

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: CS/SB 1310

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Artiles

SUBJECT: State Employment

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ferrin</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AGG</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1310 eliminates the Florida State Employees Charitable Contribution Campaign (FSECC), and provides that an organization, entity, or person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, it does not prohibit:

- State-approved communications by entities with whom the state has contracted to provide employee benefits or services;
- Noncoercive voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

The bill may have a positive fiscal impact on state expenditures. The Department of Management Services (DMS) will no longer be required to procure the services of a fiscal agent or agents to receive, account for, and distribute charitable contribution among participating charitable organizations for the FSECC.

The bill has an effective date of July 1, 2017.

II. Present Situation:

The FSECC is an annual charitable fundraising drive funded by state employees and maintained by the DMS in coordination with the Department of Financial Services.¹ It is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours for which the state provides a payroll deduction.² Universities are permitted to participate in the campaign, but are also authorized to conduct their own charitable fundraising drives for employees.³

Employees' participation in the campaign is entirely voluntary, and officers and employees are required to designate a charitable organization to receive their contributions, unless the contributions are collected as part of a campaign event.⁴ Each agency is responsible for conducting campaign events to promote and generate awareness of the campaign. Prior to 2016, agencies were authorized to collect cash donations at campaign events, however, in 2016, only payroll deductions were collected as part of the campaign as a cost saving measure.⁵

Organizations' participation in the annual campaign is limited to any nonprofit charitable organization that has as its principal mission:⁶

- Public health and welfare;
- Education;
- Environmental restoration and conservation;
- Civil and human rights; or
- The relief of human suffering and poverty.

Additionally, organizations ineligible to participate in the campaign include those:⁷

- Whose fundraising and administrative expenses exceed 25 percent;
- Whose activities contain an element that is more than incidentally political in nature or are primarily political, religious, professional, or fraternal in nature;
- That discriminate on account of race, color, religion, sex, national origin, age, handicap, or political affiliation;
- Not properly registered as a charitable organization as required by law;⁸ and
- That have not received tax-exempt status under s. 501(c)(3) of the Internal Revenue Code.

Over 1,000 charities have been approved to participate in the FSECC through the application process established by the DMS's Division of Human Resources.⁹ Charitable organizations

¹ Section 110.181(1)(a), F.S.

² *Id.*

³ Section 110.181(5), F.S. See also 1001.706, F.S.

⁴ Section 110.181(1)(b), F.S.

⁵ Email from Samantha Ferrin, Department of Management Services, Deputy Director of Legislative and External Affairs (March 30, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

⁶ Section 110.181(1)(c), F.S.

⁷ Section 110.181(1)(e), F.S.

⁸ See the Solicitation of Contributions Act, ss. 496.401-496.424, F.S.

⁹ Department of Management Services, *HB 1141 Legislative Bill Analysis* (March 14, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

participating in the campaign must be audited annually by an independent public accountant whose examination conforms to generally accepted accounting principles.¹⁰

Current law requires the DMS to competitively procure a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations,¹¹ and provides for the establishment of a Florida State Employees Charitable Campaign Steering Committee to make recommendations relating to the administration of the campaign.¹² The committee is made up of seven members appointed by the Administration Commission¹³ and two members appointed by the Secretary of the DMS.¹⁴ The Steering Committee meets periodically, usually once or twice each year.¹⁵

The DMS historically awarded the fiscal agent contract to a nonprofit charitable organization that participated in the FSECC, but in 2010, the fiscal agent selection process was opened and services were competitively procured through Solix Grant Management Solutions (Solix) for the period January 1, 2013, through December 31, 2015.¹⁶ The initial contract with Solix provided for tiered compensation, with a minimum of \$546,415 for year one of the contract and actual documented costs for years two and three.¹⁷

In 2015, the DMS entered into a new three-year contract with Solix for the period January 1, 2016, through December 31, 2018.¹⁸ For this contract period, fixed fees were initially agreed to for \$389,297 in year one, \$399,769 in year two, and \$411,631 in year three.¹⁹ However, on April 15, 2016, the DMS and Solix agreed to amended contract terms that provided for a fixed \$180,000 fee for each year of the contract.²⁰

In May of 2016, the State of Florida Auditor General published an operational audit of the FSECC, finding that during the time period covered by the initial contract with Solix the DMS did not ensure FSECC fiscal agent fees were supported by adequate documentation and did not adequately verify that employee contributions were appropriately distributed to participating charitable organizations.²¹ Prior to publication of the audit, the renewed contract with the fiscal

¹⁰ Section 110.181(1)(d), F.S.

¹¹ Section 110.181(2)(a), F.S.

¹² Sections 110.181(3) and (4), F.S.

¹³ See s. 14.02, F.S. The Administration Commission is composed of the Governor and Cabinet.

¹⁴ Section 110.181(4), F.S.

¹⁵ See *supra* note 5.

¹⁶ State of Florida Auditor General's Operational Audit of the Department of Management Services Florida State Employees' Charitable Campaign Report No. 2016-194. Available at http://www.myflorida.com/audgen/pages/pdf_files/2016-194.pdf. (last visited March 30, 2017).

¹⁷ Contract for FSECC Fiscal Agent Services Between the State of Florida Department of Management Services and Solix, Inc. Contract No.: DMS 11/12-018. (on file with the Senate Committee on Governmental Oversight and Accountability).

¹⁸ Contract for FSECC Fiscal Agent Services Between the State of Florida Department of Management Services and Solix, Inc. Contract No.: DMS 14/14-030. Available at:

<https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=HRM01>. (last visited March 30, 2017).

¹⁹ *Id.*

²⁰ Amendment NO.:1 to Contract No.: DMS 14/15-030. Available at

<https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=HRM01>. (last visited March 30, 2017).

²¹ See *supra* note 16.

agent had been modified to provide for a fixed fee and the DMS had implemented a procedure for verifying the distributions—therefore the need for corrective action was eliminated.²²

On December 5, 2016, the secretary of DMS notified state agencies that the campaign was being suspended because it had only raised approximately \$282,000, which was its lowest amount in the campaign’s history.²³

During its 36-year history, the FSECC raised over \$94 million.²⁴ However, over the last ten years contributions have declined sharply, as illustrated by the following table.²⁵

Campaign Year	Fiscal Agent	Charitable Contributions	Amount withheld by Fiscal Agent	Net Amount to Participating Charities	Fiscal Agent Costs as % of Contributions
2005-2006	United Way	\$ 4,963,346	\$ 691,065	\$ 4,272,281	13.9%
2006-2007	United Way	\$ 4,959,059	\$ 703,479	\$ 4,255,580	14.2%
2007-2008	United Way	\$ 4,869,270	\$ 706,683	\$ 4,162,587	14.5%
2008-2009	United Way	\$ 4,362,662	\$ 923,931	\$ 3,438,731	21.2%
2009-2010	United Way	\$ 4,171,177	\$ 850,877	\$ 3,320,300	20.4%
2010-2011	United Way	\$ 3,739,355	\$ 801,032	\$ 2,938,323	21.4%
2011-2012	United Way	\$ 2,688,902	\$ 796,616	\$ 1,892,286	29.6%
2012-2013	Solix, Inc.	\$ 1,762,030	\$ 546,415	\$ 1,215,615	31.0%
2013-2014	Solix, Inc.	\$ 982,387	\$ 470,470	\$ 511,917	47.9%
2014-2015	Solix, Inc.	\$ 869,004	\$ 453,599	\$ 415,405	52.2%
2015-2016	Solix, Inc.	\$ 546,186	\$ 180,000	\$ 366,186	33.0%
2016-2017	Solix, Inc.	\$ 282,000	\$ 180,000	\$ 102,000	63.8%

III. Effect of Proposed Changes:

Section 1 repeals s. 110.181, F.S., eliminating the FSECC.

Section 2 creates s. 110.182, F.S., providing that an organization, entity, or person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, it does not prohibit:

- State-approved communications by entities with whom the state has contracted to provide employee benefits or services;
- Noncoercive voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

²² *Id.*

²³ *State scraps Solix contract, suspends charity campaign*, Tallahassee Democrat, December 8, 2016, available at <http://www.tallahassee.com/story/news/2016/12/08/state-suspends-beleagured-fsecc/95139288/> (last visited March 30, 2017).

²⁴ Department of Management Services, *Donor Frequently Asked Questions*, question 1, page 2, available at <http://www.dms.myflorida.com/content/download/128373/798921/FAQ-Donor-2016.pdf> (last visited March 30, 2017).

²⁵ Figures provided in an email from Taylor Hatch, Department of Management Services, Senior Director of Policy and Legislative Affairs November 17, 2016 (on file with the Senate Committee on Governmental Oversight and Accountability).

Section 3 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Charitable organizations may see a decrease in contributions as a result of the bill. However, charitable giving appears to be at an all-time high.²⁶

C. Government Sector Impact:

According to the DMS, the bill has no fiscal impact.²⁷ However, the bill may have a positive fiscal impact on the DMS, because it will no longer be required to procure the services of a fiscal agent or agents to receive, account for, and distribute charitable contribution among participating charitable organizations for the FSECC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals section 110.181 of the Florida Statutes.

²⁶ National Philanthropic Trust, *Charitable Giving Statistics*. Available at: <https://www.nptrust.org/index.php?/philanthropic-resources/charitable-giving-statistics>. (last visited March 30, 2017). March 30, 2017).

²⁷ Department of Management Services, *HB 1141 Legislative Bill Analysis* (March 14, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

This bill creates section 110.182 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on April 3, 2017:

Adds exceptions to the prohibition on solicitation of state employees within work areas during work hours for:

- Noncoercive voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

- B. **Amendments:**

None.