

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 6037 Blind Services Direct-support Organization

**SPONSOR(S):** Fischer

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education Subcommittee	11 Y, 0 N	McAlarney	Bishop
2) Higher Education Appropriations Subcommittee	12 Y, 0 N	deNagy	Lloyd
3) Education Committee	14 Y, 0 N	McAlarney	Hassell

### SUMMARY ANALYSIS

Direct-support organizations (DSO) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a DSO is prescribed by its enacting statute and also, for most, by a written contract with the agency the DSO was created to support. In 2014, the Legislature passed a bill that required DSOs statutory authority to be repealed.

The Blind Services Foundation of Florida, Inc. (Blind Services) DSO is a not-for-profit corporation created by the Florida Legislature in 2004. Its purpose is to raise funds to support services provided to Floridians who are blind. This DSO receives 20% of the funds raised through the sale of motorcycle license plates.

The statutory authority for the Blind Services DSO is scheduled for repeal on October 1, 2017 unless reviewed and saved from repeal by the Legislature. If the Blind Services DSO is repealed, all properties would revert to the Division of Blind Services.

This bill amends s. 413.0111, F.S., saving from repeal the Blind Services DSO.

This bill has an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Direct-Support Organizations**

Direct-support organizations (DSO) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a DSO is prescribed by its enacting statute and also, for most, by a written contract with the agency the DSO was created to support.

Prior to 2014, there was no formal review process in law to determine whether a DSO was established pursuant to such authorization, or whether the rationale for the authorization remained applicable.

Chapter 2014-96, Laws of Florida<sup>1</sup> established reporting and transparency requirements for each DSO that is created or authorized pursuant to law or executive order and created, approved or administered by a state agency. The DSO must report information related to its organization, mission, and finances to the agency it was created to support by August 1 of each year.<sup>2</sup> Specifically, a DSO must provide:<sup>3</sup>

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the DSO;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

Each agency receiving the above information from a DSO must make the information available to the public through the agency's website. If the DSO maintains a website, the agency's website must provide a link to the DSO's website.<sup>4</sup> Additionally, any contract between an agency and a DSO must be contingent upon the DSO's submission and posting of this information.<sup>5</sup> If a DSO fails to submit the required information for two consecutive years, the agency is required to terminate the contract between the agency and the DSO.<sup>6</sup>

By August 15 of each year, each agency must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by the DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each organization.<sup>7</sup>

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<sup>1</sup> Section 20.058, F.S.

<sup>2</sup> Section 20.058(1), F.S.

<sup>3</sup> Section 20.058(1)(a)-(f), F.S.

<sup>4</sup> Section 20.058(2), F.S.

<sup>5</sup> Section 20.058(4), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 20.058(3), F.S.

Lastly, a law creating, or authorizing the creation of, a DSO must state that the creation of or authorization for the DSO is repealed on October 1 of the 5th year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature. DSOs in existence on July 1, 2014, must be reviewed by the Legislature by July 1, 2019.

### **DSO Audit Requirements**

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 nine months after the end of the fiscal year to the Auditor General and to the state agency responsible for its creation, administration, or approval.<sup>8</sup>

Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of the DSO's accounts and records.<sup>9</sup> The Auditor General is authorized to require and receive any records from the DSO, or from its independent auditor.<sup>10</sup>

### **DSO Ethics Code Requirements**

Section 112.3251, F.S., requires a DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in s. 112.313, F.S. and s. 112.3143(2), F.S. A DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.<sup>11</sup>

### **Blind Services Foundation of Florida, Inc. (Blind Services)**

The Blind Services DSO was created by the Florida Legislature in 2004 as a DSO of the Florida Division of Blind Services (division).<sup>12</sup> Their statutory goal is to support programs of the division and raise funds to support services for the benefit of Floridians who are blind and or visually impaired.<sup>13</sup> Specifically, this DSO is operated to benefit blind Floridians by:

- Conducting programs and activities;
- Initiating developmental projects;
- Raising funds;
- Requesting and receive grants, gifts, and bequests of moneys;
- Acquiring and administering securities, funds, objects of value, or other property, real or personal; and
- Making expenditures.<sup>14</sup>

The purposes and objectives of the Blind Services DSO must be consistent with the priority issues and objectives of the Department of Education (DOE) and be in the best interests of the state. The division may permit the use of state property and facilities by this DSO so long as it is directly used in keeping with the DSO's approved purposes.<sup>15</sup>

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<sup>8</sup> Section 215.981, F.S.

<sup>9</sup> Section 11.45(3), F.S.

<sup>10</sup> Section 11.45(3)(d), F.S.

<sup>11</sup> Section 112.3251, F.S.

<sup>12</sup> Section 413.0111(2)(a), F.S.

<sup>13</sup> Section 413.0111, F.S.

<sup>14</sup> Section 413.0111(1), F.S.

<sup>15</sup> Section 413.0111(3), F.S.

The division director may designate employees of the division to solicit donations from public or private sources to help with funding.<sup>16</sup> Funds must be used for the enhancement of division programs and projects. All funds received and expended by the DSO must be deposited into a bank account held outside of the State Treasury<sup>17</sup> and the funds must be used in a manner consistent with their purposes and goals.<sup>18</sup> Also, administrative costs for running and promoting the Blind Services DSO must be paid by private funds.<sup>19</sup> The annual audit requirements of s. 215.981 apply to the Blind Services DSO.<sup>20</sup>

In addition to state, private, and corporate funding, the Blind Services DSO funding comes from motorcycle specialty license plates. The Department of Transportation (DOT) issues a specialty license plate to the owner or lessee of any motorcycle upon request and payment of the appropriate license taxes and fees.<sup>21</sup> DOT collects an annual license plate use fee of \$20. The Florida Endowment for Vocational Rehabilitation (ABLE Trust) is currently receiving more than 30% of these funds.

The annual fees are distributed to the ABLE Trust as custodial agent. The ABLE Trust may retain a maximum of 10% of the proceeds from the sale of the license plate for administrative costs.<sup>22</sup> The ABLE Trust must distribute the remaining funds in the following manner:

1. 20% to the ABLE Trust. These funds are restricted to the support of the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistant program pursuant to s. 413.402.<sup>23</sup>
2. 20% to the Brain and Spinal Cord Injury Program Trust Fund.<sup>24</sup>
3. 20% to Prevent Blindness Florida.<sup>25</sup>
4. 20% to the Blind Services Foundation of Florida.<sup>26</sup>
5. 20% to the Florida Association of Centers for Independent Living.<sup>27</sup>

If the Blind Services DSO is repealed, all properties revert to the Division of Blind Services (division).<sup>28</sup> Approximately \$128,000 would revert to the division.

This section of law is repealed on October 1, 2017, unless reviewed and saved from repeal by the Legislature.<sup>29</sup>

The DSO has met the following statutory requirements:

- 1. The DSO is required to incorporate as a Not-for-Profit Corporation. (s. 413.0111, F.S.; ch. 617)**

The DSO is listed as an active Florida Not-for-Profit Corporation with the Florida Division of Corporations. All annual reports have been filed going back to the DSO's December 10, 2004 founding. A copy of all annual reports and the Articles of Incorporation are available online.<sup>30</sup>

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<sup>16</sup> Section 413.0111(6), F.S.

<sup>17</sup> Section 413.0111(2)(f), F.S.

<sup>18</sup> Section 413.0111(4), F.S.

<sup>19</sup> Section 413.0111(2)(g), F.S.

<sup>20</sup> Section 413.0111(5), F.S.

<sup>21</sup> Section 320.08068(2), F.S.

<sup>22</sup> Section 320.08068(4), F.S.

<sup>23</sup> Section 320.08068(4)(d), F.S.

<sup>24</sup> Section 320.08068(4)(a), F.S.

<sup>25</sup> Section 320.08068(4)(b), F.S.

<sup>26</sup> Section 320.08068(4)(c), F.S.

<sup>27</sup> Section 320.08068(4)(e), F.S.

<sup>28</sup> Section 413.0111(2)(e), F.S.

<sup>29</sup> Section 413.0111(7), F.S.

<sup>30</sup> Florida Division of Corporations, Search Records, *Detail by Entity Name*,

<http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=BLINDSERVICESFOUNDATIONFLORIDA%20N040000115650&aggregateId=domnp-n04000011565-09515b1c-51b5-4a50-90bd->

2. **For each year the DSO's expenditures exceed \$100,000, it must provide for an annual financial audit and submit the audit to the Auditor General within nine months after the end of the fiscal year. (s. 215.981, F.S.)**

The DSO's annual expenditures do not exceed \$100,000. Therefore, the DSO is not required to have an annual audit and is in compliance.

3. **The DSO is required to form a board of directors. (s. 413.0111 (2) (b) – (c), F.S.)**

The DSO has formed a board. The current board includes leaders in the blind and visually impaired community who serve as non-paid volunteers.<sup>31</sup> Currently, the board is self-appointed and operates according to their established bylaws.<sup>32</sup> The board meets three times per year and has committee meetings. These meetings are conducted via teleconference.<sup>33</sup> All board meetings must adhere to Florida's Sunshine Law requirements required under s. 24, Art. I of the State Constitution, ch. 119, and s. 286.011, F.S.<sup>34</sup> The meetings are open to the public, advertised on their web site, and in the Florida Administrative Weekly.<sup>35</sup>

4. **The DSO is required to maintain donations and direct service expenditures in a bank account outside of the State Treasury. (s. 413.0111 (f), F.S.)**

The DSO has bank accounts outside of the State Treasury.<sup>36</sup>

5. **The purposes and objectives of the DSO must be consistent with the priority issues and objectives of the Department of Education and must be in the best interests of the state. (s. 413.0111 (3), F.S.)**

The DSO's purposes and objectives are consistent with assisting Floridians who are blind and visually impaired. They maintain their mission and are focused on strategies closely aligned with the priorities of the Department of Education and Division of Blind Services.

6. **Funds designated for the DSO must be used for the enhancement of programs and projects of the Division of Blind Services. (s. 413.0111(4), F.S.)**

The DSO appears to be using the funds for assisting Floridians who are blind and visually impaired.

## **Effect of Proposed Changes**

This bill eliminates s. 413.0111(7), F.S., which sunsets the Blind Services DSO unless it is reviewed and saved from repeal by the Legislature. This enables the DSO to remain in existence, thereby allowing it to continue providing assistance and services to blind and visually impaired Floridians.

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[6fc643e18a95&searchTerm=blind%20Services%20foundation&listNameOrder=BLINDSERVICESFOUNDATIONFLORIDA%20040000115650](http://www.blindservicesfoundation.org/WelcomePage.html) (last visited Mar. 28, 2017).

<sup>31</sup> Blind Services Foundation of Florida, Inc., *Welcome Page*, <http://www.blindservicesfoundation.org/WelcomePage.html> (last visited Mar. 28, 2017).

<sup>32</sup> Section 413.0111(2)(b), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> Section 413.0111(2)(d), F.S.

<sup>35</sup> Blind Services Foundation of Florida, Inc., *Welcome Page*, <http://www.blindservicesfoundation.org/WelcomePage.html> (last visited Mar. 28, 2017).

<sup>36</sup> Email from Tanya Cooper, Director of Governmental Relations, Florida Department of Education, Florida Division of Blind Services, RE: DBS DSO Information, regarding the Blind Services Foundation of Florida, Inc. maintaining bank accounts outside of the State Treasury (Mar. 15, 2017).

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 413.0111, F.S., saving from repeal the Blind Services Foundation of Florida, Inc. direct-support organization. The DSO is scheduled for repeal on October 1, 2017 unless saved from repeal by the Legislature.

**Section 2.** Provides an effective date of July 1, 2017.

**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:

Not applicable.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.