



WASHINGTON STATE MEMBER E-NEWS UPDATE: Winter 2007 edition

## **Important Washington State Legislation** **Lynn G. Schrader, CFRE, The Schrader Group**

### **DRAFT LEGISLATION PROPOSES TO REVISE WASHINGTON'S CHARITABLE SOLICITATIONS ACT**

Washington's Charitable Solicitations Act (RCW 19.09) was originally passed in 1987. Over the past 21 years, only minor technical revisions have been made to the legislation. Last year, Secretary of State Sam Reed planned to introduce legislation that would significantly update and amend the original law. Many leaders in the nonprofit community thought that the 2006 legislation was assembled in haste, with little input from the nonprofit community, and that it would have significant negative impacts on the sector. Fortunately, the Secretary of State was persuaded to withdraw the legislation and sought more input from the nonprofit community before drafting the 2007 proposal.

The 2007 version responds to the comments that were made at the six town hall meetings held last summer across the state and has benefited from detailed suggestions from the Advisory Task Force appointed by the Secretary of State in the fall of 2006.

Many people who have been following this issue for the past 15 months think the proposed legislation would, if adopted by the legislature, result in a more effective and less burdensome charitable solicitations program in Washington, improve accountability and transparency, and, ultimately, help further increase the public's trust in Washington's nonprofit sector.

Key provisions of the draft legislation include authority for the Secretary of State to adopt rules (following the Administrative Procedures Act RCW 34.05) that establish a set of tiered independent financial reporting requirements for charitable organizations. Rules adopted would include:

1. Retention of the filing requirement for all charities that currently file an annual report with the Secretary of State (organizations with an annual budget of \$25,000 or more)
2. Require larger organizations covered by the act to secure an independent review of financial results. For organizations with more than \$1 million in annual revenues, the rule may require that their normal IRS 990 filings be prepared or reviewed by an independent expert
3. Organizations with more than \$3 million in annual revenues would routinely be required to include a copy of an audited financial statement with their report to the Secretary of State

In cases 2 and 3, the calculation of the threshold is to be based on the gross revenue of the averaged over the past three fiscal years.

Boards will be required to review and accept financial reports to be filed with the Secretary of State under this act. A penalty may be imposed on an organization that files a financial report that is incorrect in "any material way."

The draft gives the Secretary of State the authority to operate an education program for charities, their boards and the general public, supported by an increase in registration fees - the first increase in over 20 years, and to appoint an advisory council to assist with the design of that program.

The draft also provides for reciprocal agreements with other states that set conditions allowing organizations that operate elsewhere to file with their home states in lieu of reporting under Washington's law.

The 2007 draft also clarifies several definitions and clarifies the types of organizations and charitable appeals that are excluded from its requirements. The effect of these changes is to make clear that "fundraising counsel" (i.e., consultants who do not conduct campaigns or receive charitable gifts from donors) do not have to register and that the act does not apply to an appeal for a named person (such as a family that has lost their home in a fire) so long as all the proceeds go directly to that person.

In the definitions section there are these changes and clarifications:

"Charitable purposes" are defined using language based on the IRS Code and regulations. The legislation explicitly includes the benefiting of persons who protect public safety such as law enforcement personnel and firefighters - historically an area requiring investigation and enforcement by the Attorney General.

"Church" and "religious organizations" are defined separately to allow greater clarity for the point that churches are excluded while faith-based social agencies are required to comply with the charitable solicitations act.

"Fundraising Counsel" and "Commercial Coventurers" (sellers who say that part of the proceeds of a sale will be donated to a named charitable organization) are excluded from the definition of "commercial fund raiser."

A major purpose of RCW 19.09 is, of course, to require Commercial Fund Raisers to register with the secretary of state and to file reports on the fundraising that they do on behalf of client charitable organizations.

To read the proposed legislation and a brief summary prepared by the Secretary of State, log onto: [www.Secstate.wa.gov](http://www.Secstate.wa.gov). In the left column, click "Charities," then scroll down to "2007 Charities Draft Legislation."

In late January, Secretary of State Sam Reed submitted his legislation that would update and amend the Charitable Solicitations Act (Senate Bill 5662 and the identical House Bill 1777). The AFP - Washington Chapter executive committee has endorsed the legislation and submitted a letter of endorsement into the public record. The bill will have its first committee hearing in the Senate on Feb. 8 and the House on Feb. 9. Subsequently, the bills should be voted on in both the Senate and House chambers and then reach the Governor's desk for signature. To follow the progress of the legislation, log onto: [www.leg.wa.gov](http://www.leg.wa.gov)

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