

**House Commerce Committee
Public Hearing on HB 1240, PN 2089
November 17, 2015
9:30 AM**

**Room B31- Main Capitol
Written Testimony of Peter Speaks, Deputy Secretary for Regulatory Programs
Pennsylvania Department of State**

Thank you, Chairman Harris, Minority Chairman Thomas, and members of the committee for allowing the Department of State to submit written comments for the record on HB 1240, PN 2089 which would amend the Solicitation of Funds for Charitable Purposes Act, § 10 P.S. 162.1, *et seq.* The Department, through the Bureau of Corporations and Charitable Organizations (“Bureau”), administers the Solicitation of Funds for Charitable Purpose Act (“Act”). It also maintains registration and financial information on over 11,000 charities soliciting in the Commonwealth, as well as more than 400 professional solicitors and fundraising counsels. The Bureau protects Pennsylvania residents by: (1) providing public disclosure of documents filed by charities and professional fundraisers; (2) providing consumer education; and (3) investigating and prosecuting complaints of reporting violations and fraudulent diversion of charitable funds. On September 30, 2015, the Bureau released the *2014/2015 Annual Charities Report*. The report provides an overview of the Bureau’s activities, including registrations, investigations and audits of charitable organizations. The report also provides helpful information for consumers making charitable-giving decisions.

The Wolf Administration and the Department of State support Representative Quinn’s goal to ensure that those soliciting funds on behalf of charitable causes are doing so in the best interest of Pennsylvanians. The comments below include key findings from the Bureau of Corporations and Charitable Organizations *2014/2015 Annual Charities Report* as well as the Department of State’s assessment of HB 1240.

I. **Key Findings from 2014/2015 Annual Charities Report**

The Bureau of Corporations and Charitable Organizations *2014/2015 Annual Charities Report* covered the reporting period of July 1, 2014 to June 30, 2015. Below are select highlights from the report. The full report can be viewed on the Department of State website at: <http://www.dos.pa.gov/BusinessCharities/Charities/Resources/Pages/Annual-Reports.aspx>

Registration

- The Department of State registered more than 11,356 Charitable Organizations
- Reviewed more than 2,157 documents filed by more than 463 professional solicitors and professional fundraising counsels
- Received registration information from more than 2,902 institutions of purely public charity
- Processed checks totally over \$2.4 million

- Responded to over 22,000 inquiries for information

Professional Solicitors

- On June 30, 2015, there were 122 professional solicitors registered with the Bureau
- During the 2014/2015 fiscal year, professional solicitors filed campaign reports reflecting total revenue of \$1,426,877,240 and total expenses of \$815,136,632 in Pennsylvania. The charitable organizations contracting with the solicitors received \$611,740,758 or 42.87% of the total revenue raised.

Professional Fundraising Counsel

- On June 30, 2015, there were 341 professional fundraising counsel registered with the Bureau

Cease and Desist Orders

- The Investigation Division issued 20 Cease and Desist Orders since the last annual report, and there are 319 Orders currently in effect. A list of Cease and Desist Orders is available on the website.

II. Department of State Recommendations Regarding HB 1240

As noted by Secretary of State Pedro A. Cortés during the House Appropriations Committee Budget Hearing on March 24, 2015, the Department is committed to ensuring that charitable contributions are handled appropriately. The Department shares Representative Quinn's concern that there is a lack of public knowledge regarding the percentage of charitable contribution funds going to professional solicitors instead of programs to further the mission of the charity.

A. Current Requirements Under "The Solicitation of Funds for Charitable Purposes Act"

The Solicitation of Funds for Charitable Purposes Act requires organizations soliciting charitable contributions in Pennsylvania to register annually with the Department of State's Bureau of Corporation and Charitable Organizations unless they are specifically excluded under the definition of "charitable organization," or specifically exempted from registration. Depending on the amount raised, the charity is required to submit audited or reviewed financial statements as part of the annual registration.

The Act also requires professional solicitors and professional fundraising counsel to register with the Bureau prior to soliciting for charitable organizations in Pennsylvania. Professional solicitors are for-profit companies that are retained (i.e. paid) by a charitable

organization to do “The Ask” – to solicit or ask Pennsylvania citizens to contribute to the charitable cause. This is typically done through telemarketing campaigns. Fundraising counsel are for-profit companies or individuals who are retained by a charitable organization for a fixed fee or rate to plan, manage, advise, consult or prepare material for a charitable organization which is soliciting in Pennsylvania. Fundraising counsel do not do “The Ask” and do not have custody or control of contributions.

B. Requirements Under HB 1240, PN 2089

HB 1240 amends the Solicitation of Funds for Charitable Purposes Act to: (1) establish a Charitable Organization Regulation Account as a restricted account; (2) double all existing registration fees and administration fines; (3) establish a new licensure class and annual license fee for individual officers, employees and agents of professional solicitors; and (4) establish new reporting requirements for charities that generate more than \$1 million in gross national contributions but spend 25% or less on program service costs and those charities that undertake disaster relief solicitations.

C. Suggested Amendments to HB 1240, PN 2089

While supporting the concept of HB 1240, the Department has suggested amendments to better effect the purpose of the legislation. These amendments were forwarded to Representative Quinn’s staff for consideration in May 2015. Some of the suggested amendments are somewhat technical in nature while others are more substantive. These amendments:

- Define existing terms such as “program service costs” and amend the definition for “contribution.”
- Add terms and definitions for “accounting method” and “gross national contributions.”
- Clarify that officers, directors, trustees, employees, volunteers or independent contractors of charitable organizations who have been convicted of any felony or a misdemeanor involving dishonesty or arising from the conduct of a solicitation may not solicit contributions or have control or custody of contributions. This is based on Bureau experience that fiduciaries of the organizations (those with custody and control of funds) are most likely to be the perpetrators of fraud.
- Clarify the new supplemental financial disclosure section (5.1) and new section requiring financial statements for specific disaster relief solicitations (5.2) to dovetail relevant reporting terms with language used by IRS for tax reports. Any new language should track IRS definitions and numbers used on the *IRS Federal Form 990* tax-exempt organization tax return as closely as possible, so that organizations will be better able to comply with the new report.
- Amend the disclosure statement required on all solicitation statements to include website contact information for the Department of State.

D. Professional Solicitor Licensing Requirement

To protect residents of this Commonwealth, legitimate charitable organizations, and the charitable community, professional solicitors are currently required to register their organizations annually with the Bureau. It is unclear whether a licensure requirement will increase the protection of Commonwealth residents and charitable organizations. It is the Department's assessment that the licensure requirement proposed in HB 1240 may unduly burden individuals not directly working on solicitation campaigns. For example, under the current language, HB 1240 may require employees who perform non-fiduciary functions, such as direct-mail campaigns or direct advertising, to obtain a solicitation license. The Department conducted an assessment of states with existing licensing requirements and four states, Florida, Maine, Michigan and North Carolina require licensure for professional solicitors or professional fundraisers. HB 1240's requirement that "officers, directors, owners, employees, agents or servants of professional solicitors" obtain a license covers more individuals associated with the professional solicitor than other state laws. For example, Florida's law limits licensure of professional solicitors and their officer, director, trustee or owner, only if they are conducting telephonic solicitations and request a donor's financial information.

Thank you for allowing us to provide these comments for your review. Please let the Department know if you have any additional questions or concerns.