

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1338

INTRODUCER: Rules Committee and Senator Burton

SUBJECT: Charitable Giving

DATE: February 18, 2026

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>McMillan</u>	<u>Kruse</u>	<u>RC</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/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. An aggrieved donor must notify the charity of the issue. If the issue is unresolved after 90 days, the donor may file an action to enforce the endowment agreement. The court may determine an appropriate remedy but may not order that the donated property be returned to the donor unless a right to refund is expressly reserved by the donor in the endowment agreement. A charity unsure about its obligations regarding a donor restriction may ask the court for clarification.

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:

### Charitable Giving – In General

Charitable giving is common in society, as is the tendency of donors to want to limit the use of their donation to a particular use. The United States leads the world in charitable giving as a percentage of GDP.<sup>1</sup> Limiting the use of donated property according to the donor's intent has long been a feature of the common law on trusts and is a primary focus of the state as it encourages charitable giving.<sup>2</sup> Some of that common law has been codified in Florida.

### *The Florida Uniform Prudent Management of Institutional Funds Act (FUPMIFA)*<sup>3</sup>

The FUPMIFA applies to a nonprofit corporation. It governs how a charitable institution in Florida can manage, invest, and spend donor restricted endowment funds. The act is based on the Prudent Management of Institutional Funds Act created by the Uniform Law Commission. The uniform act has been adopted by 49 states.<sup>4</sup>

The uniform act provides guidance and authority to charitable organizations concerning the management and investment of funds held by those organizations, and imposes additional duties on those who manage and invest charitable funds. These duties provide additional protection for charities and protects the interests of donors who want to see their contributions used wisely.<sup>5</sup>

While the act gives significant guidance on the investment and management of funds, there is relatively little regulation of whether a fund is fulfilling the charitable purpose for which it was created. The act requires consent of the donor to release or modify a restriction on the use of the gift,<sup>6</sup> allows limited modification where consent is unavailable,<sup>7</sup> and provides for modification by the circuit court in limited circumstances.<sup>8</sup>

### 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).<sup>9</sup> The SCA contains basic registration,

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<sup>1</sup> Philanthropy Roundtable, *Statistics on U.S. Generosity*, <https://www.philanthropyroundtable.org/almanac/statistics-on-u-s-generosity/> (last visited February 18, 2026).

<sup>2</sup> Section 736.1210, F.S.

<sup>3</sup> Section 617.2104, F.S.

<sup>4</sup> Uniform Law Commission, *Prudent Management of Institutional Funds Act*, <https://www.uniformlaws.org/committees/community-home?communitykey=043b9067-bc2c-46b7-8436-07c9054064a3> (last visited Feb. 18, 2026).

<sup>5</sup> *Prefatory Note*, Uniform Prudent Management of Institutional Funds Act.

<sup>6</sup> Section 617.2104(6)(a), F.S.

<sup>7</sup> Section 617.2104(6)(b), F.S.

<sup>8</sup> Sections 617.2104(6)(d) and (6)(e), F.S.

<sup>9</sup> 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.*

financial disclosure, notification requirements, and recordkeeping requirements for charitable organizations and sponsors, fundraising consultants, and solicitors.<sup>10</sup>

### ***Charitable Organizations and Sponsors***

Currently, under s. 495.405, F.S., any charitable organization<sup>11</sup> or sponsor<sup>12</sup> that intends to solicit<sup>13</sup> donations in Florida must annually register with the Department of Agriculture and Consumer Services (DACS) and pay a registration fee before soliciting donations.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> Section 496.405(2), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

### ***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 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.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup>

All registration fees must be paid to the DACS and deposited into the General Inspection Trust Fund.<sup>21</sup>

### ***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.<sup>22</sup>
- 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.

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<sup>18</sup> Section 496.405(4)(a), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 496.405(4)(b), F.S.

<sup>21</sup> Section 496.405(4)(c), F.S.

<sup>22</sup> Section 496.413, F.S., is the section of law governing contributions solicited for or accepted on behalf of a named individual.

- 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 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.<sup>23</sup>

### III. Effect of Proposed Changes:

#### The Safeguarding Endowment Gifts Act

CS/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 pursuant to the terms of an endowment agreement that may include donor imposed restrictions governing the contribution.
- "Donor-imposed restriction" means a written statement within an endowment agreement which specifies restrictions or conditions on the management, investment, purpose, or use of endowment funds.
- "Endowment agreement" means a written agreement between a charitable organization and a donor regarding the contribution made by the donor to an existing endowment fund or a new endowment fund of a charitable organization, which agreement may include donor-imposed restrictions.
- "Endowment fund" means a fund held exclusively for a charitable purpose, other than program-related assets, or part thereof which, under the terms of a gift instrument, is not wholly expendable by the charitable organization on a current basis. The term does not include assets that a charitable organization designates as an endowment fund for its own use.
- "Gift instrument" means a record or records, including a charitable solicitation, under which property is granted to, transferred to, or held by a charitable organization as a fund held exclusively by a charitable purpose, other than program related assets.

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<sup>23</sup> Section 496.406(1)(d), F.S.

- “Legal representative” means the administrator or personal representative of a person’s estate, or a person designated in an endowment agreement, whether or not born at the time of such designation, to act in place 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, tangible or intangible personal property, or any other asset.

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.

If a charitable organization violates a donor-imposed restriction contained in an endowment agreement, the donor, or the donor’s legal representative, must notify the charitable organization of the breach. If not cured within 90 days, the donor may file a complaint to enforce the agreement. The bill creates a 5-year statute of limitations for the filing of a complaint. The complaint may be filed in the circuit court where a charitable organization’s principal office is or was last located or, if none, where its registered office is or was last located. The complaint may be filed regardless of whether the endowment agreement expressly reserves a right to sue or enforce the agreement, unless other language in the endowment agreement expressly waives this right. The complaint may not seek a judgment awarding damages to the donor or donor representative, but it may seek a refund of all or a portion of the donated funds if the donor expressly reserved a right to a refund in the endowment agreement.

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 120 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, unless other language in the endowment agreement limits this requirement.

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 may 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, unless a right to a refund is expressly reserved by the donor in the endowment agreement.

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;<sup>24</sup> or
- Alter the right of a charitable organization to modify a restriction on the management, investment, purpose, or use of an endowment fund in a manner expressly permitted by the endowment agreement and by the Florida Uniform Prudent Management of Institutional Funds Act.<sup>25</sup>

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 creates s. 496.433, F.S., 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.

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<sup>24</sup> 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](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4176994) (last visited Feb. 18, 2026).

<sup>25</sup> 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.

C. Trust Funds Restrictions:

None.

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, and 496.433.

**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 Rules on February 17, 2026:**

The committee substitute:

- Changes definitions in the "Safeguarding Endowment Gifts Act," section of the bill. The term "donor" includes 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, however the amendment removes the inclusion of these contributions to a charitable trust. Similarly, the term "endowment agreement" means a written agreement between a charitable organization and a donor and does not include a written agreement between a charitable organization or charitable trust.

- Provides that 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 5 years (instead of 6 years) after discovery for breach of such agreement.
- Provides that if a charitable organization determines in accordance with its internal policies that it is unable to fulfill a term in the endowment agreement, the charitable organization must notify the donor within 120 days (instead of 30 days) after such determination that it is unable to fulfill the terms and must offer an alternative solution, unless other language on the endowment agreement limits this requirement.
- Authorizes a charitable organization to seek a judicial declaration for a violation of the Act (instead of requiring such action).
- Clarifies that the court may not order the return of donated funds to the donor unless a right to a refund is expressly reserved by the donor in the endowment agreement.

**B. Amendments:**

None.