

1                   A bill to be entitled  
2           An act relating to area agencies on aging; amending s.  
3           20.41, F.S.; requiring the Department of Elderly Affairs  
4           to contract with area agencies on aging to fulfill  
5           programmatic and funding requirements; revising  
6           responsibilities of the governing body of an area agency  
7           on aging and the executive director of the agency;  
8           amending s. 430.203, F.S.; revising the definition of  
9           "lead agency"; removing obsolete language; revising  
10          requirements with respect to the request for proposal  
11          process for the designation of a lead agency for community  
12          care for the elderly; providing competitive procurement  
13          procedure with respect to specified contested designation  
14          of a lead agency; requiring the Department of Elderly  
15          Affairs to create a dispute resolution mechanism by rule;  
16          providing requirements with respect to the dispute  
17          resolution mechanism; specifying required standards for a  
18          bid protest; eliminating provisions that require an area  
19          agency on aging to exempt specified providers from the  
20          competitive bid process; amending s. 430.2053, F.S.;  
21          conforming a cross-reference; providing an effective date.

22  
23   Be It Enacted by the Legislature of the State of Florida:

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25           Section 1. Subsections (6), (7), (8), and (9) of section  
26   20.41, Florida Statutes, are amended to read:

27           20.41 Department of Elderly Affairs.--There is created a  
28   Department of Elderly Affairs.

29           (6) In accordance with the federal Older Americans Act of  
 30 1965, as amended, the department shall designate and contract  
 31 with area agencies on aging in each of the department's planning  
 32 and service areas. Area agencies on aging, as nongovernmental,  
 33 independent, not-for-profit corporations under s. 501(c)(3) of  
 34 the Internal Revenue Code, shall ensure a coordinated and  
 35 integrated provision of long-term care services to the elderly  
 36 and shall ensure the provision of prevention and early  
 37 intervention services. The department shall have overall  
 38 responsibility for information system planning. The department  
 39 shall ensure, through the development of equipment, software,  
 40 data, and connectivity standards, the ability to share and  
 41 integrate information collected and reported by the area  
 42 agencies in support of their contracted obligations to the  
 43 state. The department shall contract with area agencies on aging  
 44 to fulfill programmatic and funding requirements.

45           ~~(7) The department shall contract with the governing body,~~  
 46 ~~hereafter referred to as the "board," of an area agency on aging~~  
 47 ~~to fulfill programmatic and funding requirements. The board~~  
 48 ~~shall be responsible for the overall direction of the agency's~~  
 49 ~~programs and services and shall ensure that the agency is~~  
 50 ~~administered in accordance with the terms of its contract with~~  
 51 ~~the department, legal requirements, established agency policy,~~  
 52 ~~and effective management principles. The board shall also ensure~~  
 53 ~~the accountability of the agency to the local communities~~  
 54 ~~included in the planning and service area of the agency.~~

55           (7)(8) The area agency on aging ~~board~~ shall, in  
 56 consultation with the secretary, appoint a chief executive

57 officer, hereafter referred to as the "executive director," ~~to~~  
58 ~~whom shall be delegated responsibility for agency management and~~  
59 ~~for implementation of board policy,~~ and who shall be accountable  
60 for the agency's performance.

61 ~~(8)(9)~~ Area agencies on aging are subject to chapter 119,  
62 relating to public records, and, when considering any contracts  
63 requiring the expenditure of funds, are subject to ss. 286.011-  
64 286.012, relating to public meetings.

65 Section 2. Subsection (9) of section 430.203, Florida  
66 Statutes, is amended to read:

67 430.203 Community care for the elderly; definitions.--As  
68 used in ss. 430.201-430.207, the term:

69 (9) "Lead agency" means an agency designated at least once  
70 every ~~6~~ 3 years by an area agency on aging as the result of a  
71 competitive procurement conducted through a request for proposal  
72 process to be in place no later than the state fiscal year 1996-  
73 1997. Any area agency on aging that is in litigation over a  
74 prior designation of a lead agency on the effective date of this  
75 act shall conduct this competitive procurement no later than  
76 December 31, 2009, to ensure that all lead agencies have been  
77 fairly selected before the maximum 6-year procurement cycle  
78 begins.

79 (a) The ~~guidelines for the~~ request for proposal must be  
80 developed by the ~~department in consultation with the~~ area agency  
81 agencies on aging and. Such ~~guidelines must~~ include requirements  
82 for the assurance of quality and cost-efficiency of services,  
83 minimum personnel standards, and employee benefits. The  
84 department shall adopt a rule creating a dispute resolution

85 mechanism. The rule, which shall be adopted no later than August  
86 1, 2009, and which all area agencies on aging shall be required  
87 to follow, shall create standards for a bid protest and a  
88 procedure for resolution. The dispute resolution mechanism  
89 established in the rule shall include a provision for a  
90 qualified, impartial decisionmaker who shall conduct a hearing  
91 to determine whether the area agency's proposed action is  
92 contrary to the area agency's governing statutes or rules or to  
93 the solicitation specifications. The standard of proof for the  
94 protestor shall be whether the area agency's action was clearly  
95 erroneous, contrary to competition, arbitrary, or capricious.  
96 The dispute resolution mechanism shall also provide a mechanism  
97 for review of the decisionmaker's determination by a qualified  
98 and impartial reviewer, if review is requested. The standards  
99 for the bid protest shall include:

100 1. A provision requiring notice of an area agency's  
101 proposed contract award and a clear point of entry for any  
102 substantially affected entity to challenge the proposed award.

103 2. A provision for an automatic stay of the contract award  
104 process upon the filing of a bid protest that shall not be  
105 lifted until the protest is resolved.

106 3. Provisions permitting all substantially affected  
107 entities to have an opportunity to participate in the hearing,  
108 to conduct discovery, to obtain subpoenas compelling the  
109 appearance of witnesses, to present evidence and argument on all  
110 issues involved, to conduct cross-examination, to submit  
111 rebuttal evidence, and to submit proposed findings of fact and  
112 conclusions of law.

113        4. Provisions for expeditious resolution of the bid  
114 protest, including a requirement that once the area agency on  
115 aging refers a bid protest petition to the decisionmaker, a  
116 hearing shall be conducted within 30 days, unless that timeframe  
117 is waived by all parties.

118        ~~(b) The area agency on aging, in consultation with the~~  
119 ~~department, shall exempt from the competitive bid process any~~  
120 ~~contract with a provider who meets or exceeds established~~  
121 ~~minimum standards, as determined by the department.~~

122        (b)(e) In each community care service system the lead  
123 agency must be given the authority and responsibility to  
124 coordinate some or all of the services, either directly or  
125 through subcontracts, for functionally impaired elderly persons.  
126 These services must include case management, homemaker and chore  
127 services, respite care, adult day care, personal care services,  
128 home-delivered meals, counseling, information and referral, and  
129 emergency home repair services. The lead agency must compile  
130 community care statistics and monitor, when applicable,  
131 subcontracts with agencies providing core services.

132        Section 3. Subsection (7) of section 430.2053, Florida  
133 Statutes, is amended to read:

134        430.2053 Aging resource centers.--

135        (7) The aging resource center shall have a governing body  
136 which shall be the same entity described in s. 20.41(7), and an  
137 executive director who may be the same person as described in s.  
138 20.41 (7) ~~(8)~~. The governing body shall annually evaluate the  
139 performance of the executive director.

140        Section 4. This act shall take effect July 1, 2009.