

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 861 Department of Veterans' Affairs
SPONSOR(S): Reagan and others
TIED BILLS: HB 863 **IDEN./SIM. BILLS:** SB 1462

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Healthy Seniors</u>	<u>8 Y, 0 N</u>	<u>DePalma/Massengale</u>	<u>Ciccone</u>
2) <u>Healthcare Council</u>	<u></u>	<u>DePalma/Massengale</u>	<u>Gormley</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

House Bill 861 directs the Florida Department of Veterans' Affairs ("the department") to authorize the establishment of direct support-organizations (DSOs) for the purpose of providing assistance, funding, and support to the department. The bill provides for governance of the DSO by a board of directors, and specifies board composition and term limits. The bill additionally requires that a DSO shall operate under a written contract with the department, and provides contract requirements. The bill authorizes the department to permit use of departmental property, facilities, and personal services by the DSO under certain circumstances. Finally, the bill restricts transactions or agreements between the DSO it authorizes and another DSO absent approval by the department's executive director, requires the DSO to submit certain federal tax documents to the department, and provides for an annual financial audit of the DSO in accordance with s. 215.981, F.S.

The bill redirects twenty percent of the funds generated from the sale of the "Florida Salutes Veterans" specialty license plate – presently deposited in the State Homes for Veterans Trust Fund and administered by the department – toward the DSO for the sole purpose of providing direct or indirect benefit to the department.

The bill also repeals the Florida Commission on Veterans' Affairs (FCVA), an unfunded entity assigned to the department for purposes of conducting a biennial survey of possible contributions that veterans or veterans' organizations could make to the state. The bill deletes statutory cross-references to the FCVA, provides that the Department of Management Services shall consult with the department in designating and approving the Florida Medal of Honor Wall, and specifies that three members of the board of directors of the DSO established by this bill shall sit on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas.

The bill has a negative fiscal impact on the State Homes for Veterans Trust Fund of approximately \$80,226.

The bill provides an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill repeals the Florida Commission on Veterans' Affairs, an unfunded entity assigned to the Department of Veterans' Affairs, and reassigns certain responsibilities and duties of the commission to the department and members of the direct-support organization established by this legislation.

Empower Families – To the extent that the direct-support organization established by this bill is successful in generating contributions for the direct or indirect benefit of the Department of Veterans' Affairs, the department would potentially be better-equipped to meet the needs of the growing number of younger veterans who have served or are serving in the Global War on Terror, and who claim Florida as their home of record.

B. EFFECT OF PROPOSED CHANGES:

Background

Direct-Support Organizations

While no general statutory definition for a direct-support organization (DSO) exists in Florida Statute, a DSO is a Florida not-for-profit corporation, incorporated under the provisions of ch. 617, F.S., and authorized by law to benefit or provide assistance to a governmental entity. Generally, a DSO is created to give a governmental entity the flexibility to seek an additional funding source, and to enhance the mission of the departments or political subdivisions they support.

Each DSO tends to be specifically authorized or created in statute. Oftentimes, the authorizing statute establishes requirements for the organization's articles of incorporation – as well as other oversight requirements – and membership and appointment procedures for the DSO's board of directors are provided.

Some more familiar state DSOs are the Florida National Guard Foundation and the Florida Juvenile Justice Foundation. Various other state agencies and political subdivisions are statutorily-empowered to authorize DSOs, including the Statewide Public Guardianship Office;¹ the Statewide Guardian Ad Litem Office;² the Office of Tourism, Trade, and Economic Development;³ the Department of Military Affairs;⁴ the Department of Corrections;⁵ and the Department of Education.⁶

DSOs with annual expenditures in excess of \$100,000 that are administered by a state agency are statutorily-required to provide for an annual financial audit of accounts and records to be conducted by an independent certified public accountant. Such audit report is submitted by the DSO within 9 months

¹ S. 744.7082, F.S.

² S. 39.8298, F.S.

³ S. 288.1229, F.S.

⁴ S. 250.115, F.S.

⁵ S. 944.802, F.S.

⁶ S. 1001.24, F.S.

after the end of the fiscal year to the Auditor General and to the state agency responsible for its creation, administration, or approval.⁷

Florida Salutes Veterans License Plates

Pursuant to s. 320.08058, F.S., the Department of Veterans' Affairs ("the department") administers all proceeds from the sale of the "Florida Salutes Veterans" specialty license plates. Annual fees are deposited in the State Homes for Veterans Trust Fund in the State Treasury, for the sole use of constructing, operating, and maintaining domiciliary and nursing homes for veterans, as well as for the continuing promotion and marketing of the license plate.

In Fiscal Year 2006-07, the department collected \$401,130 in revenue from the sale of "Florida Salutes Veterans" specialty license plates.

The Florida Commission on Veterans' Affairs

The Florida Commission on Veterans' Affairs (FCVA, or "the commission") is composed of nine commissioners appointed by the Governor, subject to confirmation by the Senate. The commission is charged with conducting a biennial survey of possible contributions that veterans or state organizations of veterans and their auxiliaries could make to the state, and to report survey results to the department together with recommendations for encouraging such contributions. The commission also works with various veterans' organizations and their auxiliaries in the state, and functions as a liaison between these organizations and the department on matters pertaining to veterans.⁸

Although the commission serves as an advisory body to the department (which in turn is responsible for providing administrative staff support for the commission), the commission, in the performance of its duties, is not subject to the control, supervision, or direction of the department.

Presently, the commission also consults with the Department of Management Services in designating and approving plaques on the Florida Medal of Honor Wall at the State Capitol Building,⁹ and the chair of the commission appoints three commission members to sit on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas.¹⁰

Effect of Proposed Changes

Establishment of a Direct-Support Organization

The bill provides that the Department of Veterans' Affairs shall authorize the establishment of direct-support organizations to provide assistance, funding, and support for the department. A DSO established pursuant to this newly-created statute shall be not-for-profit, incorporated under chapter 617, F.S., exempted from filing fees, and approved by the Department of State. Such DSO must also be:

- organized and operated exclusively to obtain funds;
- request, and receive grants, gifts, and bequests of moneys;
- acquire, receive, hold, invest, and administer in its own name securities, funds, or property;
- make expenditures to or for the direct or indirect benefit of the department; and,

⁷ S. 215.981, F.S.; note that the Auditor General, the state agency administering the DSO, and the Office of Program Policy Analysis and Government Accountability are further provided with the authority to require and receive from the DSO or from the independent auditor any records relative to the operation of the organization.

⁸ S. 292.04, F.S.

⁹ S. 265.002, F.S.

¹⁰ S. 337.111(1), F.S.

- determined by the department to be operating in a manner consistent with the goals of the department and in the best interest of the state.

Board of Directors

The bill specifies that the DSO will be governed by a board of directors, consisting of no fewer than five members appointed by the department's executive director, and provides for the ability of veteran service organizations in the state to recommend nominees. Board members' term limits shall be for 3 years, except to the extent that staggering the initial terms of appointees is necessary, and members may be reappointed when their term expires.

The bill provides for the executive director of the department (or his or her designee) to be an ex officio member of the board of directors. Board members must also be residents of the state, and a majority of members must be both veterans¹¹ and "highly knowledgeable about the U.S. military, its service personnel, its veterans, and its missions." Finally, the bill authorizes the executive director of the department to remove any board member for cause, and to appoint a replacement for any vacancy that occurs.

Contract

The bill requires the DSO to operate under a written contract with the department, which must provide for:

- annual certification by the department that the DSO is complying with the terms of the contract and is doing so consistent with the goals and purposes of the department and in the best interest of the state;
- the reversion of moneys and property held by the DSO (to the department if the DSO is no longer approved to operate for the department, to the department if the DSO ceases to exist, or to the state if the department ceases to exist); and
- the disclosure of the material provisions of the contract, and the distinction between the department and DSO, to donors of gifts, contributions or bequests (including such disclosure on all promotional and fundraising publications).

Use of Department Property

The bill authorizes the department to permit use of department property, facilities, and personal services by the DSO, and further provides that the department may prescribe by contract any condition with which a DSO must comply to use such departmental property and services. However, the bill specifies that the department may not permit use of its property, facilities, or personal services by a DSO where such DSO does not provide equal opportunities to all persons regardless of race, color, national origin, gender, age, or religion.

Other Provisions Relating to the Establishment of DSO

The bill requires that the executive director of the department must approve any transaction or agreement between a DSO authorized by the bill and another DSO or entity. The bill also clarifies that the fiscal year of the DSO runs from July 1 of each year to June 30 of the following year, and further requires the DSO to submit to the department copies of its Internal Revenue Service Forms 1023 and 990. Finally, the bill provides that the DSO shall provide for an annual financial audit in accordance with s. 215.981, F.S.

¹¹ Per s. 1.01(14), F.S., a "veteran" is an individual who "served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only, or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans' Affairs on individuals discharged or released with other than honorable discharges."

Redirection of Specialty License Plate Revenue

The bill redistributes twenty percent of the annual funds collected through sale of the "Florida Salutes Veterans" specialty license plate to the DSO authorized in the bill for the sole purpose of providing direct or indirect benefit to the department. This redistribution reduces the amount of plate proceeds deposited into the State Homes for Veterans Trust Fund to eighty percent.

Repeal of Florida Commission on Veterans' Affairs

The bill repeals s. 292.04, F.S., relating to the creation of a Florida Commission on Veterans' Affairs, and makes conforming changes to other places in Florida law where the commission was referenced by transferring certain duties and responsibilities of the commission to the department and members of the newly-appointed DSO.

The bill provides that the Department of Management Services shall consult with the department in designating and approving the Florida Medal of Honor Wall at the State Capitol, and specifies that three members of the board of directors of the DSO established by this bill shall be appointed by the executive director of the department to sit on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas. The bill adds that terms of appointed committee members shall run concurrently with the members' terms on the board of directors of the DSO.

The bill provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Creates s. 292.055, F.S.; authorizing the Department of Veterans' Affairs to establish direct support organizations for the purpose of providing support to the department; providing definitions; providing for governance of the direct-support organization by a board of directors; specifying board composition; detailing contract requirements between the department and the direct-support organization; allowing for use of departmental property, facilities, and personal services under certain circumstances; providing that the department's executive director must approve agreements between the direct-support organization being organized and other direct-support organizations; requiring the direct-support organization to submit certain federal tax documents to the department; providing for annual financial audits in accordance with s. 215.981, F.S.

Section 2. Amends s. 320.08058, F.S.; redirecting twenty percent of the annual funds collected through sale of the "Florida Salutes Veterans" license plate to the direct-support organization.

Section 3. Repeals s. 292.04, F.S.; relating to the creation of the Florida Commission on Veterans' Affairs.

Section 4. Amends s. 265.002, F.S.; deleting references to the Florida Commission on Veterans' Affairs; providing that the Department of Management Services shall consult with the department in designating an appropriate area of the Capitol Building for a Florida Medal of Honor Wall; providing for departmental approval of plaques on the Medal of Honor Wall.

Section 5. Amends s. 337.111, F.S.; deleting references to the Florida Commission on Veterans' Affairs; providing for membership of three members of the board of directors of the direct-support organization established under s. 292.055, F.S. on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas; specifying term limits for appointed members.

Section 6. Provides that the act is effective July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments" below.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments" below.

D. FISCAL COMMENTS:

The bill requires no direct appropriation from the annual General Appropriations Act. However, a provision amending s. 320.08058, F.S., and redirecting twenty percent of the funds generated from the sale of the "Florida Salutes Veterans" license plates to the direct-support organization would shift funds normally allotted for the State Veterans' Nursing Home Trust Fund.

According to the Department of Highway Safety and Motor Vehicles, the "Florida Salutes Veterans" specialty plate generated \$401,130 in Fiscal Year 2006-07. Twenty percent of this amount is \$80,226.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This legislation does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 32-34 of the bill indicate that “[t]he Department of Veterans’ Affairs shall authorize the establishment of direct-support *organizations* to provide ...” (emphasis added). At lines 190-191, and at other points in the legislation, the bill makes reference to “the board of directors of *the* direct support organization established under s. 292.055” (emphasis added). It remains unclear if the bill is attempting to authorize the establishment of a single DSO, or rather authorizing multiple DSOs. To the extent that the bill also contains a redistribution of twenty percent of the funds generated from the sale of the “Florida Salutes Veterans” specialty license plates, creation of multiple DSOs by the department could greatly affect the negative fiscal impact on the State Veterans’ Nursing Home Trust Fund referenced above.

D. STATEMENT OF THE SPONSOR

None provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 11, 2008, the Committee on Healthy Seniors adopted a strike-all amendment to HB 861 as filed. The amendment:

- Names the legislation “The Sergeant First Class Paul R. Smith Memorial Act;”
- Clarifies that the Department of Veterans’ Affairs is directed to authorize the establishment of a single direct-support organization;
- Provides that the approval of a majority of members of the organization’s board of directors is necessary for the executive director of the department to remove a board member for cause;
- Specifies that the direct-support organization is authorized to make expenditures to or for the direct or indirect benefit of the veterans of Florida, and congressionally-chartered veteran service organizations with subdivisions incorporated in the state; and
- Provides that the twenty percent redistribution to the newly-established direct support-organization occurs for a period not to exceed 24 months after its date of incorporation.

The Committee reported the bill favorably with one amendment.