

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 964

(Senator Kelley)

Judicial Proceedings

Rules and Executive Nominations

**Secretary of State and Attorney General - Charitable Enforcement and Protection
of Charitable Assets**

This bill generally authorizes the Attorney General to investigate and enforce specified laws relating to charitable organizations and charitable representatives in the same manner as the Secretary of State is authorized under current law; it does not diminish the authority of the Secretary of State. Specified fees for charitable organizations, fundraising counsels, and professional solicitors are increased, the additional revenues of which are distributed to the Charitable Enforcement Fund established under the bill. A new requirement is established that the Attorney General must represent the public interest in the protection of charitable assets, subject to specified authorities and conditions. The Secretary of State and the Attorney General, or their designees, must establish a workgroup to study and report on information related to charitable organizations, charitable representatives, and fundraising counsel. The bill contains additional related reporting requirements.

Provisions relating to the workgroup and reporting requirements take effect June 1, 2014.

Fiscal Summary

State Effect: Special fund revenues for the Charitable Enforcement Fund increase by \$206,600 in FY 2015 from the new fees established under the bill. Future year revenues reflect annualization and annual growth in the number of charities subject to the enhanced fees. Special fund expenditures from the fund increase by \$76,000 in FY 2015 for the Office of the Secretary of State to hire one assistant Attorney General. Future year expenditures reflect annualization, the elimination of one-time costs, and significant information technology expenditures beginning in FY 2017. General fund expenditures increase to the extent that the Office of the Attorney General (OAG) or the Secretary of State requires an additional assistant Attorney General to enforce the bill.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
SF Revenue	\$206,600	\$275,000	\$292,400	\$310,400	\$328,400
GF Expenditure	-	-	-	-	-
SF Expenditure	\$76,000	\$98,200	\$502,700	\$207,400	\$212,400
Net Effect	\$130,600	\$176,800	(\$210,300)	\$103,000	\$116,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law: Under the bill, the Attorney General may investigate and enforce specified sections of the Maryland Solicitations Act relating to charitable organizations and charitable representatives in the same manner as the Secretary of State is authorized under current law. The Attorney General may sue in the circuit court for the county in which an alleged violation occurs, instead of *only* the Circuit Court for Anne Arundel County under current law.

Charitable Enforcement Fund

The Charitable Enforcement Fund is established as a special, nonlapsing fund in the Office of the Secretary of State to support the actions of the Secretary of State and the Attorney General in administering and enforcing (1) existing laws related to charitable organizations and (2) new laws related to the protection of charitable assets established under the bill. The Secretary of State must administer the fund. The fund consists of (1) revenue from specified fees; (2) money appropriated in the State budget; and (3) any other money from any other source. The fund may only be used to support the actions of the Secretary of State and the Attorney General in carrying out their duties under the bill. Expenditures from the fund may only be made in accordance with the State budget.

Fee Increases

An applicant for registration as a professional solicitor or fundraising counsel must pay the Secretary of State an application fee of \$250 or \$350, respectively. This is a \$50 increase over current fees. Each charitable organization that submits a separate registration statement and collects at least \$500,001 in charitable contributions from the public must pay an annual fee to the Secretary of State of \$300. Under current law, the

maximum fee is \$200 and applies to each charitable organization that submits a separate registration and collects at least \$100,001 in charitable contributions from the public.

Net revenues attributable solely to the fee increases in the bill are paid into the Charitable Enforcement Fund. It is the intent of the General Assembly that these fee increases be used to provide additional resources, including personnel and information technology, for administration and enforcement of existing laws related to charitable contributions and the new laws related to the protection of charitable assets established under the bill.

Expansion of Existing Prohibitions and Protections

Under the existing Maryland Solicitations Act, the bill establishes that a person may not knowingly, with the intent to retaliate, take any action harmful to any individual because the individual provided to a law enforcement officer, the Secretary of State, or the Attorney General any truthful information relating to the commission or possible commission of any federal or State offense.

The bill also establishes that a publisher or printer of a *website* that publishes or prints a charitable solicitation in violation of existing law is not liable for the violation unless the publisher or printer has knowledge that the charitable solicitation violates the law.

Protection of Charitable Assets

A new title is established under the bill for the protection of charitable assets. “Charitable asset” means property that is given, received, or held for a charitable purpose, including all interest in real property or tangible or intangible personal property. It includes cash, remainder interests, conservation or preservation easements or restrictions, and charitable contributions. It does not include property acquired or held for a for-profit purpose. “Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose whose achievement is beneficial to the community.

The Attorney General must represent the public interest in the protection of charitable assets and may:

- enforce the application of a charitable asset in accordance with the law and terms governing the use, management, investment, distribution, and expenditure of the charitable asset and the charitable purpose of the person holding the charitable asset;

- act to prevent or remedy the misapplication, diversion, or waste of a charitable asset or a breach of fiduciary or other legal duty in the governance, management, or administration of a charitable asset;
- commence or intervene in an action to prevent, remedy, or obtain damages for the misapplication, diversion, or waste of a charitable asset or a breach of fiduciary or other legal duty in the governance, management, or administration of a charitable asset; and
- commence or intervene in an action to enforce the charitable asset laws or to determine that an asset is a charitable asset.

The Attorney General may conduct an investigation, including the use of subpoena power, if the Attorney General has reason to believe that an investigation is necessary to determine whether an action may be advisable.

If the Secretary of State and the Attorney General find or have reasonable grounds to believe that a person has misapplied, diverted, or wasted a charitable asset or breached a fiduciary or other legal duty in the governance, management, or administration of a charitable asset, the Secretary of State and the Attorney General may enter into a settlement agreement that includes (1) payment by the responsible party of the value by which the charitable asset has been diminished or (2) the transfer of the charitable asset to another charitable organization consistent with the asset's charitable purpose.

The Attorney General may sue in the circuit court for the county in which the alleged violation occurred for an order that (1) restrains the responsible party from misapplying, diverting, or wasting a charitable asset in the State and (2) secures payment of the diminished value of the charitable asset or the transfer of the charitable asset to another charitable organization consistent with the asset's charitable purpose. These specified remedies are in addition to and do not limit the powers and duties of the Secretary of State or the Attorney General under the laws related to charitable organizations. An action to enforce the new title must be brought within three years after the alleged violation occurred, which is consistent with the general statute of limitations in Maryland for civil actions.

Volunteer Immunities

The bill specifies that any action or other remedy enforcing the charitable asset provisions of the bill is subject to any immunity or limitation on liability available under State or federal law or at common law. Under current law, a volunteer of a charitable organization (or other specified associations and organizations) is not liable in damages beyond the limits of any personal insurance the volunteer may have in any suit that arises

from an act or omission of an officer, director, employee, trustee, or another volunteer of the organization for which the volunteer performs services unless (1) the volunteer knew or should have known of the act or omission and the volunteer actively participates in that act or omission or (2) after the act or omission, the volunteer, with full knowledge of that act or omission, ratifies it. Similarly, a volunteer is not liable in damages beyond the limits of any personal insurance the volunteer may have in any suit that arises from the volunteer's act or omission in connection with any services provided or duties performed by the volunteer on behalf of the organization, unless an act or omission of the volunteer constitutes gross negligence; reckless, willful, or wanton misconduct; or intentionally tortious conduct. These limitations on liability do not apply to suits brought by the Attorney General upon referral by the Secretary of State in which willful violations of the Maryland Solicitations Act are alleged and proven.

Workgroup Established

By July 1, 2014, the Secretary of State and the Attorney General, or their designees, must jointly convene and co-chair a workgroup to study (1) the information that should be reported to the Secretary of State by charitable organizations, charitable representatives, and fundraising counsel and (2) how that information can be most effectively and efficiently collected without imposing an unnecessary burden on those subject to reporting as well as how that information should be shared. The workgroup must include representation from specified stakeholder groups and the general public. The Secretary of State and the Attorney General must submit an interim report on the workgroup study, including any findings and recommendations, to the Governor and the General Assembly by December 1, 2014, and must submit a final report by July 1, 2015.

Additional Reporting Requirements

The Secretary of State and the Attorney General must jointly review the number of penalties imposed on charitable organizations that fail to pay an annual fee or file an annual report and make recommendations for ways to bring the charitable organizations that fail to pay an annual fee or file an annual report into compliance. The Secretary of State and the Attorney General must submit an interim report to the Governor and the General Assembly by December 1, 2014, and must submit a final report by December 1, 2015.

Background: The Office of the Secretary of State registers and regulates charities that solicit in Maryland, including the review of a charitable organization's financial and governing documents, as well as the review of all fundraising contracts. With some exceptions, organizations that solicit charitable contributions, professional solicitors, and fundraising counsel must register with the office. The office also receives and investigates complaints from the public. There are more than 7,000 registered charities in

the State that are subject to the Maryland Solicitations Act and provisions created under the bill for the protection of charitable assets.

The office also administers the Giving Wisely program, which provides tips for consumers to consider before making a charitable donation. The program advises consumers to know who they are giving to, ask questions before giving, request financial statements, and be on the look out for deceptive practices. Consumers can check the Maryland Charities Database to see whether a charity is registered with the office. The office has information that consumers may look at to see how much money is actually spent for the charitable purpose.

2013 Interim Briefing on Charitable Solicitations

The Joint Committee on Health Care Delivery and Financing held a briefing during the 2013 interim on consumer awareness of charitable solicitations. At that briefing, OAG stated that it has a web page about nonprofits and consumer awareness. Under current law, the office has enforcement authority through the Maryland Solicitations Act but only by referral from the Secretary of State. The Attorney General has no common law authority unlike some other states.

Also discussed at the briefing was the National Conference of Commissioners on Uniform State Laws' "Model Protection of Charitable Assets Act," approved in July 2011. The committee discussed how regulation of charities varies from state to state, which creates compliance issues for the charities themselves. The model legislation attempts to make regulation more uniform. The Department of Legislative Services (DLS) advises that the provisions in the bill relating to the protection of charitable assets are based on this model legislation.

State Effect: Special fund revenues for the Charitable Enforcement Fund increase by \$206,625 in fiscal 2015 from the increased fees established under the bill. Future year revenues reflect annualization and annual growth in the number of charities and professional solicitors/counsel subject to the enhanced fees and are \$275,500 in fiscal 2016, increasing to \$328,400 by fiscal 2019. The fund may only be used to support the activities of the Secretary of State and the Attorney General in carrying out their duties under the bill. Moreover, the bill specifies legislative intent that the fee increases be used to provide *additional* resources, including personnel and information technology, for administration and enforcement of existing laws related to charitable contributions and the new laws related to the protection of charitable assets established under the bill. Expenditures from the fund may only be made in accordance with the State budget.

OAG indicates that two assistant Attorneys General (AAGs) are needed to handle the bill's requirements within the Office of the Secretary of State, as there are more than

7,000 registered charities in the State that are subject to the Maryland Solicitations Act and provisions created under the bill for the protection of charitable assets.

The Office of the Secretary of State indicates that significant information technology expenditures of \$400,000 initially and \$100,000 annually thereafter are needed to upgrade its registration process for charities and related persons from the current method (manual data entry, payment by check only, and scanning of paperwork) to an electronic, online system. Rather than submitting paper documentation, the nonprofits would be able to submit the information electronically as well as pay the registration fee automatically via credit card. Setting up this new system requires the office to hire an outside company to build the system.

Given the amount of estimated special fund revenue, both information technology upgrades and two AAGs cannot be funded concurrently – at least not without the use of general funds. DLS notes that the bill does not preclude the use of general funds for these purposes. General fund expenditures increase to the extent that *both* information technology upgrades and *two* AAGs are funded concurrently, as special fund revenues are not anticipated to be sufficient to cover these combined costs.

However, at a minimum, one AAG is needed immediately for the enhanced regulatory oversight of charitable organizations and charitable contributions by OAG and the Secretary of State. This cost is assumed to be paid from the Charitable Enforcement Fund.

Funding one AAG from the Charitable Enforcement Fund allows a sufficient fund balance to accumulate by fiscal 2017 for the Secretary of State to implement information technology upgrades.

Accordingly, special fund expenditures increase for the Secretary of State by \$76,000 in fiscal 2015, which accounts for the bill’s October 1, 2014 effective date. This estimate reflects the cost of hiring one AAG to regulate and enforce charity and charitable contribution laws as required under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$71,221
Operating Expenses	<u>4,805</u>
Total FY 2015 State Expenditures	\$76,026

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Fiscal 2017 expenditures reflect \$400,000 in information technology upgrades for the Secretary of

State. Fiscal 2018 and 2019 expenditures reflect ongoing information technology maintenance costs related to the upgrades.

To the extent that information technology upgrades or AAG staff resources are prioritized, as determined by the Governor in the State budget, the timing and/or the allocation of these expenditures may change. Also, to the extent that enforcement levels require a second AAG, funds are available for one additional AAG in the out-years, but that is not reflected in this analysis.

Local Effect: The bill's provisions authorizing the Attorney General to sue in the circuit court for the county in which an alleged violation occurs, as opposed to *only* the Circuit Court for Anne Arundel County under current law, is not anticipated to materially impact local government finances, although it allows any administrative burden related to the enforcement of charity and charitable contribution laws to be distributed across the State rather than concentrated in Anne Arundel County.

Additional Information

Prior Introductions: None.

Cross File: HB 1352 (Delegate Morhaim, *et al.*) - Health and Government Operations.

Information Source(s): Office of the Attorney General, Secretary of State, Judiciary (Administrative Office of the Courts), Comptroller's Office, Montgomery County, Department of Legislative Services

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