

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 549 Membership Associations that Receive Public Funds

**SPONSOR(S):** Government Operations Subcommittee and Diaz, Jr.

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	8 Y, 4 N, As CS	Moore	Williamson
2) Appropriations Committee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

In Florida, not for profit corporations are regulated by the Florida Not For Profit Corporation Act (Act), which outlines the requirements for creating and managing a not for profit corporation as well as the powers and duties of the corporation. The Act authorizes not for profit corporations to be created for any lawful purpose or purposes not for pecuniary profit and not specifically prohibited to corporations by other state laws.

Not for profit corporations are required to submit an annual report to the Department of State that contains basic information about the corporation, including the date of incorporation, the names and addresses of the corporation's directors and principal officers, and the addresses of certain corporate offices.

A not for profit corporation may receive public funds from the state or a local government in certain situations, such as through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.

The bill defines the term "membership association" as a corporation not for profit, including a department or division of such corporation, whose membership includes elected or appointed public officers and that receives at least 25 percent of its annual revenue from public funds. The bill specifies that the term does not include a labor organization.

The bill requires a membership association to file an annual report with the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must include contact information for the membership association, officers and representatives of the membership association, and any affiliates of the membership association. The report also must include information about the membership association's finances, including the amount of the fee required to become a member and of the annual membership dues, a copy of the current financial statements, a description of assets and liabilities, a description of salary and allowances paid to each officer and employee who received more than \$10,000 from the membership association during the preceding fiscal year, the amount of the benefits packages paid to each principal officer, and the amount of disbursements for lobbying activity and litigation.

The bill also prohibits a membership association from expending moneys received from public funds on litigation against the state.

The bill may have an indeterminate positive fiscal impact on state government, and may have an indeterminate negative fiscal impact on the private sector. See Fiscal Analysis section.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

In Florida, not for profit corporations are regulated by the Florida Not For Profit Corporation Act (Act), which outlines the requirements for creating and managing a not for profit corporation as well as the powers and duties of the corporation.<sup>1</sup> The Act authorizes not for profit corporations to be created for any lawful purpose or purposes that are not for pecuniary profit and that are not specifically prohibited to corporations by other state laws.<sup>2</sup> The Act specifies that such purposes include charitable, benevolent, eleemosynary, educational, historical, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes.<sup>3</sup>

Florida law authorizes not for profit corporations to operate with the same degree of power provided to for profit corporations in the state, including the power to appoint officers, adopt bylaws, enter into contracts, sue and be sued, and own and convey property.<sup>4</sup> Officers and directors of certain not for profit corporations also are protected by the same immunity from civil liability provided to directors of for profit corporations.<sup>5</sup> Unlike for profit corporations, certain not for profit corporations may apply for exemptions from federal, state, and local taxes.<sup>6</sup>

Not for profit corporations are required to submit an annual report to the Department of State that contains the following information:

- The name of the corporation and the state or country under the law of which it is incorporated;
- The date of incorporation or, if a foreign corporation, the date on which it was admitted to conduct its affairs in the state;
- The address of the principal office and the mailing address of the corporation;
- The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;
- The names and business street addresses of its directors and principal officers;
- The street address of its registered office in the state and the name of its registered agent at that office; and
- Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of the Act.<sup>7</sup>

A not for profit corporation may receive public funds from the state or a local government in certain situations. Public funds are defined as "moneys under the jurisdiction or control of the state, a county, or a municipality, including any district, authority, commission, board, or agency thereof and the judicial branch, and includes all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose."<sup>8</sup> The state or a local government may provide public funds to a not for profit corporation through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.<sup>9</sup>

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<sup>1</sup> Chapter 90-179, L.O.F.

<sup>2</sup> Section 617.0301, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> See ss. 617.0302 and 607.0302, F.S.

<sup>5</sup> See ss. 617.0834 and 607.0831, F.S.

<sup>6</sup> See 26 U.S.C. s. 501; Section 212.08(7)(p), F.S.

<sup>7</sup> Section 617.1622, F.S.

<sup>8</sup> Section 215.85(3)(b), F.S.

<sup>9</sup> See, e.g., Section 2-103(a), Pinellas County Code (authorizing the board of county commissioners to expend monies from the county general fund for membership fees and dues for county employees and officials for professional associations); Section 120-65(a)(2),

## Effect of Proposed Changes

The bill defines the term “membership association” as a corporation not for profit, including a department or division of such corporation, whose membership includes elected or appointed public officers and that receives at least 25 percent of its annual revenue from public funds. It provides that the term public officer has the same meaning as in s. 112.313(1), F.S., which defines public officer as “any person elected or appointed to hold office in any agency,<sup>10</sup> including any person serving on an advisory body.”<sup>11</sup> It also provides that the term public funds has the same meaning as in s. 215.85(3), F.S. The bill specifies that the term does not include a labor organization.<sup>12</sup>

The bill requires a membership association to file an annual report with the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must include the following information:

- The name and address of the membership association and any parent membership association or any state, national, or international membership association with which it is affiliated;
- The names, titles, telephone numbers, and addresses of the principal officers and all representatives of the membership association;
- The amount of the fee required to become a member of the membership association, if any, and of the annual dues that each member must pay;
- The current financial statements of the membership association;
- A copy of the current constitution and bylaws of the membership association;
- A description of the assets and liabilities of the membership association at the beginning and end of the preceding fiscal year;
- A description of the salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and to each employee who, during the preceding fiscal year, received more than \$10,000 in the aggregate from the membership association and any other state, national, or international membership association affiliated with it;
- The annual amount of the benefit packages paid to each of the principal officers of the membership association, including health, major medical, vision, dental, and life insurance as well as retirement plans and automobile allowances;
- The per-member amount of annual dues sent from the membership association to each state, national, or international affiliate;
- The total amount of direct or indirect disbursements for lobbying activity at the federal, state, or local level incurred by the membership association, listed by the full name and address of each person who received a disbursement; and
- The total amount of direct or indirect disbursements for litigation expenses incurred by the membership association, listed by case citation.

The bill prohibits a membership association from expending moneys received from public funds on litigation against the state.

### B. SECTION DIRECTORY:

**Section 1.** creates s. 617.221, F.S., relating to membership associations that receive public funds.

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South Florida Water Management District Administrative Policies (authorizing the district to pay for an employee’s membership in a professional organization not required by his or her job).

<sup>10</sup> As used in this section, an agency is defined as any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; any public school, community college, or state university; or any special district as defined in s. 189.012, F.S. Section 112.312, F.S.

<sup>11</sup> Section 112.313(1), F.S.

<sup>12</sup> Current law defines a labor organization as “any organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state.” The definition also includes an “employee organization,” as defined in s. 447.203(11), F.S., at such time as it seeks to register pursuant to s. 447.305, F.S. Section 447.02(1), F.S.

**Section 2.** provides an effective date of July 1, 2015.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill may have an indeterminate positive fiscal impact on state government as a result of reducing litigation against the state by prohibiting membership associations from using monies received from public funds to pay for such litigation.

#### **2. Expenditures:**

The bill may have an indeterminate negative fiscal impact on the state as a result of the Legislature having to receive and process the required annual reports from membership associations.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate negative fiscal impact on membership associations because they would be required to file an annual report with the Legislature.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to affect county or municipal governments.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

None.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 4, 2015, the Government Operations Subcommittee heard a proposed committee substitute for HB 549 and reported the bill favorably with committee substitute.

The bill as filed created reporting requirements for an association of government officials receiving more than 25 percent of its annual budget from state sources. It required that the association annually submit the required information to the Commission on Ethics. In addition, the bill prohibited an organization from using funds received from state sources to pursue litigation against the state.

The committee substitute:

- Defines a “membership association” as a corporation not for profit whose membership includes elected or appointed public officers and that receives at least 25 percent of its annual revenue from public funds, excluding labor organizations;
- Requires a membership association to file an annual report containing certain contact and financial information with the House Speaker and Senate President by January 1 of each year; and
- Prohibits a membership association from expending moneys received from public funds on litigation against the state.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.