

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: SB 938

INTRODUCER: Senator Bracy

SUBJECT: Department of Corrections' Direct-support Organization

DATE: February 6, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Jones</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Forbes</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 938 removes the scheduled repeal date of the law authorizing the Florida Department of Corrections (DOC) to establish a direct-support organization to provide assistance, funding, and promotional support for the DOC or staff within the correctional system in carrying out the core mission. The Corrections Foundation, Inc., is the direct-support organization designated by the DOC to provide assistance, funding, and support for the DOC and its staff.

Staff of the Senate Committee on Criminal Justice finds that the Florida Department of Corrections and the Corrections Foundation, Inc., are in compliance with all statutory requirements relevant to direct-support organizations.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2018.

**II. Present Situation:**

**Florida Department of Corrections**

The DOC is the third largest state prison system in the country with a budget of \$2.4 billion,<sup>1</sup> almost 97,000 inmates incarcerated, and another almost 137,000 offenders on active community supervision.<sup>2</sup> The mission of the DOC is to “provide a continuum of services to meet the needs of those entrusted to our care, creating a safe and professional environment with the outcome of reduced victimization, safer communities and an emphasis on the premium of life.”<sup>3</sup>

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<sup>1</sup> The DOC, *About the Florida DOC*, available at <http://www.dc.state.fl.us/about.html> (last visited January 5, 2018).

<sup>2</sup> Email from Jared Torres, Director of Legislative Affairs, The DOC, RE: Number of inmates and offenders (January 5, 2018).

<sup>3</sup> The DOC, *Our Vision*, available at <http://www.dc.state.fl.us/vision.html> (last visited January 13, 2018).

The DOC has 148 facilities statewide: 50 prisons, seven private partner prisons, 17 prison annexes, 35 work camps, three re-entry centers, 13 state-run community release centers, 19 privately operated community release centers, two road prisons, one forestry camps, and one basic training camp.<sup>4</sup> Approximately two thirds of its staff of more than 24,000 employees are either certified correctional officers or probation officers.<sup>5</sup>

To successfully achieve its mission, the DOC provides academic, vocational, and substance abuse programs to inmates and offenders, including in such areas as general education development, also known as the GED; adult basic education and mandatory literacy; printing and graphics, carpentry and digital design; and Alcoholics Anonymous and Narcotics Anonymous.<sup>6</sup>

### **The Corrections Foundation, Inc.**

Direct-support organizations (DSOs) are statutorily created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a DSO are prescribed by its enacting statute and also, for most, by a written contract with the agency the DSO was created to support.<sup>7</sup>

In 1996, the Florida Legislature created s. 944.802, F.S., establishing a DSO for the exclusive benefit of the DOC.<sup>8</sup> The Corrections Foundation, Inc. (Foundation) initially filed for incorporation as a not-for-profit organization on December 6, 1996.<sup>9</sup> The Foundation consists of an executive staff and a volunteer board of directors.<sup>10</sup> Membership in the Foundation consists of current and retired employees of the DOC, contractors, and individuals from other state and private agencies.<sup>11</sup>

The Foundation reports that it supports the DOC and its staff through two main functions, including:

- Accepting donations and grant money from private entities that must be donated through a non-profit entity and cannot be accepted directly by the DOC; and

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<sup>4</sup> The DOC, *About the Florida DOC*, available at <http://www.dc.state.fl.us/about.html> (last visited January 5, 2018).

<sup>5</sup> During FY 2015-16 there were 17,836 certified employees in institutions or probation/parole offices consisting of: 15,769 certified employees in institutions (10,667 Correctional Officers, 4,092 Sergeants, 440 Lieutenants, 311 Captains, 81 Majors, 43 Colonels, and 135 Correctional Inspectors in the Office of the Inspector General) and 2,067 certified Correctional Probation Officers. Department of Corrections, *Annual Report Fiscal Year 2015-2016*, p. 5, available at [http://www.dc.state.fl.us/pub/annual/1516/FDC\\_AR2015-16.pdf](http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf) (last visited January 18, 2018).

<sup>6</sup> *Supra*, n. 1.

<sup>7</sup> Section 944.802, F.S., is the enacting statute for the DOC's DSO, which requires a written letter of agreement between the DOC and the Foundation, rather than a contract.

<sup>8</sup> Chapter 96-312, L.O.F.

<sup>9</sup> Department of State, Division of Corporations, *Corrections Foundation, Inc., Detail by Entity Name*, available at <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=CORRECTIONSFOUNDATION%20N960000062141&aggregateId=domnp-n96000006214-bebf4ba6-69dc-49c7-85e6-5f773e468d97&searchTerm=corrections%20foundation&listNameOrder=CORRECTIONSFOUNDATION%20N960000062141> (last visited January 5, 2018).

<sup>10</sup> Corrections Foundation, *About*, available at <https://www.correctionsfoundation.org/about/> (last visited January 5, 2018).

<sup>11</sup> *Id.*

- Providing direct financial support to employees of the DOC in times of death, fire, critical illness, or other tragic circumstances through the Employee Assistance Program (EAP).<sup>12</sup>

### **Repeal of s. 944.802, F.S., and DSO Compliance Review**

Section 20.058(5), F.S., provides that laws creating or authorizing a DSO repeal on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. This subsection further provides that DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019. Section 944.802(4), F.S., provides that the section is repealed October 1, 2018, unless reviewed and saved from repeal by the Legislature.

Staff of the Senate Committee on Criminal Justice reviewed relevant materials to determine if the DOC and the Foundation comply with the requirements of s. 944.802, F.S., and with other statutory requirements for DSOs: s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements); s. 215.981, F.S. (CSO/DSO Audit Requirements); and s. 112.3251, F.S. (CSO/DSO Ethics Code Requirement).

### **Staff Review of Compliance with s. 944.802, F.S. (DSO to Support the DOC)**

#### ***Establishment of the DSO***

Section 944.802(1), F.S., authorizes the DOC to establish a DSO to provide assistance, funding, and promotional support for activities authorized for the DOC. For purposes of s. 944.802, F.S., “direct support organization” means an organization that is:

- A corporation not for profit that is incorporated under ch. 617, F.S., exempted from filing fees, and approved by the Department of State;
- Organized and operated to conduct programs and activities; initiate developmental projects; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures to or for the direct or indirect benefit of the DOC or individual units of the state correctional system;
- Determined by the DOC to be consistent with the priority issues and objectives of the DOC and in the best interest of the state; and
- Approved in writing, through a letter of agreement, by the Secretary of the DOC to operate for the direct or indirect benefit of the DOC or individual units of the state correctional institution.<sup>13</sup>

The letter of agreement between the DOC and the Foundation provides the following:

- The Foundation is specifically re-authorized to act as the DSO “for the direct and indirect benefit of the Department of Corrections or individual units of the state correctional system”;
- The Foundation’s mission is expressly consistent with the statutory mission of the DOC to support the programs, personnel, and services of the DOC as is required in s. 944.802, F.S.; and

<sup>12</sup> Email from Jared Torres, Director of Legislative Affairs, RE: The Corrections Foundation – FDC’s DSO, *The Corrections Foundation – Background Information* (September 7, 2017) (on file with the Senate Committee on Criminal Justice).

<sup>13</sup> Section 944.802(1), F.S.

- The DOC will provide support to the Foundation in the form of staffing, office space, access to OIT support, and inclusion of the Foundation’s information in all employee orientation materials.<sup>14</sup>

*Staff Finding: Compliance.* The Foundation meets the definition of “direct support organization.” In 1996, the Foundation was established as a Florida non-profit corporation under ch. 617, F.S., and is approved by the Department of State.<sup>15</sup> “[T]he Corrections Foundation has been able to undertake numerous initiatives that directly benefit the Department.”<sup>16</sup> The Foundation is also in compliance with the “use of property” requirements of s. 944.802, F.S.<sup>17</sup>

### *Activities of the DSO*

Section 944.802(1), F.S., provides that the activities of the DSO must be determined by the DOC to be consistent with the goals and mission of the DOC and in the best interests of the state. The approval must be given in a letter of agreement from the DOC.

Some of the projects operated by the Foundation include, but are not limited to:

- Employee Assistance Program, which has provided direct financial support to over 5,700 employees of the DOC in times of need;
- Fallen Officers Fund,<sup>18</sup> which has provided funding to the families of officers that have been killed in the line of duty;
- Florida State Prison Officer Safety Project, which provided funds to install openings within cell doors of higher risk inmates to allow food trays to be passed through the cell door, thereby reducing contact and the risk of injury to officers;
- Flags for Freedom,<sup>19</sup> which has sent care packages to employees of the DOC that are deployed in the military on active duty; and
- Disaster Relief Fund,<sup>20</sup> which has raised funds to benefit almost 1,500 employees of the DOC who have been impacted by catastrophic storms or flooding over the last 13 years.<sup>21</sup>

The community donations and grants accepted by the Foundation for the benefit of the DOC have been utilized to enhance operational programs within the DOC, such as the:

<sup>14</sup> Letter of Agreement between the DOC and the Foundation (effective June 15, 2017) (on file with the Senate Committee on Criminal Justice). The letter further states that use of the state e-mail system to notify agency employees must be approved by the Secretary or Chief of Staff on a case-by-case basis.

<sup>15</sup> *Supra*, n. 9.

<sup>16</sup> Letter from the DOC Secretary, Julie L. Jones, to Senate President, Joe Negron, dated August 8, 2017, Corrections Foundation, *2017 Corrections Foundation Report*, p. 1, available at <https://www.correctionsfoundation.org/wp-content/uploads/2011/06/2017-Corrections-Foundation-Report.pdf> (last visited on January 12, 2018) (hereinafter cited as “Foundation Annual Report”).

<sup>17</sup> *Id.*

<sup>18</sup> This project has raised funds for two officers that were killed in the line of duty, Officer Greg Malloy and Sergeant Ruben Thomas. Funds are raised for a period of time and then disbursed to the family in one lump sum. Email from Scotti Vaughan, Deputy Director of Legislative Affairs, RE: FW: The Corrections Foundation – FDC’s DSO (January 16, 2018).

<sup>19</sup> The Corrections Foundation, Inc., reports that more than 400 employees of the DOC have served in the nation’s military since 2001. The deployed employees have received care packages that include items such as gift cards and prepaid phone cards from the Foundation. Foundation Annual Report, p. 4.

<sup>20</sup> Email from Scotti Vaughan, Deputy Director of Legislative Affairs, DOC, RE: FW: The Corrections Foundation – FDC’s DSO (January 16, 2018).

<sup>21</sup> Foundation Annual Report, p. 4.

- Inspector General’s Office K-9 unit;<sup>22</sup>
- K-9 tracking units;<sup>23</sup>
- Dog obedience prison programs;<sup>24</sup>
- Farm Worker Housing Initiative; and
- Chaplaincy programs.<sup>25</sup>

*Staff findings: Compliance.* The letter of agreement states that the DOC has determined that the provision of services provided by the Foundation is consistent with DOC’s goals and in the best interest of the state.<sup>26</sup>

### ***Requirements Relating to Use of Services, Property, and Facilities***

Section 944.802(2)(a), F.S., authorizes the DOC to allow the Foundation to use fixed property and facilities of the state correctional system, provided the use is for the approved purpose of the DSO and does not interfere with the opportunities for inmates and staff to use the areas for established purposes. The DOC is prohibited from allowing the DSO to use fixed properties or facilities if such DSO does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin as required and specified by appropriate federal and state laws.<sup>27</sup>

*Staff findings: Compliance.* The DOC reports that it has not rented any facilities or properties to the Foundation.<sup>28</sup> The letter of agreement requires the inclusion of the Foundation’s information in all employees’ orientation materials, thereby ensuring equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin as required and specified by appropriate federal and state laws.<sup>29</sup> Additionally, the DOC reports that the Foundation provides equal membership and employment opportunities to all persons as required by law.<sup>30</sup>

### ***Independent Annual Financial Audit***

Section 944.802(3), F.S., requires the DSO to provide for an independent annual financial audit in accordance with s. 215.981, F.S.

Section 215.981(1), F.S., generally requires a DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts

<sup>22</sup> The Foundation has purchased needed supplies such as vehicles, K-9 cell phone and drug detection dogs, and equipment for the K-9 officers. Foundation Annual Report, p. 4.

<sup>23</sup> The Foundation has utilized funds for GPS tracking collars and other equipment for K-9 teams that are used statewide by local law enforcement to locate missing children or elders and inmates that have escaped. Foundation Annual Report at p. 4-5.

<sup>24</sup> There are 21 dog obedience training programs operated at various facilities throughout the state. The Foundation has utilized funds to support these programs. Foundation Annual Report, p. 5.

<sup>25</sup> Foundation Annual Report, p. 5.

<sup>26</sup> *Supra*, n. 14 and 16.

<sup>27</sup> Section 944.802(2)(c), F.S.

<sup>28</sup> Email from Scotti Vaughan, Deputy Director of Legislative Affairs, DOC, RE: Question (January 16, 2018).

<sup>29</sup> *Supra*, n. 14.

<sup>30</sup> *Supra*, n. 28.

and records.<sup>31</sup> The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the DSO supports. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a DSO's accounts and records.<sup>32</sup>

*Staff findings: Compliance.* The Foundation has annual expenditures in excess of \$100,000 and is therefore subject to the auditing requirements of s. 215.981, F.S. Records of the independent financial audits from 2007 through 2016 are posted on the Foundation's website and submitted with the annual report.<sup>33</sup>

### **Staff Review of Compliance with s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements)**

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for DSOs.<sup>34</sup>

#### ***Reporting Requirements***

Specifically, the law requires each DSO to annually submit, by August 1, the following information to the agency it supports:<sup>35</sup>

- The DSO's name, mailing address, telephone number, and website address;
- The statutory authority or executive order that created the DSO;
- A brief description of the mission and results obtained by the DSO;
- A brief description of the DSO's plans for the next three fiscal years;
- A copy of the DSO's code of ethics; and
- A copy of the DSO's most recent Internal Revenue Service (IRS) Form 990.<sup>36</sup>

*Staff findings: Compliance.* In 2017, the DOC reported all of the information required by s. 20.058(1), F.S. The copy of the IRS Form 990 provided in the 2017 Corrections Foundation Annual Report is for Fiscal Year 2015-16. The Foundation provided in email the IRS 990 form for Fiscal year 2016-17, which ended on June 30, 2017.<sup>37</sup>

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<sup>31</sup> The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Section 215.981(1), F.S. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services. Section 215.981(2), F.S.

<sup>32</sup> Section 11.45(3)(d), F.S.

<sup>33</sup> Foundation Annual Report, p. 9-52. *See also* Corrections Foundation, Forms and Publications, Audits, available at <https://www.correctionsfoundation.org/about/forms-and-publications/> (last visited January 16, 2018).

<sup>34</sup> Chapter 2014-96, L.O.F.

<sup>35</sup> Section 20.058(1), F.S.

<sup>36</sup> The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.

<sup>37</sup> Email from Scotti Vaughan, Deputy Director of Legislative Affairs, DOC, RE: FW: DSO Review (January 16, 2018), including attachment Corrections Foundation, *IRS 990 Form, Fiscal Year 2016-17* (on file with the Senate Committee on Criminal Justice).

### ***Transparency of Reported CSO or DSO Information***

Additionally, the information submitted annually by a DSO must be available on the respective agency's website along with a link to the DSO's website, if one exists.<sup>38</sup>

*Staff findings: Compliance.* The DOC website provides a link to the Foundation's website<sup>39</sup> and the information described in s. 20.58(1) F.S., is available on the Foundation's website.<sup>40</sup>

Section 20.058(3), F.S., provides that, by August 15 of each year, the agency must report the above required information to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability along with the agency's recommendation to continue, terminate, or modify the agency's association with the DSO.<sup>41</sup>

*Staff findings: Compliance.* The DOC submitted its report by August 15, 2017, and the DOC Secretary, Julie L. Jones, expressed support for the continuation of the Corrections Foundation, Inc.<sup>42</sup>

### ***Contract Requirements***

Section 20.05(4), F.S., provides that any contract between an agency and a DSO must be contingent upon the DSO submitting and posting information pursuant to s. 20.058(1) and (2), F.S. The contract must also include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If an organization fails to submit the required information for two consecutive years, the agency head shall terminate any contract between the agency and the organization.

*Staff findings: Substantial compliance.* The letter of agreement provides that the agreement is written pursuant to the requirements of s. 944.802(1), F.S.<sup>43</sup>

### **Staff Review of Compliance with s. 215.981, F.S. (DSO Audit Requirements)**

As previously noted, s. 215.981(1), F.S., requires each DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records. [For a full description of the statute, *see* discussion, *supra*, of s. 944.802(3), F.S. (Independent Annual Financial Audit)].

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<sup>38</sup> Section 20.058(2), F.S. Further, s. 20.058(4), F.S., requires that any contract between an agency and a DSO must be contingent upon the DSO submitting the required information to the agency and posting the information on the agency's website. If a DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate its contract with the DSO.

<sup>39</sup> DOC, *About Us*, Corrections Foundation Tab, available at <http://www.dc.state.fl.us/index.html> (last visited January 16, 2018). *See also* Corrections Foundation, available at <https://www.correctionsfoundation.org/> (last visited January 18, 2018).

<sup>40</sup> Corrections Foundation, Forms and Publications, available at <https://www.correctionsfoundation.org/about/forms-and-publications/> (last visited January 16, 2018).

<sup>41</sup> Section 20.058(3), F.S.

<sup>42</sup> *Supra*, n. 16.

<sup>43</sup> *Supra*, n. 14.

*Staff findings: Compliance.* As previously noted, the Foundation is in full compliance of the auditing requirements of ss. 215.981 and 944.802, F.S.<sup>44</sup>

### **Staff Review of Compliance with s. 112.3251, F.S. (CSO/DSO Ethics Code Requirement)**

Section 112.3251, F.S., requires a DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.<sup>45</sup> A DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.<sup>46</sup>

*Staff findings: Compliance.* The Foundation has a code of ethics which is conspicuously posted on its website<sup>47</sup> and that contains the specified standards of conduct and disclosures.

### **III. Effect of Proposed Changes:**

The bill removes the scheduled repeal date of the law authorizing the Florida Department of Corrections (DOC) to establish a direct-support organization to provide assistance, funding, and promotional support for the DOC or staff within the correctional system in carrying out the core mission. The Corrections Foundation, Inc., currently provides such assistance, funding, and support.

The bill takes effect July 1, 2018.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>44</sup> *Supra*, n. 33.

<sup>45</sup> Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

<sup>46</sup> Section 112.3251, F.S.

<sup>47</sup> See Corrections Foundation, Forms and Publications, Operational and Governing Documents, (“Code of Ethics” tab) available at <https://www.correctionsfoundation.org/about/forms-and-publications/> (last visited on January 16, 2018).



**B. Private Sector Impact:**

By saving s. 944.802, F.S., from repeal, the DSO may continue to provide assistance, financial support, and other direct and indirect assistance for employees of the state correctional system in addition to the families of such staff.

**C. Government Sector Impact:**

The bill does not affect state revenues or expenditures. By saving the DSO from repeal, the bill enables the DSO to continue to fund and administer projects and activities such as those described above.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 944.802 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.