

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; requiring the Department of Elderly
13 Affairs to create a dispute resolution mechanism by rule;
14 providing requirements with respect to the dispute
15 resolution mechanism; specifying required standards for a
16 bid protest; providing for specified entitlement of
17 litigants when certain lead agency designations are the
18 subject matter of litigation; eliminating provisions that
19 require an area agency on aging to exempt specified
20 providers from the competitive bid process; amending s.
21 430.2053, F.S.; conforming a cross-reference; providing an
22 effective date.

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

25
26 Section 1. Subsections (6), (7), (8), and (9) of section
27 20.41, Florida Statutes, are amended to read:

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

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

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

56 (7)~~(8)~~ The area agency on aging ~~board~~ shall, in
 57 consultation with the secretary, appoint a chief executive
 58 officer, hereafter referred to as the "executive director," ~~to~~
 59 ~~whom shall be delegated responsibility for agency management and~~
 60 ~~for implementation of board policy,~~ and who shall be accountable
 61 for the agency's performance.

62 (8)~~(9)~~ Area agencies on aging are subject to chapter 119,
 63 relating to public records, and, when considering any contracts
 64 requiring the expenditure of funds, are subject to ss. 286.011-
 65 286.012, relating to public meetings.

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

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

70 (9) "Lead agency" means an agency designated at least once
 71 every 6 ~~3~~ years by an area agency on aging as the result of a
 72 competitive procurement conducted through a request for proposal
 73 ~~process to be in place no later than the state fiscal year 1996-~~
 74 ~~1997.~~

75 (a) The ~~guidelines for the request for proposal~~ must be
 76 developed by the ~~department in consultation with the area agency~~
 77 ~~agencies on aging and.~~ Such guidelines must include requirements
 78 for the assurance of quality and cost-efficiency of services,
 79 minimum personnel standards, and employee benefits. The
 80 department shall adopt a rule creating a dispute resolution
 81 mechanism. The rule, which shall be adopted no later than August
 82 1, 2009, and which all area agencies on aging shall be required
 83 to follow, shall create standards for a bid protest and a

84 procedure for resolution. The dispute resolution mechanism
85 established in the rule shall include a provision for a
86 qualified, impartial decisionmaker who shall conduct a hearing
87 to determine whether the area agency's proposed action is
88 contrary to the area agency's governing statutes or rules or to
89 the solicitation specifications. The standard of proof for the
90 protestor shall be whether the area agency's action was clearly
91 erroneous, contrary to competition, arbitrary, or capricious.
92 The dispute resolution mechanism shall also provide a mechanism
93 for review of the decisionmaker's determination by a qualified
94 and impartial reviewer, if review is requested. The standards
95 for the bid protest shall include:

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

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

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

109 4. Provisions for expeditious resolution of the bid
110 protest, including a requirement that once the area agency on
111 aging refers a bid protest petition to the decisionmaker, a

112 hearing shall be conducted within 30 days, unless that timeframe
 113 is waived by all parties.

114 (b) For any lead agency designation conducted prior to the
 115 effective date of this subsection that is the subject matter of
 116 litigation on the date on which this subsection becomes law, the
 117 litigants shall be entitled to proceed with discovery under the
 118 Florida Rules of Civil Procedure immediately upon the date on
 119 which this subsection becomes law, and the litigants shall
 120 further be entitled to participate in the bid protest procedures
 121 enacted by rule pursuant to this subsection. ~~The area agency on~~
 122 ~~aging, in consultation with the department, shall exempt from~~
 123 ~~the competitive bid process any contract with a provider who~~
 124 ~~meets or exceeds established minimum standards, as determined by~~
 125 ~~the department.~~

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

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

138 430.2053 Aging resource centers.--

139 (7) The aging resource center shall have a governing body
140 which shall be the same entity described in s. 20.41(7), and an
141 executive director who may be the same person as described in s.
142 20.41 (7) ~~(8)~~. The governing body shall annually evaluate the
143 performance of the executive director.

144 Section 4. This act shall take effect upon becoming a law.