

## ENROLLED

CS/CS/CS/HB 935, Engrossed 2

2009 Legislature

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:

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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.~~

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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

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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

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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.--

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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.