

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1327 Charitable Organizations  
**SPONSOR(S):** Persons-Mulicka  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 2 N	Thompson	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee		Byrd	Pigott
3) Commerce Committee			

### SUMMARY ANALYSIS

The Division of Consumer Services (Division) within DACS is the state's clearinghouse for consumer complaints, information and protection. The Division regulates various businesses, including charitable organizations. Chapter 496, F.S., the Solicitation of Contributions Act (SCA), is the chapter of Florida law that governs the solicitation of funds. The SCA requires charitable organizations that intend to solicit donations in Florida to register with DACS. The SCA contains basic registration, financial disclosures, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors. The SCA does not currently prohibit the source of contributions or limit the involvement of any entities.

The bill amends the SCA, as follows:

- Prohibits charitable organizations from soliciting or accepting contributions or anything of value, including contributions or any other assistance, from certain sources related to a "foreign country of concern."
- Requires DACS to create an "Honest Services Registry" to provide the residents of this state with the information necessary to make an informed choice when deciding which charitable organizations to support.
- Provides that to be included in the Honest Services Registry, charitable organizations must at a minimum, submit to DACS, using statutory verification requirements, an attestation that:
  - The organization does not solicit or accept, directly or indirectly, funding, support, or services from a foreign source of concern; and
  - The organization's messaging and content is not directly or indirectly produced or influenced by a foreign source of concern.
- Requires DACS to publish the Honest Services Registry on its website, and adopt rules to implement these requirements.
- Defines "foreign country of concern" as the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.

The bill may have an indeterminate negative fiscal impact on state government and the private sector. The bill does not appear to have a fiscal impact on local government.

The effective date of the bill is July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### **Nefarious Use of Non-profit Organizations**

Recently, it has been found that a number of extremist and hate groups are registered as tax-exempt organizations with the Internal Revenue Service (IRS), allowing them significant financial benefits. There are many reasons such groups may seek tax-exempt status with the IRS. This status allows groups to raise money or financing while avoiding state and federal income and unemployment taxes. In some cases, tax exempt organizations can sidestep property taxes, sales taxes, and employment taxes.<sup>1</sup>

The US House of Representatives Committee on Natural Resources, in part, provides oversight of the potential manipulation of tax-exempt organizations by foreign entities to influence US environmental and natural resources policy to negatively influence US national security.<sup>2</sup> In 2018, the committee found that one such organization had arranged meetings with US politicians, held press conferences and coordinated publicity events on behalf of foreign activists in efforts opposing US national defense.<sup>3</sup> The committee found that such organizations use litigation as a tool in their obstruction efforts, and also found that the groups underreport the amount of taxpayer dollars that they receive.

In 2023, the US Office of National Intelligence released its “Annual Threat Assessment of the US Intelligence Community,” which outlined the growing threat America faces from foreign interests, such as China and Russia. Specifically, the report found such foreign interests are “using a variety of tools”, like front groups, in order to “build influence at the state and local level to shift US policy in their favor because of the belief that local officials are more pliable than their federal counterparts.”<sup>4</sup>

##### **People’s Republic of China Influence Efforts**

The US National Counterintelligence and Security Center recently warned about “deceptive and coercive” influence operations by the People’s Republic of China (PRC). Security experts say that the PRC efforts are widespread and tailored to local communities. The Center warned that a PRC entity known as the United Front Work Department (UFWD) plays a leading role in foreign influence efforts. The UFWD coordinates and conducts influence operations globally through various front organizations.<sup>5</sup>

The US House Select Committee on Strategic Competition Between the United States and the Chinese Communist Party (CCP), recently released a memo on the influence operations of the UFWD. UFWD work is a unique blend of influence and interference activities, as well as intelligence operations that is used to shape the political environment, influence other countries’ policy toward the PRC, and gain access to advanced foreign technology. It is coordinated by the UFWD and carried out by an extensive network of organizations and individuals operating in and outside of the US, alongside the PRC’s

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<sup>1</sup> Forbes, *ADL Urges IRS To Investigate As It Warns Extremist Groups Exploit Being Registered As Charities*, <https://www.forbes.com/sites/jemimamcevoy/2021/07/26/adl-urges-irs-to-investigate-as-it-warns-extremist-groups-exploit-being-registered-as-charities/?sh=7a9c50bd69c0> (last visited Jan. 25, 2024).

<sup>2</sup> The US House of Representatives Committee on Natural Resources, *Letter to Center for Biological Diversity, Inc.* (June 20, 2018).

<sup>3</sup> *Id.*

<sup>4</sup> US Office of National Intelligence, *Annual Threat Assessment of the U.S. Intelligence Community*, p. 10, <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf> (last visited Jan. 25, 2024).

<sup>5</sup> Office of the Director of National Intelligence, National Counterintelligence and Security Center, *Safeguarding Our Future: Protecting Government and Business Leaders at the U.S. State and Local Level from People’s Republic of China (PRC) Influence Operations*, [https://www.dni.gov/files/NCSC/documents/SafeguardingOurFuture/PRC\\_Subnational\\_Influence-06-July-2022.pdf](https://www.dni.gov/files/NCSC/documents/SafeguardingOurFuture/PRC_Subnational_Influence-06-July-2022.pdf) (last visited Jan. 25, 2024).

diplomatic and intelligence activities. These organizations and individuals look to influence universities, think tanks, civic groups, other prominent individuals and institutions, and public opinion broadly.<sup>6</sup>

The UFWD policy system uses many different types of entities to accomplish its goals, including the use of government agencies, enterprises, academic institutions, and non-government organizations (NGOs).<sup>7</sup>

## Russian Federation Influence Efforts

Recently, it was found that over the previous 20 years, certain entities from the Russian Federation have been donating large amounts of money to some of the most prestigious non-profit institutions in the US. The list of recipients include the Brookings Institution, the Council on Foreign Relations, Harvard University, the University of Southern California, New York's Museum of Modern Art (MOMA), and the Kennedy Center in Washington D.C.<sup>8</sup> Because no comprehensive database of philanthropic donations exists in the United States, identifying every donation made is almost impossible. The findings of the research concluded that the donations were mostly legal, came from Russian oligarchs or the companies or foundations they run, and that these practices raise significant questions about how US organizations scrutinize the money they receive.<sup>9</sup>

## Foreign Ownership of United States Real Property

Foreign ownership and investment in US agricultural land has generated significant interest in recent years.<sup>10</sup> Several high-profile incidents have prompted lawmakers to evaluate and respond to the potential impacts of foreign ownership and investment on national security, trade, and food security.<sup>11</sup>

In 2022, Fufeng Group Limited, a Chinese food manufacturer, acquired 300 acres of land 12 miles from the Grand Forks Air Force Base (AFB) in North Dakota in order to build a production plant.<sup>12</sup> Grand Forks AFB reportedly houses a significant amount of the nation's sophisticated military drone technology.<sup>13</sup> A staff research report published by the Congressionally-created US-China Economic and Security Review Commission noted that the proximity of the Fufeng Group's land purchase to the base could make it conveniently situated to monitor air traffic flow in and out of the base as well as other business patterns and security-related concerns.<sup>14</sup>

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<sup>6</sup> The Select Committee on the Chinese Communist Party, *Memorandum: United Front 101*, <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/uf-101-memo-final-pdf-version.pdf> (last visited Jan. 26, 2024).

<sup>7</sup> *Id.*

<sup>8</sup> CNN, *'It's shameful': Russian-linked billionaires have given enormous sums of money to the West's leading educational and cultural institutions*, <https://www.cnn.com/2022/05/11/us/russian-oligarchs-philanthropy-ukraine-war-invs/index.html> (last visited Jan. 25, 2024).

<sup>9</sup> Anti Corruption Data Collective, *AMERICA'S CULTURAL INSTITUTIONS ARE QUIETLY FUELED BY RUSSIAN CORRUPTION*, <https://acdatacollective.org/work/americas-cultural-institutions-are-quietly-fueled-by-russian-corruption/> (last visited Jan. 25, 2024).

<sup>10</sup> See Aleks Phillips, *What the U.S. Is Doing to Curtail Chinese Land Ownership*, Newsweek, Feb. 13, 2023, <https://www.newsweek.com/chinese-land-ownership-investment-us-military-bases-1780886> (last visited Jan. 26, 2024).

<sup>11</sup> See Letter from Congressmen Glenn "GT" Thompson & James Comer to Gene L. Dodaro, Comptroller General of the U.S. Government Accountability Office (Oct. 1, 2022), [https://oversight.house.gov/wp-content/uploads/2022/10/20221001\\_GAO\\_foreignlandownership.pdf](https://oversight.house.gov/wp-content/uploads/2022/10/20221001_GAO_foreignlandownership.pdf) (last visited Jan. 26, 2024).

<sup>12</sup> Congressional Research Service (CRS), *Foreign Ownership and Holdings of U.S. Agricultural Land* (version 4, updated Jan. 24, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF11977> (last visited Mar. 18, 2023).

<sup>13</sup> Ariel Zilber, *Chinese Firm Bought North Dakota Farm Near U.S. Air Force Drone Base: Report*, New York Post, Jul. 1, 2022, <https://nypost.com/2022/07/01/chinese-firm-bought-farm-near-us-air-force-drone-base-report/> (last visited Jan. 26, 2024); see also Letter from Thompson & Comer, *supra* note 2; see also Lauren Greenwood, U.S.-China Economic and Security Review Commission, *China's Interests in U.S. Agriculture: Augmenting Food Security through Investment Abroad* (May 26, 2022) [https://www.uscc.gov/sites/default/files/2022-05/Chinas\\_Interests\\_in\\_U.S.\\_Agriculture.pdf](https://www.uscc.gov/sites/default/files/2022-05/Chinas_Interests_in_U.S._Agriculture.pdf) (last visited Jan. 26, 2024).

<sup>14</sup> Greenwood, *supra* note 4.  
STORAGE NAME: h1327b.ANR  
DATE: 2/9/2024

In January 2023, Andrew P. Hunter, the Assistant Secretary of the Air Force for Acquisition, Technology and Logistics,<sup>15</sup> sent US Senator John Hoeven a letter providing the Air Force's official position on the project. The letter confirmed that the AFB is the center of military activities related to both air and space operations and that the Air Force's position was that the proposed Fufeng project presented a significant threat to national security with risks of significant impacts to military operations in that area.<sup>16</sup>

Additionally, there is growing concern regarding the impact of foreign land ownership on national food security. A recent letter from 130 lawmakers to the US Government Accountability Office expressed concern that "foreign investment in US farmland could result in foreign control of available US farmland, especially prime agricultural lands, and possibly lead to foreign control over food production and food prices."<sup>17,18</sup>

In 2021, foreign individuals and entities held an interest in 40.8 million acres of the nation's agricultural land.<sup>19</sup> Foreign land holdings have increased by an average of 2.2 million acres per year since 2015.<sup>20</sup>

As of 2021, the states with the most foreign-owned agricultural acreage were Texas (5.3 million acres), Maine (3.6 million acres), Colorado (1.9 million acres), Alabama (1.8 million acres), and Oklahoma (1.7 million acres). Other states with more than 1 million foreign-owned acres include Florida, along with Arkansas, California, Georgia, Kansas, Louisiana, Michigan, New Mexico, Oregon, and Washington.<sup>21</sup>

According to the US Department of Agriculture, of the 21,849,568 acres of privately held agricultural land in Florida, 1,382,284 acres (6.3 percent) are held by foreign nationals, which is among the highest proportions in the US.<sup>22</sup>

### Scrutinized List of Prohibited Companies

Companies on the Scrutinized Companies with Activities in Sudan list, on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector list, or engaged in business operations<sup>23</sup> in Syria are prohibited from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or a local governmental entity<sup>24</sup> for goods or services of \$1 million or more.<sup>25</sup> Similarly, a company on the Scrutinized Companies that Boycott Israel list or engaged in a boycott of Israel may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of any amount.<sup>26</sup> The State Board of Administration is charged with maintaining a complete list of scrutinized companies based on criteria outlined in statute.<sup>27</sup>

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<sup>15</sup> U.S. Air Force, *Andrew P. Hunter* (Sept. 2022), <https://www.af.mil/About-Us/Biographies/Display/Article/3154079/andrew-p-hunter/> (last visited Jan. 26, 2024).

<sup>16</sup> Letter from Andrew P. Hunter, Office of the Assistant Secretary, to U.S. Senator John Hoeven (Jan. 27, 2023), <https://www.hoeven.senate.gov/imo/media/doc/USAIRFORCE-FUFENG-LETTER-HOEVEN.pdf> (last visited Jan. 26, 2024).

<sup>17</sup> Letter from Thompson & Comer, *supra* note 2.

<sup>18</sup> Rachel Treisman, NPR, *China is Buying Up More U.S. Farmland. Some Lawmakers Consider That a Security Threat* (Mar. 1, 2023), <https://www.npr.org/2023/03/01/1160297853/china-farmland-purchases-house-hearing-competition> (last visited Jan. 26, 2024).

<sup>19</sup> CRS, *supra* note 3, at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Farm Service Agency, U.S. Department of Agriculture, *Foreign Holdings of U.S. Agricultural Land Through Dec. 31, 2021*, <https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/annual-reports/index> (last visited Jan. 26, 2024).

<sup>23</sup> "Business operations" means, for purposes specifically related to Syria, engaging in commerce in any form in Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce. S. 287.135(1)(c), F.S.

<sup>24</sup> "Local governmental entity" means a county, municipality, special district, or other political subdivision of the state. S. 287.135(1)(d), F.S.

<sup>25</sup> S. 287.135(2)(b), F.S.

<sup>26</sup> S. 287.135(2)(a), F.S.

<sup>27</sup> Ss. 215.4725, and 215.473, F.S.

## Foreign Countries of Concern

### Federal Law

Federal law imposes many layers of scrutiny on certain dealings with foreign nationals, mostly related to science and technology having military implications, sales of arms and certain financial transactions related to terrorism, human trafficking, international drug dealing, and other important national interests. Various federal agencies publish lists related to sanctions, restrictions, and scrutiny imposed by federal law. One such list published by the US Department of State is the “state sponsors of terrorism” list that currently includes Cuba, Iran, North Korea, and Syria.<sup>28</sup> In addition, many programs scrutinize transactions involving America’s biggest global competitors, the People’s Republic of China and Russia. On January 19, 2021, the US Department of Commerce published an interim final rule entitled: Securing the Information and Communications Technology and Services Supply Chain.<sup>29</sup> That interim rule defined “foreign adversaries” to include Russia, the People’s Republic of China, the Nicolás Maduro government of Venezuela, Cuba, Iran, and North Korea. This is a relatively short list of scrutinized countries compared to other federal lists of countries scrutinized in various import-export and financial oversight programs.<sup>30</sup> Along with Syria, a state sponsor of terrorism, these reflect the foreign governments most hostile to US interests. The rule became effective on March 22, 2021.<sup>31</sup>

### State Law

Several areas of Florida law scrutinize certain dealings with such countries. These provisions define “foreign country of concern” to mean the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.<sup>32</sup>

Regarding state grants and contracts, an entity that applies to a state agency or political subdivision for a grant or proposes a contract having a value of \$100,000 or more is required to disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous 5 years.<sup>33</sup>

Regarding state contracting with entities of foreign countries of concern, a governmental entity is prohibited from knowingly entering into a contract with an entity which would give access to an individual's personal identifying information if:<sup>34</sup>

- The entity is owned by the government of a foreign country of concern;
- The government of a foreign country of concern has a controlling interest in the entity; or
- The entity is organized under the laws of or has its principal place of business in a foreign country of concern.

Regarding economic incentives to foreign countries of concern, a government entity may not knowingly enter into an agreement or contract for an economic incentive with a foreign entity that is owned or controlled by the government of a foreign country of concern.<sup>35</sup>

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<sup>28</sup> U.S. Department of State, *State Sponsors of Terrorism*, <https://www.state.gov/state-sponsors-of-terrorism/> (last visited March 19, 2023).

<sup>29</sup> 86 Fed. Reg. 4909 (Jan. 19, 2021).

<sup>30</sup> Such lists are published by the Department of Treasury, Office of Foreign Assets Control, Department of Commerce, Bureau of Industry and Security, Department of State, Directorate of Defense Trade Controls, as well as multiple Department of Defense and Department of Energy agencies.

<sup>31</sup> See *supra* note 29; see also 15 C.F.R. pt. 7.4 (2021).

<sup>32</sup> See ss. 122.22, 286.101, 287.138, 288.0071, 288.860, 408.810, 692.201, 836.05, F.S.

<sup>33</sup> S. 286.101(3)(a), F.S.

<sup>34</sup> S. 287.138(2), F.S.

<sup>35</sup> S. 288.0071, F.S.

Regarding the use of internet applications by state government employees that are created, maintained, or owned by a foreign countries of concern, current law requires a public employer to do all of the following:<sup>36</sup>

- Block all prohibited applications from public access on any network and virtual private network that it owns, operates, or maintains.
- Restrict access to any prohibited application on a government-issued device.
- Retain the ability to remotely wipe and uninstall any prohibited application from a government-issued device that is believed to have been adversely impacted, either intentionally or unintentionally, by a prohibited application.

A person, including an employee or officer of a public employer, may not download or access any prohibited application on any government-issued device.<sup>37</sup>

Regarding grants to state universities or state colleges, a state university or state college that is authorized to spend state-appropriated funds is prohibited from accepting any grant from or participating in any agreement with any college or university based in a foreign country of concern. The Board of Governors is authorized to approve such activities if the partnership or agreement is deemed by the board to be valuable to students and the school, and is not detrimental to the safety or security of the US or its residents.<sup>38</sup>

### **Foreign Agents Registration Act**

The federal Foreign Agents Registration Act (FARA) requires certain agents of foreign principals who are engaged in political activities or other activities specified under the act to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities. Disclosure of the required information facilitates evaluation by the government and the American people of the activities of such persons in light of their function as foreign agents. The FARA Unit of the Counterintelligence and Export Control Section (CES) in the National Security Division (NSD) is responsible for the administration and enforcement of FARA.<sup>39</sup>

The regulations implementing FARA,<sup>40</sup> were last revised in 2007. In December 2021, the Department of Justice (DOJ) issued an advanced notice of proposed rulemaking soliciting input on 19 questions about how to revise the regulations. No draft regulation has emerged yet, but at the recent FARA conference, a DOJ representative previewed some of the more significant changes that are likely to be proposed. The DOJ may seek to reshape the so-called "Commercial Exemption,"<sup>41</sup> whose regulations currently exempt political activities by companies provided they don't directly promote foreign government interests, to reach political activities that predominantly benefit any foreign entities, including parent companies. This would make another popular exemption for certain parties registered under the Lobbying Disclosure Act (LDA) (which DOJ is also seeking to repeal) all the more significant and require registration by US subsidiaries that engage in registrable conduct that does not qualify as lobbying.<sup>42</sup>

### **Charitable Organizations/Solicitation of Contributions Act**

The Division of Consumer Services (Division) within DACS is the state's clearinghouse for consumer complaints, information and protection. The Division regulates various businesses, including charitable organizations. Chapter 496, F.S., the Solicitation of Contributions Act (SCA), is the chapter of Florida law that governs the solicitation of funds. The SCA requires organizations that intend to solicit

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<sup>36</sup> S. 122.22(2)(a), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> S. 288.860, F.S.

<sup>39</sup> 22 U.S.C. § 611 et seq.

<sup>40</sup> 28 C.F.R., pt. 5.

<sup>41</sup> 22 U.S.C. § 613(d)(2).

<sup>42</sup> JDSUPRA, *The US Foreign Agents Registration Act (FARA): Key Issues to Watch in 2024*, <https://www.jdsupra.com/legalnews/the-us-foreign-agents-registration-act-2703845/> (last visited Jan. 26, 2024).

donations in Florida to register with DACS.<sup>43</sup> The SCA contains basic registration, financial disclosures, and notification requirements for charitable organizations and sponsors,<sup>44</sup> fundraising consultants, and solicitors.

### Registration Statements

The SCA requires a charitable organization or sponsor, unless exempted pursuant to s. 496.406, F.S., which intends to solicit contributions to first file an initial registration statement, and a renewal statement annually, with DACS.<sup>45</sup> Every charitable organization, sponsor or parent organization that is required to register must pay a single registration fee that ranges from \$10 to \$400 depending on the amount of contributions received.

The SCA requires initial registration statements to be submitted to DACS and include 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. 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. The registration must include a statement related to the charity's activity 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>46</sup>

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

- A person who is soliciting for a named individual;
- A charitable organization or sponsor that limits solicitations of contributions to the membership of the charitable organization or sponsor;
- Any division, department, post, or chapter of certain veterans' service organizations are exempt from the registration requirements; or
- A charitable organization that has less than \$50,000 in total revenue so long as they did not employ professional solicitors or have paid employees.<sup>47</sup>

Before soliciting contributions, the charitable organization or sponsor claiming the exemption must provide DACS with certain financial and identifying information including the name, address, and telephone number of the charitable organization or sponsor, the name under which it intends to solicit contributions, the purpose for which it is organized, and the purpose for which the contributions to be solicited will be used.<sup>48</sup>

### Financial Statements

A charitable organization or sponsor that is required to register or renew registration must file an annual financial statement for the immediate preceding year with DACS. The statement must include:

- A balance sheet;
- A statement of support, revenue and expenses;

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<sup>43</sup> See s. 496.401, F.S.

<sup>44</sup> S. 496.404(25), F.S., provides that a sponsor is a group or person who is or holds itself 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 the state if the chapter, branch, or affiliate solicits or holds itself out to be soliciting contributions in the state.

<sup>45</sup> S. 496.405(1), F.S.

<sup>46</sup> S. 496.405(2), F.S.

<sup>47</sup> S. 496.406(1), F.S.

<sup>48</sup> S. 496.406(2), F.S.

- Names and addresses of any charities, professional fundraising consultants, professional solicitors, and commercial co-ventures used and the amounts received from each of them; and
- A statement of functional expenses that must include program service costs, management and general costs, and fundraising costs.<sup>49</sup>

Upon the showing of good cause by a charitable organization or sponsor, DACS is authorized to extend the time for the filing of a financial statement by up to 180 days.<sup>50</sup>

### Professional Fundraising Consultants

Professional fundraising consultants<sup>51</sup> are required to annually register and pay a \$300 fee to DACS before operating in Florida.<sup>52</sup> Additionally, professional fundraising consultants who enter into agreements with charities may do so only if the charity has complied with the SCA, and has obtained approval from DACS of a registration statement.<sup>53</sup>

Applications for registration or renewal must be signed by an authorized official of the professional fundraising consultant and must include certain identifying information such as:<sup>54</sup>

- The names and residence addresses of all principals of the applicant, including all officers, directors, and owners;
- The form of the applicant's business; and
- The street address and telephone number of the principal place of business of the applicant and any Florida street addresses if the principal place of business is located outside of Florida.

After receiving the registration statement, DACS has 15 business days to either approve the registration or notify the consultant that the registration requirements are not satisfied. If, after 15 days DACS is not notified by the consultant, the registration is deemed approved.<sup>55</sup>

### Professional Solicitors

Professional solicitors<sup>56</sup> must annually register and pay a \$300 fee to DACS before operating in Florida.<sup>57</sup> Information that must be provided for registration or renewal includes the following:<sup>58</sup>

- The street address and telephone number of the business;
- The form of the applicant's business;
- The place and date when the applicant was legally established;
- The names and residence addresses of all principals, including officers, directors, and owners, and
- A list of all telephone numbers to be used by the applicant to solicit contributions as well as the physical address associated with each telephone number.

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<sup>49</sup> S. 496.407(1), F.S.

<sup>50</sup> S. 496.407(3), F.S.

<sup>51</sup> S. 496.404(20), F.S., provides that a professional fundraising consultant is a person retained by a charitable organization or sponsor for a fixed fee or rate under a written agreement to plan, manage, conduct, carry on, advise, consult, or prepare material for a solicitation of contributions in Florida but who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions and who does not at any time have custody or control of contributions.

<sup>52</sup> S. 496.409(1),(3), F.S.

<sup>53</sup> See s. 496.409(6), F.S.

<sup>54</sup> S. 496.409(2), F.S.

<sup>55</sup> S. 496.409(6), F.S.

<sup>56</sup> S. 496.404(21), F.S., provides that a professional solicitor is a person who, for compensation, performs for a charitable organization or sponsor a service in connection with which contributions are or will be solicited in, or from a location in, Florida by the compensated person or by a person it employs, procures, or otherwise engages, directly or indirectly, to solicit contributions, or a person who plans, conducts, manages, carries on, advises, consults, directly or indirectly, in connection with the solicitation of contributions for or on behalf of a charitable organization or sponsor but who does not qualify as a professional fundraising consultant.

<sup>57</sup> S. 496.410, F.S.

<sup>58</sup> S. 496.410(2), F.S.



After receiving the registration statement, DACS has 15 business days to either approve the registration or notify the solicitor that the registration requirements are not satisfied. If, after 15 days DACS has not notified the solicitor, the registration is deemed approved.<sup>59</sup>

Solicitors must also file a solicitation notice with DACS at least 15 days before beginning a solicitation campaign or event. The notice must include identifying information including residence addresses.<sup>60</sup> During each solicitation campaign, and for not less than three years after its completion, the solicitor must maintain certain records including addresses of contributors and employees involved in the solicitation.<sup>61</sup> Additionally, if solicitors sell tickets to events and represents that the tickets will be donated for use by another person, the solicitor must maintain records including addresses of contributors and of organizations that receive the donated tickets.<sup>62</sup>

A solicitor license must be obtained from DACS by each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor conducting telephonic solicitations during which a donor's or potential donor's personal financial information is requested or provided. The license application, in part, must include the name, home address, date of birth, and identification number of a government-issued ID of the applicant.<sup>63</sup>

### Collection Receptacles for Donations

The SCA defines a "collection receptacle" as a receptacle used to collect donated clothing, household items, or other goods for resale.<sup>64</sup> The SCA requires all collection receptacles for donations to display a permanent sign on each side of the receptacle. For receptacles used by a charity required to register under ch. 496, F.S., the sign must provide the name, address, telephone number, and registration number of the charity.<sup>65</sup>

### Solicitation of Funds within Public Transportation Facilities

Any person wanting to solicit funds within a public transportation facility<sup>66</sup> must obtain a written permit from the authority responsible for the administration of the facility.<sup>67</sup> The application for the permit submitted to the authority must "set forth" the:<sup>68</sup>

- Full name, mailing address, and telephone number of the person or organization;
- Full name, mailing address, and telephone number of each person participating in the activity as well as the person in charge of the activity;
- A description of the proposed activities;
- Dates and hours of the activities; and
- Number of persons engaged in such activities.

While conducting the activities, each solicitor must display prominently a badge or insignia provided by the authority that describes the solicitor by name, age, height, weight, eye color, hair color, address, and principal occupation and indicating the name of the organization for which the funds are solicited.<sup>69</sup>

### Disclosure Requirements of Charitable Organizations and Sponsors

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<sup>59</sup> S. 496.410(5), F.S.

<sup>60</sup> S. 496.410(6), F.S.

<sup>61</sup> S. 496.410(10), F.S.

<sup>62</sup> S. 496.410(11), F.S.

<sup>63</sup> S. 496.4101, F.S.

<sup>64</sup> S. 496.4121(1), F.S.

<sup>65</sup> S. 496.4121(2)(a), F.S.

<sup>66</sup> S. 496.425(1)(b), F.S., defines "facility" as any public transportation facility, including, but not limited to, railroad stations, bus stations, ship ports, ferry terminals, roadside welcome stations, highway service plazas, airports served by scheduled passenger service, or highway rest stations.

<sup>67</sup> See s. 496.425, F.S.

<sup>68</sup> S. 496.425(2), F.S.

<sup>69</sup> S. 496.425(6), F.S.

Charitable organizations or sponsors can solicit contributions only for the purpose expressed in the solicitation for contributions or the registration statement. The following disclosures must be included at the point of solicitation:<sup>70</sup>

- The name of the organization or sponsor and principal place of business of the organization or sponsor;
- A description of the purpose for which the solicitation is being made;
- The name and address or telephone number of a person to whom inquiries may be addressed;
- The amount of the contribution which may be deducted from federal income tax; and
- The source from which a written financial statement may be obtained.

### Sources of Contributions

The SCA does not appear to require the disclosure of any information regarding the persons or entities who are solicited by, or contribute to, the charitable organizations.

According to DACS, “there are no prohibitions on the source of contributions nor limitations on the involvement of any entities in Chapter 496, FS.”<sup>71</sup>

### Effect of Proposed Changes

The bill amends the SCA to prohibit charitable organizations from soliciting or accepting contributions or anything of value, including contributions or any other assistance, from a foreign source of concern.

The bill requires DACS to create an “Honest Services Registry” to provide the residents of this state with the information necessary to make an informed choice when deciding which charitable organizations to support.

To be included in the Honest Services Registry, the bill requires charitable organizations at a minimum, to submit to DACS, using statutory verification requirements,<sup>72</sup> an attestation of the following:

- The organization does not solicit or accept, directly or indirectly, funding, support, or services from a foreign source of concern; and
- The organization's messaging and content is not directly or indirectly produced or influenced by a foreign source of concern.

The bill requires DACS to publish the Honest Services Registry on its website, and adopt rules to implement these requirements.

The bill provides the following definitions:

- "Foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.
- "Foreign source of concern" means any of the following:
  - The government or any official of the government of a foreign country of concern;
  - A political party or member of a political party or any subdivision of a political party in a foreign country of concern;
  - A partnership, an association, a corporation, an organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, or a subsidiary of such entity;
  - Any person who is domiciled in a foreign country of concern and is not a citizen or lawful permanent resident of the United States;
  - An agent, including a subsidiary or an affiliate of a foreign legal entity, acting on behalf of a foreign source of concern; or

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<sup>70</sup> S. 496.411, F.S.

<sup>71</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2024 House Bill 1327, p. 2 (Jan. 22, 2024).

<sup>72</sup> S. 92.525, F.S.

- An entity in which any person, entity, or collection of persons or entities described in paragraphs (a) through (e) has a controlling interest. As used in this paragraph, the term "controlling interest" means the possession of the power to direct or cause the direction of the management or policies of an entity, whether through ownership of securities, by contract, or otherwise. A person or an entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest.

The bill reenacts ss. 496.416 and 496.417, F.S., relating to violations as deceptive or unfair trade practices and criminal penalties, respectively, to incorporate the amendment made to s. 496.415, F.S.

The effective date of the bill is July 1, 2024.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 496.404, F.S., relating to definitions.

Section 2: Amends s. 496.415, F.S., relating to prohibited acts.

Section 3: Creates s. 496.431, F.S., relating to Honest Services Registry.

Section 4: Amends s. 741.0305, F.S., conforming provisions relating to marriage fee reduction for completion of premarital preparation course.

Section 5: Reenacts s. 496.416, F.S., relating to violation as deceptive or unfair trade practice.

Section 6: Reenacts s. 496.417, F.S., relating to criminal penalties.

Section 7: Provides an effective date of July 1, 2024.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

See Fiscal Comments.

**D. FISCAL COMMENTS:**

The bill may have an indeterminate fiscal impact to DACS due to expenditures related to creating the Honest Services Registry according to DACS. Nonrecurring expenditures would be based on 60 hours of programming time to implement the Honest Services Registry and recurring loss of revenue would be due to current charities being excluded based on these new requirements.<sup>73</sup>

The bill may have an indeterminate negative fiscal impact to the private sector. According to DACS, "...non-profits and other charitable organizations that solicit from or provide support to organizations prohibited by these changes will receive less funding. The financial impact of these limitations cannot be determined with the limited data available."<sup>74</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to impact counties or municipalities.

##### 2. Other:

###### *First Amendment Right to Freedom of Speech*

The First Amendment to the US Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech."<sup>75</sup> Generally, "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."<sup>76</sup> The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.<sup>77</sup>

Prior to July 2021, charitable organizations soliciting funds in California were required by California law to disclose the identities of their major donors to the state Attorney General's Office.<sup>78</sup> In 2010, the state of California increased its enforcement of charities' Schedule B IRS form disclosure obligations, and the Attorney General ultimately threatened to suspend some registrations and impose fines for noncompliance. Two tax-exempt charities that solicit contributions in California responded by filing suit in District Court alleging that the compelled disclosure requirement violated their First Amendment rights and the rights of their donors. California argued that having this information on hand would make it easier to determine misconduct by charities.<sup>79</sup>

On July 1, 2021, the US Supreme Court held that California's disclosure requirement was facially invalid because it burdened donors' First Amendment rights and was not narrowly tailored to an important government interest. The court reviewed the California law with the understanding that "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action." The Court standard referred to as "exacting scrutiny"<sup>80</sup> requires there to be "a substantial relation between the disclosure requirement and a sufficiently important governmental interest." The Court concluded that exacting scrutiny requires that a government-mandated disclosure regime be narrowly tailored to the government's asserted interest, even if it is not the least restrictive means of achieving that end. As a result, California's blanket demand that all charities disclose Schedule Bs to the Attorney General was ruled facially unconstitutional.<sup>81</sup>

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<sup>73</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2024 House Bill 1327, p. 2 (Jan. 22, 2024).

<sup>74</sup> *Id.*

<sup>75</sup> U.S. Const., amend. I.

<sup>76</sup> *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

<sup>77</sup> U.S. Const. amend. XIV. *See also* Art. I, Fla. Const.

<sup>78</sup> Cal. Govt. Code Ann. §12584.

<sup>79</sup> *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021).

<sup>80</sup> *Buckley v. Valeo*, 424 U. S. 1, 64 (1976).

<sup>81</sup> *Americans*, *supra* note 76.

**B. RULE-MAKING AUTHORITY:**

The bill requires DACS to adopt rules to implement the Honest Services Registry. According to DACS, the “current rules would require updates to incorporate changes to applications in this program to include the required attestations.”<sup>82</sup> Current law grants DACS the authority to adopt rules to implement the provisions of the SCA.<sup>83</sup>

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

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<sup>82</sup> *Id.*

<sup>83</sup> S. 496.424, F.S.