

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7029      PCB LFV 17-01      Department of Military Affairs Direct-support Organization  
**SPONSOR(S):** Local, Federal & Veterans Affairs Subcommittee, Baez  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 7010

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N	Renner	Miller
1) Government Accountability Committee	21 Y, 0 N	Renner	Williamson

### SUMMARY ANALYSIS

Citizen support (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 for most, by a written contract with the agency the CSO or DSO was created to support.

In 2000, the Florida National Guard Foundation (FLNGF) became a DSO under the Department of Military Affairs (DMA). The mission of FLNGF is to:

- Provide support to Florida National Guard members in times of emergencies and deployments;
- Honor and assist 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.

FLNGF's primary function is to fund and administer an emergency financial assistance grant program and a scholarship grant program for current members of the Florida National Guard and in some cases, their families. All current members of the Florida National Guard are eligible to apply for both grants.

The statutory authority for the DMA DSO is scheduled to repeal on October 1, 2017, unless reviewed and saved from repeal by the Legislature.

The bill removes the scheduled repeal of the law authorizing DMA to establish a DSO.

The bill does not appear to have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Citizen Support Organizations and Direct-support Organizations

Citizen support (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 for most, by a written contract with the agency the CSO or DSO was created to support.

Prior to 2014, there was no formal review process in law to determine whether a CSO or 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 CSO and DSO created or authorized pursuant to law or executive order and created, approved, or administered by a state agency. The CSO or 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 CSO or 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 must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the CSO or DSO.<sup>4</sup> Additionally, any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the information.<sup>5</sup> If a CSO or DSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the CSO or 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 CSO or 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>

Lastly, a law creating or authorizing the creation of a CSO or DSO must state that the creation of or authorization for the CSO or DSO is repealed on October 1 of the 5th year after enactment, unless

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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.

reviewed and saved from repeal through reenactment by the Legislature. CSOs or DSOs in existence on July 1, 2014, must be reviewed by the Legislature by July 1, 2019.<sup>8</sup>

#### CSO and DSO Audit Requirements

CSOs or DSOs with annual expenditures in excess of \$100,000 and 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, with certain exceptions. 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 responsible for its creation, administration, or approval of the CSO or DSO.<sup>9</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 accounts and records of the CSO or DSO.<sup>10</sup> The Auditor General is authorized to require and receive any records from the CSO or DSO, or from its independent auditor.<sup>11</sup>

#### CSO and DSO Ethics Code Requirements

A CSO or DSO created or authorized pursuant to law must 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. A CSO or 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>12</sup>

#### Florida National Guard Foundation

The Florida National Guard Foundation (FLNGF) was founded as a non-profit organization in 1983 to provide charitable and educational aide in the form of money and other property and services. In 2000, FLNGF became a DSO under the Department of Military Affairs (DMA).<sup>13</sup>

FLNGF is a corporation not for profit, incorporated under Ch. 617, F.S., and is approved by the Department of State. FLNGF must be determined by DMA to be operating in a manner consistent with the goals of DMA and the Florida National Guard in the best interest of the state. In addition, it must:<sup>14</sup>

- Be organized and operated exclusively to raise funds;
- 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 or similar programs, as directed by the Adjutant General; and
- Make expenditures to or for the direct or indirect benefit of the DMA or the Florida National Guard.

FLNGF's mission is to:<sup>15</sup>

- Provide support to Florida National Guard members in times of emergencies and deployments;
- Honor and assist 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.

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

<sup>9</sup> Section 215.981(1), F.S.

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

<sup>11</sup> Section 11.45(3)(d), F.S.

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

<sup>13</sup> Chapter 2000-258, Laws of Fla.

<sup>14</sup> Section 250.115(1)(a), F.S.

<sup>15</sup> FLNGF website, *Our Mission*, available at <http://www.floridanationalguardfoundation.org/> (last visited January 21, 2017).

FLNGF's primary function is to fund and administer an emergency financial assistance grant program and a scholarship grant program for current members of the Florida National Guard and in some cases, their families. All current members of the Florida National Guard are eligible to apply for both grants.

FLNGF's emergency financial assistance program grants are provided to cover expenses relating to housing, food, child care, utilities, transportation, medical, and other immediate needs. The emergency financial assistance program also serves those who are eligible for the Soldiers and Airmen Assistance Program.

FLNGF's scholarship program provides grants to Florida National Guard members and their dependents pursuing advanced academic and vocational opportunities.

FLNGF is governed by an eight-member board of directors who are appointed by the president of the board. The Adjutant General appoints the president.<sup>16</sup>

FLNGF must operate under a written contract with DMA which must provide for:<sup>17</sup>

- Certification by DMA that FLNGF is complying with the terms of the contract and is doing so consistent with the goals and purposes of DMA and in the best interests of the state. The certification must be made annually and reported in the official minutes of a meeting of FLNG.
- The reversion of moneys and property held by FLNGF to DMA if FLNGF is no longer approved to operate, to DMA if FLNGF ceases to exist, or to the state if DMA ceases to exist.
- The disclosure of the material provisions of the contract, and the distinction between DMA and FLNGF, to donors of gifts, contributions, or bequests, including disclosure on all promotional and fundraising publications.

Each year FLNGF must submit to DMA its annual budget and financial reports, federal Internal Revenue Service Application for Recognition of Exemption form (Form 1023), and a federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).<sup>18</sup> Additionally, FLNGF must provide for an annual financial audit if its expenditures exceed \$100,000.<sup>19</sup> For FY 2014-15, FLNFG expenditures exceeded \$100,000.<sup>20</sup>

FLNGF is funded primarily by individual and corporate charitable contributions. However, for FY 2016-17, 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 family members in circumstances of exceptional financial need.<sup>21</sup>

#### Soldiers and Airmen Assistance Program

The Soldiers and Airmen Assistance Program<sup>22</sup> (program) provides financial assistance and services to eligible servicemembers<sup>23</sup> of the Florida National Guard and eligible members of their families. The program is administered by DMA and funded by FLNGF. FLNGF is authorized to assist DMA in the processing of applications and the administration of the program.

Assistance authorized under the program may include housing, living expenses, vehicle expenses, health care expenses, and other expenses not specifically enumerated but considered reasonable under the circumstances.

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<sup>16</sup> Section 250.115(2), F.S.

<sup>17</sup> Section 250.115(3), F.S.

<sup>18</sup> Section 250.115(6), F.S.

<sup>19</sup> Section 250.115(7), F.S.

<sup>20</sup> FLNGF IRS Form 990 (2014), at <http://www.floridanationalguardfoundation.org/Reports/Tax%20Return%202014.pdf> (last visited February 14, 2017).

<sup>21</sup> See 2016 General Appropriations Act (HB 5001), Line 2952.

<sup>22</sup> Section 250.116, F.S.

<sup>23</sup> Section 250.01(19), F.S., defines a "servicemember" as any person serving as a member of the U.S. Armed Forces on active duty or state active duty and all members of the Florida National Guard and U.S. Reserve Forces.

The financial committee of the FLNGF board is required to perform a review of financial transactions of the program each quarter and to provide the results to DMA. The committee may also request the Office of Inspector General to conduct additional reviews of the program.

#### Staff Review of the FLNGF

Section 250.115, F.S., which provides the statutory authority for the DMA DSO, is scheduled to repeal on October 1, 2017, unless reviewed and saved from repeal by the Legislature. Staff reviewed the FLNGF to verify its compliance with Florida Statutes.

Staff reviewed relevant FLNGF records from fiscal year 2009-2010 to present, and found that FLNGF is an active DSO that supports DMA primarily by providing emergency financial assistance and scholarship grants to members of the Florida National Guard. Staff identified seven deficiencies in which DMA and FLNGF were not in full compliance with the applicable Florida Statutes. The deficiencies are administrative or procedural and are as follows:

1. The DSO is required to submit a DSO report to DMA by August 1 of each year (s. 20.058(1), F.S.)
  - a. The DSO report was signed by DMA instead of the DSO and was addressed to incorrect entities.
2. DMA must publish the DSO report required by s. 20.058(1), F.S., on DMA's website (s. 20.058(2), F.S.)
  - a. The DSO report is not available on DMA's website.
3. DMA must annually certify that the DSO is compliant with the terms of the DMA-DSO contract. The DSO must report the annual DMA certification in the DSO meeting minutes (s. 250.115(3), F.S.)
  - a. The DSO application for certification was not signed by the appropriate authority.
  - b. The DSO did not submit its application for certification to the DMA prior to the deadline.
  - c. The DSO did not attach all required documents with its application for certification.
  - d. The DMA did not respond in writing to the DSO's application for certification in a timely manner.
  - e. The DSO did not report the annual DSO certification in its meeting minutes.
4. The DSO is required to submit its annual budget to DMA (s. 250.115(6), F.S.)
  - a. The DSO has not submitted its annual budget.
5. Each quarter the DSO must review the financial transactions of the Soldiers and Airmen Assistance Program and provide its review to DMA (s. 250.116(6), F.S.)
  - a. The DSO did not conduct the quarterly reviews of the Soldiers and Airmen Assistance Program and submit it to DMA.

In response to staff's findings, DMA and FLNGF developed an internal checklist of statutory requirements to ensure future compliance.

#### **Effect of Proposed Changes**

The bill amends s. 250.115, F.S., to remove the scheduled repeal of DMA's DSO, which is scheduled to repeal on October 1, 2017.

#### **B. SECTION DIRECTORY:**

- Section 1 Amends s. 250.115, F.S., saving from repeal the DMA DSO, which is scheduled to repeal on October 1, 2017.
- 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:

By saving the DSO from repeal, members of the Florida National Guard will have another source for financial and direct assistance.

### 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:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

## Appendix A

<b>Table 1: Florida National Guard Foundation Total Annual Revenues<sup>24</sup></b>							
FY 2009-10 through FY 2015-16							
<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 Foundation Total Annual Expenditures<sup>25</sup></b>							
FY 2009-10 Through FY 2015-16							
<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 Service Expenses</b>	\$770,041	\$138,233	\$111,556	\$245,724	\$243,745	\$120,935	<b>\$1,630,234</b>
<b>Administrative Expenses</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>

<sup>24</sup> Data retrieved from the FLNGF's IRS Form 990, Part VIII.

<sup>25</sup> Data retrieved from the FLNGF's IRS Form 990, Part IX.