

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 932

INTRODUCER: Senator Bracy

SUBJECT: Citizen Support Organization for Florida Missing Children's Day

DATE: January 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 932 reenacts statutory authority (s. 683.23, F.S.) for the Florida Department of Law Enforcement to establish a citizen support organization to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day. The bill removes a provision that repeals s. 683.23, F.S., on October 1, 2018, unless the repeal date is removed and the statute is reenacted.

Florida Missing Children's Day Foundation, Inc., is the citizen support organization designated by the Florida Department of Law Enforcement to provide assistance, funding, and support for Florida Missing Children's Day.

Staff of the Senate Committee on Criminal Justice finds that the Florida Department of Law Enforcement and the Florida Missing Children's Day Foundation, Inc., are in compliance with all statutory requirements relevant to community support organizations.

The bill has no fiscal impact on state government.

II. Present Situation:

Florida Missing Children's Day

Section 683.23, F.S., provides that the second Monday in September of each year is designated as "Florida Missing Children's Day" in remembrance of Florida's past and present missing children and in recognition of our state's continued efforts to protect the safety of children through prevention, education, and community involvement"¹ "Each year parents, children, law enforcement officers and citizens convene on the steps of the Old Capitol Building in

¹ Section 683.23, F.S., was created in 2000 by ch. 2000-139, L.O.F.

Tallahassee to remember Florida's missing children who are still missing and those who will never come home again. The Governor, Lieutenant Governor, and [Florida Department of Law Enforcement] Commissioner are invited as speakers.”²

Florida Missing Children's Day Foundation, Inc.

Citizen support organizations (CSOs) and direct support organizations (DSOs) are statutorily-created private 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 2008, the Legislature created s. 683.231, F.S., which authorizes the Florida Department of Law Enforcement (FDLE) to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day.³ In 2008, the Florida Missing Children's Day Foundation, Inc. (Foundation) was established to provide such assistance, funding, and promotional support.⁴

Repeal of s. 683.231, F.S., and CSO Compliance Review

Section 20.058(5), F.S., provides that 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. This subsection further provides that CSOs or DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019. Section 683.231, F.S., provides that the section is repealed October 1, 2018, unless reviewed and saved from repeal by the Legislature.

Staff of the Senate Committee on Criminal Justice reviewed relevant materials to determine if the FDLE and the Foundation comply with the requirements of s. 683.231, F.S., and with other statutory requirements for CSOs: s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements); s. 215.981, F.S. (CSO/DSO Audit Requirements); and s. 112.3251, F.S. (CSO/DSO Ethics Code Requirement). *Staff finds that the FDLE and the Foundation are in compliance with all relevant CSO statutory requirements.*

Staff Review of Compliance with s. 683.231, F.S. (CSO to Support Florida Missing Children's Day)

Establishment of CSO

Section 683.231(1), F.S., authorizes the FDLE to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day. For purposes of s. 683.231, F.S., “citizen support organization” means an organization that is:

² *Florida Missing Children's Day* (“Florida Statute 683.23”), Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/mcic/fmcd.aspx> (last visited on Dec. 21, 2017).

³ Section 683.231(1), F.S. Section 683.231, F.S., was created by ch. 2008-249, L.O.F.

⁴ Letter from FDLE Commissioner Richard L. Swearingen to Senate President Joe Negron, dated July 6, 2017, available at www.fdle.state.fl.us/Open-Government/Documents/CSO_FMCDLetter_2017.aspx (last visited on Dec. 21, 2017).

- A Florida corporation not for profit incorporated under ch. 617, F.S., and approved by the Department of State; and
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures to or for the direct or indirect benefit of the FDLE in furtherance of Florida Missing Children's Day.⁵

Staff Finding: Compliance. The Foundation meets the definition of "citizen support organization." In 2008, the Foundation was established.⁶ The Foundation is a Florida non-profit corporation under ch. 617, F.S., and is approved by the Department of State.⁷ "[S]ponsorship funds are used for the annual Florida Missing Children's Day event, as well as for safety materials aimed at preventing abductions and protecting children from exploitation."⁸ "Expenses include: awards; invitations; printing; postage; event coordination; sound and stage equipment rentals; hotel and travel costs for award winners and victim family members; and incidental costs related to hosting the event."⁹

The letter of agreement between the FDLE and the Foundation (letter of agreement) provides the following:

- The Foundation is a duly-qualified CSO established in compliance with s. 683.231, F.S.;
- The FDLE has determined that the provision of services provided by the Foundation is consistent with FDLE's goals and in the best interest of the state;
- The Foundation is authorized to collect, administer, and raise funds through program revenues, direct appeals, campaigns, events, grants for special programs, membership drives, etc.¹⁰

Lobbying

Section 683.231(3), F.S., provides that the CSO is not a registered lobbyist within the meaning of s. 11.045, F.S.¹¹

Staff findings: Compliance. The Foundation is not a registered lobbyist.¹² Additionally, the letter of agreement prohibits the Foundation from soliciting or knowingly accepting any donations from any executive branch lobbyist or principal that is known by the Foundation to have direct

⁵ Section 683.231(2), F.S.

⁶ *Florida Missing Children's Day Foundation (FMCDF)*, Missing Endangered Persons Clearinghouse, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/MCICSearch/FMCDFFoundation.asp> (last visited on Dec. 21, 2017). The Foundation's *2017 Florida Not for Profit Corporation Annual Report* is available at <http://www.fmcdf.org/forms/2017-Annual-Report-Website.pdf> (last visited on Dec. 21, 2017).

⁷ *Id.*

⁸ *Supra*, n. 4.

⁹ *Id.*

¹⁰ Letter of Agreement (amended) between the Florida Department of Law Enforcement and the Florida Missing Children's Day Foundation, Inc. (effective September 8, 2014) (on file with the Senate Committee on Criminal Justice).

¹¹ Section 11.045, F.S., sets forth registration requirements for lobbyists who lobby the Legislature.

¹² See *2017 Lobbyist Firm Directory*, available at https://floridalobbyist.gov/reports/lobfirm1_2017.pdf?cp=0.8835648984166902 (last visited on Dec. 21, 2017).

contact with the FDLE, or for the purpose of attempting to influence the FDLE with respect to a FDLE policy decision or procurement.¹³

Requirements Relating to Collection and Expenditure of Funds

Section 683.231(4), F.S., authorizes the CSO to collect and expend funds to be used for awards; public awareness and awards ceremonies, workshops, and other meetings, including distribution materials for public education and awareness; travel; Internet and web-hosting services; administrative costs, including personnel costs; costs of audits; and costs of rental facilities.

Staff findings: Compliance. The letter of agreement authorizes the Foundation to collect, administer, and raise funds through program revenues, direct appeals, campaigns, events, grants for special programs, membership drives, etc.¹⁴

Activities of the CSO

Section 683.231(5), F.S., provides that the activities of the CSO must be determined by the FDLE to be consistent with the goals and mission of the FDLE and in the best interests of the state and approved in writing by the FDLE to operate for the direct or indirect benefit of the FDLE. The approval must be given in a letter of agreement from the FDLE.

Staff findings: Compliance. The letter of agreement states that the FDLE has determined that the provision of services provided by the Foundation is consistent with FDLE's goals and in the best interest of the state.¹⁵ Further, in 2017, FDLE Commissioner Swearingen also expressed his strong support for the continued efforts of the Foundation and recommended the Foundation continue to support Florida Missing Children's Day.¹⁶

Requirements Relating to Rental of Facilities and Properties

Section 683.231(6)(a), F.S., authorizes the FDLE to fix and collect charges for the rental of facilities and properties managed by the FDLE and to permit, without charge, appropriate use of administrative services, property, and facilities of the FDLE by the CSO, subject to s. 683.231, F.S. The use must be directly in keeping with the approved purposes of the CSO and may not be made at times or places that would unreasonably interfere with opportunities for the public to use such facilities for established purposes. Any money received from rentals of facilities and properties managed by the FDLE may be held in the Operating Trust Fund of the FDLE or in a separate depository account in the name of the CSO and subject to the provisions of the letter of agreement with the FDLE. The letter of agreement must provide that any funds held in the separate depository account in the name of the CSO must revert to the FDLE if the CSO is no longer approved by the department to operate in the best interests of the state.

Staff findings: Not currently applicable. The FDLE has not rented any facilities or properties to the Foundation.¹⁷

¹³ *Supra*, n. 10.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Supra*, n. 4.

¹⁷ E-mail from FDLE staff to staff of the Senate Committee on Criminal Justice, dated Oct. 18, 2017 (on file with the Senate Committee on Criminal Justice).

Permitted Adoption of Rules

Section 683.231(6)(b), F.S., authorizes the FDLE to adopt rules with which a CSO must comply in order to use FDLE administrative services, property, or facilities.

Staff finding: Not currently applicable. The FDLE has not adopted rules with which a CSO must comply in order to use FDLE administrative services, property, or facilities.¹⁸ The adoption of such rules is discretionary. Further, as previously noted, the FDLE has not rented any facilities or properties to the Foundation.¹⁹

Requirements Relating to Use of Services, Property, and Facilities

Section 683.231(6)(c), F.S., prohibits the FDLE from permitting the use of any administrative services, property, or facilities of the state by a CSO that does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.

Staff findings: Compliance. As previously noted, the FDLE has not rented any facilities or properties to the Foundation. However, the letter of agreement requires the Foundation to provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin as required and specified by appropriate federal and state laws.²⁰

Independent Annual Financial Audit

Section 683.231(7), F.S., requires the CSO to provide for an independent annual financial audit in accordance with s. 215.981, F.S. Copies of the audit must be provided to the FDLE, the Office of Policy and Budget in the Executive Office of the Governor, and the Florida Cabinet.

Section 215.981(1), F.S., generally requires a CSO or 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.²¹ The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. 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.²²

¹⁸ *Id.*

¹⁹ *Supra*, n. 17.

²⁰ *Supra*, n. 10.

²¹ 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. Section 215.981(1), F.S. 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. Section 215.981(2), F.S.

²² Section 11.45(3)(d), F.S.

Staff findings: Not currently applicable. The Foundation does not have annual expenditures in excess of \$100,000.²³ Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S. However, in the event the Foundation should ever have annual expenditures in excess of \$100,000, the letter of agreement provides for such audit.²⁴ Copies of such audit must be provided to the Auditor General, the FDLE, the Missing Endangered Persons Information Clearinghouse (MEPIC) Advisory Board, the Office of Policy and Budget in the Executive Office of the Governor, and the Florida Cabinet.²⁵

According to FDLE staff, “[a]ll donations are received by the Florida Missing Children’s Day Foundation treasurer. The treasurer maintains records of donations and also sends the receipt of donation to the Florida Department of Law Enforcement.”²⁶ All monies solicited for Florida Missing Children’s Day are held in a separate account in the name of the Foundation, and used only as authorized by the FDLE. No revenues may be expended without the joint approval of the Foundation and the FDLE. All excess funds are to be permanently restricted and carried over in the budget.²⁷

Further, according FDLE staff, there is a staff member whose primary job is to serve as support to the MEPIC Advisory Board and as the FDLE liaison to the Foundation. Part of this staff member’s responsibilities includes “working closely with the Foundation Treasurer, President, and their event planner to monitor and review the expenses and budget accounting and report the findings to leadership at FDLE and the Foundation Officers.” FDLE staff also notes that the department is currently “planning to conduct informal fiscal reviews quarterly, and then assess the need to adjust that frequency as looks appropriate.” FDLE will determine in the future whether a semiannual review is more appropriate. “[T]he great bulk of the Foundation expenditures all naturally occur in the ramp up to and immediately following Florida Missing Children’s Day[.]”²⁸

Staff Review of Compliance with s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements)

Section 20.058, F.S., establishes a comprehensive set of transparency and reporting requirements for CSOs and DSOs.

²³ Total contributions for 2016 were \$27,680. Documents pertaining to the Florida Missing Children’s Foundation in compliance with s. 20.058, F.S., and transmittal letter dated August 8, 2017, from FDLE Commissioner Richard L. Swearingen to Senate President Joe Negron, available at http://www.fdle.state.fl.us/Open-Government/Documents/CSO_FMCDLetter_2017.aspx (last visited on Dec. 21, 2017).

²⁴ *Supra*, n. 10.

²⁵ *Id.*

²⁶ E-mail from FDLE staff to staff of the Senate Committee on Criminal Justice, dated Aug. 18, 2017 (on file with the Senate Committee on Criminal Justice).

²⁷ *Supra*, n. 10.

²⁸ E-mail from FDLE staff to staff of the Senate Committee on Criminal Justice, dated Sept. 18, 2017 (on file with the Senate Committee on Criminal Justice).

Reporting Requirements

Section 20.058(1), F.S., requires each CSO and DSO to annually submit, by August 1, the following information to the agency it supports:

- 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 and results obtained by the CSO or DSO;
- A brief description of the CSO or DSO’s plans for the next three fiscal years;
- 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 990.²⁹

Staff findings: Compliance. In 2017, the FDLE reported all of the information required by s. 20.058(1), F.S., except for providing a copy of the IRS Form 990.³⁰ According to FDLE staff, “[b]ecause the Foundation’s annual gross receipts total less than \$50,000, they file a ‘Form 990-N.’ Using a series of system prompts, the 990-N is entirely electronic through an IRS system that the CSO is registered with as a user. There is no physical or singular electronic ‘form’ in the traditional sense of the word.”³¹ The IRS provides a confirmation of the filing composed of the responses to the system prompts for filing, which is “the only ‘documentation’ available for Form 990-N filings.”³² The confirmation is provided in the annual report of information that the FDLE provides pursuant to s. 20.58, F.S.³³

Transparency of Reported CSO or DSO Information

Section 20.058(2), F.S., provides that each agency receiving information from a CSO or DSO pursuant to s. 20.058(1), F.S., shall make such information available to the public through the agency’s website. If the organization maintains a website, the agency’s website must provide a link to the organization’s website.

Staff findings: Compliance. The information described in s. 20.58(1) F.S., is available on the FDLE website³⁴ and the FDLE website also provides a link to the Foundation’s website.³⁵

Section 20.058(3), F.S., provides that, by August 15 of each year, each agency shall 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

²⁹ 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. s. 501.

³⁰ Documents pertaining to the Florida Missing Children’s Foundation in compliance with s. 20.058, F.S., and transmittal letter dated August 8, 2017, from FDLE Commissioner Richard L. Swearingen to Senate President Joe Negron, available at http://www.fdle.state.fl.us/Open-Government/Documents/CSO_FMCDLetter_2017.aspx (last visited on Dec. 21, 2017).

³¹ E-mail from FDLE staff to staff of the Senate Committee on Criminal Justice, dated Sept. 20, 2017 (on file with the Senate Committee on Criminal Justice).

³² *Id.*

³³ *Supra*, n. 30.

³⁴ *Supra*, n. 30 and “Florida Missing Children’s Day Foundation (FMCDF)” (“2017 Annual Report” tab), Missing Endangered Persons Clearinghouse, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/MCICSearch/FMCDFoundation.asp> (last visited on Dec. 21, 2017).

³⁵ “Florida Missing Children’s Day Foundation (FMCDF)” (“Florida Missing Children’s Foundation” tab), Missing Endangered Persons Clearinghouse, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/MCICSearch/FMCDFoundation.asp> (last visited on Dec. 21, 2017).

each CSO and 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.

Staff findings: Compliance. The FDLE submitted its report by August 15, 2017,³⁶ and FDLE Commissioner Swearingen expressed his strong support for the continued efforts of the Foundation and recommended the Foundation continue to support Florida Missing Children's Day.³⁷

Contract Requirements

Section 20.05(4), F.S., provides that any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting information pursuant to s. 20.058(1) and (2), F.S. The contract must also include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If an organization fails to submit the required information for two consecutive years, the agency head shall terminate any contract between the agency and the organization.

Staff findings: Substantial compliance. The letter of agreement requires the Foundation, by August 1 of each year, to submit and post the information required by s. 20.058(1) and (2), F.S. It also specifies that the letter of agreement is contingent upon the Foundation's submission and posting of this information, and that termination of the agreement will result if the Foundation fails to submit this information for two consecutive years.

The letter of agreement also requires the Foundation to "promptly" return to the FDLE, as directed by the FDLE, all funds and property managed by the Foundation if:

- The Foundation, for any reason, ceases to be a CSO for the FDLE;
- The letter of agreement is cancelled by the FDLE because the Foundation is no longer approved by the FDLE to operate in the best interests of the state, if it is breached by the Foundation (as determined by the FDLE), or if it has expired and is not renewed; or
- If the Foundation is dissolved, if its articles of incorporation are revoked or cancelled, or if the Foundation loses its tax exempt status.³⁸

Staff Review of Compliance with s. 215.981, F.S. (CSO/DSO Audit Requirements)

As previously noted, s. 215.981(1), 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. (For a full description of the statute, *see* discussion, *supra*, of s. 683.231(7), F.S. (independent annual financial audit)).

³⁶ *Supra*, n. 30.

³⁷ *Supra*, n. 4.

³⁸ *Supra*, n. 10. Funds and property returned are to be used for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or for a public purpose. *Id.*

Staff findings: Not currently applicable. As previously noted, the Foundation does not have annual expenditures in excess of \$100,000. Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.³⁹

Staff Review of Compliance with s. 112.3251, F.S. (CSO/DSO Ethics Code Requirement)

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.⁴⁰ 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.⁴¹

Staff findings: Compliance. The Foundation has a code of ethics which is conspicuously posted at its website.⁴²

III. Effect of Proposed Changes:

The bill removes a repeal date of October 1, 2018, and reenacts authority for the FDLE to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day. The Florida Missing Children's Day Foundation, Inc., currently provides such assistance, funding, and support.

Staff of the Senate Committee on Criminal Justice finds that the FDLE and the Florida Missing Children's Day Foundation, Inc., are in compliance with all statutory requirements relevant to CSOs.

The bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁹ *Supra*, n. 23.

⁴⁰ 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.

⁴¹ Section 112.3251, F.S.

⁴² See <http://www.fmcdcf.org/forms/2017-Code-of-Ethics.pdf> and <http://www.fmcdcf.org/> ("2017 Code of Ethics" tab) (last visited on Dec. 21, 2017).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

By saving s. 683.231, F.S., from repeal, the CSO may continue to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day.

C. Government Sector Impact:

The bill has no fiscal impact on state government. By saving s. 683.231, F.S., from repeal, the CSO may continue to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day. If s. 683.231, F.S., is not saved from repeal, the FDLE may need to assume the responsibilities of the CSO or find another entity to assume those responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 683.231 of the 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.