

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1415 CS Traffic Control
SPONSOR(S): Sansom and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1878(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u>15 Y, 0 N, w/CS</u>	<u>Pugh</u>	<u>Miller</u>
2) <u>State Infrastructure Council</u>	<u>9 Y, 0 N</u>	<u>Pugh</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

State law generally prohibits activities that obstruct the free flow of traffic on public roadways and pose safety hazards to motorists and pedestrians. Sections 316.2045 and 337.406, F.S., provide some limited exceptions and require state or local authorizations for certain uses. Solicitation of funds by federally-recognized non-profit organizations or by charitable groups registered under chapter 496, F.S., is largely prohibited on state-maintained roads. Local governments have authority to permit such activities on non-state-maintained roads.

HB 1415 CS exempts organizations that are qualified under s. 501(c)(3) of the Internal Revenue Code and which are registered under chapter 496, F.S., and persons acting on behalf of these organizations, from needing permits from local governments before they can engage in solicitation along non-state-maintained roadways if they meet certain requirements. These requirements include the organization, persons, or organizations acting on their behalf providing the local government with:

- The names and addresses of those conducting the solicitation and of those receiving the contributions;
- A safety plan for persons participating in the solicitation;
- A detailed description of the location of the solicitation activities;
- Proof of a minimum \$1 million commercial general liability insurance policy against bodily injury and property damage arising from the solicitation activities; and
- Proof that the organization either is registered with the state Department of Agriculture and Consumer Services, pursuant to s. 496.405, F.S., or is exempt from registration.

The bill further requires that:

- No one under the age of 18 is participating in the solicitation activities;
- All solicitation activities occur during daylight hours;
- Solicitation activities shall not interfere with traffic or cause danger to participants or the public.
- No persons participating in the solicitation behave in a persistent, demanding or harassing manner, or use sound or voice-amplifying equipment; and
- Signage advertising the solicitation is posted at least 500 before the location of the solicitation activities, to give motorists adequate notice.

Eligible organizations or persons are limited to 10 cumulative days of solicitation activities each year. Local governments retain the authority to stop solicitation activities if the requirements are not met.

HB 1415 CS may have a minimal fiscal impact on some local governments, and will have no fiscal impact to state government. The bill raises no apparent constitutional or other legal issues.

The bill takes effect July 1, 2006.

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

STORAGE NAME: h1415c.SIC.doc
DATE: 4/4/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: HB 1415 CS increases the options of private charitable or nonprofit organizations to conduct their fundraising activities without additional government interference.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 316.2045, F.S., generally prohibits the obstruction of public streets, highways, and roads – whether maintained by the state or local governments – and addresses issues of permissible activities, penalties for violators, and an exemption for vehicles collecting solid waste or recyclable or recovered materials.

The section:

- Designates as a pedestrian violation, punishable by a \$15 fine plus court costs, when a person willfully obstructs the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining vehicular traffic, by standing or approaching a motor vehicle, or by endangering the safe movement of vehicles or pedestrians.
- Requires permits for the use of any portion of a state-maintained road or right-of-way, pursuant to the conditions in s. 337.406, F.S. Under that section of law, local governments may obtain permits from FDOT for parades and other activities that require closing any road on the State Highway System to normal traffic.
- Further provides that it is unlawful, without proper authorization or a lawful permit, for any person or persons to willfully obstruct the free, convenient, and normal use of any public street, highway, or road in order to solicit. A violation of this provision is a second-degree misdemeanor, punishable by a fine of up to \$500 or imprisonment for up to 60 days.
- Organizations qualified under s. 501(c)(3) of the Internal Revenue Code as non-profits and registered pursuant to chapter 496, F.S., or persons or organizations acting on their behalf are exempted from needing a state permit or authorization for activities on non-state-maintained roads. Chapter 496, F.S., regulates charitable solicitation in Florida, and specifies that charities and certain other non-profit organizations register with the Department of Agriculture and Consumer Services, disclose a variety of background and financial information, and pay a registration fee ranging from \$10 to \$400, depending on the previous year's fundraising amount. The department annually publishes a book listing all of the registered charities and organizations, and their previous year's revenue and expenses. The 2005-2006 edition of the "Gift Givers' Guide" is 932 pages and includes an estimated 10,000 organizations.
- Local governments may require permits for the use of any street, highway, or road that is not maintained by the state. Non-state maintained roadways are defined as either county, municipal, or private roads which a local government has agreed through a contractual arrangement to maintain.

Numerous Florida cities and counties have adopted ordinances that establish permitting requirements for persons and groups that want to solicit charitable donations; the exact number is unavailable. A review of several ordinances indicates the requirements vary from community to community.

Effect of Proposed Changes

HB 1415 CS preempts local governments from requiring permits for the use of non-state-maintained roadways from organizations that are qualified under s. 501(c)(3) of the Internal Revenue Code and which are registered under chapter 496, F.S., and from persons acting on behalf of these organizations,

as long as the organizations or persons meet a number of requirements and conditions. These requirements and conditions are based on the City of Tallahassee's charitable solicitation ordinance.

For example, the organization, persons, or organizations acting on their behalf must provide the local government with the following information:

- The names and addresses of those conducting the solicitation and of those receiving the contributions, no later than 14 days before the event.
- A safety plan for persons participating in the solicitation.
- A detailed description of the location of the solicitation activities.
- Proof of a commercial general liability insurance policy against bodily injury and property damage arising from the solicitation activities, with a limit of no less than \$1 million per occurrence. The insurance certificate must name the local government as a co-insured, and must be filed with the local government no later than 72 hours before the event.
- Proof that the organization either is registered with the state Department of Agriculture and Consumer Services, pursuant to s. 496.405, F.S., or is exempt from registration.

Additional requirements are:

- No one under the age of 18 participates in the solicitation activities.
- All solicitation activities occur during daylight hours.
- The solicitation activities must not interfere with the safe and efficient movement of traffic, nor cause danger to the participants or the public.
- Persons participating in the solicitation shall not persist in asking for donations once they have been turned down, nor may they behave in a demanding or harassing manner, or use sound or voice-amplifying equipment.
- Signs advertising the solicitation activities must be posted at least 500 ahead of the site where the solicitation is occurring.

Eligible organizations or persons are limited to 10 cumulative days of solicitation activities each year.

Local governments have the authority to stop solicitation activities if the requirements are not met.

HB 1415 CS takes effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 316.2045, F.S., to exempt from local-government permitting certain charitable and non-profit solicitation activities on non-state-maintained roadways as long as certain specified requirements are met.

Section 2: Specifies an effective date of July 1, 2006.

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:

Indeterminate, but probably minimal. Local governments that collect a fee for issuing permits to charitable and non-profit organizations wanting to solicit contributions along non-state-maintained roadways could lose that revenue source.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Charitable or non-profit organizations that have not participated in roadside solicitation because they could not meet the permitting requirements of some counties or cities, or because the activity is banned outright, may be able to collect more contributions if HB 1415 CS becomes law. These contributions could benefit persons in the local communities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 1415 CS does not appear to trigger a mandates review because it does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Local governments are exempt from rulemaking under chapter 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

At its March 28, 2006, meeting, the Transportation Committee adopted an amendment that specified a number of requirements that a charitable or non-profit organization must meet before it can solicit contributions on non-state-maintained highways. Those requirements are listed in detail in the above analysis. The bill as originally filed provided an exemption to charitable or non-profit organizations from local permit requirements without any conditional requirements.

The committee adopted the amendment without objection, then voted 15-0 to report the bill as favorable with a committee substitute.