

By Senator Rodriguez

37-00307-18

20181870\_\_

1                                   A bill to be entitled  
2       An act relating to privatized governmental functions;  
3       amending ss. 394.9082, 409.987, and 430.2053, F.S.;  
4       providing that certain individuals involved in the  
5       management of behavioral health managing entities,  
6       community-based care lead agencies, and aging resource  
7       centers, respectively, are subject to part III of ch.  
8       112, F.S.; providing penalties; prohibiting such  
9       individuals from voting on any measure that may inure  
10      to their private gain or loss or to private gain or  
11      loss of other specified entities or persons; requiring  
12      such individuals to make certain disclosures;  
13      prohibiting such individuals from accepting gifts or  
14      expenditures from a person or entity that is under  
15      consideration for a contract or from certain  
16      individuals who have contractual relationships with  
17      the managing entity, lead agency, or aging resource  
18      center; providing penalties; prohibiting certain  
19      senior managers previously employed by a managing  
20      entity, lead agency, or aging resource center from  
21      representing another person or entity before the  
22      entity, agency, or center for 2 years after retirement  
23      or termination of employment; providing an effective  
24      date.

25  
26 Be It Enacted by the Legislature of the State of Florida:  
27

28       Section 1. Paragraph (a) of subsection (5) of section  
29       394.9082, Florida Statutes, is amended to read:

37-00307-18

20181870\_\_

30 394.9082 Behavioral health managing entities.—

31 (5) MANAGING ENTITY DUTIES.—A managing entity shall:

32 (a) Maintain a governing board or, if a managed behavioral  
33 health organization, an advisory board as provided in paragraph  
34 (4) (c) or paragraph (4) (d), respectively.

35 1. The officers, partners, or members of the board of  
36 directors of the entity, or the chief executive officer or  
37 members if organized as a limited liability company, are subject  
38 to part III of chapter 112, including, but not limited to, the  
39 code of ethics and the public disclosure and reporting of  
40 financial interests under s. 112.3145. For purposes of applying  
41 part III of chapter 112 to activities of the officers, partners,  
42 or members of the board of directors of the entity, or the chief  
43 executive officer or members if organized as a limited liability  
44 company, those persons shall be considered public officers or  
45 employees, and the managing entity shall be considered their  
46 agency as defined in s. 112.312. An officer, partner, or member  
47 of the board of directors of the entity, or a chief executive  
48 officer or member if organized as a limited liability company,  
49 who fails to comply with this subparagraph is subject to  
50 penalties provided under ss. 112.317 and 112.3173.

51 2. Notwithstanding s. 112.3143(2), a board member may not  
52 vote on any measure that would inure to his or her special  
53 private gain or loss; that he or she knows would inure to the  
54 special private gain or loss of any principal by whom he or she  
55 is retained or to the parent organization or subsidiary of a  
56 corporate principal by which he or she is retained, other than  
57 an agency as defined in s. 112.312; or that he or she knows  
58 would inure to the special private gain or loss of a relative or

37-00307-18

20181870\_\_

59 business associate of the board member. Before a vote is taken,  
60 such member shall publicly state to the assembly the nature of  
61 his or her interest in the matter from which he or she is  
62 abstaining from voting and, within 15 days after the vote,  
63 disclose the nature of his or her interest as a public record in  
64 a memorandum filed with the person responsible for recording the  
65 minutes of the meeting, who shall incorporate the memorandum in  
66 the minutes. The officers, partners, members of the board of  
67 directors, or, if organized as a limited liability company,  
68 members of the company, and chief executive officer of a  
69 managing entity are also required to file such disclosures with  
70 the Commission on Ethics. The executive director of the managing  
71 entity or his or her designee shall notify each existing and  
72 newly appointed officer, partner, member of the board of  
73 directors, or, if organized as a limited liability company,  
74 member of the company, of a managing entity of his or her duty  
75 to comply with the reporting requirements of part III of chapter  
76 112.

77 3. Notwithstanding s. 112.3148, s. 112.3149, or any other  
78 provision of law, the officers, partners, members of the board  
79 of directors, or, if organized as a limited liability company,  
80 members of the company, and chief executive officer of a  
81 managing entity may not knowingly accept, directly or  
82 indirectly, any gift or expenditure from a person or entity, or  
83 an employee or representative of such person or entity, which  
84 has a contractual relationship with the managing entity or which  
85 is under consideration for a contract. An officer, partner, or  
86 member of the board of directors of the managing entity, or a  
87 chief executive officer or member if organized as a limited

37-00307-18

20181870\_\_

88 liability company, who fails to comply with this subparagraph is  
89 subject to penalties provided under ss. 112.317 and 112.3173.

90 4. A senior manager of a managing entity who was employed  
91 on or after January 1, 2007, who subsequently retires or  
92 terminates that employment may not represent another person or  
93 another entity before the managing entity for 2 years after  
94 retirement or termination of employment.

95 Section 2. Subsection (4) of section 409.987, Florida  
96 Statutes, is amended to read:

97 409.987 Lead agency procurement.-

98 (4) (a) In order to serve as a lead agency, an entity must:

99 1. ~~(a)~~ Be organized as a Florida corporation or a  
100 governmental entity.

101 2. ~~(b)~~ Be governed by a board of directors or a board  
102 committee composed of board members. The membership of the board  
103 of directors or board committee must be described in the bylaws  
104 or articles of incorporation of each lead agency, which must  
105 provide that at least 75 percent of the membership of the board  
106 of directors or board committee must consist of persons residing  
107 in this state, and at least 51 percent of the state residents on  
108 the board of directors must reside within the service area of  
109 the lead agency. However, for procurements of lead agency  
110 contracts initiated on or after July 1, 2014:

111 a. ~~1.~~ At least 75 percent of the membership of the board of  
112 directors must consist of persons residing in this state, and at  
113 least 51 percent of the membership of the board of directors  
114 must consist of persons residing within the service area of the  
115 lead agency. If a board committee governs the lead agency, 100  
116 percent of its membership must consist of persons residing

37-00307-18

20181870\_\_

117 within the service area of the lead agency.

118 ~~b.2.~~ The powers of the board of directors or board  
119 committee include, but are not limited to, approving the lead  
120 agency's budget and setting the lead agency's operational policy  
121 and procedures. A board of directors must additionally have the  
122 power to hire the lead agency's executive director, unless a  
123 board committee governs the lead agency, in which case the board  
124 committee must have the power to confirm the selection of the  
125 lead agency's executive director.

126 ~~3.(e)~~ Demonstrate financial responsibility through an  
127 organized plan for regular fiscal audits and the posting of a  
128 performance bond.

129 (b) The officers, partners, or members of the board of  
130 directors of the lead agency, or the chief executive officer or  
131 members if organized as a limited liability company, are subject  
132 to part III of chapter 112, including, but not limited to, the  
133 code of ethics and the public disclosure and reporting of  
134 financial interests under s. 112.3145. For purposes of applying  
135 part III of chapter 112 to activities of the officers, partners,  
136 or members of the board of directors of the entity, or the chief  
137 executive officer or members if organized as a limited liability  
138 company, those persons shall be considered public officers or  
139 employees, and the lead agency shall be considered their agency  
140 as defined in s. 112.312. An officer, partner, or member of the  
141 board of directors of the lead agency, or a chief executive  
142 officer or member if organized as a limited liability company,  
143 who fails to comply with this paragraph is subject to penalties  
144 provided under ss. 112.317 and 112.3173.

145 (c) Notwithstanding s. 112.3143(2), a board member may not

37-00307-18

20181870\_\_

146 vote on any measure that would inure to his or her special  
147 private gain or loss; that he or she knows would inure to the  
148 special private gain or loss of any principal by whom he or she  
149 is retained or to the parent organization or subsidiary of a  
150 corporate principal by which he or she is retained, other than  
151 an agency as defined in s. 112.312; or that he or she knows  
152 would inure to the special private gain or loss of a relative or  
153 business associate of the board member. Before a vote is taken,  
154 such member shall publicly state to the assembly the nature of  
155 his or her interest in the matter from which he or she is  
156 abstaining from voting and, within 15 days after the vote,  
157 disclose the nature of his or her interest as a public record in  
158 a memorandum filed with the person responsible for recording the  
159 minutes of the meeting, who shall incorporate the memorandum in  
160 the minutes. The officers, partners, members of the board of  
161 directors, or, if organized as a limited liability company,  
162 members of the company, and chief executive officer of a lead  
163 agency are also required to file such disclosures with the  
164 Commission on Ethics. The executive director of the lead agency  
165 or his or her designee shall notify each existing and newly  
166 appointed officer, partner, member of the board of directors,  
167 or, if organized as a limited liability company, member of the  
168 company, of a lead agency of his or her duty to comply with the  
169 reporting requirements of part III of chapter 112.

170 (d) Notwithstanding s. 112.3148, s. 112.3149, or any other  
171 provision of law, the officers, partners, members of the board  
172 of directors, or, if organized as a limited liability company,  
173 members of the company, and chief executive officer of a lead  
174 agency may not knowingly accept, directly or indirectly, any

37-00307-18

20181870\_\_

175 gift or expenditure from a person or entity, or an employee or  
176 representative of such person or entity, which has a contractual  
177 relationship with the lead agency or which is under  
178 consideration for a contract. An officer, partner, or member of  
179 the board of directors of the lead agency, or a chief executive  
180 officer or member if organized as a limited liability company,  
181 who fails to comply with this paragraph is subject to penalties  
182 provided under ss. 112.317 and 112.3173.

183 (e) A senior manager of a community-based care lead agency  
184 who was employed on or after January 1, 2007, who subsequently  
185 retires or terminates that employment may not represent another  
186 person or another entity before the community-based care lead  
187 agency for 2 years after retirement or termination of  
188 employment.

189 Section 3. Subsection (5) of section 430.2053, Florida  
190 Statutes, is amended to read:

191 430.2053 Aging resource centers.—

192 (5) The aging resource center shall have a governing body  
193 which shall be the same entity described in s. 20.41(7), and an  
194 executive director who may be the same person as described in s.  
195 20.41(7). The governing body shall annually evaluate the  
196 performance of the executive director.

197 (a) The officers, partners, or members of the board of  
198 directors of an aging resource center, or the chief executive  
199 officer or members if organized as a limited liability company,  
200 are subject to part III of chapter 112, including, but not  
201 limited to, the code of ethics and the public disclosure and  
202 reporting of financial interests under s. 112.3145. For purposes  
203 of applying part III of chapter 112 to activities of the

37-00307-18

20181870\_\_

204 officers, partners, or members of the board of directors of the  
205 entity, or the chief executive officer or members if organized  
206 as a limited liability company, those persons shall be  
207 considered public officers or employees, and the aging resource  
208 center shall be considered their agency as defined in s.  
209 112.312. An officer, partner, or member of the board of  
210 directors of the aging resource center, or a chief executive  
211 officer or member if organized as a limited liability company,  
212 who fails to comply with this paragraph is subject to penalties  
213 provided under ss. 112.317 and 112.3173.

214 (b) Notwithstanding s. 112.3143(2), a board member may not  
215 vote on any measure that would inure to his or her special  
216 private gain or loss; that he or she knows would inure to the  
217 special private gain or loss of any principal by whom he or she  
218 is retained or to the parent organization or subsidiary of a  
219 corporate principal by which he or she is retained, other than  
220 an agency as defined in s. 112.312; or that he or she knows  
221 would inure to the special private gain or loss of a relative or  
222 business associate of the public officer. Before a vote is  
223 taken, such member shall publicly state to the assembly the  
224 nature of his or her interest in the matter from which he or she  
225 is abstaining from voting and, within 15 days after the vote,  
226 disclose the nature of his or her interest as a public record in  
227 a memorandum filed with the person responsible for recording the  
228 minutes of the meeting, who shall incorporate the memorandum in  
229 the minutes. The officers, partners, members of the board of  
230 directors, or, if organized as a limited liability company,  
231 members of the company, and chief executive officer of an aging  
232 resource center are also required to file such disclosures with



37-00307-18

20181870\_\_

233 the Commission on Ethics. The executive director of the aging  
234 resource center or his or her designee shall notify each  
235 existing and newly appointed officer, partner, member of the  
236 board of directors, or, if organized as a limited liability  
237 company, member of the company, of an aging resource center of  
238 their duty to comply with the reporting requirements of part III  
239 of chapter 112.

240 (c) Notwithstanding s. 112.3148, s. 112.3149, or any other  
241 provision of law, the officers, partners, members of the board  
242 of directors, or, if organized as a limited liability company,  
243 members of the company, and chief executive officer of an aging  
244 resource center may not knowingly accept, directly or  
245 indirectly, any gift or expenditure from a person or entity, or  
246 an employee or representative of such person or entity, which  
247 has a contractual relationship with the aging resource center or  
248 which is under consideration for a contract. An officer,  
249 partner, or member of the board of directors of the aging  
250 resource center, or a chief executive officer or member if  
251 organized as a limited liability company, who fails to comply  
252 with this paragraph is subject to penalties provided under ss.  
253 112.317 and 112.3173.

254 (d) A senior manager of an aging resource center who was  
255 employed on or after January 1, 2007, who subsequently retires  
256 or terminates that employment may not represent another person  
257 or another entity before the aging resource center for 2 years  
258 after retirement or termination of employment.

259 Section 4. This act shall take effect July 1, 2018.