

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 Committee on Commerce and Tourism

BILL: SB 1338

INTRODUCER: Senator Burton

SUBJECT: Charitable Giving

DATE: January 27, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1338 creates the “Safeguarding Endowment Gifts Act,” which provides legal recourse to individual charitable donors when their giving restrictions are not followed by a recipient charitable organization according to an endowment agreement.

Additionally, the bill creates the “Charity Protection Act,” which prohibits a state agency or state official from imposing any annual filing or reporting requirements on an organization regulated or specifically exempted from regulation under ch. 496, F.S., which are more burdensome than the requirements authorized by Florida law.

The bill provides an effective date of July 1, 2026.

II. Present Situation:

The Solicitation of Contributions Act (SCA)

In Florida, the solicitation of contributions by charitable organizations and sponsors is regulated by the Solicitation of Contributions Act (the SCA).¹ The SCA contains basic registration, financial disclosure, notification requirements, and recordkeeping requirements for charitable organizations and sponsors, fundraising consultants, and solicitors.²

¹ Chapter 496, F.S. The majority of the provisions in the SCA “do not apply to bona fide religious institutions, educational institutions, and state agencies or other government entities or persons or organizations who solicit or act as professional fundraising consultants solely on their behalf, or to blood establishments as defined in s. 381.06014(1)(a), F.S.” Section 496.403, F.S. Nor do the majority of the provisions in the SCA apply to political contributions solicited in accordance with election laws. *Id.*

² *Id.*

Charitable Organizations and Sponsors

Currently, under s. 495.405, F.S., any charitable organization³ or sponsor⁴ that intends to solicit⁵ donations in Florida must annually register with the Department of Agriculture and Consumer Services (DACS) and pay a registration fee before soliciting donations.⁶

Registration includes a financial report, 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.⁷ 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.⁸ Additionally, the registration must include a statement related to the charity's activities 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.⁹

Registration Fee

Every charitable organization, sponsor, or parent organization filing on behalf of one or more chapters, branches, or affiliates that is required to register must pay a single registration fee. A

³ Section 496.404(1), F.S., defines "charitable organization" as a person who is or holds herself or himself out to be established for any benevolent, educational, philanthropic, humane, scientific, artistic, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or a person who in any manner employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation. The term includes a chapter, branch, area office, or similar affiliate soliciting contributions within the state for a charitable organization that has its principal place of business outside of Florida.

⁴ Section 496.404(27), F.S., defines "sponsor" as a group or person who is or holds herself or himself out to be soliciting contributions by the use of a name that 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 the group or person is not a charitable organization. The term includes a chapter, branch, or affiliate that has its principal place of business outside of Florida if such chapter, branch, or affiliate solicits or holds itself out to be soliciting contributions in Florida.

⁵ Section 496.404(26), F.S., defines "solicitation" as a request, directly or indirectly, for money, property, financial assistance, or any other thing of value on the plea or representation that such money, property, financial assistance, or other thing of value or a portion of it will be used for a charitable or sponsor purpose or will benefit a charitable organization or sponsor. The term includes, but is not limited to, the following methods of requesting or securing the promise, pledge, or grant of money, property, financial assistance, or any other thing of value: (a) making any oral or written request; (b) making any announcement to the press, on radio or television, by telephone or telegraph, or by any other communication device concerning an appeal or campaign by or for any charitable organization or sponsor or for any charitable or sponsor purpose; (c) distributing, circulating, posting, or publishing any handbill, written advertisement, or other publication that directly or by implication seeks to obtain any contribution; or selling or offering or attempting to sell any advertisement, advertising space, book, card, coupon, chance, device, magazine, membership, merchandise, subscription, sponsorship, flower, admission, ticket, food, or other service or tangible good, item, or thing of value, or any right of any description in connection with which any appeal is made for any charitable organization or sponsor or charitable or sponsor purpose, or when the name of any charitable organization or sponsor is used or referred to in any such appeal as an inducement or reason for making the sale or when, in connection with the sale or offer or attempt to sell, any statement is made that all or part of the proceeds from the sale will be used for any charitable or sponsor purpose or will benefit any charitable organization or sponsor.

⁶ Section 496.405(1), F.S. A solicitation is considered as having taken place regardless of whether the person making the solicitation receives any contribution. A solicitation does not occur when a person applies for a grant or an award to the government or to an organization that is exempt from federal income taxation under s. 501(a) of the Internal Revenue Code and described in s. 501(c) of the Internal Revenue Code and is duly registered.

⁷ Section 496.405(2), F.S.

⁸ *Id.*

⁹ *Id.*

parent organization filing on behalf of one or more chapters, branches, or affiliates must total all contributions received by the chapters, branches, or affiliates included in the registration statement to determine registration fees.¹⁰ Fees must be assessed as follows:

- Ten dollars, if the contributions received for the last fiscal or calendar year were less than \$5,000.
- Seventy-five dollars, if the contributions received for the last fiscal year were \$5,000 or more, but less than \$100,000.
- One hundred twenty-five dollars, if the contributions received for the last fiscal year were \$100,000 or more, but less than \$200,000.
- Two hundred dollars, if the contributions received for the last fiscal year were \$200,000 or more, but less than \$500,000.
- Three hundred dollars, if the contributions received for the last fiscal year were \$500,000 or more, but less than \$1 million.
- Three hundred fifty dollars, if the contributions received for the last fiscal year were \$1 million or more, but less than \$10 million.
- Four hundred dollars, if the contributions received for the last fiscal year were \$10 million or more.¹¹

A charitable organization or sponsor that fails to file a registration statement by the due date may be assessed an additional fee for such late filing. The late filing fee is \$25 for each month or part of a month after the date on which the annual renewal statement was due to be filed with the DACS.¹²

All registration fees must be paid to the DACS and deposited into the General Inspection Trust Fund.¹³

Registration Exemptions

The following charitable organizations and sponsors are exempt from the registration requirements:

- A person who is soliciting for a named individual, provided that all the contributions collected without any deductions whatsoever are turned over to the beneficiary for her or his use and provided that the person has complied with the requirements of s. 496.413, F.S.¹⁴
- A charitable organization or sponsor that limits solicitation of contributions to the membership of the charitable organization or sponsor. The term “membership” does not include those persons who are granted a membership upon making a contribution as a result of a solicitation.
- Any division, department, post, or chapter of a veterans’ service organization granted a federal charter under Title 36, United States Code.
- A charitable organization or sponsor that has less than \$50,000 in total contributions during a fiscal year if the fundraising activities of such organization or sponsor are carried on by

¹⁰ Section 496.405(4)(a), F.S.

¹¹ *Id.*

¹² Section 496.405(4)(b), F.S.

¹³ Section 496.405(4)(c), F.S.

¹⁴ Section 496.413, F.S., is the section of law governing contributions solicited for or accepted on behalf of a named individual.

volunteers, members, or officers who are not compensated and no part of the assets or income of such organization or sponsor inures to the benefit of or is paid to any officer or member of such organization or sponsor or to any professional fundraising consultant, professional solicitor, or commercial co-venturer. If a charitable organization or sponsor that has less than \$50,000 in total contributions during a fiscal year actually acquires total contributions equal to or in excess of \$50,000, the charitable organization or sponsor must register with the DACS within 30 days after the date the contributions reach \$50,000.¹⁵

The Florida Uniform Prudent Management of Institutional Funds Act (FUPMIFA)

The FUPMIFA governs how charitable institutions¹⁶ in Florida manage, invest, and spend donor restricted endowment funds.¹⁷

The FUPMIFA provides that subject to the intent of a donor expressed in a gift instrument,¹⁸ an institution, in managing and investing an institutional fund,¹⁹ must consider the charitable purposes²⁰ of the institution and the purposes of the institutional fund.²¹

Further, the FUPMIFA states that in addition to complying with the duty of loyalty imposed by law other than in the FUPMIFA, each person²² responsible for managing and investing an institutional fund is required to manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.²³

In managing and investing an institutional fund, an institution may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution, and an institution must make a reasonable effort to verify facts relevant to the management and investment of the fund.

An institution is permitted to pool two or more institutional funds for purposes of management and investment.

¹⁵ Section 496.406(1)(d), F.S.

¹⁶ Section 617.2104(1)(d), F.S., defines “institution” as a person organized and operated exclusively for charitable purposes, other than: (a) an individual; or (b) a trust subject to s. 518.11, F.S.; a government or governmental subdivision, agency, or instrumentality to the extent that it holds funds exclusively for a charitable purpose; or a trust that had both charitable and noncharitable interests after all noncharitable interests have been terminated if the trust is not subject to s. 518.11, F.S.

¹⁷ See s. 617.2104, F.S.

¹⁸ Section 617.2104(2)(c), F.S., defines “gift instrument” as a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

¹⁹ Section 617.2104(2)(e), F.S., defines “institutional fund” as a fund held by an institution exclusively for charitable purposes. The term does not include: (1) program-related assets; (2) a fund held for an institution by a trustee that is not an institution; (3) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund; or (4) a fund managed or administered by the State Board of Administration pursuant to its constitutional or statutory authority.

²⁰ Section 617.2104(2)(a), F.S., defines “charitable purpose” as the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

²¹ Section 617.2104(3)(a), F.S.

²² Section 617.2104(2)(f), F.S., defines “person” as an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

²³ Section 617.2104(3)(b), F.S.

Except as otherwise provided by a gift instrument, the following rules apply:

- In managing and investing an institutional fund, the following factors, if relevant, must be considered:
 - General economic conditions.
 - The possible effect of inflation or deflation.
 - The expected tax consequences, if any, of investment decisions or strategies.
 - The role that each investment or course of action plays within the overall investment portfolio of the fund.
 - The expected total return from income and the appreciation of investments.
 - Other resources of the institution.
 - The needs of the institution and the fund to make distributions and to preserve capital.
 - An asset's special relationship or special value, if any, to the charitable purposes of the institution.
- Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.
- Except as otherwise provided by law other than the FUPMIFA, an institution may invest in any kind of property or type of investment consistent with the FUPMIFA.
- An institution must diversify the investments of an institutional fund unless the institution reasonably and prudently determines under the FUPMIFA that the purposes of the fund are better served without diversification.
- Within a reasonable time after receiving property, an institution is required to make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of the FUPMIFA.
- A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

Additionally, the FUPMIFA provides that subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund²⁴ as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution must act in good faith with the care that an ordinarily prudent person in a like position would exercise under similar circumstances and must consider, if relevant, the following factors:

- The duration and preservation of the endowment fund.
- The purposes of the institution and the endowment fund.
- General economic conditions.

²⁴ Section 617.2104(2)(b), F.S., defines "endowment fund" as an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

- The possible effect of inflation or deflation.
- The expected total return from income and the appreciation of investments.
- Other resources of the institution.
- The investment policy of the institution.²⁵

To limit the authority to appropriate for expenditure or accumulate, a gift instrument must specifically state the limitation.²⁶

Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only “income,” “interest,” “dividends,” or “rents, issues, or profits,” or “to preserve the principal intact,” or words of similar import:

- Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund.
- Do not otherwise limit the authority to appropriate for expenditure or accumulate.

The FUPMIFA also provides that if the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.²⁷

If consent of the donor in a record cannot be obtained by reason of the donor’s death, disability, unavailability, or impossibility of identification, a governing board may modify a restriction contained in a gift instrument regarding the management, investment, or use of an institutional fund if the fund has a total value of \$100,000 or less and the restriction has become impracticable or wasteful; impairs the management, investment, or use of the fund; or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund.²⁸

If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, after providing written notice to the Attorney General, may release or modify the restriction, in whole or part, if:

- The institutional fund subject to the restriction has a total value of at least \$100,000 and not more than \$250,000;
- More than 20 years have elapsed since the fund was established; and
- The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.²⁹

The circuit court for the circuit in which an institution is located, upon application of that institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it

²⁵ Section 617.2104(4)(a), F.S.

²⁶ Section 617.2104(4)(b), F.S.

²⁷ Section 617.2104(6)(a), F.S.

²⁸ Section 617.2104(6)(b), F.S.

²⁹ Section 617.2104(6)(c), F.S.

impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution must notify the Attorney General of the application. To the extent practicable, any modification must be made in accordance with the donor's probable intention.³⁰

If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the circuit court for the circuit in which an institution is located, upon application of that institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution must notify the Attorney General of the application.³¹

III. Effect of Proposed Changes:

The Safeguarding Endowment Gifts Act

SB 1338 creates s. 496.432, F.S., to be entitled the "Safeguarding Endowment Gifts Act (Act)." A legislative finding is provided that the Act is necessary to provide legal recourse to individual charitable donors when their giving restrictions are not followed by a recipient charitable organization according to an endowment agreement.

The bill creates the following definitions:

- "Charitable organization" means an organization organized and operated exclusively for religious, charitable, scientific, literary, educational, testing for public safety or other specified purpose and that is tax exempt from federal income tax as an entity described in s. 501(c)(3) of the Internal Revenue Code.
- "Donor" means an individual or entity that has made a contribution of property or money to an existing endowment fund or a new endowment fund of a charitable organization or of a charitable trust pursuant to the terms of an endowment agreement that may include donor-imposed restrictions or conditions governing the use of the contribution.
- "Donor-imposed restriction" means a written statement within an endowment agreement which specifies requirements for the management or use of endowment funds.
- "Endowment agreement" means a written agreement between a charitable organization and a donor or between a charitable trust and a donor regarding the contribution made by the donor and accepted by the charitable organization or the charitable trust, which agreement may include donor-imposed restrictions or other conditions governing the use of the contribution.
- "Endowment fund" means an institutional fund or part thereof, which under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.
- "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.
- "Legal representative" means the administrator or executor of a person's estate; a surviving spouse if a court judgement has settled the accounts of the estate; or a person designated in an endowment agreement, whether or not born at the time of such designation, to act in place

³⁰ Section 617.2104(6)(d), F.S.

³¹ Section 617.2104(6)(e), F.S.

of a party to the agreement for all matters expressed in the agreement and all of the actions it contemplates, including, but not limited to, interpreting, performing, and enforcing the agreement and defending its validity.

- “Property” means real property, personal property, or money, cryptocurrency, stocks, bonds, or any other asset or financial instrument.

Except where specifically required or authorized by federal or state law, a charitable organization that accepts a contribution pursuant to a written donor-imposed restriction may not violate the terms of that restriction without potential penalty.

If a charitable organization violates a donor-imposed restriction contained in an endowment agreement, the donor, or the donor’s legal representative, 90 days after notifying the charitable organization of the breach, may file a complaint within 6 years after discovery for breach of such agreement. The complaint may be filed in a court of general jurisdiction in the county where a charitable organization named as a party has its principal office or principal place of carrying out its charitable purpose, or in a court of the United States whose district includes such county. The complaint may be filed regardless of whether the endowment agreement expressly reserves a right to sue or enforce the agreement, and it may not seek a judgement awarding damages to the donor or donor representative.

If a charitable organization is unable to fulfill a term in the endowment agreement, the charitable organization is required to notify the donor, or the donor’s legal representative, within 30 days after discovering it is unable to fulfill the terms and offer an alternative solution that closely matches the initial term in the endowment agreement.

A charitable organization may obtain a judicial declaration of the rights and duties expressed in an endowment agreement containing donor restrictions as to all of the actions the endowment agreement contemplates, including, but not limited to, the interpretation, performance, or enforcement of the agreement, and a determination of its validity. However, the charitable organization must seek a judicial declaration in any suit brought under the Act, or by filing a complaint.

If the court determines that a charitable organization violated a donor-imposed restriction in an endowment agreement, the court may order one or more remedies consistent with the charitable purposes expressed in the endowment agreement. The court is prohibited from ordering the return of the donated funds to the donor or the donor’s legal representative.

The bill clarifies that the Act does not do any of the following:

- Affect the authority of the Attorney General to enforce any restriction in an endowment agreement;
- Limit the application of the judicial power of *cy pres*;³² or

³² Section 736.0413, F.S., authorizes courts to apply the doctrine of “*cy pres*” if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve or wasteful. The doctrine may be applied to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor’s charitable purposes. The judicial doctrine of “*cy pres*” comes from the Old French “*cy près comme possible*,” meaning “as near as possible.” See Christopher J. Ryan, Jr. (2023), *An Historical and Empirical Analysis of the Cy- près Doctrine*, ACTEC Law Journal, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4176994 (last visited Jan. 27, 2026).

- Alter the right of an institution to modify a restriction on the management, investment, purpose, or use of an endowment fund in a manner permitted by the endowment agreement and by the Florida Uniform Prudent Management of Institutional Funds Act.³³

The bill provides that if any provision of the Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared severable.

The Charity Protection Act

The bill also creates s. 496.433, F.S., which is entitled the “Charity Protection Act (CPA).” A legislative finding is provided that the CPA is necessary to minimize burdens on the charitable sector and to create a grantmaking environment centered on effectiveness and fiscal impact on charitable organizations.

Except where specifically required or authorized by federal law, the CPA prohibits a state agency or state official from imposing any annual filing or reporting requirements on an organization regulated or specifically exempted from regulation under ch. 496, F.S., which are more burdensome than the requirements authorized by Florida law.

The CPA does not apply to state grants or contracts or to fraud investigations, and it does not restrict enforcement actions against specific nonprofit organizations.

The bill provides an effective date of July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³³ Section 617.2104, F.S., is the Florida Uniform Prudent Management of Institutional Funds Act and provides a framework for managing and investing institutional funds. The term “institutional fund” means a fund held by an institution exclusively for charitable purposes, but the term does not include: (1) program related assets; (2) a fund held for an institution by a trustee that is not an institution; (3) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund; or (4) a fund managed or administered by the State Board of Administration pursuant to its constitutional statutory authority.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If a charitable organization violates a donor-imposed restriction in an endowment agreement, a donor (or the donor's legal representative) may file a complaint, and the court may order remedies consistent with the charitable purposes expressed in the endowment agreement.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 496.432, 496.433.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.