

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Transportation, Tourism, and Economic Development

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BILL: SB 7010

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee

SUBJECT: Department of Military Affairs Direct-support Organization

DATE: March 8, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Sanders</u>	<u>Ryon</u>		<b>MS Submitted as Committee Bill</b>
1.	<u>Wells</u>	<u>Pitts</u>	<u>ATD</u>	<b>Recommend: Favorable</b>
2.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**I. Summary:**

SB 7010 saves from repeal the statutory authority granted to the Florida Department of Military Affairs to establish a direct-support organization.

The bill has no fiscal impact on state funds. The direct-support organization is funded through private sector contributions.

**II. Present Situation:**

**Citizen Support Organizations and Direct-Support Organizations**

Citizen support organizations (CSOs) and direct-support organizations (DSOs) 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 CSO or DSO are prescribed by its enacting statute and also, for most, by a written contract with the agency the CSO or DSO was created to support.

***CSO and DSO Transparency and Reporting Requirements (s. 20.058, F.S.)***

In 2014, the legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs.<sup>1</sup> Specifically, the law requires each CSO and DSO to annually submit by August 1, the following information to the agency it supports:<sup>2</sup>

- The CSO or DSO's name, mailing address, telephone number, and website address;
- The statutory authority or executive order that created the CSO or DSO;
- A brief description of the mission of, and results obtained by, the CSO or DSO;
- A brief description of the CSO or DSO's plans for the next three fiscal years;

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<sup>1</sup> Chapter 2014-96, Laws of Fla.

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

- A copy of the CSO or DSO's code of ethics; and
- A copy of the CSO or DSO's most recent Internal Revenue Service (IRS) Form 990.<sup>3</sup>

Additionally, the information submitted annually by a CSO or DSO must be available on the respective agency's website along with a link to the CSO or DSO's website if one exists.<sup>4</sup> Any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting the required information to the agency and posting of the information on the agency's website.<sup>5</sup> If a CSO or DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate its contract with the CSO or DSO.<sup>6</sup>

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the above information submitted by the CSO or DSO along with the agency's recommendation to continue, terminate, or modify the agency's association with the CSO or DSO.<sup>7</sup>

Laws creating or authorizing a CSO or DSO repeal on October 1 of the fifth year after enactment unless reviewed and saved from repeal by the legislature. CSOs and DSOs in existence prior to July 1, 2014, must be reviewed by the legislature by July 1, 2019.<sup>8</sup>

#### ***CSO and DSO Audit Requirements (s. 215.981, F.S.)***

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.<sup>9</sup> The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports. 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 a CSO's or DSO's accounts and records.<sup>10</sup>

#### ***CSO and DSO Ethics Code Requirement (s. 112.3251, F.S.)***

Section 112.3251, F.S., requires a CSO or 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 ss. 112.313 and 112.3143(2), F.S.<sup>11</sup> A CSO or DSO may adopt additional or more

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<sup>3</sup> The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.

<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.

<sup>8</sup> Section 20.058(5), F.S.

<sup>9</sup> The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

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

<sup>11</sup> Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.<sup>12</sup>

### **Florida Department of Military Affairs and Florida National Guard**

The Florida Department of Military Affairs (DMA) is a state agency created to provide management oversight and administrative support to the Florida National Guard.<sup>13</sup> The DMA is responsible for:

- Combat readiness and emergency preparedness of the Florida National Guard;
- Responding to disasters and civil disturbances;
- Drug interdiction operations; and
- Assisting Floridians at risk.<sup>14</sup>

The Adjutant General, who is a federally-recognized general officer, is an appointee of the Governor and serves as both the agency head of the DMA and the commanding officer of the Florida National Guard. Under the Adjutant General's command are nearly 12,000 servicemembers of the Army and Air Force National Guard and over 400 DMA state employees.<sup>15</sup> Members of the Florida National Guard may be called to state active duty by the Governor<sup>16</sup> or activated by the federal government to support national security objectives, protect the public safety of citizens and their property, or defend the State of Florida.

### ***Direct-support Organization for the Department of Military Affairs***

In 2000, the legislature created s. 250.115, F.S., authorizing a DSO for the DMA.<sup>17</sup> The law requires the DMA DSO to be a Florida non-profit corporation<sup>18</sup> that operates exclusively to:

- Raise funds and request and receive grants, gifts, and bequests of moneys;
- Acquire, receive, hold, invest, and administer in its own name securities, funds, or property;
- Support the processing of requests for assistance from the Soldiers and Airmen Assistance Program<sup>19</sup> or similar programs, as directed by the Adjutant General; and
- Make expenditures for the direct or indirect benefit of the DMA or the Florida National Guard.<sup>20</sup>

The statutory authority for the DMA DSO is scheduled to repeal on October 1, 2017, unless reviewed and saved from repeal by the legislature.<sup>21</sup>

<sup>12</sup> Section 112.3251, F.S.

<sup>13</sup> DMA, *Adjutant General's Report: Fiscal Year 2014*, 4 (March 10, 2015), available at <http://dma.myflorida.com/wp-content/uploads/2015/04/AGReport2014.pdf> (last visited Jan. 30, 2017).

<sup>14</sup> Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Government Program Summaries: Department of Military Affairs*, available at <http://www.oppaga.state.fl.us/profiles/4109> (last visited Jan. 30, 2017).

<sup>15</sup> Florida Department of Military Affairs, *Department of Military Affairs Mission*, available at <http://dma.myflorida.com/about-us/> (last visited Jan. 30, 2016).

<sup>16</sup> See s. 250.01(21), F.S.

<sup>17</sup> Chapter 2000-258, Laws of Fla.

<sup>18</sup> Section 250.115(1)(a)1., F.S.

<sup>19</sup> The Soldiers and Airmen Assistance Program is established in s. 250.116, F.S., to provide emergency financial assistance to Florida National Guard members who are on or were recently on federal active duty orders and their families.

<sup>20</sup> Section 250.115(1)(a)2., F.S.

<sup>21</sup> Section 250.115(8), F.S.

### ***Soldiers and Airmen Assistance Program***

Section 250.116, F.S., assigns the DMA DSO funding and administration responsibilities for the Soldiers and Airmen Assistance Program (Program). The legislature established the Program in 2010 as a means to provide financial assistance and services to certain Florida National Guard members on federal active duty orders and their families.<sup>22</sup> Program eligibility is limited to Florida National Guard members who are currently, or were recently on federal active duty orders, and their dependent family members.<sup>23</sup>

The Program is funded by the DMA DSO<sup>24</sup> and administered by both the DMA and the DMA DSO.<sup>25</sup> The types of assistance available under the Program may include housing, basic living needs, vehicles, health care, and other reasonable services or expenses.<sup>26</sup> The financial committee of the DMA DSO board of directors is required to review the financial transactions of the Program on a quarterly basis and provide the review to the DMA.<sup>27</sup>

### **Florida National Guard Foundation, Inc.**

Florida National Guard Foundation, Inc., (FLNGF) serves as the DSO for the DMA. The FLNGF was initially founded as a non-profit corporation in 1983 to support Florida National Guard members and their families<sup>28</sup> and became the DMA DSO following enactment of s. 250.115, F.S., in 2000, which authorizes and prescribes the duties of the DMA DSO.

The mission of the FLNGF is to:

- Provide support to Florida National Guard members in times of emergencies and deployments;
- Honor and assist those soldiers and airmen who have sacrificed their health and well-being for the security of the state and nation; and
- Preserve the Florida National Guard's rich history so the sacrifices of the soldiers and airmen are not forgotten.<sup>29</sup>

The FLNGF is currently governed by an eight-member board of directors and operates pursuant to a written contract with the DMA.<sup>30</sup> The FLNGF occupies a small office in the DMA

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<sup>22</sup> Chapter 2010-98, Laws of Fla.

<sup>23</sup> See s. 250.116(4), F.S. Eligible Florida National Guard members include those who are on federal active duty serving in the Global War on Terrorism or Overseas Contingency Operations, or are within 120 days of termination of such orders; and those deployed by the Federal Government and participating in state operations for homeland defense, or are within 120 days of return from such deployment. Dependent family members must be designated on the servicemember's U.S. Department of Defense Form 93.

<sup>24</sup> Section 250.116(2), F.S.

<sup>25</sup> Section 250.116(1), F.S.

<sup>26</sup> Section 250.116(3), F.S.

<sup>27</sup> Section 250.116(6), F.S.

<sup>28</sup> FLNGF Articles of Incorporation (March 29, 1983) (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

<sup>29</sup> FLNGF website, *Our Mission*, available at <http://www.floridanationalguardfoundation.org/index.html> (last visited Jan. 11, 2017).

<sup>30</sup> DMA-FLNGF Contract (June 20, 2011) (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

headquarters building in St. Augustine, Florida, which is staffed by a part-time employee of the DMA who serves as the FLNGF executive director.

The FLNGF is funded primarily by individual and corporate charitable contributions. However, for FY 2016-17, the FLNGF received state funding for the first time, in the amount of \$500,000, to be used exclusively to support Florida National Guard members and their immediate families in circumstances of exceptional financial need.<sup>31</sup>

Tables 1 and 2 below provide the FLNGF’s total annual revenue and expenditure amounts, respectively, for fiscal year 2009-10 through fiscal year 2014-15.<sup>32</sup>

<b>Table 1: Florida National Guard Foundation Revenue Totals<sup>33</sup></b> FY 2009-10 through FY 2014-15							
<b>Fiscal Year</b>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>Total</u>
<b>Total Revenue</b>	\$755,323	\$89,403	\$242,990	\$290,902	\$295,407	\$166,820	\$1,840,845

<b>Table 2: Florida National Guard Foundation Total Annual Expenditures<sup>34</sup></b> FY 2009-10 through FY 2014-15							
<b>Fiscal Year</b>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>Total</u>
<b>DSO Services Expenses<sup>35</sup></b>	\$770,041	138,233	\$111,556	\$245,724	\$243,745	\$120,935	<b>\$1,630,234</b>
<b>Administrative Expenses<sup>36</sup></b>	\$79,585	\$18,662	\$10,387	7,856	\$9,313	\$8,762	<b>\$134,565</b>
<b>Fundraising Expenses</b>	\$0	\$0	\$0	\$92,735	\$51,643	\$1,000	<b>\$145,378</b>
<b>Total Expenditures</b>	<b>\$849,626</b>	<b>\$156,895</b>	<b>\$121,943</b>	<b>\$346,315</b>	<b>\$304,701</b>	<b>\$130,697</b>	<b>\$1,910,177</b>

For fiscal year 2014-15, the FLNGF’s services expenditures were 93 percent of the organization’s total expenditures. Administrative and fundraising expenses were 6 percent and 1 percent, respectively.

***Florida National Guard Foundation Program Services***

The FLNGF’s primary function is to fund and administer an emergency financial assistance program and a scholarship grant program for current members of the Florida National Guard,

<sup>31</sup> See 2016 General Appropriations Act (HB 5001), Line 2952

<sup>32</sup> The FLNGF FY 2015-16 financial audit and the FY 2015-16 IRS Form 990 are not yet available.

<sup>33</sup> Data retrieved from the FLNGF’s IRS Form 990, Part VIII.

<sup>34</sup> Data retrieved from FLNGF’s IRS Form 990, Part IX.

<sup>35</sup> DSO services expenses include, but are not limited to, emergency financial assistance and scholarship grants for Florida National Guard members, grants to other organizations, and other FLNGF non-administrative activities.

<sup>36</sup> Administrative expenses include, but is not limited to, contract services, travel and meetings, office expenses and supplies, audit and legal fees, insurance, and other miscellaneous expenses.

and in some cases their families. All current members of the Florida National Guard are eligible to apply for both grant types.

The FLNGF's emergency financial assistance program provides grants to current Florida National Guard members, and their families, during times of serious financial need. Grants are provided to cover expenses relating to housing, food, child care, utilities, transportation, medical, and other immediate needs. Grants are generally provided on a one-time basis and funds are paid directly to the appropriate vendor.<sup>37</sup> Only in extreme cases are funds issued directly to the servicemember.<sup>38</sup>

The emergency financial assistance program serves those who are eligible for the Soldiers and Airmen Assistance Program<sup>39</sup> in addition to all other traditional Florida National Guard members not on federal active duty orders.<sup>40</sup> From fiscal year 2009-10 through fiscal year 2015-16, the FLNGF distributed approximately \$1.6 million in emergency financial assistance grants to 1,429 recipients.<sup>41</sup> Of that amount, approximately \$42,260 was distributed to 40 recipients under the authority of the Soldiers and Airmen Assistance Program.<sup>42</sup>

The FLNGF's scholarship program provides grants to Florida National Guard members and their dependents pursuing advanced academic and vocational opportunities. Current students in good standing at an accredited college, university, or vocational technical school in Florida, and graduating high school seniors, are eligible to receive a FLNGF scholarship grant.<sup>43</sup> Since fiscal year 2008-09, the FLNGF has awarded \$69,400 in scholarship grants to 43 participants.<sup>44</sup>

### **Senate Professional Staff Review of the DMA and the FLNGF**

Section 250.115, F.S., the statutory authority for the DMA DSO, is scheduled to repeal on October 1, 2017, unless reviewed and saved from repeal by the legislature. Professional staff of the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security reviewed the FLNGF to verify its compliance with applicable Florida Statutes.

Senate professional staff reviewed relevant FLNGF records from fiscal year 2009-10 to present, and found that the FLNGF is an active DSO that supports the DMA primarily by providing emergency financial assistance and scholarship grants to members of the Florida National Guard.

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<sup>37</sup> FLNGF Standard Operating Procedures (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

<sup>38</sup> Id.

<sup>39</sup> See s. 250.116, F.S.

<sup>40</sup> See FLNGF website, available at <http://www.floridanationalguardfoundation.org/assistance.html> (last visited, Jan. 12, 2017).

<sup>41</sup> Data retrieved from FLNGF's IRS Form 990, Schedule I, Part III, and e-mail correspondence from the Department of Military Affairs on January 10, 2017 (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

<sup>42</sup> Data received from FLNGF staff (on file with the Senate Military and Veteran Affairs, Space, and Domestic Security Committee).

<sup>43</sup> Supra note 40.

<sup>44</sup> Supra note 41.

Senate professional staff identified eight deficiencies in which the DMA and the FLNGF were not in full compliance with the applicable Florida Statutes.<sup>45</sup> These deficiencies are largely administrative or procedural and may be easily addressed. In response to Senate professional staff's findings, the DMA and the FLNGF developed an internal checklist of statutory requirements to ensure future compliance.

### **III. Effect of Proposed Changes:**

The bill amends s. 250.115, F.S., to save from repeal the Florida Department of Military Affairs direct-support organization, which is currently scheduled to repeal on October 1, 2017.

The effective date of the bill is July 1, 2017.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

By saving the DMA DSO from repeal, the bill sustains a source of financial assistance and scholarship grants for Florida National Guard members and their families.

#### **C. Government Sector Impact:**

By saving the DMA DSO from repeal, the bill allows the DMA DSO to continue to provide funding for the Soldiers and Airmen Assistance Program, pursuant to s. 250.116, F.S.

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<sup>45</sup> See Florida Senate Review of the Department of Military Affairs Direct-support Organization, Staff Findings and Recommendations (March 6, 2017) (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 250.115, Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.