

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 254

(Senator Hester)

Judicial Proceedings

Economic Matters

Business Regulation - Charitable Organizations

This bill alters the definition of “charitable contribution” to exclude an authorization for (or a discount on) the use of services or materials, equipment, or facilities, including those relating to advertising and broadcast airtime (including public service announcements). The bill further authorizes the Secretary of State (SOS) to accept certain documentation in place of an audit or review in connection with a charitable organization’s registration statement.

Fiscal Summary

State Effect: To the extent SOS receives additional requests for registration and reporting waivers, additional staff may be needed, as discussed below. Any such increase is likely temporary once initial requests for waivers are processed. Revenues are not materially affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill authorizes SOS to accept other documentation in place of the audit or review that is otherwise required as part of the registration process. Specifically, SOS may accept supporting documents indicating, and an affidavit attesting, that:

- the charitable organization (1) primarily solicits in-kind contributions; (2) receives specified donations of property that are intended to be redistributed to individuals

residing in the State without charge; (3) does not employ a professional solicitor or fund-raising counsel; (4) used Generally Accepted Accounting Principles to determine the value of property received as charitable contributions during the immediately preceding fiscal year; (5) has cash receipts from charitable contributions not exceeding \$300,000 and amounting to 20% or less of the charitable organization's gross income during the immediately preceding fiscal year that are used for program services or management and general expenses, as specified under State regulations; (6) is current and up to date in all relevant registration and reporting requirements; (7) is in good standing with the State Department of Assessments and Taxation (if applicable); and (8) has tax-exempt status under specified provisions of the Internal Revenue Code;

- the charitable contributions of property are directly related to the purposes for which the charitable organization was organized and will be used in conducting the charitable organization's programs; and
- the governing body of the charitable organization (1) is composed of at least three independent and unrelated directors and (2) completed an onboarding and training program during the immediately preceding fiscal year, provided internally or externally, that covered specified topics.

Current Law: The Business Regulation Article defines a “charitable contribution” as a contribution made on a representation that it will be used for a charitable purpose. A charitable contribution includes the payment, transfer, or enforceable pledge of financial help, including money, credit, property, or services.

However, a charitable contribution does not include:

- an unsolicited gift;
- a government grant or government money;
- membership assessments, dues, or fines;
- a payment for property sold (or services rendered) by a charitable organization – unless the property is sold or the services rendered in connection with a charitable solicitation; and
- a public safety contribution (*i.e.*, a contribution made on a representation that it will be used for the purposes of a public safety organization).

SOS registers and oversees charitable organizations in the State and maintains an [online database](#) of registered entities.

A charitable organization is a person that:

- is or holds itself out to be a benevolent, educational, eleemosynary, humane, patriotic, philanthropic, or religious organization; and
- either (1) solicits or receives charitable contributions from the public or (2) is an ambulance, firefighting, fraternal, rescue, or police or other law enforcement organization when it solicits charitable contributions from the public.

A charitable organization must register and receive a registration letter from SOS before it (1) solicits charitable contributions in the State; (2) has charitable contributions solicited on its behalf in the State; or (3) solicits charitable contributions outside the State if the organization is in the State.

A registered charitable organization must submit an annual report to SOS, as specified. SOS may exempt an organization from registration and reporting requirements if the charitable organization (1) is organized under the laws of another state that has a statute similar to Maryland's; (2) has been exempted from the submission of a registration statement by the other state; (3) has a principal place of business outside the State; and (4) gets its money principally from sources outside the State.

Auditing Requirements: In addition to other information and materials necessary to complete the registration statement, charitable organizations must submit an audit by a certified public accountant (CPA) if the gross income from contributions in the most recent fiscal year is at least \$750,000, or a review by an independent CPA if the gross income from contributions from the last fiscal year is at least \$300,000 but less than \$750,000. SOS may accept other documentation in place of either the audit or the review but may also require an audit or review if the amount of gross income is less than \$750,000. SOS retains the authority to require an audit or review under the bill.

State Expenditures: SOS advises that the bill may have an operational impact on the agency, as the bill's exclusion of certain charitable contributions may result in an influx of requests from charitable organizations to submit alternative documentation instead of audits or reviews, and that it must review and make a determination on each request. Although this analysis assumes the effect of additional exclusions from the audit requirement is limited, if the bill results in a significant level of exclusions, SOS may require additional staff to manage an influx of requests. Although SOS anticipates that as many as 18,000 charities may submit requests to provide alternative documentation, it acknowledges that the exact number of charities that may ultimately request an exemption cannot be reliably determined at this time. Thus, a reliable estimate of the impact on SOS operations cannot be determined.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 72 (Delegate Watson) - Economic Matters.

Information Source(s): Office of the Attorney General; Secretary of State; Department of Legislative Services

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