HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1603 Florida State Employees' Charitable Campaign
SPONSOR(S): Cruz and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1312

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee	14 Y, 0 N	Haug	Williamson
2)	Economic Development & Community Affairs Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

On an annual basis, the Department of Management Services, in consultation with the Florida State Employees' Charitable Campaign statewide steering committee screens upwards of 1400 applications from charities applying to participate in the campaign. Employees are invited to designate their pledged amount to the charity(ies) of their choice and the associated amount(s) will be paid through payroll deduction. Employees also may donate money to the campaign without designating a specific charity. Such donations are classified as "undesignated funds." Monies earmarked to a particular charity are forwarded to that charity (or that charity's parent organization) by the local fiscal agent. Undesignated monies are maintained by the local fiscal agent until allocation decisions have been made.

In 2006, the Legislature created a two-fold allocation process for undesignated funds. Implementation of the two-fold allocation process for undesignated funds necessitated the creation of a second application process that has been difficult to administer due to ambiguities in the statutory language

The bill makes changes to the Florida State Employees' Charitable Campaign to provide a uniform distribution process of undesignated funds. The bill eliminates the undesignated funds application and decision making process and establishes a pro rata method as the sole manner for allocation of undesignated funds to participating charitable organizations.

This bill is expected to reduce expenditures by the Department of Management Services. It does not have a fiscal impact on local governments.

This bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

On an annual basis, the Department of Management Services (DMS), in consultation with the Florida State Employees' Charitable Campaign (FSECC) statewide steering committee (consisting of 9 appointed state employees) must screen upwards of 1400 applications from charities applying to participate in the campaign. The vast majority of these applicant organizations (1200 to 1300) meets the criteria each year and become participating charities.[1]

FSECC fundraising is de-centralized into 27 fiscal agent areas. DMS contracts with the United Way of Florida, Inc. (UWOF), to act as the fiscal agent. UWOF then utilizes the 27 regional United Way entities to serve as sub-agents to perform the duties of the contracted fiscal agent. During the annual campaign, each state employee receives a booklet that lists the participating charities for the fiscal agent area in which he or she works. In addition to listing the participating United Way charities specific to the fiscal agent area, each booklet also lists the other participating charities. Employees are invited to designate their pledged amount to the charity(ies) of their choice and the associated amount(s) will be paid through payroll deduction.

Employees also may donate money to the campaign without designating a specific charity. Such donations are classified as "undesignated funds." Additional undesignated funds are collected from various state agency hosted fund raising events such as bake sales and short distance jogging.

Monies collected in each fiscal agent area are handled separately by each local fiscal agent. Monies earmarked to a particular charity are forwarded to that charity (or that charity's parent organization) by the local fiscal agent. Undesignated monies are maintained by the local fiscal agent until allocation decisions have been made.

Historically all decisions regarding the allocation of undesignated funds were delegated to the local steering committee in each fiscal agent area. These committees were and still are comprised of state employees located in each respective fiscal agent area. Any charity that DMS and the FSECC statewide steering committee approved to participate in a particular fiscal agent area can petition the local steering committee of that area for undesignated funds. The allocation of undesignated funds

[1] Department of Management Services HB 1603 (2010) Substantive Bill Analysis (March 12, 2010) at 1 (on file with the Governmental Affairs Policy Committee).

between local (United Way) charities, national charities, international charities and independent charities is at the sole discretion of each local steering committee.

In 2006, the Legislature created a two-fold allocation process for undesignated funds.[2] "Tier One" undesignated funds determinations occur when charities apply to DMS and certify that they are providing direct services to one or more fiscal agent areas. Charities affiliated with the United Way have been allowed to participate in the Tier One allocation process without having to formally apply, on the premise that they provide direct services in their respective fiscal agent area as a matter of course. DMS, in consultation with the FSECC statewide steering committee, reviews applications from the non-United Way charities and determines which ones have met the criteria for Tier One undesignated funds. All eligible charities receive a pro rata share of the Tier One funds (i.e., the same percentage of undesignated funds as the percentage of designated funds they received).[3] In 2008, the FSECC statewide steering committee reviewed applications from 90 different charities with over 1,192 fiscal agent area claims. Those applicants had to be analyzed to determine if direct services were provided in those local fiscal agent areas.[4]

After the Tier One allocation is made usually there are residual undesignated funds remaining in most of the fiscal agent areas. The local steering committees are then tasked with allocation of these "Tier Two" funds. It is left to their discretion as to which participating charities will receive a portion of the undesignated funds and what percentage/dollar amount they will receive. There are no statutory eligibility requirements in order for organizations to receive undesignated funds through the Tier Two distribution process other than the organization must be approved for participation in the current year's campaign.

Implementation of the two-fold allocation process for undesignated funds necessitated the creation of a second application process administered by DMS. The FSECC statewide steering committee is now involved in a second application process. This has significantly increased the amount of time DMS devotes to administration of the campaign and that the FSECC statewide steering committee must spend meeting and deliberating. In addition, the task of determining whether non United Way charities are providing direct services in a local fiscal agent area as contemplated by the 2006 change in the law has been difficult to perform due to ambiguities in the statutory language. Consequently, the first year of application of the statutory requirement resulted in litigation due to charities challenging the determination that they had not met the criteria.

Effect of Proposed Changes

The bill makes changes to the Florida State Employees' Charitable Campaign to provide a uniform distribution process of undesignated funds. The bill eliminates the undesignated funds application and decision making process that currently requires substantial DMS staff time to administer.

The bill establishes a pro rata method as the sole manner for allocation of undesignated funds to participating charitable organizations. This change is accomplished by eliminating the requirement that only those charities that provide direct services in a local fiscal agent's area may receive undesignated funds.

The change will remove the discretion of the FSECC statewide steering committee to interpret the meaning of the term "direct services" and resulting fund distribution.[5] This interpretive process has been the subject of controversy and has led to litigation.[6]

[2] Public Law 2006-221; codified at s. 110.181, F.S.
[3] Section 110.181(2)(e), F.S.
[4] Department of Management Services HB 1603 (2010) Substantive Bill Analysis (March 12, 2010) at 2 (on file with the Governmental Affairs Policy Committee).
[5] Section 110.181(2)(e), F.S.
[6] *Community Health Charities of Florida v. State, Dept. of Management Services*, 961 So.2d 372, (Fla. 1st DCA 2007); *Community Health Charities of Florida v. State, Dept. of Management Services*, 7 So.3d 570 (Fla. 1st DCA 2009).

B. SECTION DIRECTORY:

Section 1: Amends s. 110.181, F.S., removing the power of local steering committees to direct distribution of undesignated charitable campaign funds.

Section 2: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   This bill is expected to reduce expenditures by the Department of Management Services (*see* Fiscal Comments).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The funds received by participating charitable organizations may increase or decrease depending on the level of contributions received as a result of each annual campaign.

D. FISCAL COMMENTS:

The Department of Management Service provided the following fiscal comment:

Since the inception of the FSECC in 1993, the Legislature has provided the DMS Division of Human Resource Management (HRM) with an annual appropriation of $17,000 to administer the campaign. Even if we assume the cost of doing business has not generally risen in the past 17 years, this amount would not include the costs associated with the new application process, the unanticipated expenses of litigation, or the ongoing legal services that are now required. As a consequence, the actual administrative costs to DMS for the FSECC in Fiscal Year 2007 to 2008 was $106,457.53, of which $45,101.23 was general counsel hours, $7,181.16 was for other legal costs (including Attorney General hours) and $12,800.00 was the cost of a settlement agreement. In Fiscal Year 2008 to 2009, actual administrative costs were $153,830.23, of which $54,043.29 were related to legal services. Even though the statutes authorize DMS to recoup from the campaign the administrative costs that exceed our appropriation, such reimbursement is capped to 1% of campaign proceeds, which has been declining slightly the past few years (the 2007 campaign raised $4,869,270.00 but the 2008 campaign only raised $4,364,809.00). For example, in FY 08-09 DMS had to absorb over $93,000.00:

$153,830.23	Grand Total Expenditures for FY 08-09
($ 17,000.00)	Covered by Annual Appropriation
($ 43,648.09)	Amount Recouped from Campaign (1% of the $4,364,809.00 raised in 2008)
$ 93,182.14	Amount Absorbed by DMS

Also, because the amount recouped from the campaign is not returned directly to either the operating budget of HRM or the DMS Office of the General Counsel (OGC), the actual impact on these program areas is a loss of over $136,000.000, which affects their ability to effectively perform other mission critical activities. Specifically:

$153,830.23	Grand Total Expenditures for FY 08-09
($ 17,000.00)	Appropriation Amount in the HRM Budget
$136,830.23	Total Amount un-recouped by HRM and OGC

Of the 2,047.25 hours of professional staff time that HRM devoted to the FSECC in Fiscal Year 2008 to 2009, HRM estimates that approximately 682.42 hours or a third (33%) was required to administer the undesignated funds process of the Campaign.[7]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

[7] Department of Management Services HB 1603 (2010) Substantive Bill Analysis (March 12, 2010) at 2 (on file with the Governmental Affairs Policy Committee).