\$97,606
(2FTE) Senior Financial Investigator	<u>111,326</u>	<u>111,326</u>
Total Salaries & Benefits	\$208,932	\$208,932
Expenses		
Professional Package (4FTE)	\$25,044	\$25,044
Human Resources Allocation (4FTE)	\$1,376	\$1,376
Nonoperating Costs		
Information Technology Support	\$4,845	\$4,845
Administrative/Indirect Cost	12,972	12,972
General Revenue Service Charge	<u>20,000</u>	<u>20,000</u>
Total Nonoperating Costs	\$37,817	\$37,817
<b>Total Recurring Costs</b>	<b>\$273,169</b>	<b>\$273,169</b>
<b>Nonrecurring</b>		
Expenses		
Professional Expenses (4FTE)	\$15,092	
Contracted Services		
Software – develop, test, deploy 2,059 hrs @ \$85	\$175,015	
Acquisition of Motor Vehicles (2)	<u>\$49,250</u>	
<b>Total Nonrecurring Costs</b>	<b>\$239,357</b>	
<b>Total Costs</b>	<b><u>\$512,526</u></b>	<b><u>\$273,169</u></b>
<b>Net Loss/Increase to the General Inspection Trust Fund</b>	<b><u>(\$150,526)</u></b>	<b><u>\$88,831</u></b>

The department 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. Similarly, the department 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. To meet the increased workload, OALE estimates it will require two additional Senior Financial Investigator FTEs as well as vehicles for each investigator.<sup>39</sup>

### FDLE Expenditures

Service Charge to General Revenue	\$4,800	\$3,900
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#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The number of potential violators is unknown. Therefore, the amount of revenue to be collected for court costs is indeterminate.

##### 2. Expenditures:

The bill imposes minimum mandatory terms of imprisonment for certain offenses relating to ch. 496, F.S., which could have an indeterminate, negative jail bed impact.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 a fingerprinting fee of \$53.50, which includes \$24 for the state criminal history record check, \$16.50 for the national criminal history check and \$13 for a lifetime federal retention fee.<sup>40</sup> There is an additional \$6 state retention fee added to the annual renewal fee. 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.

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. Some charities that raise funds in response to a specific disaster or crisis will incur additional administrative costs associated with filing quarterly relief statements. 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.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

<sup>39</sup> *Id.*

<sup>40</sup> 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).

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.<sup>41</sup>

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 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.

<sup>41</sup> The Department has indicated that they would correct this issue with an amendment.

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.



27 employees of a charitable organization or sponsor from  
 28 allowing certain persons to solicit contributions on  
 29 behalf of the charitable organization or sponsor;  
 30 authorizing the department to deny or revoke the  
 31 registration of a charitable organization or sponsor  
 32 under certain circumstances; requiring a charitable  
 33 organization or sponsor that has ended solicitation  
 34 activities in this state to notify the department in  
 35 writing; creating s. 496.4055, F.S.; defining the term  
 36 "conflict of interest transaction"; requiring the  
 37 board of directors of a charitable organization or  
 38 sponsor, or an authorized committee thereof, to adopt  
 39 a policy regarding conflict of interest transactions;  
 40 amending s. 496.407, F.S.; requiring the financial  
 41 statements of certain charitable organizations or  
 42 sponsors to be audited or reviewed; providing  
 43 requirements and standards for such audit or review;  
 44 authorizing certain charitable organizations and  
 45 sponsors to submit specified Internal Revenue Service  
 46 Forms in lieu of a financial statement; authorizing  
 47 the department to provide an extension for filing a  
 48 financial statement; authorizing the department to  
 49 require an audit or review of any financial statement  
 50 submitted by a charitable organization or sponsor;  
 51 creating s. 496.4071, F.S.; requiring certain  
 52 charitable organizations or sponsors to report

53 | specified supplemental financial information to the  
 54 | department by a certain date; creating s. 496.4072,  
 55 | F.S.; requiring certain charitable organizations or  
 56 | sponsors that solicit contributions for a specific  
 57 | disaster relief effort to submit quarterly financial  
 58 | statements to the department; providing requirements  
 59 | and procedures for the filing of such quarterly  
 60 | reports; amending s. 496.409, F.S.; authorizing a  
 61 | professional fundraising consultant to enter into a  
 62 | contract or agreement only with certain charitable  
 63 | organizations or sponsors; revising the procedures and  
 64 | requirements for reviewing professional fundraising  
 65 | consultant registration statements and renewal  
 66 | applications; prohibiting certain officers, trustees,  
 67 | directors, or employees of professional fundraising  
 68 | consultants from allowing certain persons to solicit  
 69 | contributions on behalf of the professional  
 70 | fundraising consultant; authorizing the department to  
 71 | deny or revoke the registration of a professional  
 72 | fundraising consultant under certain circumstances;  
 73 | amending s. 496.410, F.S.; revising the information  
 74 | that must be included in a professional solicitor  
 75 | application for registration or renewal of  
 76 | registration; revising procedures and requirements for  
 77 | reviewing professional solicitor registration  
 78 | statements and renewal applications; revising the



79 information that must be included in a solicitation  
 80 notice filed by a professional solicitor; authorizing  
 81 a professional solicitor to enter into a contract or  
 82 agreement only with certain charitable organizations  
 83 or sponsors; prohibiting certain officers, trustees,  
 84 directors, or employees of a professional solicitor  
 85 from soliciting for compensation or allowing certain  
 86 persons to solicit for compensation on behalf of the  
 87 professional solicitor; authorizing the department to  
 88 deny or revoke the registration of a professional  
 89 solicitor under certain circumstances; creating s.  
 90 496.4101, F.S.; requiring each officer, director,  
 91 trustee, or owner of a professional solicitor and  
 92 certain employees of a professional solicitor to  
 93 obtain a solicitor license from the department;  
 94 providing application requirements and procedures;  
 95 requiring applicants to submit a complete set of  
 96 fingerprints and pay a fee for fingerprint processing  
 97 and retention; requiring a solicitor license to be  
 98 renewed annually; providing an initial application and  
 99 renewal fee for a solicitor license; requiring  
 100 material changes in applications or renewal  
 101 applications to be reported to the department within a  
 102 specified period; providing a fee for reporting  
 103 material changes; providing violations; requiring the  
 104 department to adopt rules to allow certain applicants

105 to engage in solicitation activities on a temporary  
 106 basis; authorizing the department to deny or revoke a  
 107 solicitor license under certain circumstances;  
 108 amending s. 496.411, F.S.; revising disclosure  
 109 requirements for charitable organizations and  
 110 sponsors; amending s. 496.412, F.S.; revising  
 111 disclosure requirements for professional solicitors;  
 112 creating s. 496.4121, F.S.; defining the term  
 113 "collection receptacle"; requiring collection  
 114 receptacles to display permanent signs or labels;  
 115 providing requirements for such signs or labels;  
 116 requiring a charitable organization or sponsor using a  
 117 collection receptacle to provide certain information  
 118 to a donor upon request; amending s. 496.415, F.S.;  
 119 prohibiting the submission of false, misleading, or  
 120 inaccurate information in a document in connection  
 121 with a solicitation or sales promotion; prohibiting  
 122 the failure to remit specified funds to a charitable  
 123 organization or sponsor; amending s. 496.419, F.S.;  
 124 increasing administrative fine amounts the department  
 125 is authorized to impose for specified violations of  
 126 the Solicitation of Contributions Act; creating s.  
 127 496.4191, F.S.; requiring the department to  
 128 immediately suspend a registration or processing of an  
 129 application for registration if the registrant,  
 130 applicant, or any officer or director thereof is

131 charged with certain criminal offenses; creating s.  
 132 496.430, F.S.; authorizing the department to issue an  
 133 order to disqualify a charitable organization or  
 134 sponsor from receiving a sales tax exemption under  
 135 certain circumstances; providing exceptions;  
 136 authorizing a charitable organization or sponsor to  
 137 appeal a disqualification order within a specified  
 138 period; providing that a disqualification order  
 139 remains effective for a specified period; requiring a  
 140 charitable organization or sponsor to provide  
 141 specified information to the department in order to  
 142 lift a disqualification order; requiring the  
 143 department to provide a final disqualification order  
 144 to the Department of Revenue within a specified  
 145 period; requiring the Department of Revenue to revoke  
 146 a sales tax exemption certificate of, or refuse to  
 147 grant a sales tax exemption certificate to, charitable  
 148 organizations or sponsors subject to a final  
 149 disqualification order; providing for appeal;  
 150 providing applicability; amending s. 741.0305, F.S.;  
 151 conforming a cross-reference; providing severability;  
 152 providing an appropriation and authorizing positions;  
 153 providing an effective date.

154  
 155  
 156

Be It Enacted by the Legislature of the State of Florida:

157 Section 1. Paragraph (p) of subsection (7) of section  
 158 212.08, Florida Statutes, is amended to read:

159 212.08 Sales, rental, use, consumption, distribution, and  
 160 storage tax; specified exemptions.—The sale at retail, the  
 161 rental, the use, the consumption, the distribution, and the  
 162 storage to be used or consumed in this state of the following  
 163 are hereby specifically exempt from the tax imposed by this  
 164 chapter.

165 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any  
 166 entity by this chapter do not inure to any transaction that is  
 167 otherwise taxable under this chapter when payment is made by a  
 168 representative or employee of the entity by any means,  
 169 including, but not limited to, cash, check, or credit card, even  
 170 when that representative or employee is subsequently reimbursed  
 171 by the entity. In addition, exemptions provided to any entity by  
 172 this subsection do not inure to any transaction that is  
 173 otherwise taxable under this chapter unless the entity has  
 174 obtained a sales tax exemption certificate from the department  
 175 or the entity obtains or provides other documentation as  
 176 required by the department. Eligible purchases or leases made  
 177 with such a certificate must be in strict compliance with this  
 178 subsection and departmental rules, and any person who makes an  
 179 exempt purchase with a certificate that is not in strict  
 180 compliance with this subsection and the rules is liable for and  
 181 shall pay the tax. The department may adopt rules to administer  
 182 this subsection.

183 (p) Section 501(c)(3) organizations.—Also exempt from the  
 184 tax imposed by this chapter are sales or leases to organizations  
 185 determined by the Internal Revenue Service to be currently  
 186 exempt from federal income tax pursuant to s. 501(c)(3) of the  
 187 Internal Revenue Code of 1986, as amended, if ~~when~~ such leases  
 188 or purchases are used in carrying on their customary nonprofit  
 189 activities, unless such organizations are subject to a final  
 190 disqualification order issued by the Department of Agriculture  
 191 and Consumer Services pursuant to s. 496.430.

192 Section 2. Subsection (3) of section 212.084, Florida  
 193 Statutes, is amended, and subsection (7) is added to that  
 194 section, to read:

195 212.084 Review of exemption certificates; reissuance;  
 196 specified expiration date; temporary exemption certificates.—

197 (3) After review is completed and it has been determined  
 198 that an institution, organization, or individual is actively  
 199 engaged in a bona fide exempt endeavor and is not subject to a  
 200 final disqualification order issued by the Department of  
 201 Agriculture and Consumer Services pursuant to s. 496.430, the  
 202 department shall reissue an exemption certificate to the entity.  
 203 However, each certificate so reissued is valid for 5 consecutive  
 204 years, at which time the review and reissuance procedure  
 205 provided by this section applies ~~apply~~ again. If the department  
 206 determines that an entity no longer qualifies for an exemption,  
 207 it shall revoke the tax exemption certificate of the entity.

208 (7) The department shall revoke a sales tax exemption

209 certificate granted to, or refuse to grant a sales tax exemption  
 210 certificate to, an institution, organization, or individual who  
 211 is the subject of a final disqualification order issued by the  
 212 Department of Agriculture and Consumer Services pursuant to s.  
 213 496.430. A revocation or denial under this subsection is subject  
 214 to challenge under chapter 120 only as to whether a  
 215 disqualification order is in effect. An institution,  
 216 organization, or individual who appeals or challenges the  
 217 validity of the disqualification order must do so pursuant to s.  
 218 496.430(2).

219 Section 3. Section 496.403, Florida Statutes, is amended  
 220 to read:

221 496.403 Application.—Sections 496.401-496.424 do not apply  
 222 to bona fide religious institutions, educational institutions,  
 223 blood establishments as defined in s. 381.06014(1)(a), and state  
 224 agencies or other government entities or persons or  
 225 organizations who solicit or act as professional fundraising  
 226 consultants solely on ~~their~~ behalf of those entities. Sections  
 227 496.401-496.424 do not apply to political contributions  
 228 solicited in accordance with the election laws of this state.

229 Section 4. Section 496.404, Florida Statutes, is amended  
 230 to read:

231 496.404 Definitions.—As used in ss. 496.401-496.424, the  
 232 term:

233 (1) "Charitable organization" means a ~~any~~ person who is or  
 234 holds herself or himself out to be established for any

235 benevolent, educational, philanthropic, humane, scientific,  
 236 artistic, patriotic, social welfare or advocacy, public health,  
 237 environmental conservation, civic, or other eleemosynary  
 238 purpose, or a ~~any~~ person who in any manner employs a charitable  
 239 appeal as the basis for any solicitation or an appeal that  
 240 suggests that there is a charitable purpose to any solicitation.  
 241 The term ~~It~~ includes a chapter, branch, area office, or similar  
 242 affiliate soliciting contributions within the state for a  
 243 charitable organization that ~~which~~ has its principal place of  
 244 business outside the state.

245 (2) "Charitable purpose" means a ~~any~~ benevolent,  
 246 philanthropic, patriotic, educational, humane, scientific,  
 247 artistic, public health, social welfare or advocacy,  
 248 environmental conservation, civic, or other eleemosynary  
 249 objective.

250 (3) "Charitable sales promotion" means an advertising or  
 251 sales campaign conducted by a commercial co-venturer which  
 252 represents that the purchase or use of goods or services offered  
 253 by the commercial co-venturer benefits ~~are to benefit~~ a  
 254 charitable organization. The provision of advertising services  
 255 to a charitable organization does not, in itself, constitute a  
 256 charitable sales promotion.

257 (4) "Commercial co-venturer" means a ~~any~~ person who, for  
 258 profit, regularly and primarily is engaged in trade or commerce  
 259 other than in connection with solicitation of contributions and  
 260 who conducts a charitable sales promotion or a sponsor sales

261 promotion.

262 (5) "Contribution" means the promise, pledge, or grant of  
 263 ~~any~~ money or property, financial assistance, or any other thing  
 264 of value in response to a solicitation. The term "Contribution"  
 265 includes, in the case of a charitable organization or sponsor  
 266 offering goods and services to the public, the difference  
 267 between the direct cost of the goods and services to the  
 268 charitable organization or sponsor and the price at which the  
 269 charitable organization or sponsor or a ~~any~~ person acting on  
 270 behalf of the charitable organization or sponsor resells those  
 271 goods or services to the public. The term "Contribution" does  
 272 not include:

273 (a) Bona fide fees, dues, or assessments paid by members  
 274 ~~if, provided that~~ membership is not conferred solely as  
 275 consideration for making a contribution in response to a  
 276 solicitation;

277 (b) ~~"Contribution" also does not include~~ Funds obtained by  
 278 a charitable organization or sponsor pursuant to government  
 279 grants or contracts;

280 (c) Funds, ~~or~~ obtained as an allocation from a United Way  
 281 organization that is duly registered with the department; or

282 (d) Funds received from an organization duly registered  
 283 with the department that is exempt from federal income taxation  
 284 under s. 501(a) of the Internal Revenue Code and described in s.  
 285 501(c) of the Internal Revenue Code ~~that is duly registered with~~  
 286 ~~the department.~~



287           (6) "Crisis" means an event that garners widespread  
 288 national or global media coverage due to an actual or perceived  
 289 threat of harm to an individual, a group, or a community.

290           ~~(7)(6)~~ "Department" means the Department of Agriculture  
 291 and Consumer Services.

292           (8) "Disaster" means a natural, technological, or civil  
 293 event, including, but not limited to, an explosion, chemical  
 294 spill, earthquake, tsunami, landslide, volcanic activity,  
 295 avalanche, wildfire, tornado, hurricane, drought, or flood,  
 296 which affects one or more countries and causes damage of  
 297 sufficient severity and magnitude to result in:

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

300           ~~(9)(7)~~ "Division" means the Division of Consumer Services  
 301 of the Department of Agriculture and Consumer Services.

302           ~~(10)(8)~~ "Educational institutions" means those  
 303 institutions and organizations described in s. 212.08(7)(cc)8.a.  
 304 The term includes private nonprofit organizations, the purpose  
 305 of which is to raise funds for schools teaching grades  
 306 kindergarten through grade 12, colleges, and universities,  
 307 including a ~~any~~ nonprofit newspaper of free or paid circulation  
 308 primarily on university or college campuses which holds a  
 309 current exemption from federal income tax under s. 501(c)(3) of  
 310 the Internal Revenue Code, an ~~any~~ educational television network  
 311 or system established pursuant to s. 1001.25 or s. 1001.26, and  
 312 a ~~any~~ nonprofit television or radio station that is a part of

313 such network or system and that holds a current exemption from  
 314 federal income tax under s. 501(c)(3) of the Internal Revenue  
 315 Code. The term also includes a nonprofit educational cable  
 316 consortium that holds a current exemption from federal income  
 317 tax under s. 501(c)(3) of the Internal Revenue Code, the whose  
 318 primary purpose of which is the delivery of educational and  
 319 instructional cable television programming and the whose members  
 320 of which are composed exclusively of educational organizations  
 321 that hold a valid consumer certificate of exemption and that are  
 322 either an educational institution as defined in this subsection  
 323 or qualified as a nonprofit organization pursuant to s.  
 324 501(c)(3) of the Internal Revenue Code.

325 (11)~~(9)~~ "Emergency service employee" means an ~~any~~ employee  
 326 who is a firefighter, as defined in s. 633.102, or ambulance  
 327 driver, emergency medical technician, or paramedic, as defined  
 328 in s. 401.23.

329 (12)~~(10)~~ "Federated fundraising organization" means a  
 330 federation of independent charitable organizations that ~~which~~  
 331 have voluntarily joined together, including, but not limited to,  
 332 a united way or community chest, for purposes of raising and  
 333 distributing contributions for and among themselves and where  
 334 membership does not confer operating authority and control of  
 335 the individual organization upon the federated group  
 336 organization.

337 (13)~~(11)~~ "Fundraising costs" means those costs incurred in  
 338 inducing others to make contributions to a charitable

339 organization or sponsor for which the contributors will receive  
 340 no direct economic benefit. Fundraising costs include, but are  
 341 not limited to, salaries, rent, acquiring and obtaining mailing  
 342 lists, printing, mailing, and all direct and indirect costs of  
 343 soliciting, as well as the cost of unsolicited merchandise sent  
 344 to encourage contributions.

345 (14)~~(12)~~ "Law enforcement officer" means a ~~any~~ person who  
 346 is elected, appointed, or employed by a ~~any~~ municipality or the  
 347 state or a ~~any~~ political subdivision thereof and:

348 (a) Who is vested with authority to bear arms and make  
 349 arrests and whose primary responsibility is the prevention and  
 350 detection of crime or the enforcement of the criminal, traffic,  
 351 or highway laws of the state; or

352 (b) Whose responsibility includes supervision, protection,  
 353 care, custody, or control of inmates within a correctional  
 354 institution.

355 (15) "Management and general costs" means all such costs  
 356 of a charitable organization or sponsor which are not  
 357 identifiable with a single program or fundraising activity but  
 358 which are indispensable to the conduct of such programs and  
 359 activities and the charitable organization or sponsor's  
 360 existence.

361 (16)~~(13)~~ "Membership" means the relationship of a person  
 362 to an organization which ~~that~~ entitles her or him to the  
 363 privileges, professional standing, honors, or other direct  
 364 benefit of the organization in addition to the right to vote,

365 elect officers, and hold office in the organization.

366 (17)~~(14)~~ "Owner" means a ~~any~~ person who has a direct or  
 367 indirect interest in a ~~any~~ professional fundraising consultant  
 368 or professional solicitor.

369 (18)~~(15)~~ "Parent organization" means that part of a  
 370 charitable organization or sponsor which coordinates,  
 371 supervises, or exercises control over policy, fundraising, and  
 372 expenditures or assists or advises one or more of the  
 373 organization's chapters, branches, or affiliates in this state.

374 (19)~~(16)~~ "Person" means an ~~any~~ individual, organization,  
 375 trust, foundation, group, association, entity, partnership,  
 376 corporation, or society, ~~or any combination thereof of them.~~

377 (20)~~(17)~~ "Professional fundraising consultant" means a ~~any~~  
 378 person who is retained by a charitable organization or sponsor  
 379 for a fixed fee or rate under a written agreement to plan,  
 380 manage, conduct, carry on, advise, consult, or prepare material  
 381 for a solicitation of contributions in this state, ~~but who does~~  
 382 not solicit contributions or employ, procure, or engage any  
 383 compensated person to solicit contributions and who does not at  
 384 any time have custody or control of contributions. A bona fide  
 385 volunteer or bona fide employee or salaried officer of a  
 386 charitable organization or sponsor maintaining a permanent  
 387 establishment in this state is not a professional fundraising  
 388 consultant. An attorney, investment counselor, or banker who  
 389 advises an individual, corporation, or association to make a  
 390 charitable contribution is not a professional fundraising

391 consultant as the result of such advice.

392 (21)~~(18)~~ "Professional solicitor" means a ~~any~~ person who,  
 393 for compensation, performs for a charitable organization or  
 394 sponsor a ~~any~~ service in connection with which contributions are  
 395 or will be solicited in, or from a location in, this state by  
 396 the compensated person or by a ~~any~~ person it employs, procures,  
 397 or otherwise engages, directly or indirectly, to solicit  
 398 contributions, or a person who plans, conducts, manages, carries  
 399 on, advises, consults, ~~whether~~ directly or indirectly, in  
 400 connection with the solicitation of contributions for or on  
 401 behalf of a charitable organization or sponsor, but who does not  
 402 qualify as a professional fundraising consultant. A bona fide  
 403 volunteer or bona fide employee or salaried officer of a  
 404 charitable organization or sponsor maintaining a permanent  
 405 establishment in this state is not a professional solicitor. An  
 406 attorney, investment counselor, or banker who advises an  
 407 individual, corporation, or association to make a charitable  
 408 contribution is not a professional solicitor as the result of  
 409 such advice.

410 (22) "Program service costs" means all expenses incurred  
 411 primarily to accomplish the charitable organization or sponsor's  
 412 stated purposes. The term does not include fundraising costs.

413 (23)~~(19)~~ "Religious institution" means a ~~any~~ church,  
 414 ecclesiastical or denominational organization, or established  
 415 physical place for worship in this state at which nonprofit  
 416 religious services and activities are regularly conducted and

417 carried on~~7~~ and includes those bona fide religious groups that  
 418 ~~which~~ do not maintain specific places of worship. The term  
 419 ~~"Religious institution"~~ also includes a any separate group or  
 420 corporation that ~~which~~ forms an integral part of a religious  
 421 institution that ~~which~~ is exempt from federal income tax under  
 422 ~~the provisions of~~ s. 501(c)(3) of the Internal Revenue Code. The  
 423 term also includes a religious institution recognized by the  
 424 Department of Revenue under s. 212.08(7)(m)2. and a religious  
 425 organization described in s. 501(c)(3) of the Internal Revenue  
 426 Code that is exempt from federal income tax under s. 501(a) of  
 427 the Internal Revenue Code and exempt from filing an annual Form  
 428 990, 990-EZ, or 990-N under 26 U.S.C. s. 6033, and which is not  
 429 ~~primarily supported by funds solicited outside its own~~  
 430 ~~membership or congregation.~~

431 (24)(20) "Solicitation" means a request, directly or  
 432 indirectly, for money, property, financial assistance, or any  
 433 other thing of value on the plea or representation that such  
 434 money, property, financial assistance, or other thing of value  
 435 or a portion of it will be used for a charitable or sponsor  
 436 purpose or will benefit a charitable organization or sponsor.  
 437 The term "Solicitation" includes, but is not limited to, the  
 438 following methods of requesting or securing the promise, pledge,  
 439 or grant of money, property, financial assistance, or any other  
 440 thing of value:

- 441 (a) Making any oral or written request;
- 442 (b) Making any announcement to the press, on radio or

443 television, by telephone or telegraph, or by any other  
 444 communication device concerning an appeal or campaign by or for  
 445 any charitable organization or sponsor or for any charitable or  
 446 sponsor purpose;

447 (c) Distributing, circulating, posting, or publishing any  
 448 handbill, written advertisement, or other publication that  
 449 directly or by implication seeks to obtain any contribution; or

450 (d) Selling or offering or attempting to sell any  
 451 advertisement, advertising space, book, card, coupon, chance,  
 452 device, magazine, membership, merchandise, subscription,  
 453 sponsorship, flower, admission, ticket, food, or other service  
 454 or tangible good, item, or thing of value, or any right of any  
 455 description in connection with which any appeal is made for any  
 456 charitable organization or sponsor or charitable or sponsor  
 457 purpose, or when the name of any charitable organization or  
 458 sponsor is used or referred to in any such appeal as an  
 459 inducement or reason for making the sale or when, in connection  
 460 with the sale or offer or attempt to sell, any statement is made  
 461 that all or part of the proceeds from the sale will be used for  
 462 any charitable or sponsor purpose or will benefit any charitable  
 463 organization or sponsor.

464  
 465 A solicitation is considered as having taken place regardless of  
 466 whether ~~or not~~ the person making the solicitation receives any  
 467 contribution. A solicitation does not occur when a person  
 468 applies for a grant or an award to the government or to an

469 organization that is exempt from federal income taxation under  
 470 s. 501(a) of the Internal Revenue Code and described in s.  
 471 501(c) of the Internal Revenue Code and is duly registered with  
 472 the department.

473 (25)~~(21)~~ "Sponsor" means a group or person who ~~which~~ is or  
 474 holds herself or himself ~~itself~~ out to be soliciting  
 475 contributions by the use of a ~~any~~ name that ~~which~~ implies that  
 476 the group or person is in any way affiliated with or organized  
 477 for the benefit of emergency service employees or law  
 478 enforcement officers and the group or person ~~which~~ is not a  
 479 charitable organization. The term includes a chapter, branch, or  
 480 affiliate that ~~which~~ has its principal place of business outside  
 481 the state, if such chapter, branch, or affiliate solicits or  
 482 holds itself out to be soliciting contributions in this state.

483 (26)~~(22)~~ "Sponsor purpose" means a ~~any~~ program or endeavor  
 484 performed to benefit emergency service employees or law  
 485 enforcement officers.

486 (27)~~(23)~~ "Sponsor sales promotion" means an advertising or  
 487 sales campaign conducted by a commercial co-venturer who  
 488 represents that the purchase or use of goods or services offered  
 489 by the commercial co-venturer will be used for a sponsor purpose  
 490 or donated to a sponsor. The provision of advertising services  
 491 to a sponsor does not, in itself, constitute a sponsor sales  
 492 promotion.

493 Section 5. Subsection (1), paragraphs (a) and (g) of  
 494 subsection (2), subsection (3), paragraph (b) of subsection (4),



495 and subsections (7) and (8) of section 496.405, Florida  
 496 Statutes, are amended, and subsections (9) and (10) are added to  
 497 that section, to read:

498 496.405 Registration statements by charitable  
 499 organizations and sponsors.—

500 (1) ~~(a)~~ A charitable organization or sponsor, unless  
 501 exempted pursuant to s. 496.406, which intends to solicit  
 502 contributions in this state by any means or have funds solicited  
 503 on its behalf by any other person, charitable organization,  
 504 sponsor, commercial co-venturer, or professional solicitor, or  
 505 that participates in a charitable sales promotion or sponsor  
 506 sales promotion, must, before ~~prior to~~ engaging in any of these  
 507 activities, file an initial registration statement, and a  
 508 renewal statement annually thereafter, with the department.

509 ~~(a)(b)~~ Except as provided in paragraph (b), any changes in  
 510 the information submitted on the initial registration statement  
 511 or the last renewal statement must be updated annually on a  
 512 renewal statement provided by the department on or before the  
 513 date that marks 1 year after the date the department approved  
 514 the initial registration statement as provided in this section.  
 515 The department shall annually provide a renewal statement to  
 516 each registrant by mail or by electronic mail at least 30 days  
 517 before the renewal date.

518 (b) Any changes to the information submitted to the  
 519 department pursuant to paragraph (2)(d) on the initial  
 520 registration statement or the last renewal statement must be

521 reported to the department on a form prescribed by the  
 522 department within 10 days after the change occurs.

523 (c) A charitable organization or sponsor that is required  
 524 to file an initial registration statement or annual renewal  
 525 statement may not, before ~~prior to~~ approval of its statement by  
 526 the department in accordance with subsection (7), solicit  
 527 contributions or have contributions solicited on its behalf by  
 528 any other person, charitable organization, sponsor, commercial  
 529 co-venturer, or professional solicitor, or participate in a  
 530 charitable sales promotion or sponsor sales promotion.

531 ~~(d) For good cause shown, the department may extend the~~  
 532 ~~time for the filing of an annual renewal statement or financial~~  
 533 ~~report for a period not to exceed 60 days, during which time the~~  
 534 ~~previous registration remains in effect.~~

535 ~~(d)(e) In no event shall~~ The registration of a charitable  
 536 organization or sponsor may not continue in effect and shall  
 537 expire without further action of the department:

538 1. After the date the charitable organization or sponsor  
 539 should have filed, but failed to file, its renewal statement  
 540 financial report in accordance with this section.

541 2. For failure to provide a financial statement within any  
 542 extension period provided under and s. 496.407. The organization  
 543 may not file a renewal statement until it has filed the required  
 544 financial report with the department.

545 (2) The initial registration statement must be submitted  
 546 on a form prescribed by the department, signed by an authorized

547 official of the charitable organization or sponsor who shall  
 548 certify that the registration statement is true and correct, and  
 549 include the following information or material:

550 (a) A copy of the financial statement ~~report~~ or Internal  
 551 Revenue Service Form 990 and all attached schedules or Internal  
 552 Revenue Service Form 990-EZ and Schedule O required under s.  
 553 496.407 for the immediately preceding fiscal year. A newly  
 554 organized charitable organization or sponsor with no financial  
 555 history must file a budget for the current fiscal year.

556 (g) The following information must be filed with the  
 557 initial registration statement and must be updated when any  
 558 change occurs in the information that was previously filed with  
 559 the initial registration statement:

560 1. The principal street address and telephone number of  
 561 the charitable organization or sponsor and the street address  
 562 and telephone numbers of any offices in this state or, if the  
 563 charitable organization or sponsor does not maintain an office  
 564 in this state, the name, street address, and telephone number of  
 565 the person who ~~that~~ has custody of its financial records. The  
 566 parent organization that files a consolidated registration  
 567 statement on behalf of its chapters, branches, or affiliates  
 568 must additionally provide the street addresses and telephone  
 569 numbers of all such locations in this state.

570 2. The names and street addresses of the officers,  
 571 directors, trustees, and ~~the~~ principal salaried executive  
 572 personnel.

573           3. The date when the charitable organization  
 574 ~~organization's~~ or sponsor's fiscal year ends.

575           4. A list or description of the major program activities.

576           5. The names, street addresses, and telephone numbers of  
 577 the individuals or officers who have final responsibility for  
 578 the custody of the contributions and who will be responsible for  
 579 the final distribution of the contributions.

580           (3) Each chapter, branch, or affiliate of a parent  
 581 organization that is required to register under this section  
 582 must ~~either~~ file a separate registration statement and financial  
 583 statement ~~report~~ or ~~must~~ report the required information to its  
 584 parent organization, which shall then file, on a form prescribed  
 585 by the department, a consolidated registration statement for the  
 586 parent organization and its Florida chapters, branches, and  
 587 affiliates. A consolidated registration statement filed by a  
 588 parent organization must include or be accompanied by financial  
 589 statements ~~reports~~ as specified in s. 496.407 for the parent  
 590 organization and each of its Florida chapters, branches, and  
 591 affiliates that solicited or received contributions during the  
 592 preceding fiscal year. However, if all contributions received by  
 593 chapters, branches, or affiliates are remitted directly into a  
 594 depository account that ~~which~~ feeds directly into the parent  
 595 organization's centralized accounting system from which all  
 596 disbursements are made, the parent organization may submit one  
 597 consolidated financial statement ~~report~~ on a form prescribed by  
 598 the department. The consolidated financial statement must

599 reflect the activities of each chapter, branch, or affiliate of  
 600 the parent organization, including all contributions received in  
 601 the name of each chapter, branch, or affiliate; all payments  
 602 made to each chapter, branch, or affiliate; and all  
 603 administrative fees assessed to each chapter, branch, or  
 604 affiliate.

605 (4)

606 (b) A charitable organization or sponsor that ~~which~~ fails  
 607 to file a registration statement by the due date may be assessed  
 608 an additional fee for such late filing. The late filing fee is  
 609 ~~shall be~~ \$25 for each month or part of a month after the date on  
 610 which the annual renewal statement was ~~and financial report were~~  
 611 due to be filed with the department.

612 (7) (a) The department must examine each initial  
 613 registration statement or annual renewal statement and the  
 614 supporting documents filed by a charitable organization or  
 615 sponsor and shall determine whether the registration  
 616 requirements are satisfied. Within 15 business ~~working~~ days  
 617 after its receipt of a statement, the department must examine  
 618 the statement, notify the applicant of any apparent errors or  
 619 omissions, and request any additional information the department  
 620 is allowed by law to require. Failure to correct an error or  
 621 omission or to supply additional information is not grounds for  
 622 denial of the initial registration or annual renewal statement  
 623 unless the department has notified the applicant within the 15-  
 624 business-day ~~15-working-day~~ period. The department must approve

625 or deny each statement, or must notify the applicant that the  
 626 activity for which she or he seeks registration is exempt from  
 627 the registration requirement, within 15 business ~~working~~ days  
 628 after receipt of the initial registration or annual renewal  
 629 statement or the requested additional information or correction  
 630 of errors or omissions. ~~A~~ Any statement that is not approved or  
 631 denied within 15 business ~~working~~ days after receipt of the  
 632 requested additional information or correction of errors or  
 633 omissions is approved. Within 7 business ~~working~~ days after  
 634 receipt of a notification that the registration requirements are  
 635 not satisfied, the charitable organization or sponsor may  
 636 request a hearing. The hearing must be held within 7 business  
 637 ~~working~~ days after receipt of the request, and any recommended  
 638 order, if one is issued, must be rendered within 3 business  
 639 ~~working~~ days after ~~of~~ the hearing. The final order must then be  
 640 issued within 2 business ~~working~~ days after the recommended  
 641 order. If a recommended order is not issued, the final order  
 642 must be issued within 5 business ~~working~~ days after the hearing.  
 643 The proceedings must be conducted in accordance with chapter  
 644 120, except that the time limits and provisions set forth in  
 645 this paragraph ~~subsection~~ prevail to the extent of any conflict.

646 (b) If a charitable organization or sponsor discloses  
 647 information specified in subparagraphs (2)(d)2.-7. in the  
 648 initial registration statement or annual renewal statement, the  
 649 time limits set forth in paragraph (a) are waived, and the  
 650 department shall process such initial registration statement or

651 annual renewal statement in accordance with the time limits set  
 652 forth in chapter 120. The registration of a charitable  
 653 organization or sponsor shall be automatically suspended for  
 654 failure to disclose any information specified in subparagraphs  
 655 (2)(d)2.-7. until such time as the required information is  
 656 submitted to the department.

657 (8) A ~~Ne~~ charitable organization or sponsor, or an  
 658 officer, director, trustee, or employee thereof, may not shall  
 659 knowingly allow an officer, director, trustee, or employee of  
 660 the charitable organization or sponsor ~~any of its officers,~~  
 661 ~~directors, trustees, or employees~~ to solicit contributions on  
 662 behalf of such charitable organization or sponsor if such  
 663 officer, director, trustee, or employee has, in any state,  
 664 regardless of adjudication, been convicted of, been ~~or~~ found  
 665 guilty of, or pled guilty or nolo contendere to, or has been  
 666 incarcerated within the last 10 years as a result of having  
 667 previously been convicted of, been ~~or~~ found guilty of, or pled  
 668 guilty or nolo contendere to, a any felony within the last 10  
 669 years or a any crime within the last 10 years involving fraud,  
 670 theft, larceny, embezzlement, fraudulent conversion,  
 671 misappropriation of property, or a any crime arising from the  
 672 conduct of a solicitation for a charitable organization or  
 673 sponsor, or has been enjoined in any state from violating a any  
 674 law relating to a charitable solicitation. The prohibitions in  
 675 this subsection also apply to a misdemeanor in another state  
 676 which constitutes a disqualifying felony in this state.

677       (9) The department may deny or revoke the registration of  
 678 a charitable organization or sponsor if the charitable  
 679 organization or sponsor, or an officer, director, or trustee  
 680 thereof, has had the right to solicit contributions revoked in  
 681 any state, has entered into an agreement with any state to cease  
 682 soliciting contributions within that state, or has been ordered  
 683 by a court or governmental agency to cease soliciting  
 684 contributions within any state.

685       (10) A charitable organization or sponsor registered under  
 686 this section which ends solicitation activities or participation  
 687 in charitable sales promotions in this state shall immediately  
 688 notify the department in writing of the date such activities  
 689 ceased.

690       Section 6. Section 496.4055, Florida Statutes, is created  
 691 to read:

692       496.4055 Charitable organization or sponsor board duties.-

693       (1) As used in this section, the term "conflict of  
 694 interest transaction" means a transaction between a charitable  
 695 organization or sponsor and another party in which a director,  
 696 officer, or trustee of the charitable organization or sponsor  
 697 has a direct or indirect financial interest. The term includes,  
 698 but is not limited to, the sale, lease, or exchange of property  
 699 to or from the charitable organization or sponsor; the lending  
 700 of moneys to or borrowing of moneys from the charitable  
 701 organization or sponsor; and the payment of compensation for  
 702 services provided to or from the charitable organization or



703 sponsor.

704 (2) The board of directors, or an authorized committee  
 705 thereof, of a charitable organization or sponsor required to  
 706 register with the department under s. 496.405 shall adopt a  
 707 policy regarding conflict of interest transactions. The policy  
 708 shall require annual certification of compliance with the policy  
 709 by all directors, officers, and employees of the charitable  
 710 organization. A copy of the annual certification shall be  
 711 submitted to the department with the annual registration  
 712 statement required by s. 496.405.

713 Section 7. Section 496.407, Florida Statutes, is amended  
 714 to read:

715 496.407 Financial statement ~~report~~.-

716 (1) A charitable organization or sponsor that is required  
 717 to initially register or annually renew registration must file  
 718 an annual financial statement ~~report~~ for the immediately  
 719 preceding fiscal year on ~~upon~~ a form prescribed by the  
 720 department.

721 (a) The statement ~~report~~ must include the following:

722 1.(a) A balance sheet.

723 2.(b) A statement of support, revenue and expenses, and  
 724 any change in the fund balance.

725 3.(c) The names and addresses of the charitable  
 726 organizations or sponsors, professional fundraising consultant,  
 727 professional solicitors, and commercial co-venturers used, if  
 728 any, and the amounts received therefrom ~~from each of them~~, if

729 any.

730 4.(d) A statement of functional expenses that must  
 731 include, but is not ~~be~~ limited to, expenses in the following  
 732 categories:

733 a.1. Program service costs.

734 b.2. Management and general costs.

735 c.3. Fundraising costs.

736 (b) The financial statement must be audited or reviewed as  
 737 follows:

738 1. For a charitable organization or sponsor that receives  
 739 less than \$500,000 in annual contributions, a compilation,  
 740 audit, or review of the financial statement is optional.

741 2. For a charitable organization or sponsor that receives  
 742 at least \$500,000 but less than \$1 million in annual  
 743 contributions, the financial statement shall be reviewed or  
 744 audited by an independent certified public accountant.

745 3. For a charitable organization or sponsor that receives  
 746 \$1 million or more in annual contributions, the financial  
 747 statement shall be audited by an independent certified public  
 748 accountant.

749 (c) Audits and reviews shall be prepared in accordance  
 750 with the following standards:

751 1. An audit shall be prepared by an independent certified  
 752 public account in accordance with generally accepted auditing  
 753 standards, including the Statements on Auditing Standards.

754 2. A review shall be prepared by an independent certified

755 public accountant in accordance with the Statements on Standards  
 756 for Accounting and Review Services.

757 (d) An audited or reviewed financial statement must be  
 758 accompanied by a report signed and prepared by the independent  
 759 certified public accountant performing such audit or review.

760 (2) In lieu of the financial statement ~~report~~ described in  
 761 subsection (1), a charitable organization or sponsor that  
 762 receives less than \$500,000 in annual contributions may submit a  
 763 copy of its Internal Revenue Service Form 990 and all attached  
 764 schedules filed for the preceding fiscal year, or a copy of its  
 765 Internal Revenue Service Form 990-EZ and Schedule O filed for  
 766 the preceding fiscal year.

767 (3) Upon a showing of good cause by a charitable  
 768 organization or sponsor, the department may extend the time for  
 769 the filing of a financial statement required under this section  
 770 by up to 180 days, during which time the previous registration  
 771 shall remain active. The registration shall be automatically  
 772 suspended for failure to file the financial statement within the  
 773 extension period.

774 (4) The department may require an audit or review to be  
 775 conducted for any financial statement submitted by any  
 776 charitable organization or sponsor. ~~A charitable organization or~~  
 777 ~~sponsor may elect to also include a financial report that has~~  
 778 ~~been audited by an independent certified public accountant or an~~  
 779 ~~audit with opinion by an independent certified public~~  
 780 ~~accountant. In the event that a charitable organization or~~

781 ~~sponsor elects to file an audited financial report, this~~  
 782 ~~optional filing must be noted in the department's annual report~~  
 783 ~~submitted pursuant to s. 496.423.~~

784 Section 8. Section 496.4071, Florida Statutes, is created  
 785 to read:

786 496.4071 Supplemental financial disclosure.-

787 (1) If, for the immediately preceding fiscal year, a  
 788 charitable organization or sponsor had more than \$1 million in  
 789 total revenue and spent less than 25 percent of the organization  
 790 or sponsor's total annual functional expenses on program service  
 791 costs, in addition to any financial statement required under s.  
 792 496.407, the charitable organization or sponsor shall file the  
 793 following supplemental financial information on a form  
 794 prescribed by the department:

795 (a) The dollar amount and the percentage of total revenue  
 796 and charitable contributions allocated to funding each of the  
 797 following administrative functions:

- 798 1. Total salaries of all persons employed by the  
 799 charitable organization or sponsor.
- 800 2. Fundraising, including any contributions received from  
 801 a professional solicitor's campaign.
- 802 3. Amounts paid to professional solicitors and the names  
 803 of such professional solicitors.
- 804 4. Travel expenses.
- 805 5. Overhead and other expenses related to managing and  
 806 administering the charitable organization or sponsor.

807       (b) The names of and specific sums earned by or paid to  
 808 all employees or consultants who earned or were paid more than  
 809 \$100,000 during the immediately preceding fiscal year.

810       (c) The names of and specific sums paid to all service  
 811 providers who were paid more than \$100,000 during the  
 812 immediately preceding fiscal year and a brief description of the  
 813 services provided.

814       (d) The dollar amount and percentage of total revenue and  
 815 charitable contributions allocated to programs.

816       (e) The details of any economic or business transaction  
 817 between the charitable organization or sponsor and an officer,  
 818 trustee, or director of the charitable organization or sponsor;  
 819 the immediate family of an officer, trustee, or director of the  
 820 charitable organization or sponsor; an entity controlled by an  
 821 officer, trustee, or director of the charitable organization or  
 822 sponsor; an entity controlled by the immediate family of an  
 823 officer, trustee, or director of the charitable organization or  
 824 sponsor; an entity that employed or engaged for consultation an  
 825 officer, trustee, or director of the charitable organization or  
 826 sponsor; and an entity that employed or engaged for consultation  
 827 the immediate family of an officer, trustee, or director of the  
 828 charitable organization or sponsor. As used in this paragraph,  
 829 the term "immediate family" means a parent, spouse, child,  
 830 sibling, grandparent, grandchild, brother-in-law, sister-in-law,  
 831 son-in-law, daughter-in-law, mother-in-law, or father-in-law.

832       (2) The supplemental financial information required under

833 subsection (1) must be filed with the department by the  
 834 charitable organization or sponsor within 30 days after  
 835 receiving a request for such information from the department.

836 Section 9. Section 496.4072, Florida Statutes, is created  
 837 to read:

838 496.4072 Financial statements for specific disaster relief  
 839 solicitations.—

840 (1) A charitable organization or sponsor that solicits  
 841 contributions in this state for a charitable purpose related to  
 842 a specific disaster or crisis and receives at least \$100,000 in  
 843 contributions in response to such solicitation shall file  
 844 quarterly disaster relief financial statements with the  
 845 department on a form prescribed by the department. The quarterly  
 846 statements must detail the contributions secured as a result of  
 847 the solicitation and the manner in which such contributions were  
 848 expended. The department shall post notice on its website of a  
 849 disaster or crisis subject to the reporting requirements of this  
 850 section within 10 days after the disaster or crisis.

851 (2) The first quarterly statement shall be filed on the  
 852 last day of the 3rd month following the accrual of at least  
 853 \$100,000 in contributions after the commencement of  
 854 solicitations for the specific disaster or crisis. The  
 855 charitable organization or sponsor shall continue to file  
 856 quarterly statements with the department until the quarter after  
 857 all contributions raised in response to the solicitation are  
 858 expended.

859 Section 10. Subsections (4), (6), and (9) of section  
 860 496.409, Florida Statutes, are amended, and subsection (10) is  
 861 added to that section, to read:

862 496.409 Registration and duties of professional  
 863 fundraising consultant.—

864 (4) A professional fundraising consultant may enter into a  
 865 contract or agreement with a charitable organization or sponsor  
 866 only if the charitable organization or sponsor has complied with  
 867 all applicable provisions of this chapter. A ~~Every~~ contract or  
 868 agreement between a professional fundraising consultant and a  
 869 charitable organization or sponsor must be in writing, signed by  
 870 two authorized officials of the charitable organization or  
 871 sponsor, and filed by the professional fundraising consultant  
 872 with the department at least 5 days before ~~prior to~~ the  
 873 performance of any material service by the professional  
 874 fundraising consultant. Solicitation under the contract or  
 875 agreement may not begin before the filing of the contract or  
 876 agreement.

877 (6) (a) The department shall examine each registration  
 878 statement and all supporting documents filed by a professional  
 879 fundraising consultant and determine whether the registration  
 880 requirements are satisfied. If the department determines that  
 881 the registration requirements are not satisfied, the department  
 882 must notify the professional fundraising consultant within 15  
 883 business ~~working~~ days after its receipt of the registration  
 884 statement; otherwise the registration statement is approved.

885 Within 7 business ~~working~~ days after receipt of a notification  
 886 that the registration requirements are not satisfied, the  
 887 applicant may request a hearing. The hearing must be held within  
 888 7 business ~~working~~ days after receipt of the request, and any  
 889 recommended order, if one is issued, must be rendered within 3  
 890 business ~~working~~ days after the hearing. The final order must  
 891 then be issued within 2 business ~~working~~ days after the  
 892 recommended order. If a ~~there is no~~ recommended order is not  
 893 issued, the final order must be issued within 5 business ~~working~~  
 894 days after the hearing. The proceedings must be conducted in  
 895 accordance with chapter 120, except that the time limits and  
 896 provisions set forth in this paragraph ~~subsection~~ prevail to the  
 897 extent of any conflict.

898 (b) If a professional fundraising consultant discloses  
 899 information specified in paragraphs (2)(e)-(g) in the initial  
 900 application for registration or renewal application, the time  
 901 limits set forth in paragraph (a) are waived, and the department  
 902 shall process the initial application for registration or the  
 903 renewal application in accordance with the time limits set forth  
 904 in chapter 120. The registration of a professional consultant  
 905 shall be automatically suspended for failure to disclose any  
 906 information specified in paragraphs (2)(e)-(g) until such time  
 907 as the required information is submitted to the department.

908 (9) A ~~Ne~~ person may not act as a professional fundraising  
 909 consultant, and a ~~ne~~ professional fundraising consultant, or an  
 910 officer, director, trustee, or employee thereof, may not ~~shall~~



911 knowingly employ an ~~any~~ officer, trustee, director, or employee,  
 912 if such person has, in any state, regardless of adjudication,  
 913 been convicted of, been ~~or~~ found guilty of, or pled guilty or  
 914 nolo contendere to, or has been incarcerated within the last 10  
 915 years as a result of having previously been convicted of, been  
 916 ~~or~~ found guilty of, or pled guilty or nolo contendere to, a ~~any~~  
 917 crime within the last 10 years involving fraud, theft, larceny,  
 918 embezzlement, fraudulent conversion, or misappropriation of  
 919 property, or a ~~any~~ crime arising from the conduct of a  
 920 solicitation for a charitable organization or sponsor, or has  
 921 been enjoined in any state from violating a ~~any~~ law relating to  
 922 a charitable solicitation.

923 (10) The department may deny or revoke the registration of  
 924 a professional fundraising consultant if the professional  
 925 fundraising consultant, or any of its officers, directors, or  
 926 trustees, has had the right to solicit contributions revoked in  
 927 any state, has entered into an agreement with any state to cease  
 928 soliciting contributions within that state, or has been ordered  
 929 by a court or governmental agency to cease soliciting  
 930 contributions within any state.

931 Section 11. Present subsections (3), (5), (7), (14), and  
 932 (15) of section 496.410, Florida Statutes, are amended,  
 933 paragraphs (j), (k), and (l) are added to subsection (2) of that  
 934 section, paragraphs (i) through (n) are added to subsection (6)  
 935 of that section, and a new subsection (15) is added to that  
 936 section, to read:

937 496.410 Registration and duties of professional  
 938 solicitors.-

939 (2) Applications for registration or renewal of  
 940 registration must be submitted on a form prescribed by rule of  
 941 the department, signed by an authorized official of the  
 942 professional solicitor who shall certify that the report is true  
 943 and correct, and must include the following information:

944 (j) A list of all telephone numbers the applicant will use  
 945 to solicit contributions as well as the actual physical address  
 946 associated with each telephone number and any fictitious names  
 947 associated with such address.

948 (k) A copy of any script, outline, or presentation used by  
 949 the applicant to solicit contributions or, if such solicitation  
 950 aids are not used, written confirmation thereof.

951 (l) A copy of sales information or literature provided to  
 952 a donor or potential donor by the applicant in connection with a  
 953 solicitation.

954 (3) The application for registration must be accompanied  
 955 by a fee of \$300. ~~A professional solicitor that is a partnership~~  
 956 ~~or corporation may register for and pay a single fee on behalf~~  
 957 ~~of all of its partners, members, officers, directors, agents,~~  
 958 ~~and employees. In that case,~~ The names and street addresses of  
 959 all the officers, employees, and agents of the professional  
 960 solicitor and all other persons with whom the professional  
 961 solicitor has contracted to work under its direction, including  
 962 solicitors, must be listed in the application or furnished to

963 the department within 5 days after the date of employment or  
 964 contractual arrangement. Each registration is valid for 1 year  
 965 ~~and. The registration~~ may be renewed for an additional 1-year  
 966 period upon application to the department and payment of the  
 967 registration fee.

968 (5) (a) The department must examine each registration  
 969 statement and supporting documents filed by a professional  
 970 solicitor. If the department determines that the registration  
 971 requirements are not satisfied, the department must notify the  
 972 professional solicitor within 15 business ~~working~~ days after its  
 973 receipt of the registration statement; otherwise the  
 974 registration statement is approved. Within 7 business ~~working~~  
 975 days after receipt of a notification that the registration  
 976 requirements are not satisfied, the applicant may request a  
 977 hearing. The hearing must be held within 7 business ~~working~~ days  
 978 after receipt of the request, and any recommended order, if one  
 979 is issued, must be rendered within 3 business ~~working~~ days after  
 980 the hearing. The final order must then be issued within 2  
 981 business ~~working~~ days after the recommended order. If ~~a there is~~  
 982 ~~no~~ recommended order is not issued, the final order must be  
 983 issued within 5 business ~~working~~ days after the hearing. The  
 984 proceedings must be conducted in accordance with chapter 120,  
 985 except that the time limits and provisions set forth in this  
 986 paragraph ~~subsection~~ prevail to the extent of any conflict.

987 (b) If a professional solicitor discloses information  
 988 specified in paragraphs (2)(f)-(h) in the initial application

989 for registration or the renewal application, the time limits set  
 990 forth in paragraph (a) are waived, and the department shall  
 991 process the initial application for registration or renewal  
 992 application in accordance with the time limits set forth in  
 993 chapter 120. The registration of a professional solicitor shall  
 994 be automatically suspended for failure to disclose any  
 995 information specified in paragraphs (2)(f)-(h) until such time  
 996 as the required information is submitted to the department.

997 (6) No less than 15 days before commencing any  
 998 solicitation campaign or event, the professional solicitor must  
 999 file with the department a solicitation notice on a form  
 1000 prescribed by the department. The notice must be signed and  
 1001 sworn to by the contracting officer of the professional  
 1002 solicitor and must include:

1003 (i) A statement of the guaranteed minimum percentage of  
 1004 the gross receipts from contributions which will be remitted to  
 1005 the charitable organization or sponsor, if any, or, if the  
 1006 solicitation involves the sale of goods, services, or tickets to  
 1007 a fundraising event, the percentage of the purchase price which  
 1008 will be remitted to the charitable organization or sponsor, if  
 1009 any.

1010 (j) The percentage of a contribution which may be deducted  
 1011 as a charitable contribution under federal income tax laws.

1012 (k) A statement as to whether an owner, director, officer,  
 1013 trustee, or employee of the professional solicitor is related as  
 1014 a parent, spouse, child, sibling, grandparent, grandchild,

1015 brother-in-law, sister-in-law, son-in-law, daughter-in-law,  
 1016 mother-in-law, or father-in-law to:

1017 1. Another officer, director, owner, trustee, or employee  
 1018 of the professional solicitor.

1019 2. An officer, director, owner, trustee, or employee of a  
 1020 charitable organization or sponsor under contract with the  
 1021 professional solicitor.

1022 3. A supplier or vendor providing goods or services to a  
 1023 charitable organization or sponsor under contract with the  
 1024 professional solicitor.

1025 (1) The beginning and ending dates of the solicitation  
 1026 campaign.

1027 (m) A copy of any script, outline, or presentation used by  
 1028 the professional solicitor to solicit contributions for the  
 1029 solicitation campaign or, if such solicitation aids are not  
 1030 used, written confirmation thereof.

1031 (n) A copy of sales information or literature provided to  
 1032 a donor or potential donor by the professional solicitor in  
 1033 connection with the solicitation campaign.

1034 (7) A professional solicitor may enter into a contract or  
 1035 agreement with a charitable organization or sponsor only if the  
 1036 charitable organization or sponsor has complied with all  
 1037 applicable provisions of this chapter. A ~~Each~~ contract or  
 1038 agreement between a professional solicitor and a charitable  
 1039 organization or sponsor for each solicitation campaign must be  
 1040 in writing, signed by two authorized officials of the charitable

1041 organization or sponsor, one of whom must be a member of the  
 1042 organization's governing body and one of whom must be the  
 1043 authorized contracting officer for the professional solicitor,  
 1044 and contain all of the following provisions:

1045 (a) A statement of the charitable or sponsor purpose and  
 1046 program for which the solicitation campaign is being conducted.

1047 (b) A statement of the respective obligations of the  
 1048 professional solicitor and the charitable organization or  
 1049 sponsor.

1050 (c) A statement of the guaranteed minimum percentage of  
 1051 the gross receipts from contributions which will be remitted to  
 1052 the charitable organization or sponsor, if any, or, if the  
 1053 solicitation involves the sale of goods, services, or tickets to  
 1054 a fundraising event, the percentage of the purchase price which  
 1055 will be remitted to the charitable organization or sponsor, if  
 1056 any. Any stated percentage shall exclude any amount which the  
 1057 charitable organization or sponsor is to pay as fundraising  
 1058 costs.

1059 (d) A statement of the percentage of the gross revenue  
 1060 which the professional solicitor will be compensated. If the  
 1061 compensation of the professional solicitor is not contingent  
 1062 upon the number of contributions or the amount of revenue  
 1063 received, his or her compensation shall be expressed as a  
 1064 reasonable estimate of the percentage of the gross revenue, and  
 1065 the contract must clearly disclose the assumptions upon which  
 1066 the estimate is based. The stated assumptions must be based upon

1067 all of the relevant facts known to the professional solicitor  
 1068 regarding the solicitation to be conducted by the professional  
 1069 solicitor.

1070 (e) The effective and termination dates of the contract.

1071 (14) A ~~no~~ person may not act as a professional solicitor,  
 1072 and a ~~no~~ professional solicitor, or an officer, director,  
 1073 trustee, or employee thereof, may not ~~shall~~, to solicit for  
 1074 compensation, knowingly employ an ~~any~~ officer, trustee,  
 1075 director, or employee, or a ~~any~~ person with a controlling  
 1076 interest therein, who has, in any state, regardless of  
 1077 adjudication, been convicted of, ~~been~~ ~~or~~ found guilty of, or  
 1078 pled guilty or nolo contendere to, or has been incarcerated  
 1079 within the last 10 years as a result of having previously been  
 1080 convicted of, ~~been~~ ~~or~~ found guilty of, or pled guilty or nolo  
 1081 contendere to, a felony within the last 10 years involving  
 1082 fraud, theft, larceny, embezzlement, fraudulent conversion, or  
 1083 misappropriation of property, or a ~~any~~ crime arising from the  
 1084 conduct of a solicitation for a charitable organization or  
 1085 sponsor, or has been enjoined in any state from violating a ~~any~~  
 1086 law relating to a charitable solicitation. The prohibitions in  
 1087 this subsection also apply to a misdemeanor in another state  
 1088 which constitutes a disqualifying felony in this state.

1089 (15) The department may deny or revoke the registration of  
 1090 a professional solicitor if the professional solicitor, or any  
 1091 of its officers, directors, trustees, or agents, has had the  
 1092 right to solicit contributions revoked in any state, has entered

1093 into an agreement with any state to cease soliciting  
 1094 contributions within that state, or has been ordered by a court  
 1095 or governmental agency to cease soliciting contributions within  
 1096 any state.

1097 (16)~~(15)~~ All registration fees must be paid to the  
 1098 department and deposited into the General Inspection Trust Fund.

1099 Section 12. Section 496.4101, Florida Statutes, is created  
 1100 to read:

1101 496.4101 Licensure of professional solicitors and certain  
 1102 employees thereof.-

1103 (1) An officer, director, trustee, or owner of a  
 1104 professional solicitor and an employee of a professional  
 1105 solicitor conducting telephonic solicitations must, before  
 1106 engaging in solicitation activities, obtain a solicitor license  
 1107 from the department.

1108 (2) Persons required to obtain a solicitor license under  
 1109 subsection (1) shall submit to the department, in such form as  
 1110 the department prescribes, an application for a solicitor  
 1111 license. The application must include the following information:

1112 (a) The true name, date of birth, unique identification  
 1113 number of a driver license or other valid form of  
 1114 identification, and home address of the applicant.

1115 (b) Whether the applicant, in any state, regardless of  
 1116 adjudication, has previously been convicted of, been found  
 1117 guilty of, or pled guilty or nolo contendere to, or has been  
 1118 incarcerated within the last 10 years as a result of having



1119 previously been convicted of, been found guilty of, or pled  
 1120 guilty or nolo contendere to, a crime within the last 10 years  
 1121 involving fraud, theft, larceny, embezzlement, fraudulent  
 1122 conversion, or misappropriation of property, or a crime arising  
 1123 from the conduct of a solicitation for a charitable organization  
 1124 or sponsor, or has been enjoined in any state from violating a  
 1125 law relating to a charitable solicitation.

1126 (c) Whether the applicant, in any state, is involved in  
 1127 pending litigation or has had entered against her or him an  
 1128 injunction, a temporary restraining order, or a final judgment  
 1129 or order, including a stipulated judgment or order, an assurance  
 1130 of voluntary compliance, a cease and desist order, or any  
 1131 similar document, in any civil or administrative action  
 1132 involving fraud, theft, larceny, embezzlement, fraudulent  
 1133 conversion, or misappropriation of property, or has been  
 1134 enjoined from violating any law relating to a charitable  
 1135 solicitation.

1136 (3) (a) An applicant shall submit a complete set of his or  
 1137 her fingerprints to an agency, entity, or vendor authorized by  
 1138 s. 943.053(13). The fingerprints shall be forwarded to the  
 1139 Department of Law Enforcement for state processing, and the  
 1140 Department of Law Enforcement shall forward them to the Federal  
 1141 Bureau of Investigation for national processing.

1142 (b) Fees for state and federal fingerprint processing and  
 1143 fingerprint retention fees shall be borne by the applicant. The  
 1144 state cost for fingerprint processing is that authorized in s.

1145 943.053(3)(b) for records provided to persons or entities other  
 1146 than those specified as exceptions therein.

1147 (c) All fingerprints submitted to the Department of Law  
 1148 Enforcement as required under this subsection shall be retained  
 1149 by the Department of Law Enforcement as provided under s.  
 1150 943.05(2)(g) and (h) and enrolled in the Federal Bureau of  
 1151 Investigation's national retained print arrest notification  
 1152 program. Fingerprints shall not be enrolled in the national  
 1153 retained print arrest notification program until the Department  
 1154 of Law Enforcement begins participation with the Federal Bureau  
 1155 of Investigation. Arrest fingerprints will be searched against  
 1156 the retained prints by the Department of Law Enforcement and the  
 1157 Federal Bureau of Investigation.

1158 (d) For any renewal of the applicant's license, the  
 1159 department shall request the Department of Law Enforcement to  
 1160 forward the retained fingerprints of the applicant to the  
 1161 Federal Bureau of Investigation unless the applicant is enrolled  
 1162 in the national retained print arrest notification program  
 1163 described in paragraph (c). The fee for the national criminal  
 1164 history check shall be paid as part of the renewal fee to the  
 1165 department and forwarded by the department to Department of Law  
 1166 Enforcement. If the applicant's fingerprints are retained in the  
 1167 national retained print arrest notification program, the  
 1168 applicant shall pay the state and national retention fee to the  
 1169 department, which shall forward the fee to the Department of Law  
 1170 Enforcement.

1171 (e) The department shall notify the Department of Law  
 1172 Enforcement regarding any person whose fingerprints have been  
 1173 retained but who is no longer licensed under this chapter.

1174 (f) The department shall screen background results to  
 1175 determine whether an applicant meets licensure requirements.

1176 (4) A solicitor license must be renewed annually by the  
 1177 submission of a renewal application. A solicitor license that is  
 1178 not renewed expires without further action by the department.

1179 (5) An applicant for a solicitor license shall remit a  
 1180 license fee of \$100 to the department at the time the initial  
 1181 application is filed with the department and an annual renewal  
 1182 fee of \$100 thereafter. All fees collected, less the cost of  
 1183 administration, shall be deposited into the General Inspection  
 1184 Trust Fund.

1185 (6) Any material change to the information submitted to  
 1186 the department in the initial application or renewal application  
 1187 for a solicitor license shall be reported to the department by  
 1188 the applicant or licensee within 10 days after the change  
 1189 occurs. The applicant or licensee shall also remit a fee in the  
 1190 amount of \$10 for processing the change to the initial or  
 1191 renewal application.

1192 (7) It is a violation of this chapter:

1193 (a) For an applicant to provide inaccurate or incomplete  
 1194 information to the department in the initial or renewal  
 1195 application for a solicitor license.

1196 (b) For a person specified in subsection (1) to fail to

1197 maintain a solicitor license as required by this section.

1198 (c) For a professional solicitor to allow, require,  
 1199 permit, or authorize an employee without an active solicitor  
 1200 license issued under this section to conduct telephonic  
 1201 solicitations.

1202 (8) The department shall adopt rules that allow certain  
 1203 applicants to engage in solicitation activities on a temporary  
 1204 basis until such time as a solicitor license is granted or  
 1205 denied.

1206 (9) The department may deny or revoke a solicitor license  
 1207 if the applicant or licensee has had the right to solicit  
 1208 contributions revoked in any state, has entered into an  
 1209 agreement with any state to cease soliciting contributions  
 1210 within that state, has been ordered by a court or governmental  
 1211 agency to cease soliciting contributions within any state, or is  
 1212 subject to any disqualification specified in s. 496.410(14).

1213 Section 13. Subsections (2), (3), and (6) of section  
 1214 496.411, Florida Statutes, are amended to read:

1215 496.411 Disclosure requirements and duties of charitable  
 1216 organizations and sponsors.—

1217 (2) A charitable organization or sponsor soliciting in  
 1218 this state must include all of the following disclosures at the  
 1219 point of solicitation:

1220 (a) The name of the charitable organization or sponsor and  
 1221 state of the principal place of business of the charitable  
 1222 organization or sponsor.†

1223 (b) A description of the purpose or purposes for which the  
 1224 solicitation is being made.~~†~~

1225 (c) Upon request, the name and either the address or  
 1226 telephone number of a representative to whom inquiries may ~~could~~  
 1227 be addressed.~~†~~

1228 (d) Upon request, the amount of the contribution which may  
 1229 be deducted as a charitable contribution under federal income  
 1230 tax laws.~~†~~

1231 (e) Upon request, the source from which a written  
 1232 financial statement may be obtained. Such financial statement  
 1233 must be for the immediate preceding ~~past~~ fiscal year and must be  
 1234 consistent with the annual financial statement ~~report~~ filed  
 1235 under s. 496.407. The written financial statement must be  
 1236 provided within 14 days after the request and must state the  
 1237 purpose for which funds are raised, the total amount of all  
 1238 contributions raised, the total costs and expenses incurred in  
 1239 raising contributions, the total amount of contributions  
 1240 dedicated to the stated purpose or disbursed for the stated  
 1241 purpose, and whether the services of another person or  
 1242 organization have been contracted to conduct solicitation  
 1243 activities.

1244 (3) Every charitable organization or sponsor that ~~which~~ is  
 1245 required to register under s. 496.405 or is exempt under s.  
 1246 496.406(1)(d) shall ~~must~~ conspicuously display ~~in capital~~  
 1247 ~~letters~~ the following statement on every ~~printed~~ solicitation,  
 1248 ~~written~~ confirmation, receipt, or reminder of a contribution:

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"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 and website for the division which ~~that~~ can be used to obtain the registration information. If ~~When~~ the solicitation consists of more than one piece, the statement must be displayed prominently in the solicitation materials. If the solicitation occurs on a website, the statement must be conspicuously displayed on the webpage on which donations are requested.

(6) Each charitable organization or sponsor that is required to register under s. 496.405 shall conspicuously display the organization ~~organization's~~ or sponsor's registration number issued by the department under this chapter on every printed solicitation, written confirmation, receipt, or reminder of a contribution. If the solicitation consists of more than a single item, the statement shall be displayed prominently in the solicitation materials.

Section 14. Subsection (1) of section 496.412, Florida Statutes, is amended to read:

496.412 Disclosure requirements and duties of professional solicitors.-

1275 (1) A professional solicitor must comply with and be  
 1276 responsible for complying or causing compliance with the  
 1277 following disclosures:

1278 (a) Before ~~Prior to~~ orally requesting a contribution, or  
 1279 contemporaneously with a written request for a contribution, a  
 1280 professional solicitor must clearly disclose:

1281 1. The name of the professional solicitor as on file with  
 1282 the department.

1283 2. If the individual acting on behalf of the professional  
 1284 solicitor identifies himself or herself by name, the  
 1285 individual's legal name.

1286 3. The name and state of the principal place of business  
 1287 of the charitable organization or sponsor and a description of  
 1288 how the contributions raised by the solicitation will be used  
 1289 for a charitable or sponsor purpose~~r~~ or, if there is no  
 1290 charitable organization or sponsor, a description as to how the  
 1291 contributions raised by the solicitation will be used for a  
 1292 charitable or sponsor purpose.

1293 (b) In the case of a solicitation campaign conducted  
 1294 orally, whether by telephone or otherwise, any written  
 1295 confirmation, receipt, or reminder sent to any person who has  
 1296 contributed or has pledged to contribute~~r~~, shall include a clear  
 1297 disclosure of the information required by paragraph (a).

1298 (c) In addition to the information required by paragraph  
 1299 (a), any written confirmation, receipt, or reminder of  
 1300 contribution made pursuant to an oral solicitation and any

1301 ~~written~~ solicitation shall conspicuously state in ~~capital~~  
 1302 ~~letters~~:

1303  
 1304 "A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL  
 1305 INFORMATION MAY BE OBTAINED FROM THE DIVISION OF  
 1306 CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE  
 1307 STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT,  
 1308 APPROVAL, OR RECOMMENDATION BY THE STATE."  
 1309

1310 The statement must include a toll-free number and website for  
 1311 the division which ~~that~~ can be used to obtain the registration  
 1312 information. If ~~When~~ the solicitation consists of more than one  
 1313 piece, the statement must be displayed prominently in the  
 1314 solicitation materials. If the solicitation occurs on a website,  
 1315 the statement must be conspicuously displayed on the webpage on  
 1316 which donations are requested.

1317 (d) If requested by the person being solicited, the  
 1318 professional solicitor shall inform that person in writing,  
 1319 within 14 days after ~~of~~ the request, of the fixed percentage of  
 1320 the gross revenue or the reasonable estimate of the percentage  
 1321 of the gross revenue that the charitable organization or sponsor  
 1322 will receive as a benefit from the solicitation campaign or  
 1323 shall immediately notify the person being solicited that the  
 1324 information is available on the department's website or by  
 1325 calling the division's toll-free number.

1326 (e) If requested by the person being solicited, the



1327 professional solicitor shall inform that person in writing,  
 1328 within 14 days ~~of~~ after the request, of the percentage of the  
 1329 contribution which may be deducted as a charitable contribution  
 1330 under federal income tax laws or shall immediately notify the  
 1331 person being solicited that the information is available on the  
 1332 department's website or by calling the division's toll-free  
 1333 number.

1334 Section 15. Section 496.4121, Florida Statutes, is created  
 1335 to read:

1336 496.4121 Collection receptacles used for donations.-

1337 (1) As used in this section, the term "collection  
 1338 receptacle" means a receptacle used to collect donated clothing,  
 1339 household items, or other goods for resale.

1340 (2) A collection receptacle must display a permanent sign  
 1341 or label on each side which contains the following information  
 1342 printed in letters that are at least 3 inches in height and no  
 1343 less than one-half inch in width, in a color that contrasts with  
 1344 the color of the collection receptacle:

1345 (a) For a collection receptacle used by a person required  
 1346 to register under this chapter, the name, business address,  
 1347 telephone number, and registration number of the charitable  
 1348 organization or sponsor for whom the solicitation is made.

1349 (b) For a collection receptacle placed or maintained in  
 1350 public view by a person not required to register under this  
 1351 chapter or by a person not claiming an exemption pursuant to s.  
 1352 496.406, the name, telephone number, and physical address of the

1353 business conducting the solicitation and the statement: "This is  
 1354 not a charity. Donations made here support a for-profit business  
 1355 and are not tax deductible."

1356 (3) Upon request, a charitable organization or sponsor  
 1357 using a collection receptacle must provide the donor with  
 1358 documentation of its tax-exempt status and the registration  
 1359 issued under this chapter.

1360 Section 16. Subsection (2) of section 496.415, Florida  
 1361 Statutes, is amended, and subsection (18) is added to that  
 1362 section, to read:

1363 496.415 Prohibited acts.—It is unlawful for any person in  
 1364 connection with the planning, conduct, or execution of any  
 1365 solicitation or charitable or sponsor sales promotion to:

1366 (2) ~~Knowingly~~ Submit false, misleading, or inaccurate  
 1367 information in a document that is filed with the department,  
 1368 provided to the public, or offered in response to a request or  
 1369 investigation by the department, the Department of Legal  
 1370 Affairs, or the state attorney.

1371 (18) Fail to remit to a charitable organization or sponsor  
 1372 the disclosed guaranteed minimum percentage of gross receipts  
 1373 from contributions as required under s. 496.410(7)(c) or, if the  
 1374 solicitation involved the sale of goods, services, or tickets to  
 1375 a fundraising event, the percentage of the purchase price as  
 1376 agreed in the contract or agreement as required under this  
 1377 chapter.

1378 Section 17. Subsection (5) of section 496.419, Florida

1379 Statutes, is amended to read:  
 1380 496.419 Powers of the department.—  
 1381 (5) Upon a finding as set forth in subsection (4), the  
 1382 department may enter an order doing one or more of the  
 1383 following:  
 1384 (a) Issuing a notice of noncompliance pursuant to s.  
 1385 120.695;  
 1386 (b) Issuing a cease and desist order that directs that the  
 1387 person cease and desist specified fundraising activities;  
 1388 (c) Refusing to register or canceling or suspending a  
 1389 registration;  
 1390 (d) Placing the registrant on probation for a period of  
 1391 time, subject to such conditions as the department may specify;  
 1392 (e) Canceling an exemption granted under s. 496.406; ~~and~~  
 1393 (f) Except as provided in paragraph (g), imposing an  
 1394 administrative fine not to exceed \$5,000 ~~\$1,000~~ for each act or  
 1395 omission that ~~which~~ constitutes a violation of ss. 496.401-  
 1396 496.424 or s. 496.426 or a rule or order. With respect to a s.  
 1397 501(c)(3) organization, the penalty imposed pursuant to this  
 1398 subsection may ~~shall~~ not exceed \$500 per violation for failure  
 1399 to register under s. 496.405 or file for an exemption under s.  
 1400 496.406(2). The penalty shall be the entire amount per violation  
 1401 and is not ~~to be interpreted as~~ a daily penalty; and  
 1402 (g) Imposing an administrative fine not to exceed \$10,000  
 1403 for a violation of this chapter that involves fraud or  
 1404 deception.

1405 Section 18. Section 496.4191, Florida Statutes, is created  
 1406 to read:

1407 496.4191 Additional penalty; immediate suspension.—Upon  
 1408 notification and subsequent written verification by a law  
 1409 enforcement agency, a court, a state attorney, or the Department  
 1410 of Law Enforcement, the department shall immediately suspend a  
 1411 registration or the processing of an application for a  
 1412 registration if the registrant, applicant, or an officer or  
 1413 director of the registrant or applicant is formally charged with  
 1414 a crime involving fraud, theft, larceny, embezzlement, or  
 1415 fraudulent conversion or misappropriation of property or a crime  
 1416 arising from the conduct of a solicitation for a charitable  
 1417 organization or sponsor until final disposition of the case or  
 1418 removal or resignation of that officer or director.

1419 Section 19. Section 496.430, Florida Statutes, is created  
 1420 to read:

1421 496.430 Disqualification for certain tax exemptions.—  
 1422 (1) The department may issue an order to disqualify a  
 1423 charitable organization or sponsor from receiving a sales tax  
 1424 exemption certificate issued by the Department of Revenue if the  
 1425 department finds, based upon the average of functional expenses  
 1426 and program service costs provided to the department pursuant to  
 1427 s. 496.407 for the 3 most recent fiscal years, that the  
 1428 charitable organization or sponsor has failed to expend at least  
 1429 25 percent of its total annual functional expenses on program  
 1430 service costs.

1431 (2) Notwithstanding a finding under subsection (1) that a  
 1432 charitable organization or sponsor has failed to expend at least  
 1433 25 percent of its total annual functional expenses on program  
 1434 service costs, the department may decline to issue a  
 1435 disqualification order if the charitable organization or sponsor  
 1436 establishes:

1437 (a) That payments were made to affiliates which should be  
 1438 considered in calculating the program service costs;

1439 (b) That revenue was accumulated for a specific program  
 1440 purpose consistent with representations in solicitations; or

1441 (c) Such other mitigating circumstances as are defined by  
 1442 rule of the department.

1443 (3) A charitable organization or sponsor may appeal a  
 1444 disqualification order by requesting a hearing within 21 days  
 1445 after notification from the department that it has issued a  
 1446 disqualification order under this section. The hearing must be  
 1447 conducted in accordance with chapter 120.

1448 (4) A disqualification order issued by the department  
 1449 pursuant to this section is effective for at least 1 year after  
 1450 such order becomes final and shall remain effective until such  
 1451 time as the department receives sufficient evidence from the  
 1452 disqualified charitable organization or sponsor which  
 1453 demonstrates it expends at least 25 percent of its total annual  
 1454 functional expenses on program service costs.

1455 (a) The charitable organization or sponsor may not submit  
 1456 such evidence to the department sooner than 1 year after the

1457 disqualification order becomes final and may not submit such  
 1458 information more than once each year for consideration by the  
 1459 department.

1460 (b) The department shall also consider any financial  
 1461 statement that was submitted by the charitable organization or  
 1462 sponsor to the department pursuant to s. 496.407 after the  
 1463 disqualification order became final.

1464 (5) The department shall provide a disqualification order  
 1465 to the Department of Revenue within 30 days after such order  
 1466 becomes final. A final disqualification order is conclusive as  
 1467 to the charitable organization or sponsor's entitlement to a  
 1468 sales tax exemption. The Department of Revenue shall revoke a  
 1469 sales tax exemption certificate granted to, or refuse to grant a  
 1470 sales tax exemption certificate to, a charitable organization or  
 1471 sponsor subject to a final disqualification order within 30 days  
 1472 after receiving such disqualification order. A charitable  
 1473 organization or sponsor may not appeal or challenge the  
 1474 revocation or denial of a sales tax exemption certificate by the  
 1475 Department of Revenue if such revocation or denial is based upon  
 1476 a final disqualification order issued pursuant to this section.

1477 (6) This section does not apply to a charitable  
 1478 organization or sponsor that:

1479 (a) Is not required to register under this chapter with  
 1480 the department; or

1481 (b) Has been in existence for less than 4 years,  
 1482 regardless of whether the charitable organization is registered

1483 in this state.

1484 Section 20. Paragraph (a) of subsection (3) of section  
1485 741.0305, Florida Statutes, is amended to read:

1486 741.0305 Marriage fee reduction for completion of  
1487 premarital preparation course.—

1488 (3)(a) All individuals electing to participate in a  
1489 premarital preparation course shall choose from the following  
1490 list of qualified instructors:

- 1491 1. A psychologist licensed under chapter 490.
- 1492 2. A clinical social worker licensed under chapter 491.
- 1493 3. A marriage and family therapist licensed under chapter  
1494 491.

1495 4. A mental health counselor licensed under chapter 491.

1496 5. An official representative of a religious institution  
1497 which is recognized under s. 496.404(23) ~~496.404(19)~~, if the  
1498 representative has relevant training.

1499 6. Any other provider designated by a judicial circuit,  
1500 including, but not limited to, school counselors who are  
1501 certified to offer such courses. Each judicial circuit may  
1502 establish a roster of area course providers, including those who  
1503 offer the course on a sliding fee scale or for free.

1504 Section 21. If any provision of this act or its  
1505 application to any person or circumstance is held invalid, the  
1506 invalidity does not affect other provisions or applications of  
1507 the act which can be given effect without the invalid provision  
1508 or application, and to this end the provisions of this act are

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1509 | severable.

1510 |       Section 22. For the 2014-2015 fiscal year, the sums of  
 1511 | \$235,352 in recurring funds and \$239,357 in nonrecurring funds  
 1512 | from the General Inspection Trust Fund are appropriated to the  
 1513 | Department of Agriculture and Consumer Services, and 4 full-time  
 1514 | equivalent positions with associated salary rate of \$143,264 are  
 1515 | authorized, for the purpose of implementing this act.

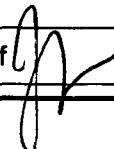
1516 |       Section 23. This act shall take effect July 1, 2014.





**HOUSE OF REPRESENTATIVES TRUST FUND RE-CREATION STAFF ANALYSIS**

**BILL #:** HB 7041      PCB GOAS 14-01      Trust Funds/Re-creation/Federal Grants Trust Fund/DBPR  
**SPONSOR(S):** Government Operations Appropriations Subcommittee, Ingram  
**TIED BILLS:**                      **IDEN./SIM. BILLS:** SB 680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee	13 Y, 0 N	Topp	Topp
1) Appropriations Committee		Topp <b>BPT</b>	Leznoff 

**I. SUMMARY**

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision also requires that trust funds be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating or re-creating that trust fund. The Federal Grants Trust Fund was created in the Department of Business and Professional Regulation (DBPR) effective July 1, 2011 in Ch. 2011-60, Laws of Florida, and is scheduled to terminate on July 1, 2015.

This legislation re-creates the Federal Grants Trust Fund in the Department of Business and Professional Regulation without modification, effective July 1, 2014, provided that it is enacted by three-fifths of the membership of both houses of the Legislature.

This bill has no fiscal impact.

## **II. SUBSTANTIVE ANALYSIS**

### **A. PRESENT SITUATION:**

#### **1. MAJOR STATUTES THAT CONTROL THE TRUST FUND:**

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision also requires that trust funds be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating or re-creating that trust fund. The Federal Grants Trust Fund was created within the Department of Business and Professional Regulation effective July 1, 2011 by chapter 2011-60, Laws of Florida, in s. 455.1165, F.S., and is scheduled to terminate on July 1, 2015.

#### **2. BRIEF DESCRIPTION OF THE FUND'S USES OR PURPOSES:**

The trust fund was established for use as a depository for funds to be used for allowable grant activities funded by restricted program revenues from federal sources.

#### **3. MAJOR SOURCES OF REVENUE FOR THE FUND:**

Funds credited to the Federal Grants Trust Fund consist of grants and funding from the federal government, interest earnings and cash advances from other trust funds.

#### **4. TOTAL PROJECTED RECEIPTS INTO THE FUND AND CURRENT YEAR APPROPRIATIONS FROM THE FUND:**

In the 2012-2013, fiscal year, receipts into the Federal Grants Trust Fund were \$285,212 and expenditures totaled \$250,532. In the current fiscal year, DBPR has no active federal grant funding; therefore, there are no projected receipts or appropriations for the Federal Grants Trust Fund.

### **B. EFFECT OF PROPOSED CHANGES:**

The bill re-creates the Federal Grants Trust Fund within the Department of Business and Professional Regulation without modification, effective July 1, 2014 and repeals the scheduled termination of the trust fund.

## **III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

This legislation has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

## **IV. COMMENTS**

## **V. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

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A bill to be entitled  
 An act relating to trust funds; re-creating the  
 Federal Grants Trust Fund within the Department of  
 Business and Professional Regulation without  
 modification; amending s. 455.1165, F.S.; abrogating  
 provisions relating to the termination of the trust  
 fund, to conform; providing a contingent effective  
 date.

WHEREAS, the Legislature wishes to extend the life of the  
 Federal Grants Trust Fund within the Department of Business and  
 Professional Regulation, which is otherwise scheduled to be  
 terminated pursuant to constitutional mandate, and

WHEREAS, the Legislature has reviewed the trust fund before  
 its scheduled termination date and has found that it continues  
 to meet an important public purpose, and

WHEREAS, the Legislature has found that existing public  
 policy concerning the trust fund sets adequate parameters for  
 its use, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The Federal Grants Trust Fund within the  
 Department of Business and Professional Regulation, FLAIR number  
 79-2-261, which is to be terminated pursuant to s. 19(f)(2),  
 Article III of the State Constitution on July 1, 2015, is re-

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27 created.

28 Section 2. Subsection (3) of section 455.1165, Florida  
 29 Statutes, is amended to read:

30 455.1165 Federal Grants Trust Fund.—


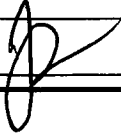
31 ~~(3) In accordance with s. 19(f)(2), Art. III of the State~~  
 32 ~~Constitution, the Federal Grants Trust Fund shall, unless~~  
 33 ~~terminated sooner, be terminated on July 1, 2015. Before its~~  
 34 ~~scheduled termination, the trust fund shall be reviewed as~~  
 35 ~~provided in s. 215.3206(1) and (2).~~

36 Section 3. This act shall take effect July 1, 2014, but it  
 37 shall not take effect unless it is enacted by a three-fifths  
 38 vote of the membership of each house of the Legislature.



## HOUSE OF REPRESENTATIVES TRUST FUND RE-CREATION STAFF ANALYSIS

**BILL #:** HB 7043    PCB GOAS 14-02    Trust Funds/Re-creation/Federal Grants Trust Fund/DFS  
**SPONSOR(S):** Government Operations Appropriations Subcommittee, Ingram  
**TIED BILLS:**                    **IDEN./SIM. BILLS:** SB 682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee	13 Y, 0 N	Keith	Topp
1) Appropriations Committee		Keith 	Leznoff 

### I. SUMMARY

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision also requires that trust funds be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating or re-creating that trust fund. The Federal Grants Trust Fund was created in the Department of Financial Services effective July 1, 2011 in Ch. 2011-29, Laws of Florida, and is scheduled to terminate on July 1, 2015.

This legislation re-creates the Federal Grants Trust Fund within the Department of Financial Services without modification, effective July 1, 2014, provided that it is enacted by three-fifths of the membership of both houses of the Legislature.

This bill has no fiscal impact.

## **II. SUBSTANTIVE ANALYSIS**

### **A. PRESENT SITUATION:**

#### **1. MAJOR STATUTES THAT CONTROL THE TRUST FUND:**

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision also requires that trust funds be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating or re-creating that trust fund. The Federal Grants Trust Fund was created within the Department of Financial Services effective July 1, 2011 by chapter 2011-29, Laws of Florida, in section 17.67, Florida Statutes, and is scheduled to terminate on July 1, 2015.

#### **2. BRIEF DESCRIPTION OF THE FUND'S USES OR PURPOSES:**

The trust fund was established for use as a depository for funds to be used for allowable grant activities funded by restricted program revenues from federal sources.

#### **3. MAJOR SOURCES OF REVENUE FOR THE FUND:**

Funds credited to the Federal Grants Trust Fund consist of grants and funding from the federal government, interest earnings and cash advances from other trust funds.

#### **4. TOTAL PROJECTED RECEIPTS INTO THE FUND AND CURRENT YEAR APPROPRIATIONS FROM THE FUND:**

The total projected receipts into this fund for the current year are \$4,278,935 and current year appropriations from the fund are \$2,857,326.

### **B. EFFECT OF PROPOSED CHANGES:**

This legislation re-creates the Federal Grants Trust Fund within the Department of Financial Services without modification, effective July 1, 2014, and repeals the scheduled termination of the trust fund.

## **III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

This legislation has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

## **IV. COMMENTS**

## **V. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**





27 Statutes, is amended to read:

28 17.67 Federal Grants Trust Fund.—

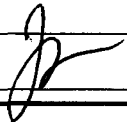
29 ~~(3) In accordance with s. 19(f)(2), Art. III of the State~~  
 30 ~~Constitution, the Federal Grants Trust Fund shall, unless~~  
 31 ~~terminated sooner, be terminated on July 1, 2015. Before its~~  
 32 ~~scheduled termination, the trust fund shall be reviewed as~~  
 33 ~~provided in s. 215.3206(1) and (2).~~

34 Section 3. This act shall take effect July 1, 2014, but it  
 35 shall not take effect unless it is enacted by a three-fifths  
 36 vote of the membership of each house of the Legislature.



## HOUSE OF REPRESENTATIVES TRUST FUND RE-CREATION STAFF ANALYSIS

**BILL #:** HB 7053      PCB TEDAS 14-01      Trust Funds/Re-creation/State Economic Enhancement & Development Trust Fund/DEO  
**SPONSOR(S):** Transportation & Economic Development Appropriations Subcommittee, Hooper  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 684

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Economic Development Appropriations Subcommittee	9 Y, 0 N	Proctor	Davis
1) Appropriations Committee		Proctor <i>TP</i>	Leznoff 

### I. SUMMARY

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision also requires that trust funds be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating or re-creating that trust fund. The State Economic Enhancement and Development (SEED) Trust Fund within the Department of Economic Opportunity (DEO) became effective July 1, 2011 in Ch. 2011-138, Laws of Florida, and is scheduled to terminate on July 1, 2015.

This legislation re-creates the SEED Trust Fund within the DEO without modification, effective July 1, 2014, provided that it is enacted by three-fifths of the membership of both houses of the Legislature.

## II. SUBSTANTIVE ANALYSIS

### A. PRESENT SITUATION:

#### 1. MAJOR STATUTES THAT CONTROL THE TRUST FUND:

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision also requires that trust funds be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating or re-creating that trust fund. The SEED Trust Fund was created within the DEO effective July 1, 2011 by chapter 2011-138, Laws of Florida in s. 288.1201, F.S. and is scheduled to terminate on July 1, 2015.

#### 2. BRIEF DESCRIPTION OF THE FUND'S USES OR PURPOSES:

Funds deposited into the trust fund are used for infrastructure and job creation opportunities and for transportation facilities, affordable housing programs and projects in accordance with ch. 420, F.S.; economic development incentives for job creation and capital investment; workforce training associated with locating a new business or expanding an existing business; and tourism promotion and marketing services, functions, and programs.

#### 3. MAJOR SOURCES OF REVENUE FOR THE FUND:

Moneys credited to the trust fund consist of documentary stamp tax proceeds as specified in law, local financial support funds, interest earnings, and cash advances from other trust funds.

#### 4. TOTAL PROJECTED RECEIPTS INTO THE FUND AND CURRENT YEAR APPROPRIATIONS FROM THE FUND:

Total projected receipts are \$150 million. The Fiscal Year 2013-14 appropriation level is \$117,016,648.

### B. EFFECT OF PROPOSED CHANGES:

The bill re-creates the SEED Trust Fund without modification and repeals the scheduled termination of the trust fund.

## III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

This legislation has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

## IV. COMMENTS

## V. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES



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27 is re-created.

28 Section 2. Subsection (4) of section 288.1201, Florida  
 29 Statutes, is amended to read:

30 288.1201 State Economic Enhancement and Development Trust  
 31 Fund.—

32 ~~(4) In accordance with s. 19(f)(2), Art. III of the State~~  
 33 ~~Constitution, the trust fund shall, unless terminated sooner, be~~  
 34 ~~terminated on July 1, 2015. Before its scheduled termination,~~  
 35 ~~the trust fund shall be reviewed as provided in s. 215.3206(1)~~  
 36 ~~and (2).~~


37 Section 3. This act shall take effect July 1, 2014, except  
 38 that this act shall not take effect unless it is enacted by a  
 39 three-fifths vote of the membership of each house of the  
 40 Legislature.





### HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7059      PCB TEDAS 14-02      Trust Funds/Termination/Department of Economic Opportunity  
**SPONSOR(S):** Transportation & Economic Development Appropriations Subcommittee, Hooper  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 686

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Economic Development Appropriations Subcommittee	10 Y, 0 N	Proctor	Davis
1) Appropriations Committee		Proctor <i>TP</i>	Leznoff 

### SUMMARY ANALYSIS

This bill terminates the Community Services Block Grant Trust Fund, Energy Consumption Trust Fund, Economic Development Transportation Trust Fund, and the Low Income Home Energy Assistance Program Block Grant Trust Fund within the Department of Economic Opportunity.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **PRESENT SITUATION**

Legislative review of trust funds is required at least once every four years pursuant to section 215.3208, Florida Statutes. The schedule for review is included in the legislative budget instructions developed pursuant to the requirements of section 216.023, Florida Statutes. A trust fund analysis indicated four trust funds within the Department of Economic Opportunity (DEO) are no longer needed and could be terminated.

The Community Services Block Grant Trust Fund, FLAIR number 40-2-261, was originally created as a depository for receipts from the U.S. Department of Health & Human Services, interest earnings and cash advances from other trust funds. It was used to administer the Federal Community Service Block Grant Program, to provide immediate life necessities and motivation to achieve self-sufficiency. Services can include emergency health, food, housing, day care, transportation assistance, housing counseling, financial management assistance, nutrition programs including federal surplus food distribution, community gardening projects, food banks, job counseling, placement and training services, and homeless prevention programs. At the time of the creation of the DEO the balance of this fund was transferred into the Federal Grants Trust Fund where the activities are now funded.

The Energy Consumption Trust Fund, FLAIR number 40-2-174, was originally created as a depository for the United States Department of Energy's Weatherization Assistance Program (WAP) and petroleum violation escrow settlements from the federal government. The WAP is designed to reduce the monthly energy burden on low-income households by improving the energy efficiency of the home. This trust fund was originally under the Department of Community Affairs. At the time of the creation of the DEO the balance of this fund was transferred into the Federal Grants Trust Fund.

The Economic Development Transportation Trust Fund, FLAIR number 40-2-175, was originally created as a depository of general revenue from appropriations and transfers from the State Transportation Trust Fund at the Florida Department of Transportation (FDOT) to fund activities related to transportation projects as defined in section 334.03, F.S., that are necessary to facilitate economic development and growth. The program was transferred to FDOT under Ch. 2011-142, L.O.F. At the time of the program's transfer to FDOT the balance of this fund was also transferred.

The Low Income Home Energy Assistance Program Block Grant Trust Fund, FLAIR number 40-2-451, was originally created as a depository for receipts from the U.S. Department of Health & Human Services, interest earnings and cash advances from other trust funds. It was used to administer and fund the Low Income Home Energy Assistance Program, which provides home energy assistance benefits to eligible households, or direct payments to electric or natural gas utilities or other energy suppliers and operators of subsidized housing on behalf of eligible households. This trust fund was originally under the Department of Community Affairs. At the time of the creation of the DEO the balance of this fund was transferred into the Federal Grants Trust Fund where the activities are now funded.

## **EFFECT OF PROPOSED CHANGES:**

This bill terminates the Community Services Block Grant Trust Fund, the Energy Consumption Trust Fund, and Low Income Home Energy Assistance Program Block Grant Trust Fund within the Department of Economic Opportunity. The current remaining balance and any proceeds thereof will be transferred to the Federal Grants Trust Fund, FLAIR number 40-2-261, within DEO.

This bill also terminates the Economic Development Transportation Trust Fund within the Department of Economic Opportunity. The current remaining balance and any proceeds thereof will be transferred to the State Transportation Trust Fund within FDOT.

### **B. SECTION DIRECTORY:**

- Section 1. Terminates the Community Services Block Grant Trust Fund, the Energy Consumption Trust Fund, and the Low Income Home Energy Assistance Program Block Grant Trust Fund.
- Section 2. Terminates the Economic Development Transportation Trust Fund.
- Section 3. Amends s. 17.61, F.S. relating to Chief Financial Officer.
- Section 4. Amends s. 420.36, F.S. relating to the Low-Income Emergency Home Repair Program.
- Section 5. Provides effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

- 1. Revenues:  
None
- 2. Expenditures:  
None

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

- 1. Revenues:  
None
- 2. Expenditures:  
None

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

### **D. FISCAL COMMENTS:**

The bill has no fiscal impact.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

#### **B. RULE-MAKING AUTHORITY:**

None

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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A bill to be entitled  
 An act relating to trust funds; terminating specified  
 trust funds within the Department of Economic  
 Opportunity; providing for the disposition of balances  
 in and revenues of such trust funds; prescribing  
 procedures for the termination of such trust funds;  
 amending ss. 17.61 and 420.36, F.S.; conforming  
 provisions to changes made by this act; providing an  
 effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The following trust funds within the  
 Department of Economic Opportunity are terminated:  
(a) The Community Services Block Grant Trust Fund, FLAIR  
 number 40-2-118;  
(b) The Energy Consumption Trust Fund, FLAIR number 40-2-  
 174; and  
(c) The Low-Income Home Energy Assistance Program Block  
 Grant Trust Fund, FLAIR number 40-2-451.  
(2) All current balances remaining in, and all the  
 revenues of, the trust funds shall be transferred to the Federal  
 Grants Trust Fund within the Department of Economic Opportunity.  
(3) The Department of Economic Opportunity shall pay any  
 outstanding debts and obligations of the terminated trust funds  
 as soon as practicable, and the Chief Financial Officer shall

27 close out and remove the terminated trust funds from the various  
 28 state accounting systems using generally accepted accounting  
 29 principles concerning outstanding warrants, assets, and  
 30 liabilities.

31 Section 2. (1) The Economic Development Transportation  
 32 Trust Fund within the Department of Economic Opportunity, FLAIR  
 33 number 40-2-175, is terminated.

34 (2) All current balances remaining in, and all the  
 35 revenues of, the trust fund shall be transferred to the State  
 36 Transportation Trust Fund within the Department of  
 37 Transportation.

38 (3) The Department of Economic Opportunity shall pay any  
 39 outstanding debts and obligations of the terminated trust fund  
 40 as soon as practicable, and the Chief Financial Officer shall  
 41 close out and remove the terminated trust fund from the various  
 42 state accounting systems using generally accepted accounting  
 43 principles concerning outstanding warrants, assets, and  
 44 liabilities.

45 Section 3. Paragraph (c) of subsection (3) of section  
 46 17.61, Florida Statutes, is amended to read:

47 17.61 Chief Financial Officer; powers and duties in the  
 48 investment of certain funds.—

49 (3)

50 (c) Except as provided in this paragraph and except for  
 51 moneys described in paragraph (d), the following agencies may  
 52 not invest trust fund moneys as provided in this section, but

53 shall retain such moneys in their respective trust funds for  
 54 investment, with interest appropriated to the General Revenue  
 55 Fund, pursuant to s. 17.57:

56 1. The Agency for Health Care Administration, except for  
 57 the Tobacco Settlement Trust Fund.

58 2. The Agency for Persons with Disabilities, except for:

59 a. The Federal Grants Trust Fund.

60 b. The Tobacco Settlement Trust Fund.

61 3. The Department of Children and Families ~~Family~~  
 62 ~~Services~~, except for:

63 a. The Alcohol, Drug Abuse, and Mental Health Trust Fund.

64 b. The Social Services Block Grant Trust Fund.

65 c. The Tobacco Settlement Trust Fund.

66 d. The Working Capital Trust Fund.

67 4. The Department of Corrections.

68 5. The Department of Elderly Affairs, except for:

69 a. The Federal Grants Trust Fund.

70 b. The Tobacco Settlement Trust Fund.

71 6. The Department of Health, except for:

72 a. The Federal Grants Trust Fund.

73 b. The Grants and Donations Trust Fund.

74 c. The Maternal and Child Health Block Grant Trust Fund.

75 d. The Tobacco Settlement Trust Fund.

76 7. The Department of Highway Safety and Motor Vehicles,  
 77 only for the Security Deposits Trust Fund.

78 8. The Department of Juvenile Justice.

- 79 9. The Department of Law Enforcement.
- 80 10. The Department of Legal Affairs.
- 81 11. The Department of State, only for:
- 82 a. The Grants and Donations Trust Fund.
- 83 b. The Records Management Trust Fund.
- 84 12. The Department of Economic Opportunity, only for+
- 85 ~~a. The Economic Development Transportation Trust Fund.~~
- 86 ~~b.~~ the Economic Development Trust Fund.
- 87 13. The Florida Public Service Commission, only for the
- 88 Florida Public Service Regulatory Trust Fund.
- 89 14. The Justice Administrative Commission.
- 90 15. The state courts system.

91 Section 4. Paragraphs (a) and (c) of subsection (4) of  
 92 section 420.36, Florida Statutes, are amended to read:

93 420.36 Low-income Emergency Home Repair Program.—There is  
 94 established within the Department of Economic Opportunity the  
 95 Low-income Emergency Home Repair Program to assist low-income  
 96 persons, especially the elderly and physically disabled, in  
 97 making emergency repairs which directly affect their health and  
 98 safety.

99 (4)(a) Funds appropriated to the department for the  
 100 program shall be deposited in the Federal Grants Energy  
 101 ~~Consumption~~ Trust Fund. Administrative and personnel costs  
 102 incurred by the department in implementing the provisions of  
 103 this section may be paid from the fund.

104 (c) Funds shall be distributed to grantees and subgrantees



105 as follows:

106 1. For each county, a base amount of at least \$3,000 shall  
 107 be set aside from the total funds available, and such amount  
 108 shall be deducted from the total amount appropriated by the  
 109 Legislature.

110 2. The balance of the funds appropriated by the  
 111 Legislature shall be divided by the total poverty population of  
 112 the state, and this quotient shall be multiplied by each  
 113 county's share of the poverty population. That amount plus the  
 114 base of at least \$3,000 constitutes ~~shall constitute~~ each  
 115 county's share. A grantee that ~~which~~ serves more than one county  
 116 shall receive the base amount plus the poverty population share  
 117 for each county to be served. Contracts with grantees may be  
 118 renewed annually.

119 3. The funds allocated to each county shall be offered  
 120 first to an existing weatherization assistance program grantee  
 121 in good standing, as determined by the department, which ~~that~~  
 122 can provide services to the target population of low-income  
 123 persons, low-income elderly persons, and low-income physically  
 124 disabled persons throughout the county.

125 4. If a weatherization assistance program grantee is not  
 126 available to serve the entire county area, the funds shall be  
 127 distributed through the following process:

128 a. An announcement of funding availability shall be  
 129 provided to the county. The county may elect to administer the  
 130 program.

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131           b. If the county elects not to administer the program, the  
 132 department shall establish rules to address the selection of one  
 133 or more public or private not-for-profit agencies that are  
 134 experienced in weatherization, rehabilitation, or emergency  
 135 repair to administer the program.



136           5. If no eligible agency agrees to serve a county, the  
 137 funds for that county shall be distributed to grantees having  
 138 the best performance record as determined by department rule. At  
 139 the end of the contract year, any uncontracted or unexpended  
 140 funds shall be returned to the Federal Grants ~~Energy Consumption~~  
 141 Trust Fund and reallocated under the next year's contracting  
 142 cycle.

143           Section 5. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES TRUST FUND RE-CREATION STAFF ANALYSIS

**BILL #:** HB 7067      PCB EDAS 14-01    Trust Funds/Re-creation/Welfare Transition Trust Fund/DOE  
**SPONSOR(S):** Education Appropriations Subcommittee, Fresen  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Appropriations Subcommittee	12 Y, 0 N	Seifert	Heflin
1) Appropriations Committee		Seifert 	Leznoff 

### I. SUMMARY

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision requires that trust fund be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of created or recreating that trust fund. The Welfare Transition Trust Fund was created in the Department of Education effective July 1, 2011, and is scheduled to terminate on July 1, 2015.

The Legislature re-creates the Welfare Transition Trust Fund effective July 1, 2014, provided that it is enacted by three-fifths of the membership of both houses of the Legislature.

This bill has no fiscal impact.

## II. SUBSTANTIVE ANALYSIS

### A. PRESENT SITUATION:

#### 1. MAJOR STATUTES THAT CONTROL THE TRUST FUND:

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision requires that trust fund be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of created or recreating that trust fund. The Welfare Transition Trust Fund was created in the Department of Education effective July 1, 2011, by chapter 2011-157, Laws of Florida, in section 1001.283, Florida Statutes and is scheduled to terminate on July 1, 2015.

#### 2. BRIEF DESCRIPTION OF THE FUND'S USES OR PURPOSES:

This trust fund is used exclusively to provide services to individuals eligible for Temporary Assistance for Needy Families pursuant to the requirements and limitation of part A of Title IV of the Social Security Act, as amended, or any other applicable federal requirement or limitation.

#### 3. MAJOR SOURCES OF REVENUE FOR THE FUND:

Moneys in the trust fund consist of those funds collected from the Temporary Assistance for Needy Families Block Grant.

#### 4. TOTAL PROJECTED RECEIPTS INTO THE FUND AND CURRENT YEAR APPROPRIATIONS FROM THE FUND:

The total projected receipts into this fund for the current year are \$98,277,590 and current year appropriations from the fund are \$98,277,590.

### B. EFFECT OF PROPOSED CHANGES:

The bill re-creates the trust fund without modification and repeals the scheduled termination of the trust fund.

## III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

This legislation has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

## IV. COMMENTS

## V. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
2           An act relating to trust funds; re-creating the  
3           Welfare Transition Trust Fund within the Department of  
4           Education without modification; amending s. 1001.283,  
5           F.S.; abrogating provisions relating to the  
6           termination of the trust fund, to conform; providing a  
7           contingent effective date.

8  
9           WHEREAS, the Legislature wishes to extend the life of the  
10          Welfare Transition Trust Fund within the Department of  
11          Education, which is otherwise scheduled to be terminated  
12          pursuant to constitutional mandate, and

13          WHEREAS, the Legislature has reviewed the trust fund before  
14          its scheduled termination date and has found that it continues  
15          to meet an important public purpose, and

16          WHEREAS, the Legislature has found that existing public  
17          policy concerning the trust fund sets adequate parameters for  
18          its use, NOW, THEREFORE,

19

20          Be It Enacted by the Legislature of the State of Florida:

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22                   Section 1. The Welfare Transition Trust Fund within the  
23                   Department of Education, FLAIR number 48-2-401, which is to be  
24                   terminated pursuant to Section 19(f)(2), Article III of the  
25                   State Constitution on July 1, 2015, is re-created.

26                   Section 2. Subsection (3) of section 1001.283, Florida

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27 Statutes, is amended to read:

28 1001.283 Welfare Transition Trust Fund.—

29 ~~(3) In accordance with s. 19(f)(2), Art. III of the State~~  
 30 ~~Constitution, the Welfare Transition Trust Fund shall, unless~~  
 31 ~~terminated sooner, be terminated on July 1, 2015. Before its~~  
 32 ~~scheduled termination, the trust fund shall be reviewed as~~  
 33 ~~provided in s. 215.3206(1) and (2).~~


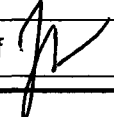
34 Section 3. This act shall take effect July 1, 2014, but it  
 35 shall not take effect unless it is enacted by a three-fifths  
 36 vote of the membership of each house of the Legislature.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7079      PCB ANRAS 14-01      Trust Funds/Termination & Administration/DOACS  
**SPONSOR(S):** Agriculture & Natural Resources Appropriations Subcommittee; Albritton  
**TIED BILLS:**      **IDEN./SIM. BILLS:** SB 678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Appropriations Subcommittee	10 Y, 0 N	Lolley	Massengale
1) Appropriations Committee		Lolley 	Leznoff 

**SUMMARY ANALYSIS**

To implement Article III, section 19(f), of the State Constitution, section 215.3208(1), Florida Statutes, specifies that a schedule for review of trust funds be included in the legislative budget instructions developed pursuant to section 216.023, Florida Statutes. The trust funds in the Department of Agriculture and Consumer Services are scheduled for review this year.

Consistent with all of the remaining trust funds administered by the department, the bill codifies into chapter 570, Florida Statutes, the Administrative Trust Fund, the Federal Grants Trust Fund, the Florida Saltwater Products Promotion Trust Fund, the Plant Industry Trust Fund, the Pest Control Trust Fund, the Citrus Inspection Trust Fund, and the Incidental Trust Fund.

The bill terminates the Agricultural Law Enforcement Trust Fund, the Market Trade Show Trust Fund, and the Relocation and Construction Trust Fund effective July 1, 2014; transfers all cash balances and revenues to other trust funds; and amends sections 253.025, 571.24 and 932.7055, Florida Statutes, making conforming changes. The bill also requires the Department of Agriculture and Consumer Services to pay any outstanding debts or obligations. The bill also requires the Chief Financial Officer to close out and remove the terminated funds from the various state accounting systems.

Because the bill merely transfers unexpended balances, revenue sources, and appropriations between trust funds, there is no fiscal impact on state and local governments or the private sector.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

To implement Article III, section 19(f), of the State Constitution, section 215.3208(1), Florida Statutes, specifies that a schedule for review of trust funds be included in the legislative budget instructions developed pursuant to section 216.023, Florida Statutes. The trust funds in the Department of Agriculture and Consumer Services are scheduled for review this year.

Most of the department's trust funds are established in Florida Statutes except for the Administrative Trust Fund, the Citrus Inspection Trust Fund, the Federal Grants Trust Fund, the Florida Saltwater Products Promotion Trust Fund, the Incidental Trust Fund, the Pest Control Trust Fund, and the Plant Industry Trust Fund. These trust funds were previously created and re-created in conformity with Florida law, but have never been specifically codified in Florida Statute.

The *Administrative Trust Fund* was last re-created in chapter 2004-113, Laws of Florida, as a depository for funds to be used for management activities that are departmental in nature. Revenue sources consist of indirect cost earnings and assessments against trust funds.

The Contracts and Grants Trust Fund was renamed as the *Federal Grants Trust Fund* effective July 1, 2007, in chapter 2006-79, Laws of Florida. Revenue sources consist of grants and funding from the federal government and interest earnings.

The *Florida Saltwater Products Promotion Trust Fund* was last re-created in chapter 2004-128, Laws of Florida, for the sole purpose of promoting all fish and saltwater products produced in this state.<sup>1</sup> Revenue sources include a 25 percent distribution of saltwater products license fees collected by the Fish and Wildlife Conservation Commission, saltwater products dealer's license fees, and interest earnings.

The *Plant Industry Trust Fund* was last re-created in chapter 2004-124, Laws of Florida, to defray expenses in carrying out the duties imposed on the department by chapters 581, 586, and sections 593.101 through 593.117, Florida Statutes, which regulate nurseries, honeybee colonies, and boll weevil eradication. Revenue sources include inspection fees, certifications, assessments, and permit fees as applied to nurseries, pest and plant eradication, and apiaries.

The *Pest Control Trust Fund* was last re-created in chapter 2004-125, Laws of Florida, to carry out the provisions of chapter 482, Florida Statutes, including licensing of pest control businesses, examinations for operators' certificates and in the education of the pest control industry.<sup>2</sup> Revenue sources include license, examination, certification, and commercial fees and fines.

The *Citrus Inspection Trust Fund* was last re-created in chapter 2004-115, Laws of Florida, to defray costs incurred as a result of inspecting and certifying citrus fruit and processed citrus products.<sup>3</sup> Revenue sources include various inspection fees, citrus dealer licenses, and the citrus marketing order.

The *Incidental Trust Fund* was last re-created in chapter 2004-121, Laws of Florida, to promote and encourage good forest management, including fire protection, education, stewardship, recreation, tree planting and care, and the proper management of public lands.<sup>4</sup> Revenue sources include sale of forest

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<sup>1</sup> Section 379.362, F.S.

<sup>2</sup> Section 482.2401, F.S.

<sup>3</sup> Section 601.28, F.S.

<sup>4</sup> Section 589.04, F.S.

products; nursery and recreation receipts; fire suppression, plowing, and prescribed burning program income; and fees and rent for use of facilities.

As a part of the review, three trust funds were identified for potential termination because revenue collections and expenditures are sporadic and because of the ability to account for their activities within the department's other larger trust funds. These are the Agricultural Law Enforcement Trust Fund, the Market Trade Show Trust Fund, and the Relocation and Construction Trust Fund.

The *Agricultural Law Enforcement Trust Fund* was authorized in section 932.7055, Florida Statutes, as a depository for revenues received as a result of state or federal criminal proceedings or forfeiture proceedings. Revenues are generally used for acquisition of motor vehicles and salary incentive payments and vary according to the amount of criminal and forfeiture receipts each year. The total cash and investment balance as of December 31, 2013 was \$256,384.

The *Market Trade Show Trust Fund* was last re-created in chapter 2004-122, Laws of Florida, to offset costs in promoting and marketing Florida's agricultural and agricultural business products. The major source of revenue is rental receipts collected from the agricultural industry associated with state, national, and international trade shows. The total cash and investment balance as of December 31, 2013 was \$1,080,413.

Finally, the *Relocation and Construction Trust Fund* was created in section 253.025, Florida Statutes, for the sole purpose of achieving the orderly relocation of the forestry fire towers and work centers. The source of revenue for the trust fund is the sale or lease of forestry facilities. The total cash and investment balance as of December 31, 2013 was \$433,421.

### **Effect of Proposed Changes**

Consistent with all of the remaining trust funds administered by the department, the bill codifies into chapter 570, Florida Statutes, the Administrative Trust Fund, the Federal Grants Trust Fund, the Florida Saltwater Products Promotion Trust Fund, the Plant Industry Trust Fund, the Pest Control Trust Fund, the Citrus Inspection Trust Fund, and the Incidental Trust Fund.

The bill terminates the Agricultural Law Enforcement Trust Fund, effective July 1, 2014; transfers all cash balances and revenues to the General Inspection Trust Fund; and makes a conforming change to section 932.7055, Florida Statutes.

The bill terminates the Market Trade Show Trust Fund, effective July 1, 2014, and transfers all cash balances and revenues to the Florida Agricultural Promotional Campaign Trust Fund. The bill also amends section 571.24, Florida Statutes to authorize the department to collect rental receipts for industry promotions.

The bill terminates the Relocation and Construction Trust Fund, effective July 1, 2014; transfers all cash balances, revenues, and outstanding appropriations to the Incidental Trust Fund; and makes a conforming change to section 253.025, Florida Statutes.

The bill requires the Department of Agriculture and Consumer Services to pay any outstanding debts or obligations for the terminated trust funds and requires the Chief Financial Officer to close out and remove the terminated funds from the various state accounting systems.

### **B. SECTION DIRECTORY:**

**Section 1.** Terminates the Agricultural Law Enforcement Trust Fund; transferring remaining balances, and revenues to the General Inspection Trust Fund.

**Section 2.** Terminates the Market Trade Show Trust Fund; transferring remaining balances and revenues to the Florida Agricultural Promotional Campaign Trust Fund.

**Section 3.** Terminates the Relocation and Construction Trust Fund; transferring remaining balances, revenues, and outstanding appropriations to the Incidental Trust Fund.

**Section 4.** Creates s. 570.192, F.S., codifying the Administrative Trust Fund.

**Section 5.** Creates s. 570.193, F.S., codifying the Federal Grants Trust Fund.

**Section 6.** Creates s. 570.194, F.S., codifying the Florida Saltwater Products Promotion Trust Fund.

**Section 7.** Creates s. 570.321, F.S., codifying the Plant Industry Trust Fund.

**Section 8.** Creates s. 570.441, F.S., codifying the Pest Control Trust Fund.

**Section 9.** Creates s. 570.482, F.S., codifying the Citrus Inspection Trust Fund.

**Section 10.** Creates s. 570.5481, F.S., codifying the Incidental Trust Fund.

**Section 11.** Amends s. 571.24, F.S., providing for collection of rental receipts for industry promotions.

**Section 12.** Amends s. 253.025, F.S., providing for revenues from the sale or lease of forestry facilities in the Incidental Trust Fund.

**Section 13.** Amends s. 932.7055, F.S., providing for revenues from state or federal criminal proceedings or forfeiture proceedings in the General Inspection Trust Fund.

**Section 14.** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

**D. FISCAL COMMENTS:**

Because the bill merely transfers unexpended balances, revenue sources, and appropriations from the terminated trust funds to more pertinent trust funds, there is no fiscal impact on state and local governments or the private sector.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



27 duties; amending s. 253.025, F.S.; redirecting  
 28 proceeds from the Relocation and Construction Trust  
 29 Fund to the Incidental Trust Fund; conforming  
 30 provisions to changes made by the act; amending s.  
 31 932.7055, F.S.; redirecting proceeds from the  
 32 Agricultural Law Enforcement Trust Fund to the General  
 33 Inspection Trust Fund; providing an effective date.  
 34

35 Be It Enacted by the Legislature of the State of Florida:  
 36

37 Section 1. (1) The Agricultural Law Enforcement Trust  
 38 Fund within the Department of Agriculture and Consumer Services,  
 39 FLAIR number 42-2-025, is terminated.

40 (2) All current balances remaining in, and all revenues  
 41 of, the trust fund shall be transferred to the General  
 42 Inspection Trust Fund within the Department of Agriculture and  
 43 Consumer Services, FLAIR number 42-2-321.

44 (3) The Department of Agriculture and Consumer Services  
 45 shall pay any outstanding debts or obligations of the terminated  
 46 fund as soon as practicable, and the Chief Financial Officer  
 47 shall close out and remove the terminated fund from various  
 48 state accounting systems using generally accepted accounting  
 49 principles concerning warrants outstanding, assets, and  
 50 liabilities.

51 Section 2. (1) The Market Trade Show Trust Fund within  
 52 the Department of Agriculture and Consumer Services, FLAIR

53 | number 42-2-466, is terminated.

54 | (2) All current balances remaining in, and all revenues  
 55 | of, the trust fund shall be transferred to the Florida  
 56 | Agricultural Promotional Campaign Trust Fund within the  
 57 | Department of Agriculture and Consumer Services, FLAIR number  
 58 | 42-2-920.

59 | (3) The Department of Agriculture and Consumer Services  
 60 | shall pay any outstanding debts or obligations of the terminated  
 61 | fund as soon as practicable, and the Chief Financial Officer  
 62 | shall close out and remove the terminated fund from various  
 63 | state accounting systems using generally accepted accounting  
 64 | principles concerning warrants outstanding, assets, and  
 65 | liabilities.

66 | Section 3. (1) The Relocation and Construction Trust Fund  
 67 | within the Department of Agriculture and Consumer Services,  
 68 | FLAIR number 42-2-584, is terminated.

69 | (2) All current balances remaining in, all revenues of,  
 70 | and all outstanding appropriations of the trust fund shall be  
 71 | transferred to the Incidental Trust Fund within the Department  
 72 | of Agriculture and Consumer Services, FLAIR number 42-2-381.

73 | (3) The Department of Agriculture and Consumer Services  
 74 | shall pay any outstanding debts or obligations of the terminated  
 75 | fund as soon as practicable, and the Chief Financial Officer  
 76 | shall close out and remove the terminated fund from various  
 77 | state accounting systems using generally accepted accounting  
 78 | principles concerning warrants outstanding, assets, and



79 liabilities.

80 Section 4. Section 570.192, Florida Statutes, is created  
81 to read:

82 570.192 Administrative Trust Fund.-

83 (1) The Administrative Trust Fund shall be administered by  
84 the Department of Agriculture and Consumer Services.

85 (2) Funds to be credited to and uses of the trust fund  
86 shall be administered in accordance with s. 215.32.

87 (3) Notwithstanding s. 216.301 and pursuant to s. 216.351,  
88 any balance in the trust fund at the end of a fiscal year shall  
89 remain in the trust fund at the end of the year and be available  
90 for carrying out the purposes of the trust fund.

91 Section 5. Section 570.193, Florida Statutes, is created  
92 to read:

93 570.193 Federal Grants Trust Fund.-

94 (1) The Federal Grants Trust Fund shall be administered by  
95 the Department of Agriculture and Consumer Services.

96 (2) Funds to be credited to and uses of the trust fund  
97 shall be administered in accordance with s. 215.32.

98 (3) Notwithstanding s. 216.301 and pursuant to s. 216.351,  
99 any balance in the trust fund at the end of a fiscal year shall  
100 remain in the trust fund at the end of the year and be available  
101 for carrying out the purposes of the trust fund.

102 Section 6. Section 570.194, Florida Statutes, is created  
103 to read:

104 570.194 Florida Saltwater Products Promotion Trust Fund.-

105       (1) The Florida Saltwater Products Promotion Trust Fund  
 106       shall be administered by the Department of Agriculture and  
 107       Consumer Services.

108       (2) Funds to be credited to and uses of the trust fund  
 109       shall be administered in accordance with ss. 328.76 and 379.362.

110       (3) Notwithstanding s. 216.301 and pursuant to s. 216.351,  
 111       any balance in the trust fund at the end of a fiscal year shall  
 112       remain in the trust fund at the end of the year and be available  
 113       for carrying out the purposes of the trust fund.

114       Section 7. Section 570.321, Florida Statutes, is created  
 115       to read:

116       570.321 Plant Industry Trust Fund.—

117       (1) The Plant Industry Trust Fund shall be administered by  
 118       the Department of Agriculture and Consumer Services.

119       (2) Funds to be credited to and uses of the trust fund  
 120       shall be administered in accordance with ss. 259.032, 581.031,  
 121       581.141, 581.211, 581.212, 586.045, 586.15, 586.16, 593.114, and  
 122       593.117.

123       (3) Notwithstanding s. 216.301 and pursuant to s. 216.351,  
 124       any balance in the trust fund at the end of a fiscal year shall  
 125       remain in the trust fund at the end of the year and be available  
 126       for carrying out the purposes of the trust fund.

127       Section 8. Section 570.441, Florida Statutes, is created  
 128       to read:

129       570.441 Pest Control Trust Fund.—

130       (1) The Pest Control Trust Fund shall be administered by

131 | the Department of Agriculture and Consumer Services.

132 |       (2) Funds to be credited to and uses of the trust fund  
 133 | shall be administered in accordance with chapter 482.

134 |       (3) Notwithstanding s. 216.301 and pursuant to s. 216.351,  
 135 | any balance in the trust fund at the end of a fiscal year shall  
 136 | remain in the trust fund at the end of the year and be available  
 137 | for carrying out the purposes of the trust fund.

138 |       Section 9. Section 570.482, Florida Statutes, is created  
 139 | to read:

140 |       570.482 Citrus Inspection Trust Fund.—

141 |       (1) The Citrus Inspection Trust Fund shall be administered  
 142 | by the Department of Agriculture and Consumer Services.

143 |       (2) Funds to be credited to and uses of the trust fund  
 144 | shall be administered in accordance with ss. 570.481, 573.118,  
 145 | 581.091, 601.28, 601.281, and 601.59.

146 |       (3) Notwithstanding s. 216.301 and pursuant to s. 216.351,  
 147 | any balance in the trust fund at the end of a fiscal year shall  
 148 | remain in the trust fund at the end of the year and be available  
 149 | for carrying out the purposes of the trust fund.

150 |       Section 10. Section 570.5481, Florida Statutes, is created  
 151 | to read:

152 |       570.5481 Incidental Trust Fund.—

153 |       (1) The Incidental Trust Fund shall be administered by the  
 154 | Department of Agriculture and Consumer Services.

155 |       (2) Funds to be credited to and uses of the trust fund  
 156 | shall be administered in accordance with ss. 125.27, 253.025,

157 261.12, 317.0010, 317.0016, 589.011, 589.04, 589.11, 589.277,  
 158 589.31, 590.02, 590.14, and 590.42.

159 (3) Notwithstanding s. 216.301 and pursuant to s. 216.351,  
 160 any balance in the trust fund at the end of a fiscal year shall  
 161 remain in the trust fund at the end of the year and be available  
 162 for carrying out the purposes of the trust fund.

163 Section 11. Present subsections (4) through (9) of section  
 164 571.24, Florida Statutes, are redesignated as subsections (5)  
 165 through (10), respectively, and a new subsection (4) is added to  
 166 that section, to read:

167 571.24 Purpose; duties of the department.—The purpose of  
 168 this part is to authorize the department to establish and  
 169 coordinate the Florida Agricultural Promotional Campaign. The  
 170 duties of the department shall include, but are not limited to:

171 (4) Collecting rental receipts for industry promotions.

172 Section 12. Paragraphs (b) and (d) of subsection (13) of  
 173 section 253.025, Florida Statutes, are amended to read:

174 253.025 Acquisition of state lands for purposes other than  
 175 preservation, conservation, and recreation.—

176 (13)

177 (b) In the case of a sale by the Department of Agriculture  
 178 and Consumer Services of a forestry facility, the proceeds of  
 179 the sale shall go into the Department of Agriculture and  
 180 Consumer Services Incidental Relocation and Construction Trust  
 181 Fund. The Legislature may, at the request of the department,  
 182 appropriate such money within the trust fund to the department

183 for purchase of land and construction of a facility to replace  
 184 the disposed facility. All proceeds other than land, from any  
 185 sale, conveyance, exchange, trade, or transfer conducted as  
 186 provided for in this subsection shall be placed within the  
 187 department's Incidental Relocation and Construction Trust Fund.

188 ~~(d) There is hereby created in the Department of~~  
 189 ~~Agriculture and Consumer Services the Relocation and~~  
 190 ~~Construction Trust Fund. The trust fund is to be used for the~~  
 191 ~~sole purpose of effectuating the orderly relocation of the~~  
 192 ~~forestry fire towers and work centers.~~

193 Section 13. Paragraph (h) of subsection (6) of section  
 194 932.7055, Florida Statutes, is amended to read:

195 932.7055 Disposition of liens and forfeited property.—

196 (6) If the seizing agency is a state agency, all remaining  
 197 proceeds shall be deposited into the General Revenue Fund.  
 198 However, if the seizing agency is:



199 (h) The Department of Agriculture and Consumer Services,  
 200 the proceeds accrued pursuant to ~~the provisions of the Florida~~  
 201 ~~Contraband Forfeiture Act~~ shall be deposited into the General  
 202 Inspection Agricultural Law Enforcement Trust Fund or into the  
 203 department's Federal Law Enforcement Trust Fund as provided in  
 204 s. 570.205, as applicable.

205 Section 14. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for CS/CS/HB 851 Postsecondary Education Tuition and Fees  
**SPONSOR(S):** Appropriations Committee  
**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Garner 	Leznoff 

### SUMMARY ANALYSIS

The bill revises provisions relating to the determination of resident status for tuition purposes.

The bill provides that a United States citizen who is a dependent child may not be denied classification as a resident for tuition purposes based solely upon the immigration status of his or her parent. It amends the definitions of "dependent child" and "parent" regarding establishing residency for tuition purposes.

The bill also clarifies that postsecondary institutions may satisfy the verification requirement of documents by accepting an affidavit that requires the person claiming residence to submit specific information. Furthermore, once any institution of higher education in the state classifies a student as a resident for tuition purposes or verifies that a student meets specific criteria established in law, an institution of higher education would not be required to reevaluate the classification status of a student so long as there is no inconsistent information suggesting an erroneous classification and there is no break in the student's enrollment of 12 months or longer.

The bill clarifies that a student who resides in Florida may be classified as a resident for tuition purposes if he or she marries a person who qualifies as a resident for tuition purposes. It also allows a student who has been classified as a nonresident to reclassify as a resident upon subsequently marrying a person who already qualifies as a resident for tuition purposes.

For a dependent child living with an adult relative who is a Florida resident and who is not the child's parent, the bill reduces the amount of time the child must live with the relative in order to use the relative's documentation to establish residency for tuition purposes from five years to three years.

The bill clarifies that students who are eligible for specific tuition exemptions or waivers are classified as residents for tuition purposes.

The bill exempts the following types of students from the payment of out-of-state fees:

- Veterans of the United States Armed Forces, including reserve components, who physically reside in Florida while enrolled in a Florida postsecondary institution; and
- Students who attend a Florida high school for 3 consecutive years and enroll in a postsecondary institution within 24 months after graduation, provided they submit their high school transcript as documentary evidence of attendance and graduation.

Students who are not required to pay out-of-state fees under the new provisions may be reported for purposes of state funding.

The bill clarifies that the Board of Governors must adopt regulations, instead of rules, to implement the section.

The bill eliminates the automatic annual rate of inflation increases currently authorized for state universities, Florida colleges, and workforce education programs. The bill also reduces the rate at which an institution may request to increase their tuition differential to the Board of Governors from 15 percent to 6 percent.

The fiscal impact of the bill is indeterminate at this time.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcs0851.APC.DOCX

DATE: 3/11/2014

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by charter technical career centers, career centers operated by school districts, Florida College System institutions, and state universities. Students pay differing tuition rates based on their status as a resident or nonresident of Florida.<sup>1</sup>

Applicants to a postsecondary institution must meet certain qualifying standards in order to be classified as a resident of Florida for tuition purposes. The applicant, or in the case of a dependent child, his or her parents,<sup>2</sup> must establish legal residence in Florida and must have maintained legal residence for at least 12 consecutive months immediately prior to the applicant's enrollment in a postsecondary institution.<sup>3</sup>

Each postsecondary institution determines the residency status of the students who apply for admission to the institution.<sup>4</sup> Each applicant must provide to the institution a statement of length of residence and establish that his or her presence in the state is for the purpose of maintaining a bona fide domicile and not as a temporary residence or residence incident to enrollment.<sup>5</sup>

##### **Documentation of residency for tuition purposes**

An applicant seeking an initial determination of residency must submit two or more documents evidencing residency to the institution. For students who are eligible to be claimed as a dependent under the federal income tax code (regardless of whether they are claimed or not), the applicant's parent (not the applicant) must submit documentation evidencing length of residency in Florida. No one document, alone, may be considered as conclusively establishing Florida residency for tuition purposes.<sup>6</sup> At least one of the following must be provided by the applicant or the applicant's parent if the applicant is a dependent:

- A Florida voter's registration card;
- A Florida driver's license;
- A State of Florida identification card;
- A Florida vehicle registration;
- Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child;
- Proof of a homestead exemption in Florida;
- Transcripts from a Florida high school for multiple years if the Florida high school diploma or GED was earned within the last 12 months; or
- Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period.<sup>7</sup>

<sup>1</sup> See Sections 1009.22, 1009.23, and 1009.24, F.S. Out-of-state tuition is established by each university board of trustees, subject to the approval of the BOG. Section 1009.24(4)(c), F.S.

<sup>2</sup> The legal residence of a dependent child's parents is prima facie evidence of the dependent child's residence. Section 1009.21(4), F.S.

<sup>3</sup> Section 1009.21(2)(a)1., F.S. A legal resident, for purposes of tuition, is a person who has maintained his or her residence in Florida for the preceding year, has purchased a home which is occupied by him or her as his or her residence, or has established a domicile in Florida pursuant to s. 222.17, F.S. Section 1009.21(1)(d), F.S.

<sup>4</sup> Section 1009.21(3)(c), F.S.

<sup>5</sup> Section 1009.21(2)(a)2., F.S. Each institution must also establish a residency appeal committee under s. 1009.21(12), F.S.

<sup>6</sup> Section 1009.21(3)(c), F.S.

<sup>7</sup> Section 1009.21(3)(c)1., F.S.



One or more of the following documents may be provided by the applicant:

- A declaration of domicile in Florida;
- A Florida professional or occupational license;
- Florida incorporation;
- A document evidencing family ties in Florida;
- Proof of membership in a Florida-based charitable or professional organization; or
- Any other documentation that supports the student's request for resident status, including, but not limited to, utility bills and proof of 12 consecutive months of payments, a lease agreement and proof of 12 consecutive months of payments, or an official state, federal, or court document evidencing legal ties to Florida<sup>8</sup>

## **Implementation of Residency Requirements**

### *Present Situation*

The State Board of Education (SBE) and Florida Board of Governors (BOG) must adopt rules to implement the provisions of Section 1009.21, F.S.<sup>9</sup> Accordingly, the SBE has adopted Rule 6A-10.044, F.A.C., "Residency for Tuition Purposes." The BOG has adopted a similar set of provisions under Rule 72.1001, F.A.C., also entitled "Residency for Tuition Purposes."<sup>10</sup> Each rule establishes requirements for determining residency for tuition purposes.

Federal law provides that an "alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefits unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."<sup>11</sup>

### *Ruiz v. Robinson*

In 2011, a group of five dependent, U.S. citizen residents of Florida filed a lawsuit against the SBE and the BOG challenging the above-referenced rule and regulation promulgated by both boards. The plaintiffs had applied to attend various postsecondary institutions in Florida,<sup>12</sup> but were denied residency status by the institutions application of the rules because the plaintiffs' parents could not establish legal immigration status.<sup>13</sup> The plaintiffs claimed in their lawsuit that the rules are unconstitutional because they violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The court held that the State cannot deny in-state residency status to a U.S. citizen resident of Florida based upon his or her parent's inability to prove their own legal presence in the country. While the court stated the definition of "legal resident" under Section 1009.21, F.S. is facially neutral; it found that the additional criteria set forth in the challenged rules, as implemented by the institutions, denied the Plaintiffs the same benefits and opportunities as similarly situated individuals.<sup>14</sup> Therefore, the rules, insofar as they require dependent United States citizen students who are residents of Florida to establish the immigration status of their Florida resident parents, were found to violate the Equal Protection Clause of the Fourteenth Amendment. The court also enjoined the BOG and the SBE from

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<sup>8</sup> Section 1009.21(3)(c)2., F.S.

<sup>9</sup> Section 1009.21(13), F.S.

<sup>10</sup> The Florida Board of Governors also adopted Regulation 7.005 in 2011 with language that is identical to Rule 72.1001, F.A.C.

<sup>11</sup> 8 U.S.C. § 1623, Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

<sup>12</sup> The institutions included Florida International University, Miami-Dade College, and Palm Beach State College.

<sup>13</sup> 892 F. Supp. 2d 1321 (S.D. Fla. 2012).

<sup>14</sup> *Ruiz v. Robinson* at 1333.

interpreting the rules in a way that would require such students to establish the immigration status of their Florida-resident parents.<sup>15</sup>

The court clarified that the order would not preclude the State from requiring proof of Florida residency from a student and the student's parents in order to classify the student as a resident for tuition purposes.<sup>16</sup>

The court also noted that the SBE or BOG could not use the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PROWRA) as justification for requiring proof of a parent's legal presence in the country because that law merely precludes unlawful *aliens*, not U.S. citizens, from receiving tuition benefits. Since the children in this case were U.S. citizens and the tuition benefit accrues to the child and not the parent, PROWRA was inapplicable.<sup>17</sup>

### Effect of Proposed Changes

The bill provides that a United States citizen, who is a dependent child, may not be denied classification as a resident for tuition purposes based solely upon the immigration status of his or her parent. This, in effect, codifies the holding in *Ruiz v. Robinson*.<sup>18</sup>

### **Definitions**

#### Present Situation

A "dependent child" is defined as any person, whether or not living with his or her parent, who is eligible to be claimed by his or her parent as a dependent under the federal income tax code.<sup>19</sup> A "parent," in the context of establishing residency for tuition purposes, is defined as the natural or adoptive parents or legal guardian of a dependent child.<sup>20</sup> However, the federal income tax code allows a stepparent to claim a stepson or stepdaughter as a dependent.<sup>21</sup>

For purposes of determining eligibility for federal financial aid, an independent student is one of the following: at least 24 years old, married, a graduate or professional student, a veteran, a member of the armed forces, an orphan, a ward of the court, someone with legal dependents other than a spouse, an emancipated minor, or someone who is homeless or at risk of becoming homeless.<sup>22</sup>

#### Effect of Proposed Changes

The bill amends the definition of "dependent child" to include any person who is not deemed an independent for purposes of federal financial aid. This would help to promote consistency and avoid discrepancy between the determination of dependent or independent status for residency purposes and the determination of such status for federal financial aid purposes. It also amends the definition of "parent" to include stepparents to align with the federal income tax code definition.

### **Verification of documents by postsecondary institutions**

#### Present Situation

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<sup>15</sup> Final Judgment in *Ruiz v. Robinson*. Docket Document 109, 1:11-cv-23776-KMM, Federal District Court, Southern District of Florida.

<sup>16</sup> *Id.* at 8-9.

<sup>17</sup> *Id.* at 9.

<sup>18</sup> 892 F. Supp. 2d 1321 (S.D. Fla. 2012).

<sup>19</sup> Section 1009.21(1)(a), F.S.

<sup>20</sup> Section 1009.21(1)(f), F.S.

<sup>21</sup> 26 U.S.C. s. 152.

<sup>22</sup> U.S. Department of Education, *Federal Student Aid Glossary*, available at <http://studentaid.ed.gov/glossary> (last visited Feb. 27, 2014)

Public postsecondary institutions must affirmatively determine that an applicant granted admission to that institution meets the residency requirements.<sup>23</sup> Residency determination must be documented by the submission of written or electronic verification that includes two or more documents including either a Florida voter registration card, a Florida driver's license, a State of Florida identification card, a Florida vehicle registration, proof of a permanent home in Florida occupied as a primary residence, proof of a homestead exemption, a Florida high school transcript, or proof of permanent full-time employment in Florida.<sup>24</sup>

Currently, the residency affidavit submitted by applicants provides for the person claiming residency to verify his or her voter registration card, driver's license, identification card, or vehicle registration by the state of issuance, number, original issue date and current issue date. In lieu of requiring the claimant to produce verified documents from the various state agencies responsible for issuing the documents, which could result in great expense and delay to the student and the claimant, postsecondary institutions have been using the residency affidavit to satisfy the electronic verification requirement in the statute.<sup>25</sup> There have been differing interpretations by some state auditors as to what constitutes "electronic verification" of this information.

#### Effect of Proposed Changes

The bill clarifies that postsecondary institutions may satisfy the verification requirement for documents by accepting an affidavit that requires the person claiming residence to submit specific information.

#### **Children who reside with an adult (non-parent) relative**

##### Present Situation

A dependent child living with an adult relative, who is not the child's parent, may be classified as a resident for tuition purposes if the child has lived with the adult relative for five consecutive years immediately prior to initial enrollment at an institution of higher education and the adult relative must have maintained legal residence in Florida for at least 12 months prior to the child's enrollment.<sup>26</sup>

##### Effect of Proposed Changes

For a dependent child living with an adult relative who is not the child's parent, the bill reduces from five years to three years the amount of time the child must live with the relative in order to use the adult relative's documentation to qualify as a resident for tuition purposes. The three year requirement aligns with other time periods established in the bill.

#### **Effect of marital status on residency for tuition purposes**

##### Present Situation

A student may not be denied legal resident status solely by reason of marriage to a person domiciled in another state, so long as the student remains a legal resident of Florida.<sup>27</sup> Conversely, a student cannot establish legal residence in this state solely by reason of marriage to a person domiciled in this state.<sup>28</sup>

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<sup>23</sup> Section 1009.21(3)(c), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Email, State University System of Florida, Board of Governors (Feb. 5, 2014).

<sup>26</sup> Section 1009.21(2)(b), F.S.

<sup>27</sup> Section 1009.21(5)(a), and (6)(d), F.S.

<sup>28</sup> Section 1009.21(5)(b), F.S.

Florida law also provides that, upon becoming a legal resident, a student may reclassify as a resident for tuition purposes if his or her spouse is already a legal resident.<sup>29</sup>

### Effect of Proposed Changes

The bill clarifies when a person may be classified or reclassified, due to marriage, as a resident for tuition purposes. A person residing in Florida may be classified as a resident for tuition purposes if he or she marries a person who meets the 12-month residency requirement and otherwise qualifies as a resident for tuition purposes. A person may be reclassified as a resident for tuition purposes if the person submits evidence of: his or her own physical residence in the state and marriage to a person who qualifies as a resident for tuition purposes.

## **Reevaluation of residency status**

### Present Situation

Currently, if the parents of a dependent student establish a domicile in another state after the student has been classified as a Florida resident for tuition purposes, the student loses his or her resident status. However, the student is provided a one-year grace period, measured from the date the circumstances resulting in the loss of residency status arose, during which the student continues to maintain in-state tuition rates.<sup>30</sup>

### Effect of Proposed Changes

The bill provides that once any institution of higher education in the state classifies a student as a resident for tuition purposes or verifies that a student meets specific criteria established in law, an institution of higher education would not be required to reevaluate the classification status of a student so long as there is no inconsistent information suggesting an erroneous classification and there is no break in the student's enrollment of 12 months or longer.

## **Residency of individuals eligible for tuition exemptions and waivers**

### Present Situation

Under current law, certain persons are eligible for tuition exemptions and waivers, including:

- Individuals who are homeless;<sup>31</sup>
- Individuals who were in the custody of the Department of Children and Families at the time they reached 18 years of age;<sup>32</sup>
- Individuals who were in the custody of a relative under s. 39.5085, F.S., at the time they reached 18 years of age or who were adopted from the Department of Children and families after May 5, 1997;<sup>33</sup>
- Individuals who have been wrongfully incarcerated;<sup>34</sup>
- Dependents or spouses of firefighters killed in the line of duty;<sup>35</sup> and

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<sup>29</sup> Section 1009.21,(6)(d), F.S. The student must submit evidence of his or her own residency in this state, evidence of his marriage to the spouse, and evidence of the spouse's legal residency in the state for at least 12 consecutive months immediately preceding the application for reclassification.

<sup>30</sup> Section 1009.21(8), F.S.

<sup>31</sup> Section 961.06(1)(b), F.S.

<sup>32</sup> Section 1009.25(1)(c), F.S.

<sup>33</sup> Section 1009.25(1)(d), F.S.

<sup>34</sup> Section 1009.25(1)(f), F.S.

<sup>35</sup> Section 112.191(3), F.S

- Dependents or spouses of law enforcement, correctional, or correctional probation officers killed in the line of duty.<sup>36</sup>

Although these individuals are legal residents of Florida, it can be difficult, or even impossible, for them to compile and provide documentation establishing their residence in Florida for tuition purposes. Consequently, institutions may grant the exemption or waiver to the student as a non-resident student. Currently, there are no provisions under Florida law automatically classifying persons eligible for these tuition exemptions and waivers as residents for tuition purposes.

### Effect of Proposed Changes

Under the bill, individuals who receive a tuition exemption or waiver are classified as residents for tuition purposes. This would eliminate the burden borne by students and institutions regarding classification of residency based on the submission of various documents to which these individuals may not have access.

## **Veterans in Florida**

### Present Situation

Florida law also classifies certain individuals as Florida residents for tuition purposes without requiring the individuals to submit the above-described documentation under Section 1009.21(3)(c), F.S. Such individuals include:

- Active duty members of the Armed Services of the United States residing or stationed in this state, their spouses, and dependent children, and active drilling members of the Florida National Guard.
- Active duty members of the Armed Services of the United States and their spouses and dependents attending a Florida College System institution or state university within 50 miles of the military establishment where they are stationed, if such military establishment is within a county contiguous to Florida.
- United States citizens living on the Isthmus of Panama, who have completed 12 consecutive months of college work at the Florida State University Panama Canal Branch, and their spouses and dependent children.
- Full-time instructional and administrative personnel employed by state public schools and institutions of higher education and their spouses and dependent children.
- Students from Latin America and the Caribbean who receive scholarships from the federal or state government. Any student classified pursuant to this paragraph shall attend, on a full-time basis, a Florida institution of higher education.
- Southern Regional Education Board's Academic Common Market graduate students attending Florida's state universities.
- Full-time employees of state agencies or political subdivisions of the state when the student fees are paid by the state agency or political subdivision for the purpose of job-related law enforcement or corrections training.
- McKnight Doctoral Fellows and Finalists who are United States citizens.
- United States citizens living outside the United States who are teaching at a Department of Defense Dependent School or in an American International School and who enroll in a graduate level education program which leads to a Florida teaching certificate.
- Active duty members of the Canadian military residing or stationed in this state under the North American Air Defense (NORAD) agreement, and their spouses and dependent children, attending a Florida College System institution or state university within 50 miles of the military establishment where they are stationed.

- Active duty members of a foreign nation's military who are serving as liaison officers and are residing or stationed in this state, and their spouses and dependent children, attending a Florida College System institution or state university within 50 miles of the military establishment where the foreign liaison officer is stationed.<sup>37</sup>

Under current law, however, veterans must meet the residency requirements set forth under s. 1009.21(2), F.S., in order to be eligible for in-state tuition rates.<sup>38</sup>

Section 1.01(14), F.S., defines the term veteran as:

a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges.

Florida is tied with Texas for the second largest population of veterans in the nation at 1.6 million. Only California has a larger population of veterans, at 2 million.<sup>39</sup>

### Effect of Proposed Changes

Under the bill, veterans of the Armed Services of the United States, including reserves, who physically reside in Florida while enrolled in a Florida institution of higher education, are not required to pay the out-of-state fees ordinarily charged to non-resident students. Consequently, veterans would not have to maintain legal residence for 12 months prior to enrollment in order to qualify for in-state tuition.

## **Florida High School Graduates**

### Present Situation

Currently, transcripts from a Florida high school for multiple years may be used as one piece of documentation for students trying to establish residency for tuition purposes.<sup>40</sup> However, in addition to the high school transcripts, students who are dependents must provide a second piece of documentation that attests to the residency of their parents or legal guardians. This may be difficult for students whose parents are estranged, unwilling to provide documentation, or are undocumented immigrants. Since no one document, alone, may be considered as conclusively establishing Florida residency for tuition purposes,<sup>41</sup> many Florida high school graduates who have lived in Florida for multiple years cannot provide the required documentation and are classified as out-of-state students. This has been a particularly difficult problem for students who are undocumented immigrants that were brought to the United States by their parents as a child.

Several states currently have laws, referred to as tuition equity, that permit certain undocumented students who have attended and graduated from their primary and secondary schools to pay the same tuition as their classmates at public institutions of higher education. A majority of America's

<sup>37</sup> Section 1009.21(10), F.S.

<sup>38</sup> To establish residency for tuition purposes, a person, or if that person is a dependent child, his or her parent, to establish legal residence in Florida and maintain legal residence in Florida for at least 12 consecutive months immediately prior to initial enrollment in an institution of higher education. Section 1009.21(2)(a)1., F.S.

<sup>39</sup> United States Census Bureau, *A Snapshot of Our Nation's Veterans*, available at: <http://www.census.gov/how/infographics/veterans.html> (Last visited Feb. 14, 2014)

<sup>40</sup> Section 1009.21(3)(c), F.S.

<sup>41</sup> *Id.*

undocumented immigrants live in these states, and several other states are considering similar policies.<sup>42</sup>

Tuition equity laws generally allow students who attend and graduate from a high school in a state, and who meet other specified criteria, to pay in-state tuition rates, regardless of their immigration status. Currently, **17 states** have provisions allowing for in-state tuition rates for undocumented students. Fifteen states—California, Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oregon, Texas, Utah, and Washington— extend in-state tuition rates to undocumented students through state legislation. Two states—Oklahoma and Rhode Island— allow in-state tuition rates to undocumented students through Board of Regents decisions.<sup>43</sup>

The states that have passed laws to allow undocumented students to receive in-state tuition delineate requirements for eligibility. In general, students must live in state and attend high school for a specified period (1-4 years), and graduate or receive their GED. Students must be accepted to a public college or university, and must sign an affidavit stating their intention to file for legal immigration status. Only 3 states—California, New Mexico and Texas—currently allow undocumented students to receive state financial aid. Students without legal immigrant status are ineligible for federal financial aid.<sup>44</sup>

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) states, "...an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."<sup>45</sup>

The states that have enacted laws granting in-state tuition rates to undocumented students have worded the legislation so that it is contingent on high school attendance and graduation, and not based on residency within the state. Since legal United States residents are also entitled to in-state tuition rates based on the same criteria, the states claim that their laws do not violate the IIRIRA. The California Supreme Court upheld California's law that grants in-state tuition rates to eligible undocumented students.<sup>46</sup>

### Effect of Proposed Changes

The bill provides that students, regardless of immigration status, who attend a Florida high school for 3 consecutive years and enroll in an institution of higher education within 24 months after graduation are not required to pay out-of-state fees, provided they submit their high school transcript as documentary evidence of attendance and graduation. While these students are not classified as residents for tuition purposes, they may be reported for purposes of state funding.

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<sup>42</sup> National Immigration Law Center, *Facts About In-state Tuition*, available at: <http://www.nilc.org/fsinstate.html> (Last visited Feb. 7, 2014)

<sup>43</sup> National Council of State Legislatures, *Undocumented Student Tuition: Overview*, available at: <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (Last visited Feb. 7, 2014)

<sup>44</sup> National Council of State Legislatures, *Undocumented Student Tuition: State Action*, available at: <http://www.ncsl.org/research/education/undocumented-student-tuition-state-action.aspx> (Last visited Feb. 7, 2014)

<sup>45</sup> Pub. L. No. 104-208, 110 Stat. 3009-546 (Sept. 30, 1996).

<sup>46</sup> National Council of State Legislatures, *Undocumented Student Tuition: Federal Action*, available at: <http://www.ncsl.org/research/education/undocumented-student-tuition-federal-action.aspx> (Last visited Feb. 7, 2014)

## Higher Education Automatic Rate of Inflation Increase

### Current Situation

The standard rates of tuition for the State University System, Florida College System, and Workforce Education programs established by the Legislature for Fiscal Year 2013-2014 are as follows:

### Postsecondary Tuition Rates - Fiscal Year 2013-2014

Institution	Rate Per	Resident/ Non-Resident Tuition	Out-of State Fee (Is Paid in Addition to Tuition)
<b>School District Career Centers</b>			
Workforce Programs (non-college credit) Applied Technology Diploma Career Certificate	Contact Hour	\$2.33	\$6.99
<b>Florida College System</b>			
Workforce Programs (non-college credit) Applied Technology Diploma Career Certificate	Contact Hour	\$2.33	\$6.99
Undergraduate Advanced and Professional Postsecondary Vocational Developmental Education Educator Preparation Institute Programs	Credit Hour	\$71.98	\$215.94
Baccalaureate	Credit Hour	\$91.79	Determined by Institution
<b>State University System</b>			
Undergraduate	Credit Hour	\$105.07	Determined by Institution
Graduate Programs	Determined by Institution		

Current law specifies that the resident undergraduate tuition per credit hour must increase at the beginning of each fall semester at a rate equal to inflation unless otherwise provided in the General Appropriations Act. Automatic tuition increases are also applicable for Florida College System institutions, and School District Career Centers, except that the inflationary increase is authorized for both tuition and out-of-state fees. The rate of inflation is defined as "the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year." Prior to March 1 of each year, the Office of Economic and Demographic Research must report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the Board of Governors (BOG) of the State University System (SUS) of Florida. If the percentage change is negative or the Legislature does not establish the tuition in the GAA, the tuition remains the same as the prior fiscal year.

### Effect of Changes

The bill eliminates the automatic annual rate of inflation increases currently authorized for state universities, Florida colleges, and workforce education programs. In doing so the bill also deletes the requirement that the Office of Economic and Demographic Research annually report the rate of inflation to the Governor, the Legislature, the Board of Governors, and the State Board of Education and deletes the definition of the term "rate of inflation". The bill specifies that if the tuition rate is not provided in the General Appropriations Act, the tuition and out-of-state fee shall remain at the same level as the prior fiscal year.



## **State University System Limitation Tuition Differential Increase**

### Current Situation

The University Boards of Trustees of each university are authorized by the Board of Governors to charge a tuition differential which may be assessed on all undergraduate courses at a state university. Revenue generated by the tuition differential must be spent solely for improving the quality of direct undergraduate instruction and support services. Seventy percent of the revenues from the tuition differential shall be expended for purposes of undergraduate education, the remaining 30 percent of the revenues from the tuition differential, or the equivalent amount of revenue from private sources, shall be expended to provide financial aid to undergraduate students who exhibit financial need. If the entire tuition and fee costs of resident students who have applied for and received Pell Grant funds have been met and the university has excess funds remaining from the 30 percent of the revenues from the tuition differential required to be used to assist students who exhibit financial need, the university may expend the excess portion in the same manner as required for the other 70 percent of the tuition differential revenues.

Increases to the tuition differential fee may be proposed by the state university board of trustees once each year. Such increases must be approved by the BOG. Each state university may not increase the aggregate sum of tuition and the tuition differential by more than 15 percent of the total charged for the aggregate sum of these fees in the preceding fiscal year. The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential, may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions.

The Board of Governors convenes in June of each year to discuss the tuition differential proposals submitted by the university boards of trustees. In FY 2012-2013, all eleven state universities were approved by the Board for a tuition differential increase. The tuition differential by university ranges from \$35.14 to \$52.29 per student credit hour – the System average is \$41.30. The System estimates \$240 million in tuition differential revenue for 2012-2013 – with \$168 million geared towards undergraduate educational services and \$72 million for institutional need-based financial aid.

### Effect of Changes

The bill reduces the rate at which an institution may request to increase their tuition differential to the Board of Governors from 15 percent to 6 percent. Lowering the annual percentage increase for the aggregate sum of tuition and the tuition differential reduces the ability to increase fees which are indexed to tuition.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 1009.21, F.S., revising provisions relating to the establishment of residency for tuition purposes; reducing the five-year requirement for children living with resident, non-parent relatives; allowing students to maintain established resident status; amending the definition of "dependent child"; amending the definition of "parent"; providing that the state may not deny a U.S. citizen resident of Florida residency status for tuition purposes based solely on the immigration status of his or her parent; permitting institutions to satisfy document verification requirement based on submission of affidavit by person claiming residency; clarifying provisions on residency for tuition purposes pertaining to marital status; granting residency status to individuals eligible for certain tuition waivers and exemptions under Florida law; granting an exemption from the payment of out-of-state fees to veterans of the U.S. Armed Forces who physically reside in Florida while enrolled in a Florida institution of higher learning; granting an exemption from the payment of out-of-state fees for students who meet certain graduation, enrollment, and residency documentation requirements; requiring the Board of Governors to adopt regulations implementing the section.

Section 2. The bill eliminates the automatic annual rate of inflation increases currently authorized for workforce education programs.

Section 3. The bill eliminates the automatic annual rate of inflation increases currently authorized for Florida colleges.

Section 4. The bill eliminates the automatic annual rate of inflation increases currently authorized for state universities. The bill reduces the rate at which an institution may request to increase their tuition differential to the Board of Governors from 15 percent to 6 percent.

Section 2. Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The fiscal impact is indeterminate as it is difficult to identify the number of students who meet the criteria outlined in the bill, but are not currently enrolled in or who would be reclassified at an institution of higher education.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

##### **Student Veterans of State Universities**

The State University System reported 353 non-resident or unclassified undergraduate veteran students and 195 non-resident graduate level veteran students in 2013-2014.<sup>47</sup> Thus, universities would experience an estimated loss of \$8,294,307 in revenues from out-of-state tuition and fees.

##### **Student Veterans of Florida College System Institutions**

The Florida College System reported that there were 449 veteran students who were classified as non-residents in 2012-13.<sup>48</sup> Thus, the colleges would experience an estimated loss of approximately \$5 million in revenues from out-of-state tuition and fees.

##### **Higher Education Automatic Rate of Inflation Increase**

The reported rate of inflation for FY 2014-15 is 1.5% which would have the potential of increasing revenues for state universities by \$9.3 million, \$13.2 million for Florida Colleges, and \$575,000 for workforce programs.

##### **State University System Limitation Tuition Differential Increase**

Reducing the rate at which an institution is able to increase their tuition differential from 15 percent to 6 percent decreases the potential revenue increase by \$107 million for FY 2014-2015 and compounds over time.

<sup>47</sup> State University System of Florida Board of Governors, *Legislative Bill Analysis for HB 851* (2014).

<sup>48</sup> Email, Florida College System, Division of Florida Colleges (Feb. 12, 2014). Only GI Bill recipients are included in count.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would allow veterans and specified Florida high school graduates, who would otherwise be unable to establish Florida residency for tuition purposes, to pay lower, in-state tuition rates at state universities and Florida College System institutions.

**Student Veterans of State Universities**

For the 2013-2014 academic year, the average cost of SUS undergraduate tuition and fees for two semesters (30 credit hours) is \$6,155 for residents and \$21,434 for non-residents. For graduate students, the average cost of tuition and fees for two semesters (24 hours) is \$10,262 for residents and \$25,138 for non-residents. Thus, student veterans could expect savings in the amount of \$15,279 at the undergraduate level and \$14,876 at the graduate level for the 2013-2014 academic year.<sup>49</sup>

**Student Veterans of Florida College System Institutions**

For 2013-14, the Florida College System reports the average cost for two semesters is \$3,124 for residents enrolled in non-baccalaureate degree programs and \$11,531 for non-residents. For students enrolled in the baccalaureate degree programs, the cost for two semesters is \$3,585 for residents and \$15,400 for non-residents. Thus, student veterans could expect savings in the amount of \$8,407 in non-baccalaureate degree programs and \$11,815 in baccalaureate degree programs for the 2013-14 academic year.<sup>50</sup>

**Higher Education Automatic Rate of Inflation Increase**

Eliminating the automatic annual rate of inflation increases maintains tuition rates at the same amount which reduces the potential impact of a tuition increase for students. The impact to the student for FY 2013-14 is \$1.58 per credit hour or \$47.28 annual cost at universities; \$1.08 per credit hour or \$32.39 annual cost at colleges for residents (\$3.24 per credit hour or \$97.17 for non-residents); and \$0.03 per contact hour or \$20.97 for a 600 contact hour program at school district career centers for residents, (\$0.10 per contact hour or \$62.91 for non-residents).

**State University System Limitation Tuition Differential Increase**

Reducing the rate at which an institution is able to increase their tuition differential which reduces the potential impact of a tuition increase for students. The impact to the student for FY 2013-14 is an average of \$23 per credit hour or \$682 annual cost at state universities.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

<sup>49</sup> State University System of Florida Board of Governors, *Tuition & Fees*, available at <http://www.flbog.edu/about/budget/tuition.php>. (last visited Feb. 11, 2014).

<sup>50</sup> Email, Florida College System, Division of Florida Colleges (Feb. 12, 2014).

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require municipalities or counties to expend funds or to take any action requiring the expenditure of funds, reduce the authority that municipalities or counties have to raise revenues in the aggregate, or reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill requires the Board of Governors to adopt regulations to implement the provisions of the section. The SBE and BOG may need to amend any rules or regulations inconsistent with the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2       An act relating to postsecondary education tuition and  
 3       fees; amending s. 1009.21, F.S., relating to the  
 4       determination of resident status for tuition purposes;  
 5       revising the definitions of the terms "dependent  
 6       child" and "parent"; revising certain residency  
 7       requirements for a dependent child; prohibiting denial  
 8       of classification as a resident for tuition purposes  
 9       based on certain immigration status; revising  
 10      requirements for documentation of residency; revising  
 11      requirements relating to classification or  
 12      reclassification as a resident for tuition purposes  
 13      based on marriage; revising requirements relating to  
 14      reevaluation of classification as a resident for  
 15      tuition purposes; classifying persons who receive  
 16      certain tuition exemptions or waivers as residents for  
 17      tuition purposes; providing that certain veterans of  
 18      the Armed Services of the United States and students  
 19      who meet certain attendance, graduation, and  
 20      enrollment requirements are not classified as  
 21      residents for tuition purposes but are exempt from  
 22      payment of out-of-state fees; authorizing the  
 23      reporting of such persons for purposes of state  
 24      funding; providing for the adoption of rules and  
 25      regulations; amending s. 1009.22, F.S.; revising  
 26      provisions relating to workforce education

27 postsecondary tuition and out-of-state fees; amending  
 28 s. 1009.23, F.S.; revising provisions relating to  
 29 Florida College System institution tuition and out-of-  
 30 state fees; amending s. 1009.24, F.S.; revising  
 31 provisions relating to state university resident  
 32 undergraduate tuition; revising the annual percentage  
 33 increase allowed in the aggregate sum of tuition and  
 34 the tuition differential at state universities;  
 35 providing an effective date.

36

37 Be It Enacted by the Legislature of the State of Florida:

38

39 Section 1. Section 1009.21, Florida Statutes, is amended  
 40 to read:

41 1009.21 Determination of resident status for tuition  
 42 purposes and exemption from payment of out-of-state fees.-  
 43 Students shall be classified as residents or nonresidents for  
 44 the purpose of assessing tuition in postsecondary educational  
 45 programs offered by charter technical career centers or career  
 46 centers operated by school districts, in Florida College System  
 47 institutions, and in state universities.

48 (1) As used in this section, the term:

49 (a) "Dependent child" means any person, whether or not  
 50 living with his or her parent, who is eligible to be claimed by  
 51 his or her parent as a dependent under the federal income tax  
 52 code or who is not deemed independent for federal financial aid

53 purposes.

54 (b) "Initial enrollment" means the first day of class at  
55 an institution of higher education.

56 (c) "Institution of higher education" means any charter  
57 technical career center as defined in s. 1002.34, career center  
58 operated by a school district as defined in s. 1001.44, Florida  
59 College System institution as defined in s. 1000.21(3), or state  
60 university as defined in s. 1000.21(6).

61 (d) "Legal resident" or "resident" means a person who has  
62 maintained his or her residence in this state for the preceding  
63 year, has purchased a home which is occupied by him or her as  
64 his or her residence, or has established a domicile in this  
65 state pursuant to s. 222.17.

66 (e) "Nonresident for tuition purposes" means a person who  
67 does not qualify for the in-state tuition rate.

68 (f) "Parent" means the natural or adoptive parent,  
69 stepparent, or legal guardian of a dependent child.

70 (g) "Resident for tuition purposes" means a person who  
71 qualifies as provided in this section for the in-state tuition  
72 rate.

73 (2)(a) To qualify as a resident for tuition purposes:

74 1. A person or, if that person is a dependent child, his  
75 or her parent or parents must have established legal residence  
76 in this state and must have maintained legal residence in this  
77 state for at least 12 consecutive months immediately before  
78 ~~prior to~~ his or her initial enrollment in an institution of

79 higher education.

80 2. Every applicant for admission to an institution of  
 81 higher education shall be required to make a statement as to his  
 82 or her length of residence in the state and, further, shall  
 83 establish that his or her presence or, if the applicant is a  
 84 dependent child, the presence of his or her parent or parents in  
 85 the state currently is, and during the requisite 12-month  
 86 qualifying period was, for the purpose of maintaining a bona  
 87 fide domicile, rather than for the purpose of maintaining a mere  
 88 temporary residence or abode incident to enrollment in an  
 89 institution of higher education.

90 (b) However, with respect to a dependent child living with  
 91 an adult relative other than the child's parent, such child may  
 92 qualify as a resident for tuition purposes if the adult relative  
 93 is a legal resident who has maintained legal residence in this  
 94 state for at least 12 consecutive months immediately before  
 95 ~~prior to~~ the child's initial enrollment in an institution of  
 96 higher education, provided the child has resided continuously  
 97 with such relative for the 3 5 years immediately before ~~prior to~~  
 98 the child's initial enrollment in an institution of higher  
 99 education, during which time the adult relative has exercised  
 100 day-to-day care, supervision, and control of the child.

101 (c) The legal residence of a dependent child whose parents  
 102 are divorced, separated, or otherwise living apart will be  
 103 deemed to be this state if either parent is a legal resident of  
 104 this state, regardless of which parent is entitled to claim, and



105 | does in fact claim, the minor as a dependent pursuant to federal  
 106 | individual income tax provisions.

107 |       (d) A dependent child who is a United States citizen may  
 108 | not be denied classification as a resident for tuition purposes  
 109 | based solely upon the immigration status of his or her parent.

110 |       (3) (a) An individual shall not be classified as a resident  
 111 | for tuition purposes and, thus, shall not be eligible to receive  
 112 | the in-state tuition rate until he or she has provided such  
 113 | evidence related to legal residence and its duration or, if that  
 114 | individual is a dependent child, evidence of his or her parent's  
 115 | legal residence and its duration, as may be required by law and  
 116 | by officials of the institution of higher education from which  
 117 | he or she seeks the in-state tuition rate.

118 |       (b) Except as otherwise provided in this section, evidence  
 119 | of legal residence and its duration shall include clear and  
 120 | convincing documentation that residency in this state was for a  
 121 | minimum of 12 consecutive months before ~~prior to~~ a student's  
 122 | initial enrollment in an institution of higher education.

123 |       (c) Each institution of higher education shall  
 124 | affirmatively determine that an applicant who has been granted  
 125 | admission to that institution as a Florida resident meets the  
 126 | residency requirements of this section at the time of initial  
 127 | enrollment. The residency determination must be documented by  
 128 | the submission of written or electronic verification that  
 129 | includes two or more of the documents identified in this  
 130 | paragraph. Verification of the documents listed in sub-

131 subparagraphs 1.a.-d. may be satisfied by submission of an  
 132 affidavit by the person claiming residency. No single piece of  
 133 evidence shall be conclusive.

134 1. The documents must include at least one of the  
 135 following:

136 a. A Florida voter information ~~voter's registration~~ card.

137 b. A Florida driver ~~driver's~~ license.

138 c. A State of Florida identification card.

139 d. A Florida vehicle registration.

140 e. Proof of a permanent home in Florida which is occupied  
 141 as a primary residence by the individual or by the individual's  
 142 parent if the individual is a dependent child.

143 f. Proof of a homestead exemption in Florida.

144 g. Transcripts from a Florida high school for multiple  
 145 years if the Florida high school diploma or GED was earned  
 146 within the last 12 months.

147 h. Proof of permanent full-time employment in Florida for  
 148 at least 30 hours per week for a 12-month period.

149 2. The documents may include one or more of the following:

150 a. A declaration of domicile in Florida.

151 b. A Florida professional or occupational license.

152 c. Florida incorporation.

153 d. A document evidencing family ties in Florida.

154 e. Proof of membership in a Florida-based charitable or  
 155 professional organization.

156 f. Any other documentation that supports the student's

157 request for resident status, including, but not limited to,  
 158 utility bills and proof of 12 consecutive months of payments; a  
 159 lease agreement and proof of 12 consecutive months of payments;  
 160 or an official state, federal, or court document evidencing  
 161 legal ties to Florida.

162 (4) With respect to a dependent child, the legal residence  
 163 of the dependent child's parent or parents is prima facie  
 164 evidence of the dependent child's legal residence, which  
 165 evidence may be reinforced or rebutted, relative to the age and  
 166 general circumstances of the dependent child, by the other  
 167 evidence of legal residence required of or presented by the  
 168 dependent child. However, the legal residence of a dependent  
 169 child's parent or parents who are domiciled outside this state  
 170 is not prima facie evidence of the dependent child's legal  
 171 residence if that dependent child has lived in this state for 3  
 172 5 consecutive years before ~~prior~~ to enrolling or reregistering  
 173 at the institution of higher education at which resident status  
 174 for tuition purposes is sought.

175 (5) A person who physically resides in this state may be  
 176 classified as a resident for tuition purposes if he or she  
 177 marries a person who meets the 12-month residency requirement  
 178 under subsection (2) and otherwise qualifies as a resident for  
 179 tuition purposes under this section ~~In making a domiciliary~~  
 180 ~~determination related to the classification of a person as a~~  
 181 ~~resident or nonresident for tuition purposes, the domicile of a~~  
 182 ~~married person, irrespective of sex, shall be determined, as in~~

183 ~~the case of an unmarried person, by reference to all relevant~~  
 184 ~~evidence of domiciliary intent. For the purposes of this~~  
 185 ~~section.~~

186 ~~(a) A person shall not be precluded from establishing or~~  
 187 ~~maintaining legal residence in this state and subsequently~~  
 188 ~~qualifying or continuing to qualify as a resident for tuition~~  
 189 ~~purposes solely by reason of marriage to a person domiciled~~  
 190 ~~outside this state, even when that person's spouse continues to~~  
 191 ~~be domiciled outside of this state, provided such person~~  
 192 ~~maintains his or her legal residence in this state.~~

193 ~~(b) A person shall not be deemed to have established or~~  
 194 ~~maintained a legal residence in this state and subsequently to~~  
 195 ~~have qualified or continued to qualify as a resident for tuition~~  
 196 ~~purposes solely by reason of marriage to a person domiciled in~~  
 197 ~~this state.~~

198 ~~(c) In determining the domicile of a married person,~~  
 199 ~~irrespective of sex, the fact of the marriage and the place of~~  
 200 ~~domicile of such person's spouse shall be deemed relevant~~  
 201 ~~evidence to be considered in ascertaining domiciliary intent.~~

202 (6) (a) Except as otherwise provided in this section, a  
 203 person who is classified as a nonresident for tuition purposes  
 204 may become eligible for reclassification as a resident for  
 205 tuition purposes if that person or, if that person is a  
 206 dependent child, his or her parent presents clear and convincing  
 207 documentation that supports permanent legal residency in this  
 208 state for at least 12 consecutive months rather than temporary

209 residency for the purpose of pursuing an education, such as  
 210 documentation of full-time permanent employment for the prior 12  
 211 months or the purchase of a home in this state and residence  
 212 therein for the prior 12 months while not enrolled in an  
 213 institution of higher education.

214 (b) If a person who is a dependent child and his or her  
 215 parent move to this state while such child is a high school  
 216 student and the child graduates from a high school in this  
 217 state, the child may become eligible for reclassification as a  
 218 resident for tuition purposes when the parent submits evidence  
 219 that the parent qualifies for permanent residency.

220 (c) If a person who is a dependent child and his or her  
 221 parent move to this state after such child graduates from high  
 222 school, the child may become eligible for reclassification as a  
 223 resident for tuition purposes after the parent submits evidence  
 224 that he or she has established legal residence in the state and  
 225 has maintained legal residence in the state for at least 12  
 226 consecutive months.

227 (d) A person classified as a nonresident for tuition  
 228 purposes may be reclassified as a resident by subsequently  
 229 marrying a person who meets the criteria to establish residency  
 230 for tuition purposes. In order to be reclassified, a person must  
 231 submit all of the following:

- 232 1. Evidence of his or her own physical residence in this  
 233 state.
- 234 2. Evidence of marriage to a person who qualifies as a

235 resident for tuition purposes under this section.

236 3. Documentation to support his or her spouse's residency  
 237 classification. A person who is classified as a nonresident for  
 238 tuition purposes and who marries a legal resident of the state  
 239 or marries a person who becomes a legal resident of the state  
 240 may, upon becoming a legal resident of the state, become  
 241 eligible for reclassification as a resident for tuition purposes  
 242 upon submitting evidence of his or her own legal residency in  
 243 the state, evidence of his or her marriage to a person who is a  
 244 legal resident of the state, and evidence of the spouse's legal  
 245 residence in the state for at least 12 consecutive months  
 246 immediately preceding the application for reclassification.

247 (7) A person shall not lose his or her resident status for  
 248 tuition purposes solely by reason of serving, or, if such person  
 249 is a dependent child, by reason of his or her parent's or  
 250 parents' serving, in the Armed Forces outside this state.

251 (8) Once any institution of higher education in the state  
 252 classifies a student as a resident for tuition purposes or  
 253 verifies that a student meets the criteria under subsection  
 254 (11), an institution of higher education is not required to  
 255 reevaluate the classification unless inconsistent information  
 256 suggests that an erroneous classification was made or the  
 257 student breaks enrollment from the institution for a period of  
 258 12 months or longer. A person who has been properly classified  
 259 as a resident for tuition purposes but who, while enrolled in an  
 260 institution of higher education in this state, loses his or her

261 ~~resident tuition status because the person or, if he or she is a~~  
 262 ~~dependent child, the person's parent or parents establish~~  
 263 ~~domicile or legal residence elsewhere shall continue to enjoy~~  
 264 ~~the in state tuition rate for a statutory grace period, which~~  
 265 ~~period shall be measured from the date on which the~~  
 266 ~~circumstances arose that culminated in the loss of resident~~  
 267 ~~tuition status and shall continue for 12 months. However, if the~~  
 268 ~~12-month grace period ends during a semester or academic term~~  
 269 ~~for which such former resident is enrolled, such grace period~~  
 270 ~~shall be extended to the end of that semester or academic term.~~

271 (9) Any person who ceases to be enrolled at or who  
 272 graduates from an institution of higher education while  
 273 classified as a resident for tuition purposes and who  
 274 subsequently abandons his or her domicile in this state shall be  
 275 permitted to reenroll at an institution of higher education in  
 276 this state as a resident for tuition purposes without the  
 277 necessity of meeting the 12-month durational requirement of this  
 278 section if that person has reestablished his or her domicile in  
 279 this state within 12 months after of such abandonment and  
 280 continuously maintains the reestablished domicile during the  
 281 period of enrollment. The benefit of this subsection shall not  
 282 be accorded more than once to any one person.

283 (10) The following persons shall be classified as  
 284 residents for tuition purposes:

285 (a) Active duty members of the Armed Services of the  
 286 United States residing or stationed in this state, their

287 spouses, and dependent children, and active drilling members of  
 288 the Florida National Guard.

289 (b) Active duty members of the Armed Services of the  
 290 United States and their spouses and dependents attending a  
 291 Florida College System institution or state university within 50  
 292 miles of the military establishment where they are stationed, if  
 293 such military establishment is within a county contiguous to  
 294 Florida.

295 (c) United States citizens living on the Isthmus of  
 296 Panama, who have completed 12 consecutive months of college work  
 297 at the Florida State University Panama Canal Branch, and their  
 298 spouses and dependent children.

299 (d) Full-time instructional and administrative personnel  
 300 employed by state public schools and institutions of higher  
 301 education and their spouses and dependent children.

302 (e) Students from Latin America and the Caribbean who  
 303 receive scholarships from the federal or state government. Any  
 304 student classified pursuant to this paragraph shall attend, on a  
 305 full-time basis, a Florida institution of higher education.

306 (f) Southern Regional Education Board's Academic Common  
 307 Market graduate students attending Florida's state universities.

308 (g) Full-time employees of state agencies or political  
 309 subdivisions of the state when the student fees are paid by the  
 310 state agency or political subdivision for the purpose of job-  
 311 related law enforcement or corrections training.

312 (h) McKnight Doctoral Fellows and Finalists who are United



313 States citizens.

314 (i) United States citizens living outside the United  
 315 States who are teaching at a Department of Defense Dependent  
 316 School or in an American International School and who enroll in  
 317 a graduate level education program which leads to a Florida  
 318 teaching certificate.

319 (j) Active duty members of the Canadian military residing  
 320 or stationed in this state under the North American Air Defense  
 321 (NORAD) agreement, and their spouses and dependent children,  
 322 attending a Florida College System institution or state  
 323 university within 50 miles of the military establishment where  
 324 they are stationed.

325 (k) Active duty members of a foreign nation's military who  
 326 are serving as liaison officers and are residing or stationed in  
 327 this state, and their spouses and dependent children, attending  
 328 a Florida College System institution or state university within  
 329 50 miles of the military establishment where the foreign liaison  
 330 officer is stationed.

331 (l) Persons who receive a tuition exemption or waiver  
 332 under s. 112.19(3), s. 112.191(3), s. 961.06(1)(b), s.  
 333 1009.25(1)(c), (d), or (f), or s. 1009.26(8) or (10).

334 (11) The following persons are not classified as residents  
 335 for tuition purposes but are exempt from the payment of out-of-  
 336 state fees:

337 (a) Veterans of the Armed Services of the United States,  
 338 including reserve components thereof, who were honorably

339 discharged and who physically reside in this state while  
 340 enrolled in an institution of higher education.

341 (b) Students, regardless of immigration status, who attend  
 342 a secondary school in this state for 3 consecutive years  
 343 immediately before high school graduation, apply for enrollment  
 344 in an institution of higher education within 24 months after  
 345 graduation, and submit an official Florida high school  
 346 transcript as documentary evidence of attendance and graduation.

347  
 348 Persons who are exempt from the payment of out-of-state fees  
 349 under this subsection may be reported for purposes of state  
 350 funding.

351 ~~(12) (11) Once a student has been classified as a resident~~  
 352 ~~for tuition purposes, an institution of higher education to~~  
 353 ~~which the student transfers is not required to reevaluate the~~  
 354 ~~classification unless inconsistent information suggests that an~~  
 355 ~~erroneous classification was made or the student's situation has~~  
 356 ~~changed. However, the student must have attended the institution~~  
 357 ~~making the initial classification within the prior 12 months,~~  
 358 ~~and the residency classification must be noted on the student's~~  
 359 ~~transcript. The Higher Education Coordinating Council shall~~  
 360 ~~consider issues related to residency determinations and make~~  
 361 ~~recommendations relating to efficiency and effectiveness of~~  
 362 ~~current law.~~

363 ~~(13) (12)~~ Each institution of higher education shall  
 364 establish a residency appeal committee comprised of at least

365 three members to consider student appeals of residency  
 366 determinations, in accordance with the institution's official  
 367 appeal process. The residency appeal committee must render to  
 368 the student the final residency determination in writing. The  
 369 institution must advise the student of the reasons for the  
 370 determination.

371 (14) ~~(13)~~ The State Board of Education shall adopt rules,  
 372 and the Board of Governors shall adopt regulations, ~~rules~~ to  
 373 implement this section.

374 Section 2. Paragraph (d) of subsection (3) of section  
 375 1009.22, Florida Statutes, is amended to read:

376 1009.22 Workforce education postsecondary student fees.-

377 (3)

378 ~~(d) Beginning with the 2008-2009 fiscal year and each year~~  
 379 ~~thereafter,~~ The tuition and the out-of-state fee per contact  
 380 hour shall increase at the beginning of each fall semester at a  
 381 rate ~~equal to inflation, unless otherwise~~ provided in the  
 382 General Appropriations Act. If the rate is not provided in the  
 383 General Appropriations Act ~~The Office of Economic and~~  
 384 ~~Demographic Research shall report the rate of inflation to the~~  
 385 ~~President of the Senate, the Speaker of the House of~~  
 386 ~~Representatives, the Governor, and the State Board of Education~~  
 387 ~~each year prior to March 1. For purposes of this paragraph, the~~  
 388 ~~rate of inflation shall be defined as the rate of the 12-month~~  
 389 ~~percentage change in the Consumer Price Index for All Urban~~  
 390 ~~Consumers, U.S. City Average, All Items, or successor reports as~~

391 ~~reported by the United States Department of Labor, Bureau of~~  
 392 ~~Labor Statistics, or its successor for December of the previous~~  
 393 ~~year. In the event the percentage change is negative, the~~  
 394 tuition and out-of-state fee shall remain at the same level as  
 395 the prior fiscal year.

396 Section 3. Paragraph (c) of subsection (3) of section  
 397 1009.23, Florida Statutes, is amended to read:

398 1009.23 Florida College System institution student fees.-  
 399 (3)

400 ~~(c) Beginning with the 2008-2009 fiscal year and each year~~  
 401 ~~thereafter,~~ The tuition and the out-of-state fee shall increase  
 402 at the beginning of each fall semester at a rate equal to  
 403 ~~inflation, unless otherwise~~ provided in the General  
 404 Appropriations Act. If the rate is not provided in the General  
 405 Appropriations Act ~~The Office of Economic and Demographic~~  
 406 ~~Research shall report the rate of inflation to the President of~~  
 407 ~~the Senate, the Speaker of the House of Representatives, the~~  
 408 ~~Governor, and the State Board of Education each year prior to~~  
 409 ~~March 1. For purposes of this paragraph, the rate of inflation~~  
 410 ~~shall be defined as the rate of the 12-month percentage change~~  
 411 ~~in the Consumer Price Index for All Urban Consumers, U.S. City~~  
 412 ~~Average, All Items, or successor reports as reported by the~~  
 413 ~~United States Department of Labor, Bureau of Labor Statistics,~~  
 414 ~~or its successor for December of the previous year. In the event~~  
 415 ~~the percentage change is negative, the tuition and the out-of-~~  
 416 ~~state fee per credit hour shall remain at the same levels as the~~

417 prior fiscal year.

418 Section 4. Paragraph (b) of subsection (4) and paragraph  
 419 (b) of subsection (16) of section 1009.24, Florida Statutes, are  
 420 amended to read:

421 1009.24 State university student fees.—

422 (4)

423 ~~(b) Beginning with the 2008-2009 fiscal year and each year~~  
 424 ~~thereafter,~~ The resident undergraduate tuition per credit hour  
 425 shall increase at the beginning of each fall semester at a rate  
 426 ~~equal to inflation, unless otherwise~~ provided in the General  
 427 Appropriations Act. If the rate is not provided in the General  
 428 Appropriations Act ~~The Office of Economic and Demographic~~  
 429 ~~Research shall report the rate of inflation to the President of~~  
 430 ~~the Senate, the Speaker of the House of Representatives, the~~  
 431 ~~Governor, and the Board of Governors each year prior to March 1.~~  
 432 ~~For purposes of this paragraph, the rate of inflation shall be~~  
 433 ~~defined as the rate of the 12 month percentage change in the~~  
 434 ~~Consumer Price Index for All Urban Consumers, U.S. City Average,~~  
 435 ~~All Items, or successor reports as reported by the United States~~  
 436 ~~Department of Labor, Bureau of Labor Statistics, or its~~  
 437 ~~successor for December of the previous year. In the event the~~  
 438 ~~percentage change is negative, the resident undergraduate~~  
 439 tuition shall remain at the same level as the prior fiscal year.

440 (16) Each university board of trustees may establish a  
 441 tuition differential for undergraduate courses upon receipt of  
 442 approval from the Board of Governors. The tuition differential

443 shall promote improvements in the quality of undergraduate  
 444 education and shall provide financial aid to undergraduate  
 445 students who exhibit financial need.

446 (b) Each tuition differential is subject to the following  
 447 conditions:

448 1. The tuition differential may be assessed on one or more  
 449 undergraduate courses or on all undergraduate courses at a state  
 450 university.

451 2. The tuition differential may vary by course or courses,  
 452 campus or center location, and by institution. Each university  
 453 board of trustees shall strive to maintain and increase  
 454 enrollment in degree programs related to math, science, high  
 455 technology, and other state or regional high-need fields when  
 456 establishing tuition differentials by course.

457 3. For each state university ~~that has total research and~~  
 458 ~~development expenditures for all fields of at least \$100 million~~  
 459 ~~per year as reported annually to the National Science~~  
 460 ~~Foundation~~, the aggregate sum of tuition and the tuition  
 461 differential may not be increased by more than 6 ~~15~~ percent of  
 462 the total charged for the aggregate sum of these fees in the  
 463 preceding fiscal year. ~~For each state university that has total~~  
 464 ~~research and development expenditures for all fields of less~~  
 465 ~~than \$100 million per year as reported annually to the National~~  
 466 ~~Science Foundation~~, the aggregate sum of tuition and the tuition  
 467 differential may not be increased by more than ~~15~~ percent of the  
 468 total charged for the aggregate sum of these fees in the

469 ~~preceding fiscal year.~~

470 4. The aggregate sum of undergraduate tuition and fees per  
 471 credit hour, including the tuition differential, may not exceed  
 472 the national average of undergraduate tuition and fees at 4-year  
 473 degree-granting public postsecondary educational institutions.

474 5. The tuition differential shall not be included in any  
 475 award under the Florida Bright Futures Scholarship Program  
 476 established pursuant to ss. 1009.53-1009.538.

477 6. Beneficiaries having prepaid tuition contracts pursuant  
 478 to s. 1009.98(2)(b) which were in effect on July 1, 2007, and  
 479 which remain in effect, are exempt from the payment of the  
 480 tuition differential.

481 7. The tuition differential may not be charged to any  
 482 student who was in attendance at the university before July 1,  
 483 2007, and who maintains continuous enrollment.

484 8. The tuition differential may be waived by the  
 485 university for students who meet the eligibility requirements  
 486 for the Florida public student assistance grant established in  
 487 s. 1009.50.

488 9. Subject to approval by the Board of Governors, the  
 489 tuition differential authorized pursuant to this subsection may  
 490 take effect with the 2009 fall term.

491 Section 5. This act shall take effect July 1, 2014.