

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 99 Charitable Public Solicitations
SPONSOR(S): Hooper
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Committee on Urban & Local Affairs, Ligas, Bussey.

SUMMARY ANALYSIS

Generally state law prohibits activities that obstruct or create a hazard to the free and normal use of public roadways or pose a safety risk to pedestrians and motorists. Sections 316.2045 and 337.406 provide a few exceptions and require state or local permission for those limited uses.

HB 99 provides an exemption for non-profit or charitable organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, F.S., and persons or organizations acting on their behalf, from needing a permit from the local government for activities on non-state maintained roadways, as long as they meet certain requirements.

- The names and addresses of those participating in the solicitation activity;
A safety plan for the participants;
A detailed description of the location of the solicitation;
Proof of a minimum \$1 million commercial general liability insurance policy against bodily injury and property damage arising from the solicitation activity; and
Proof that the organization is registered with the state Department of Agriculture and Consumer Services pursuant to chapter 496 or is exempt from registration.

The bill also requires that:

- Eligible organizations are limited to 10 cumulative days of solicitation activities a year;
All solicitation must occur during daylight hours;
Solicitation activities must not interfere with the safe and efficient movement of traffic or cause danger to the participants or the public;
No person engaging in solicitation shall persist in soliciting a contribution once it has been denied, nor may they act in a demeaning or harassing manner, or use any sound or voice-amplifying device;
No one under the age of 18 may participate in the solicitation activity; and
Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.

HB 99 may have a minimal fiscal impact on local governments and no impact on state governments. The bill does not appear to raise any constitutional issues.

The bill takes effect July 1, 2007.

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

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## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: HB 99 increases the options of private charitable or nonprofit organizations to conduct their solicitation activities without additional government interference.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Section 316.2045, F.S., generally prohibits any person or persons from willfully obstructing the free, convenient, and normal use of any public street, highway, or road and provides for penalties. There is also an exemption for commercial vehicles used solely for the purpose of collecting solid waste or recyclable materials.

This 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 traffic by standing or approaching motor vehicles, or by endangering the safe movement of vehicles.
- Requires permits for the use of any portion of a state-maintained road or right-of-way only for the purposes and in the manner set out in s. 337.406, F.S. Any portion of a state transportation facility may be used for an art festival, parade, fair or other special event, if permitted by the local government entity.
- Provides that the solicitation for charitable purposes, without authorization from the department or through permitting, is defined as a second degree misdemeanor. Under section 337.406, F.S., a violation of this provision is punishable by a fine of up to \$500 or a term of imprisonment not to exceed 60 days.
- Organizations qualified under s. 501 (c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf, are exempt from needing a state permit for activities on non-state maintained streets. Chapter 496 requires that non-profit organizations register with the Department of Agriculture and Consumer Services, provide various background and financial information, and pay a registration fee ranging from \$10 to \$400 depending on the contributions received in the last fiscal year.
- Local governments may require permits for the use of any street, road or right-of-way not maintained by that state.

##### **Effect of Proposed Changes**

HB 99 preempts local governments from requiring permits for the solicitation of charitable contributions on roadways by organizations that are qualified under 501(c)(3) of the Internal Revenue Code and registered under chapter 496, F.S., as long as the persons acting on behalf of these organizations meet specific conditions.

The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:

- The name and address of the person or organization that will perform the solicitation and the name and address of the organization that will receive funds from the solicitation, no fewer than 14 calendar days prior to the proposed solicitation.
- A plan for the safety of all persons participating in the event, as well as the motoring public, at the locations where the solicitation will take place.
- The specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.

- Proof of commercial general liability insurance against claims for bodily injury and property damage arising from the solicitor's activities must be filed with the local government no later than 72 hours before the date of solicitation. The insurance must have a limit of not less than \$1 million per occurrence and the certificate of insurance must name the local government as an additional insured.
- Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.

Additional requirements:

- Eligible charitable and non-profit organizations are limited to 10 cumulative days of solicitation activities a year.
- All solicitation must occur during daylight hours.
- Solicitation activities must not interfere with the safe and efficient movement of traffic and must not cause danger to the participants or the public.
- No person engaging in solicitation shall persist in soliciting a contribution once it has been denied, nor may they act in a demeaning or harassing manner, or use any sound or voice-amplifying device.
- No one under the age of 18 may participate in the solicitation activity.
- Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.

Local government may stop solicitation activities if any conditions or requirements are not met.

HB 99 takes effect on July 1, 2007.

C. SECTION DIRECTORY:

Section 1: Names the Act the "Iris Roberts Act."

Section 2: Amends s. 316.2045, F.S., to exempt charitable organizations from local requirements for permitting if certain conditions are met.

Section 3: Specifies an effective date of July 1, 2007.

## 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 not likely above the significant fiscal impact threshold. Local governments could lose the revenue from charitable organizations that are required to pay a fee for permitting to solicit on non-state maintained roadways.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. HB 99 may increase the opportunities for various charitable and non-profit organizations that have never before participated in solicitation on roadways because of the permitting fees or a ban on the activity. This may result in more funding for these organizations that would benefit the local communities they serve.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities/counties to spend money or take action that requires expenditure of money, reduce authority of cities or counties to raise revenues in the aggregate, or reduce the percentage of state sales tax shared within cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

There is not a state agency that is affected by this bill and local governments are exempt from rulemaking requirements under chapter 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

On February 14, 2007, the Sponsor advised staff that no statement would be submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**