

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 747 Direct-Support Organizations

SPONSOR(S): Anderson

TIED BILLS: HB 749 IDEN./SIM. BILLS: SB 746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Family Services Policy Committee		Cicccone	Cicccone
2) Governmental Affairs Policy Committee			
3) Health & Family Services Policy Council			
4) Full Appropriations Council on General Government & Health Care			
5)			

SUMMARY ANALYSIS

A direct-support organization (DSO) is a Florida not-for-profit corporation created to raise funds and make expenditures to benefit a governmental entity.

House Bill 747 creates s. 430.82, F.S., and authorizes the Department of Elderly Affairs (DOEA, or "the department") to establish a direct-support organization (DSO) to provide 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 also requires that a DSO operate under a written contract with the department, and provides contract requirements. The bill authorizes the department to allow the DSO use of departmental property, facilities, and personal services under certain circumstances.

The bill restricts transactions or agreements between the DSO it authorizes and another DSO absent approval by the secretary of the department, and requires the DSO to submit certain federal tax documents to the department. Finally, the DSO is required to provide an annual financial audit in accordance with s. 215.981, F.S.

The bill has no direct fiscal impact on state funds.

The bill provides an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Current Situation:

A direct-support organization (DSO) is a Florida not-for-profit corporation, incorporated under ch. 617, F.S., and authorized by law to benefit or provide assistance to a governmental entity. A DSO is created to give a governmental entity the flexibility to seek an additional funding source, and to enhance the mission of the department.

DSOs are specifically authorized or created in statute. Generally, the authorizing statute establishes requirements for the organization's articles of incorporation – and other oversight requirements – and membership and appointment procedures for the DSO's board of directors. Several DSOs currently exist in Florida Statute including the Florida Veterans Foundation, the Florida National Guard Foundation and the Florida Juvenile Justice Foundation. Several 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 after the end of the fiscal year to the Auditor General and to the state agency responsible for its creation, administration, or approval.⁷

Currently, DOEA does not have legislative authority to establish a DSO.

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.

⁷ S. 215.981, F.S.; note that the Auditor General, the state agency administering the DSO, 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.

Effect of the Bill

The bill creates s. 430.82, Florida Statutes, and provides that DOEA may establish a DSO to provide assistance, funding and support for the department to carry out its mission. A DSO established pursuant to this newly-created statute shall be not-for-profit, incorporated under ch. 617, F.S., exempted from filing fees, and approved by the Department of State. A DSO must 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 persons in this state who are 60 years of age or older; and,
- Determined by the department to operate in a manner consistent with the department's goals and in the best interest of the state.

Board of Directors

The bill specifies the governance of the DSO by a board of directors, consisting of no fewer than five members appointed by the secretary, who may receive nominee recommendations from networks and partnerships in this state that are involved in issues related to aging. The bill provides that DSO board members serve 3-year terms, except that the terms of the initial appointees will be staggered, and members may be reappointed when their term expires.

The bill provides for the secretary or his or her designee to serve as an ex officio member of the board. Board members must be current state residents, and a majority of members must be "60 years of age or older and highly knowledgeable about the department, its service personnel, its veterans, and its missions." The secretary may remove any board member for cause with the approval of a majority of the board of directors. The secretary is directed 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 consistent with the goals and purposes of the department and in the best interests of the state;
- Reversion of moneys and property held by the DSO if it is no longer approved to operate for the department or if the organization or the department ceases to exist; and,
- Disclosure of the material provisions of the contract and the distinction between the department and the DSO to donors of gifts, contributions, or bequests, and all promotional and fundraising publications.

Department Property

The bill authorizes the department to allow the DSO use of department property, facilities, or personal services and authorizes the department to contractually prescribe conditions for such use. The bill prohibits such use if the DSO does not provide equal employment opportunities.

Restrictions

The bill provides that any transaction or agreement between the DSO and another DSO or entity must be approved by the secretary.

The bill establishes the DSO's fiscal year from July 1 of each year to June 30 of the following year and requires the DSO to submit copies of its Internal Revenue Service forms 1023 and 990 to the department. The bill directs the DSO to provide for an annual financial audit in accordance with s. 215.981, F.S.

B. SECTION DIRECTORY:

Section 1. Creates s. 430.82, F.S.; authorizing the Department of Elderly 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 the use of departmental property, facilities, and personal services under certain circumstances; providing that the secretary of the department must approve any transaction or agreement between the direct-support organization and any other direct-support organization or other entity; specifying the term of the direct-support organizations' fiscal year; 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. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill 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:

Line 36 on page 2 of the bill does not include the statutory reference regarding direct-support organization filing fees.

Line 64 on page 3 of the bill includes language regarding the criteria of the membership of the board that is not applicable to the goals and purpose of the department.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES